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Presidential Documents

Title 3—

The President

Proclamation 6352 of October 9, 1991

Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics

By the President of the United States of America

A Proclamation

1. Pursuant to the authority vested in me by the Constitution and the laws of the United States, as President of the United States of America, I, acting through duly empowered representatives, entered into negotiations with representatives of the Union of Soviet Socialist Republics to conclude an agreement on trade relations between the United States of America and the Union of Soviet Socialist Republics.

2. These negotiations were conducted in accordance with the requirements of the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act").

3. As a result of these negotiations, an "Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics," including annexes and exchanges of letters which form an integral part of the Agreement, the foregoing in English and Russian, was signed on June 1, 1990, by duly empowered representatives of the two Governments and is set forth as an annex to this proclamation.

4. This Agreement conforms to the requirements relating to bilateral commercial agreements set forth in section 405(b) of the Trade Act (19 U.S.C. 2435(b)).

5. Article XVII of the Agreement provides that the Agreement shall enter into force on the date of exchange of written notices of acceptance by the two Governments.

6. Section 405(c) of the Trade Act (19 U.S.C. 2435(c)) provides that a bilateral commercial agreement providing nondiscriminatory treatment to the products of a country heretofore denied such treatment, and a proclamation implementing such agreement, shall take effect only if approved by the Congress under the provisions of that Act.

7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States the substance of the provisions of that Act, of other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 404, 405, and 604 of the Trade Act of 1974, as amended, do proclaim that:

(1) This proclamation shall become effective, said Agreement shall enter into force, and nondiscriminatory treatment shall be extended to the products of the Union of Soviet Socialist Republics, in accordance with the terms of said Agreement, on the date of exchange of written notices of acceptance in accordance with Article XVII of said Agreement. The United States Trade Representative shall publish notice of the effective date in the **Federal Register.**

(2) Effective with respect to articles entered, or withdrawn from warehouse for consumption, into the customs territory of the United States on or after the date provided in paragraph (1) of this proclamation, general note 3(b) to the Harmonized Tariff Schedule of the United States, enumerating those countries whose products are subject to duty at the rates set forth in Rates of Duty Column 2 of the tariff schedule, is modified by striking out "Union of Soviet Socialist Republics".

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 91-24823
Filed 10-9-91; 5:10 pm]
Billing code 3195-01-M

Note: The annex referred to in paragraph 3 of Proclamation 6352 was printed in the **Federal Register** at 56 FR 37409, August 6, 1991.

Rules and Regulations

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

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2636

Regulation Requiring Confidential Reporting of Payments to Charitable Organizations in Lieu of Honoraria; Further Deferral of Effective Date

AGENCY: Office of Government Ethics.

ACTION: Further deferral of effective date of interim rule provision.

SUMMARY: The Office of Government Ethics (OGE) is further deferring the effective date of its interim rule for the executive branch on confidential reporting of payments to charities in lieu of honoraria (see 56 FR 1727–1728, January 17, 1991 and 56 FR 21589, May 10, 1991). The regulation, 5 CFR 2636.205, will now become effective on February 18, 1992.

DATES: The effective date of 5 CFR 2636.205 is further deferred until February 18, 1992.

ADDRESSES: Any comments or questions should be sent to William E. Gressman, Office of Government Ethics, suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

FOR FURTHER INFORMATION CONTACT: Mr. Gressman of OGE at the address above, telephone (202/FTS) 523–5757, FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics published 5 CFR 2636.205, the confidential reporting provision for payments to charitable organizations in lieu of honoraria, as an interim rule in the **Federal Register** on January 17, 1991 and provided for an effective date of May 15, 1991 (see 56 FR 1721–1730). The remainder of that interim regulation, 5 CFR part 2636, entitled "Limitations on Outside Employment and Prohibition of Honoraria· Confidential Reporting of Payments to Charities in Lieu of Honoraria," was effective January 1, 1991 and continues in effect. On May 10, 1991, OGE deferred the effective date of § 2636.205 until October 15, 1991 in order to allow more time to adopt a new reporting form; as noted below, OGE now needs additional time to complete that process.

OGE continues to work on a draft confidential standard reporting form to collect the information specified in 5 CFR 2636.205 and the underlying section of the Ethics in Government Act as amended, 5 U.S.C. appendix 102(a)(1)(A). Because the new form will collect information from some members of the public (terminees who file after leaving the Government) as well as current Federal employees, it must be submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35 (the § 2636.205 regulation itself was approved thereunder by OMB on April 10, 1991). In addition, since the form will be a standard form, OGE will also submit it to the General Services Administration (GSA) for its review and approval in accordance with standard form clearance procedures. In order to allow an adequate amount of time for OGE to finish preparing the new reporting form, submit it to OMB and GSA for approval, and provide for a public comment period before final issuance of the form, the Office of Government Ethics has determined to further defer the effective date of the 5 CFR 2636.205 reporting regulation until February 18, 1992.

Approved: October 7, 1991.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 91–24588 Filed 10–10–91; 8:45 am]
BILLING CODE 6345–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 75

[No. LS–90–112]

Increase Testing Fees for Inspection and Certification of Quality of Agricultural and Vegetable Seeds Under the Agricultural Marketing Act of 1946

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends 7 CFR part 75 by increasing the applicable fees for testing seed under the voluntary seed inspection and certification program. The increased fees which are to be paid by the users of the service are necessary because of increased costs of operating the program. The increased fees are intended to generate sufficient revenue to offset the costs of operating the program. In addition, a new section is added to display the OMB control number assigned to the information collection requirements contained in part 75.

EFFECTIVE DATE: November 12, 1991.

FOR FURTHER INFORMATION CONTACT: James P. Triplitt, Chief, Seed Regulatory and Testing Branch, 301–344–4430.

SUPPLEMENTARY INFORMATION: This rule is authorized by the Agricultural Marketing Act (AMA) of 1946, as amended, 7 U.S.C. 1621 *et seq.*, which provides for voluntary seed inspection and certification services. The AMA authorizes the Secretary to inspect, and certify the quality of agricultural products and collect such fees as reasonable to cover as nearly as practicable the cost of service rendered. This revision is to increase the fees to be charged for the inspection and certification of agricultural and vegetable seeds to reflect the Department's cost of operating the program.

This action has been reviewed under Executive Order No. 12291 and Departmental Regulation 1512–1 and has been determined to be a non-major rule under the criteria contained therein. This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Administrator of AMS has determined that this action will not have a substantial economic impact on a significant number of small entities. Although some seed growers and shippers using this service may be classified as small entities, the effect of the increased fees will be minimal. Under this final rule the average cost for a test will increase from $41.26 to approximately $49.98. It is estimated that the total revenue generated by this increase will be approximately $20,000 annually.

The AMA provides for the inspection and certification of quality of

agricultural and vegetable seeds in order to brinq about efficient, orderly marketing and to assist the development of new or expanding markets. The AMA provides for the collection of fees and charges equal to the cost of providing the service. The service is voluntary and available to anyone.

Under the voluntary program samples of agricultural and vegetable seeds submitted are tested for factors such as purity and germination at the request of the applicant for the service. In addition, grain samples, submitted at the applicant's request, by the Federal Grain Inspection Service are examined for the presence of certain weed and crop seed. A Federal Seed Analysis, Sample Inspection, Certificate is issued giving the test results. Of 2,000 samples tested in 1990, most represented seed or grain scheduled for export. Many importing countries require a Federal Seed Analysis Certificate on U.S. seed.

The fees were last increased June 1, 1984. Since that time there have been increases in salaries and fringe benefits of botanists, clerical, and supervisory personnel as well as all administrative costs of operating the program. In addition, some aging testing equipment such as seed germinators must be replaced in order to continue to provide accurate, timely test results. After reviewing the current costs the department determined that the present fees were insufficient to cover the department's cost of operation. In view of the above, the hourly rate for voluntary seed inspection and certification services is increased from $23.40 to $29.40. In addition, the cost of issuing additional duplicate original certificates will be increased from $3.30 to $7.35. Approximately one-fourth hour is required to issue additional duplicate certificates.

In addition, this final rule adds a new § 75.49 to display the OMB control number assigned to the information collection requirements in part 75. The information collection requirements contained in part 75 have been previously approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), and has been assigned OMB Control No. 0581–0140.

A proposed rule was published in the **Federal Register** on May 2, 1991 [56 FR 20146]. Comments on the proposed rule were invited from interested persons until June 3, 1991. No comments were received. Therefore, it has been determined that the changes to the regulations as proposed should be adopted.

List of Subjects in 7 CFR Part 75

Administrative practice and procedure, Agricultural commodities, Reporting and recordkeeping requirements, Seeds, Vegetables.

PART 75—REGULATIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS

1. The authority citation for 7 CFR part 75 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087 and 1090, as amended (7 U.S.C. 1622 and 1624).

§ 75.41 [Amended]

2. In § 75.41, remove "$23.40" and add in its place "$29.40."

§ 75.47 [Amended]

3. In § 75.47, remove "$3.30" and add in its place "$7.35."

4. Section 75.49 is added to read as follows:

§ 75.49 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 is as follows: OMB Control No. 0581–0140.

Done at Washington, DC on October 4, 1991.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 91–24362 Filed 10–10–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1210

[WRPA Docket No. 1; FV–91–253]

Watermelon Research and Promotion Plan; Amendments to Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting without modification as a final rule an interim final rule which amended the Watermelon Research and Promotion Plan's rules and regulations by clarifying when the 90-day refund period begins for assessments paid by producers and handlers and specifying that, when requesting a refund, handlers must submit copies of a specified report, and producers must submit receipts or copies of receipts received from handlers on the date the producer's watermelons were handled. This action benefits both producers and handlers by clarifying when the refund period starts and what documentation is acceptable for proving payment of assessments.

EFFECTIVE DATE: October 11, 1991.

FOR FURTHER INFORMATION CONTACT: Richard H. Mathews, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–South, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 447–4140.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Watermelon Research and Promotion Plan (Plan) (7 CFR part 1210). The Plan is effective under the Watermelon Research and Promotion Act (7 U.S.C. 4901–4916), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation No. 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Act and Plan provide that all producers (not including persons engaged in the growing of less than five acres of watermelons) and handlers of watermelons are subject to regulation under the Plan for watermelons produced in the contiguous 48 States. The Act and Plan provide that watermelon producers and handlers pay equal assessments for operating the program. The Act and Plan further provide that handlers are responsible for collecting and submitting both producer and handler assessments to the National Watermelon Promotion Board (Board), reporting their handling of watermelons, and for maintaining records necessary to verify their reportings.

There are approximately 750 watermelon handlers and 5,000 watermelon producers subject to regulation under the Plan. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $3,500,000 and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of watermelon handlers and producers may be classified as small entities.

This action will not have a significant economic impact on small handlers or producers. This action benefits both producers and handlers by clarifying when the refund period starts and what documentation is acceptable for proving payment of assessments.

Section 1647(b)(2) of the Act (7 U.S.C. 4906(b)(2)) and 1210.327(b) of the Plan (7 CFR 1210.327(b)) authorize the Board to recommend to the Secretary such rules and regulations as are necessary to effectuate the terms and conditions of the Plan.

An interim final rule amending § 1210.520 (7 CFR 1210.520) was issued June 21, 1991, and published in the **Federal Register** (56 FR 29399, June 27, 1991), based on recommendations from the board. That rule specified that the 90-day refund period begins for both producers and handlers on the last day of the month of handling. That rule further required that, when requesting a refund, handlers must submit copies of a specified report, and producers must submit receipts or copies of receipts received from handlers on the date the producer's watermelons were handled. It was also provided that interested persons could file written comments through July 29, 1991. Twenty-one comments, all favoring the amendments, were received from producers, handlers, persons commenting on behalf of the National Watermelon Promotion Board, as well as a dietician.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et seq.*), the information collection requirements and refund application forms used under the provisions of § 1210.520 have been previously approved by OMB and assigned OMB Control Number 0581–0158. Recently this OMB Control Number was redesignated by OMB as OMB Control Number 0581–0093. This action places no new recordkeeping or reporting requirements on producers or handlers.

Based on available information, the Administrator of the AMS has determined that the issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Upon the basis of the evidence provided by the Board, and the comments submitted regarding the interim final rule, it is found that this action, and all of its terms and conditions as set forth, finalizing the interim final rule, as published in the **Federal Register** (56 FR 29399, June 27, 1991), will tend to effectuate the declared policy of the Act.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register,** because: (1) This action maintains the clarifications and specifications of the interim final rule; (2) the interim final rule provided a 30-day comment period, and twenty-one comments, all favoring the amendments, were received; (3) the 1991 crop year is currently underway; and (4) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Agricultural research, Reporting and recordkeeping requirements, Watermelons.

For the reasons set forth in the preamble, part 1210, chapter XI of title 7 is amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916.

2. Accordingly, the interim final rule amending the provisions of § 1210.520, which was published in the **Federal Register** (56 FR 29399, June 27, 1991), is adopted as a final rule without change.

Dated: October 4, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–24361 Filed 10–10–91; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Policy and Procedures for Enforcement Actions; Policy Statement, Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: correction.

SUMMARY: This action corrects the Commission's statement of policy and procedure for NRC enforcement actions codified as appendix C to 10 CFR part 2. On August 2, 1991 (56 FR 36998), the Nuclear Regulatory Commission published a policy statement in the **Federal Register** that modified the Commission's Enforcement Policy to add an additional example to the Reactor Operations Supplement involving maintenance related violations and to delete the civil penalty adjustment factor for violations involving maintenance deficiencies. This document inadvertently replaced an example that was added to the Reactor Operations Supplement involving a licensed operator's confirmed positive drug test by a final rule published on July 15, 1991 (56 FR 32066). This action is necessary to restore the text of appendix C, supplement 1, paragraph c.9 that was added in the July 15, 1991, final rule and to correct the paragraph designation of the paragraph added in the August 2, 1991, policy statement.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–0741.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read in part as follows:

Authority: Sec 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

* * * * *

2. Appendix C, supplement 1, is corrected by revising example c.9 and by adding example c.10 to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

Supplement I—Severity Categories

* * * * *

Reactor Operations

* * * * *

C. Severity Level III—Violations involving for example:

* * * * *

9. A licensed operator's confirmed positive test for drugs or alcohol that does not result in a Severity Level I or II violation.

10. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient.

* * * * *

Dated at Rockville, Maryland this 8th day of October 1991.

For the Nuclear Regulatory Commission.

Donnie Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 91-24612 Filed 10-10-91; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 202, 213, and 226

[Regs. B, M, Z; Docket No. R-0737]

Equal Credit Opportunity, Consumer Leasing, and Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical amendment.

SUMMARY: The Board is making technical amendments to its regulations to reflect the organizational restructuring of the Office of Thrift Supervision.

EFFECTIVE DATE: October 11, 1991.

FOR FURTHER INFORMATION CONTACT: Dale I. Nishimura, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-2412; for the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Office of Thrift Supervision (OTS) has undergone a structural reorganization which has eliminated the title "District Director" and any official recognition of an OTS "district." The realignment has abolished the twelve districts and created five regions.

The Board's Regulations B (Equal Credit Opportunity), M (Consumer Leasing), and Z (Truth in Lending) contain references to the various Federal supervisory agencies responsible for enforcement. The following amendments are hereby made to the Board's Regulations B, M, and Z to reflect this agency reorganization.

List of Subjects

12 CFR Part 202

Banks, Banking, Civil rights, Consumer protection, Credit, Federal Reserve System, Marital status discrimination, Minority groups, Penalties, Religious discrimination, Sex discrimination, Women.

12 CFR Part 213

Advertising, Consumer leasing, Truth in lending.

12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Rate limitations, Truth in lending.

12 CFR chapter II is amended as follows:

PART 202—EQUAL CREDIT OPPORTUNITY

1. The authority citation for 12 CFR part 202 continues to read as follows:

Authority: 15 U.S.C. 1691-1691f.

Appendix A to Part 202—Federal Enforcement Agencies [Amended]

2. Appendix A is amended by removing under the fourth heading the reference "The District Director of the Office of Thrift Supervision in the district in which the institution is located." and adding "Office of Thrift Supervision Regional Director for the region in which the institution is located." in its place.

PART 213—CONSUMER LEASING

1. The authority citation for 12 CFR part 213 is amended to read as follows:

Authority: 15 U.S.C. 1604.

Appendix D to Part 213—Federal Enforcement Agencies [Amended]

2. Appendix D is amended by adding at the end of the fourth heading the reference "Office of Thrift Supervision Regional Director for the region in which the institution is located."

PART 226—TRUTH IN LENDING

1. The authority citation for 12 CFR part 226 continues to read as follows:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and sec. 2, Pub. L. 100-583, 102 Stat. 2960; sec 1204(c), Competitive Equality Banking Act, Pub. L. 100-86, 101 Stat. 552.

Appendix I—Federal Enforcement Agencies [Amended]

2. Appendix I is amended by removing under the fourth heading the reference "The District Director of the Office of Thrift Supervision in the district in which the institution is located." and adding "Office of Thrift Supervision Regional Director for the region in which the institution is located." in its place.

Board of Governors of the Federal Reserve System, October 3, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-24270 Filed 10-10-91; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-86-AD; Amdt. 39-8059; AD 91-21-12]

Airworthiness Directives; Boeing Models 737, 757, and 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Models 737, 757, and 747-400 series airplanes, which requires replacement of the radio control panels (RCP) in the flight deck. This amendment is prompted by reports of uncommanded frequency changes of the Very High Frequency (VHF) and High Frequency (HF) radios. This condition, if not corrected, could result in temporary loss of communications with Air Traffic Control (ATC) and result in a hazardous situation during a critical flight phase.

DATE: Effective November 12, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Slotte, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2797. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Models 737, 757, and 747-400 series airplanes, which requires replacement of the radio control panels in the flight deck, was published in the **Federal Register** on June 4, 1991 (56 FR 25380).

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

Several commenters stated that there is a need to further define the dash numbers of the affected parts and to identify the approved corrective panel(s). The FAA notes that the panels required to be removed by this AD are P/N's 285U0037-104, -105, -201, -202, and -203. Since these dash numbers constitute the only part numbers currently in service and the proposal identified all units with the basic part number (285U0037), there is no impact

on the number of airplanes affected. In addition, Boeing is in the process of preparing replacement panels and a related service bulletin (to be reviewed and approved by the FAA) as a means of compliance with this AD. The final rule has been changed to specify the affected part numbers.

Several commenters stated that the proposed compliance time of nine months may be too short because replacement parts are not currently available. One commenter requested that the compliance time be extended to 12 months. After reviewing the present status of the program to produce replacement panels, the FAA agrees that the compliance time may be extended to 12 months without significantly impacting safety. The final rule has been changed accordingly.

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

There are approximately 173 Models 737, 757, and 747–400 series airplanes of the affected design in the worldwide fleet. It is estimated that 20 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,200.

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

For the reasons discussed above, I certify that this action (1) is not a "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, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

91–21–12. Boeing: Amendment 39–8059. Docket No. 91–NM–86–AD.

Applicability: Model 737, 757, and 747–400 series airplanes, equipped with Boeing part number (P/N) 285U0037–104, –105, –201, –202, or –203 series radio control panels, certificated in any category.

Compliance: Required within 12 months of the effective date of this AD unless previously accomplished.

To prevent uncommanded frequency changes of the high frequency (HF) and very high frequency (VHF) radios, accomplish the following:

(a) Remove the P/N 285U0037–104, –105, –201, –202, or –203 series radio control panels and replace them with panels approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment (39–8059, AD91–21–12) becomes effective November 12, 1991.

Issued in Renton, Washington, on September 27, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–24572 Filed 10–10–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–NM–204–AD; Amdt. 39–8011; AD 91–18–08]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires that landing gear brake wear limits be incorporated into the FAA-approved maintenance inspection program. This amendment is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway. An investigation revealed that 8 out of 10 brakes on the airplane were at or near the maximum allowable wear limits before the RTO and were unable to absorb the required RTO energy, thus contributing to the accident. This condition, if not corrected, could result in loss of brake effectiveness during a high energy RTO and cause further incidents/accidents.

EFFECTIVE DATE: November 12, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2672. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 747 series airplanes, which requires that landing gear brake wear limits be incorporated into the FAA-approved maintenance inspection program, was published in the **Federal Register** on December 18, 1990 (55 FR 51921).

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

One commenter disagreed with the standard that the FAA imposed regarding the allowance of thrust reverser credit in the calculation of the energy the brake must absorb in its worn state; this commenter asked that the allowable wear limits be adjusted to reflect no credit for thrust reversers. The commenter's reason for objecting was

that the FAA would be unable to assure that brakes worn to the maximum allowable limit are capable of absorbing the additional energy if thrust reversers are not used or inoperable. The FAA concurs in part with the commenter. If thrust reversers are unavailable, it is possible that the brakes will not be able to absorb the energy of a maximum kinetic energy RTO on a dry runway, field-length limited takeoff, with all the brakes at their maximum wear state. However, the FAA does not concur that the wear limit should be based on the absence of thrust reversers. A number of factors exist which, when considered, provide an acceptable level of safety without further reducing allowable brake wear through eliminating the effect of thrust reversers. Maximum energy RTO's are a relatively rare event. Further, it is rare for airplanes to be operating with all brakes worn to their limit. In addition, thrust reversers will in almost all cases be used because flight crews are trained to apply them when bringing the airplane to a stop, especially during an RTO. It should also be noted that the energy credit allowed for thrust reversers for the purposes of this AD is based on loss of an engine and its attendant thrust reverser, and loss of an engine is not the only reason for rejecting a takeoff. Also, there is usually more runway distance available than the minimum allowable under the operating rules, which provides some stopping performance margin during an RTO. When all these factors are considered, sufficient conservatism is present to offset the added costs associated with limiting brake wear based on the absence of thrust reversers.

Another commenter asked that the rule be withdrawn since there have been no accidents/incidents on the Model 747, and the possibility of having all brakes on the airplane being near the fully worn state at the same time is extremely remote. The FAA disagrees. This type of event has occurred on a transport airplane in service. Further, in light of recent data, new methodologies were developed and used to determine brake wear limits which, in some cases, are different from those currently used. The FAA has determined that these limits provide a more appropriate level of safety which more realistically reflects actual airplane usage than those currently recommended Also, the existing wear limits may not be adhered to since they currently are not mandated by the FAA; as described in the preamble to the Notice, this could result in an unsafe condition.

One commenter contended that the period for public comment provided for this action was too short; this commenter indicated that only 23 working days were actually available for compiling comments. The FAA notes that the Notice was published in the **Federal Register** on December 18, 1990; the period for public comment closed on February 1, 1991. This time span encompassed a total of six weeks, which is the normal amount of time usually provided for public comment to any NPRM.

A commenter asked that the **Discussion** section of the proposal be clarified since it gives the impression that something was wrong with the Model DC–10 brake pistons; there was nothing wrong with the pistons. The FAA agrees that there was nothing wrong with the pistons in the brake assemblies; the O–ring was damaged as a result of the pistons being over-extended due to excessive brake wear.

A commenter asked the FAA to justify why it did not incorporate certain key items recommended by the Aerospace Industries Association (AIA). The commenter asked why the FAA:

1. Used 100% worn brakes when AIA demonstrated that airlines generally remove brakes prior to 100% wear and the extremely remote probability that all brakes on the airplane would be at the fully worn state when a maximum energy RTO is conducted.

2. Did not address brake force (stopping distance) when AIA guidelines dealt with brake force and the energy and force issues are interdependent.

3. Did not consider the probability of occurrence and severity of the result in establishing these requirements.

The FAA required a demonstration of 100% worn brakes because the regulatory and design intent is that brakes be capable of absorbing 100% of the energy in their operating environment. If the criteria only addressed brakes at a 90% worn state, the FAA would not have properly evaluated the brake. Also, airlines routinely remove brakes prior to their fully worn state; this is done for the sake of convenience, and for economic considerations regarding dispatch and spares availability.

Brake force issues were not addressed in this rulemaking because the FAA determined that additional information was necessary before proceeding with rulemaking on this subject. The FAA therefore made the decision to continue with the brake energy issue in the interest of public safety while the issues surrounding brake force were being resolved. The FAA may consider further rulemaking to address the brake force issues.

Finally, the issue regarding probability of occurrence and severity of the result proposed by the AIA, involved the probability of the airplane conducting an RTO at the maximum kinetic energy, all brakes on the airplane being at their fully worn state, and the airplane departing the runway at a relatively low speed (20 knots or less). The existing regulations and design criteria require that an airplane stop on the runway. It is unacceptable to the FAA for an airplane braking system to be designed in such a manner or to have standards that allow an airplane to leave the runway at any speed, since obstacles and hazards may damage the airplane or cause injuries to passengers and crew members.

Another commenter stated that rules regarding this subject should be promulgated for both U.S. and non-U.S. airframe manufacturers. The discussion in the preamble to the proposed rule only stated that U.S. airframe manufacturers had been requested to provide required adjustments in allowable wear. It is the intent of the FAA to address all transport airplanes that have a U.S. Type Certificate. Non-U.S. airframe manufacturers have been providing similar information and additional rulemaking may be forthcoming based on the data received.

One commenter asked that brakes in limited use, and expected to decline in usage, be exempted from the worn brake standard imposed by the FAA. The FAA considers it inappropriate to attempt to address all brakes in this rulemaking action. However, the FAA will address each of these brakes on a case-by-case basis, as petitioned by the airframe/brake manufacturers.

Another commenter requested that brake and airframe manufacturer part numbers be identified in the rule. The FAA agrees that these should be included and has changed the final rule accordingly.

One commenter asked that the wording of the proposed paragraph A. be reworded to indicate that this limit is the length of the wear pin after the brake is rebuilt. The commenter provided no justification for why this should be done. The FAA does not consider changing the wording to be appropriate, since operators use different wear pin lengths and removal criteria for various reasons. By specifying the criteria as allowable wear, the rule still provides flexibility for the operators while meeting its intent.

One commenter requested that the FAA review the relevance of the

requirement within the rule for incorporation of maintenance wear limits that are identical to values already in use, and currently in the brake manufacturers' component maintenance manuals and/or service bulletins. The commenter also asked that the FAA consider other appropriate means of accomplishing the intent of this rule, such as utilizing the provisions of part 43 of the Federal Aviation Regulations ("Maintenance, Preventive Maintenance, Rebuilding, and Alteration") to place more emphasis on this issue, and specifying the brake manufacturers' component maintenance manual and/or service bulletin information control brake overhaul criteria. This would provide for comprehensive maintenance criteria to be controlled and maintained for each individual brake and airplane combination. The FAA disagrees. The FAA has determined that the current regulations and methodology used do not require the establishment and maintenance of wear limits and that, as a result, an unsafe condition exists. Under these circumstances, the AD process is the appropriate regulatory means for mandating corrective action.

One commenter asked that certain brakes be excluded from the proposed rule since dynamometer testing has shown that these brakes do not require a wear limit reduction. The FAA disagrees. Even though no wear limit reduction is necessary, the rule still requires operators to establish these limits in their FAA-approved maintenance program. Further, should an operator not be utilizing these limits, it is critical that the operator's brakes be evaluated to assure that they are within these limits.

Another commenter objected to the description of the unsafe condition as stated in the **SUMMARY** section of the preamble. The commenter contended that there is no actual change in currently used wear limits and the loss of brake effectiveness does not exist for certain brakes. The commenter also stated that, since there have been no incidents or accidents involving Model 747 airplanes related to this issue, the indication that the addressed unsafe condition could lead to "further" accident/incidents is inappropriate The FAA disagrees. As stated previously, the FAA has determined that it is necessary to require that these wear limits be mandated and their present use verified. The term "further" was used in a generic sense, since the FAA is dealing with this issue on a broad basis.

One commenter stated that the phrase "not properly defined," regarding current brake wear limits, is confusing since it could be interpreted to apply to the component maintenance manual or maintenance inspection program. The commenter asked that this be clarified to indicate that it only applies to the maintenance inspection program. The FAA's intent in using that phrase was to communicate that brake wear limits in the component maintenance manual may not be properly defined in or incorporated into the operators' FAA-approved maintenance programs.

Another commenter expressed concern about the difference between the wear limit for a specific brake recommended by the manufacturer and that in the proposed rule. Dynamometer tests showed that a 2.16 inch wear limit is capable of absorbing the required energy, but the manufacturer recommends a lower limit (2.00 inch) due to service experience; future service experience may result in increases to the wear limit. The commenter requested that the wear limit currently recommended by the manufacturer be included in the rule in place of the 2.16 inch wear limit proposed. The FAA agrees and has revised the final rule accordingly. This change should not increase wear limits already recommended and theoretically in use.

A final commenter objected to the statement that the intent of the rule is, "To prevent the loss of main landing gear braking effectiveness * * *," and suggested that it be changed to, "To assure that the present level of brake effectiveness is retained * * *." The commenter stated that the revised wording is more accurate since the wear limits currently being used by affected operators are not different from those specified in the proposed rule. The FAA disagrees that the wording needs to be changed. The FAA has determined that although the wear limits may actually be used by affected operators, they may not be adhered to, since no specific requirement to do so exists. The use of the word "prevent" is appropriate since the ultimate intent of the brake wear limits is definitely to prevent the loss of braking effectiveness.

The format of the final rule has been restructured to be consistent with the standard **Federal Register** style.

Paragraph (b) of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph below, has been revised to increase the specified hourly rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

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

There are approximately 300 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 48 airplanes of U.S. registry and 11 U.S. operators will be affected by this AD. Although the rule will require the incorporation of maximum brake wear limits into the FAA-approved maintenance inspection program, no other action, inspection, or part replacement costs are involved. However, it is estimated that it will require 20 manhours, at an average labor cost of $55 per manhour, for each operator to incorporate the requirement into its FAA-approved maintenance inspection program. Based on these figures, the total cost impact of the AD on U S. operators is estimated to be $12,100 (or $1,100 per operator).

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

For the reasons discussed above, I certify that this action (1) is not a "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, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

91–18–08. Boeing: Amendment 39–8011. Docket No. 90–NM–204–AD.

Applicability: Model 747 series airplanes equipped with brake part numbers (P/N) identified in paragraph (a) of this AD, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits, shown below, into the FAA-approved maintenance inspection program.

Brake manufacturer	Brake P/N	Boeing P/N	Maximum wear limit (inches)
Bendix	2603703–13	60B10014–9	1.55
Bendix	2603703–14	60B10014–11	1.55
Bendix	2605662–1	60B10014–15	2.50
Bendix	2605662–3	60B10014–23	2.70
BF Goodrich	2–1515–1	60B10062–11	2.00
BF Goodrich	2–1515–2	60B10062–12	2.00

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment (39–8011, AD 91–18–08) becomes effective November 12, 1991.

Issued in Renton, Washington, on September 26, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–24573 Filed 10–10–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–CE–64–AD; Amdt. 39–8061; AD 91–22–01]

Airworthiness Directives; Cessna Model 210 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Cessna Model 210 airplanes. This action requires an inspection of the electrical wires in the nose gear tunnel area and the fuel line to the engine-driven fuel pump for cracking or chafing; the replacement of a cracked or chafed fuel line or electrical wire; and routing or clamping of the wire bundle in the nose gear tunnel area to obtain minimum clearance. There have been 24 reports of damaged fuel lines that have resulted from contact with electrical wires. One incident resulted in an in-flight fire. The actions specified by this AD are intended to prevent fuel leakage caused by damaged fuel lines, which could result in an in-flight fire.

DATES: Effective November 4, 1991. Comments for inclusion in the Rules Docket must be received on or before December 17, 1991.

ADDRESSES: Cessna Service Information Letter SE82–32, dated July 23, 1982, that is discussed in this AD may be obtained from Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; Telephone (316) 941–7550. This information may also be examined at the Rules Docket at the address below. Send comments on this AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91–CE–64–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4143.

SUPPLEMENTARY INFORMATION: There have been 24 reports of damaged fuel lines that have resulted from contact with electrical wires on certain Cessna Model 210 airplanes. One incident resulted in an in-flight fire. There is a possibility that the wire bundle located in the nose gear tunnel area is making contact with the engine-driven fuel pump fuel line on the affected airplanes, which could result in a cracked or chafed fuel line or electrical wires. After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that there should be a minimum clearance of .25 inches between the wire bundle and fuel line to the engine-driven fuel pump, and that AD action should be taken in this area in order to continue to assure the airworthiness of the affected airplanes.

Since the condition described is likely to exist or develop in other Cessna Model 210 airplanes of the same type design, an airworthiness directive is being issued that specifies actions that will prevent fuel leakage caused by damaged fuel lines, which could result in an in-flight fire. The AD action requires an inspection of the electrical wires in the nose gear tunnel area and the fuel line to the engine-driven fuel pump for cracking or chafing; the replacement of a cracked or chafed fuel line or electrical wire; and routing or clamping of the wire bundle in the nose gear tunnel area to obtain minimum clearance.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as

they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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); and 14 CFR 11.89.

§ 39.13 [Amended]

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

AD 91-22-01 Cessna: Amendment 39-8061; Docket No. 91-CE-64-AD.

Applicability: Model 210 airplanes (serial numbers (S/N) 21059062 through 21064535, S/N T210-0393 through T210-0454, and S/N P21000001 through P21000760), certificated in any category.

Compliance: Required within the next 50 hours time-in-service, unless already accomplished.

To prevent fuel leakage caused by damaged fuel lines, which could result in an in-flight fire, accomplish the following:

(a) Inspect the electrical wires in the nose gear tunnel area and the fuel line to the engine-driven fuel pump for cracks or chafing.

(1) If any cracked or chafed electrical wire or fuel line is found, prior to further flight, replace with a new electrical wire or fuel line. Ensure that the electrical wires are bundled and route or clamp the wire bundle so there is a clearance of .25 inches between the wire bundle and fuel line to the engine-driven fuel pump.

(2) If no cracked or chafed electrical wire or fuel line is found, ensure that the electrical wires are bundled and route or clamp the wire bundle so there is a clearance of .25 inches between the wire bundle and fuel line to the engine-driven fuel pump.

Note: Cessna Service Information Letter SE82-32, dated July 23, 1982, includes a photo that highlights the inspection areas and clearance area that is referenced in this AD. This service information may be obtained from the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety, may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) Information that is related to this AD may be obtained from the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri. This amendment becomes effective on November 4, 1991.

Issued in Kansas City, Missouri, on September 30, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-24574 Filed 10-10-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-ANE-05; Amdt. 39-6370]

Airworthiness Directives; CFM International (CFMI) CFM56-2/-3/-3B/-3C/-5 Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error in an Airworthiness Directive (AD) which was published in the **Federal Register** on Thursday, October 26, 1989, (54 FR 43581). This action corrects the Amendment Number. The AD in all other respects remains unchanged.

EFFECTIVE DATE: October 11, 1991.

SUPPLEMENTARY INFORMATION: A final rule Airworthiness Directive (AD), applicable to CFMI CFM56-2/-3/-3B/-3C/-5 Series turbofan engines, was published in the **Federal Register** on Thursday, October 26, 1989, (54 FR 43581). The AD superseded AD 89-17-04 by adding new bearing part numbers and serial numbers, and the CFM56-5 model engine, to the bearing inspection and removal program. The following correction is needed:

On page 54 FR 43581, in the first column, on the second line after the CFR title and part heading, change the Agency number to read as follows: [Docket No. 89-ANE-05; Amdt. 39-6370].

Issued in Burlington, Massachusetts, on September 18, 1991.

Mark C. Fulmer,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-24461 Filed 10-10-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-ASW-36]

Revision of Control Zone: Amarillo, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the control zone located at Amarillo, TX.

This action is necessary to revise the name of the airport, the runway used in the control zone description due to a change of magnetic variation, and the coordinates of the airport. The intended effect of this action is to revise the control zone located at Amarillo, TX, to ensure adequate controlled airspace to contain instrument operations at the Amarillo International Airport.

EFFECTIVE DATE: 0901 u.t.c., January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Mark F. Kennedy, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On December 10, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the control zone located at Amarillo, TX (56 FR 35).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G, dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations will revise the control zone located at Amarillo, TX. This action is necessary to revise name of the airport, the runway used in the control zone description due to a change of magnetic variation, and the coordinates of the airport. The intended effect of this action is to revise the control zone located at Amarillo, TX, to ensure adequate controlled airspace to contain instrument operations at the Amarillo International Airport.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

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

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Amarillo, TX [Revised]

Within a 5-mile radius of the Amarillo International Airport (latitude 35°13'10"N., longitude 101°42'20"W.); within 2 miles each side of the Amarillo VORTAC 220° radial, extending from the 5-mile radius zone to the VORTAC; within 2 miles each side of the extended centerline of Runway 22, extending from the 5-mile radius zone to 4.5 miles southwest of the departure end of Runway 22.

Issued in Fort Worth, TX, on September 25, 1991.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 91–24576 Filed 10–10–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 93

National Security Agency Litigation Regulation

AGENCY: National Security Agency/ Central Security Service (NSA/CSS).

ACTION: Interim final rule.

SUMMARY: The National Security Agency (NSA) is publishing this regulation to provide public notice of NSA's procedures for acceptance of service of process at NSA, including field sites, and for the release of official information in litigation by NSA personnel, through testimony or otherwise. This regulation sets forth the NSA's procedures for acceptance of service of process in person or mail and NSA's procedures for providing uniform and consistent responses to demands by courts and other entities of competent jurisdiction.

DATES: This interim final rule is effective October 2, 1990. Comments must be received by November 12, 1991.

ADDRESSES: Forward comments to: Associate General Counsel, National Security Agency, 9800 Savage Road, Fort George Meade, MD 20755–6000.

FOR FURTHER INFORMATION CONTACT: Vito T. Potenza, telephone 301–688–6054.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 93

Courts, Government employees.

Accordingly title 32, chapter I, subchapter A, is amended to add part 93 to read as follows:

PART 93—ACCEPTANCE OF SERVICE OF PROCESS; RELEASE OF OFFICIAL INFORMATION IN LITIGATION; AND TESTIMONY BY NSA PERSONNEL AS WITNESSES

Sec.
93.1 References.
93.2 Purpose and applicability.
93.3 Definitions.
93.4 Policy.
93.5 Procedures.
93.6 Fees.
93.7 Responsibilities.

Authority: E.O. 12333, 3 CFR, 1981 Comp., p. 200, 50 U.S.C. app. 401; 50 U.S.C. app. 402.

§ 93.1 References.

(a) DoD Directive 5405.2,[1] "Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses," July 23, 1985, reprinted in 32 CFR part 97.

(b) E.O. 12333, United States Intelligence Activities, 3 CFR, 1981 Comp., p. 200, reprinted in 50 U.S.C. app. 401.

(c) The National Security Agency Act of 1959, Public Law No. 86–36, as amended, 50 U.S.C. app. 402.

(d) Rule 4, Federal Rules of Civil Procedure.

(e) DoD Instruction 7230.7,[2] "User Charges", January 29, 1985.

(f) 28 CFR 50.15.

§ 93.2 Purpose and applicability.

(a) This part implements § 93.1(a) in the National Security Agency/Central

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 93.1(a).

Security Service including all field sites (hereinafter referred to collectively as NSA). The procedures herein are also promulgated pursuant to the NSA's independent authority, under § 1.12(b)(10) of E.O. 12333 referenced under § 93.1(b), to protect the security of its activities, information and employees. This part establishes policy, assigns responsibilities, and prescribes mandatory procedures for service of process at NSA and for the release of official information in litigation by NSA personnel, through testimony or otherwise.

(b) This part is intended only to provide guidance for the internal operation of the NSA and does not create any right or benefit, substantive or procedural, enforceable at law against the United States, the Department of Defense, or NSA. This part does not override the statutory privilege against the disclosure of the organization or any function of the NSA, of any information with respect to the activities thereof, or of the names, titles, salaries, or numbers of the persons employed by the NSA. See section 6(a) of the DoD Directive referenced under § 93.1(a).

§ 93.3 Definitions.

(a) *Service of process.* Refers to the delivery of a summons and complaint, or other document the purpose of which is to give notice of a proceeding or to establish the jurisdiction of a court or administrative proceeding, in the manner prescribed by § 93.1(d), to an officer or agency of the United States named in court or administrative proceedings.

(b) *Demand.* Refers to the delivery of a subpoena, order, or other directive of a court of competent jurisdiction, or other specific authority, for the production, disclosure, or release of official information, or for the appearance and testimony of NSA personnel as witnesses.

(c) *NSA personnel.* (or NSA person) Includes present and former civilian employees of NSA (including non-appropriated fund activity employees), and present and former military personnel assigned to NSA. NSA personnel also includes non-U.S. nationals who perform services overseas for NSA under the provisions of status of forces or other agreements, and specific individuals hired through contractual agreements by or on behalf of NSA.

(d) *Litigation.* Refers to all pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards, or other tribunals, foreign and domestic. It includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving litigation.

(e) *Official information.* Is information of any kind, in any storage medium, whether or not classified or protected from disclosure by § 93.1(c) that:

(1) Is in the custody and control of NSA; or

(2) Relates to information in the custody and control of NSA; or

(3) Was acquired by NSA personnel as part of their official duties or because of their official status within NSA.

(f) *General Counsel.* Refers to the NSA General Counsel (GC), or in the GC's absence, the NSA Deputy GC, or in both of their absences, the NSA Assistant GC (Administration/Litigation).

(g) *NSA attorney.* Refers to an attorney in the NSA Office of General Counsel (OGC).

§ 93.4 Policy.

Official information that is not classified, privileged, or otherwise protected from public disclosure, should generally be made reasonably available for use in federal and state courts and by other governmental bodies.

§ 93.5 Procedures.

(a) *Release of official information in litigation.* NSA personnel shall not produce, disclose, release, comment upon, or testify concerning any official information during litigation without the prior written approval of the GC. In exigent circumstances, the GC may issue oral approval, but a record of such approval will be made and retained in the OGC. NSA personnel shall not provide, with or without compensation, opinion or expert testimony concerning official NSA information, subjects, or activities, except on behalf of the United States or a party represented by the Department of Justice (DoJ). Upon a showing by the requester of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the NSA or the United States, the GC may, in writing, grant special authorization for NSA personnel to appear and testify at no expense to the United States. Official information may be released in litigation only in compliance with the following procedures.

(1) If official information is sought, through testimony or otherwise, by a litigation demand, the individual seeking such release or testimony must set forth, in writing and with as much specificity as possible, the nature and relevance of the official information sought. Subject to paragraph (a)(5) of this section, NSA personnel may only produce, disclose, release, comment upon or testify concerning those matters that were specified in writing and approved by the GC.

(2) Whenever a litigation demand is made upon NSA personnel for official information or for testimony concerning such information, the person upon whom the demand was made shall immediately notify the OGC. After consultation and coordination with the DoJ, if required, the GC shall determine whether the individual is required to comply with the demand and shall notify the requester or the court or other authority of that determination.

(3) If a litigation demand requires a response before instructions from the GC are received, the GC shall furnish the requester or the court or other authority with a copy of § 93.1(a) and this part 93. The GC shall also inform the requester or the court or other authority that the demand is being reviewed, and seek a stay of the demand pending a final determination.

(4) If a court or other authority declines to stay the demand in response to action taken pursuant to paragraph 3 of this section, or if such court or other authority orders that the demand must be complied with notwithstanding the final decision of the GC, the NSA personnel upon whom the demand was made shall notify the GC of such ruling or order. If the GC determines that no further legal review of or challenge to the ruling or order will be sought, the affected NSA personnel shall comply with the demand or order. If directed by the GC, however, the affected NSA personnel must decline to provide the information.[3] The NSA personnel shall state the following to the Court:

"I must respectfully advise the Court that under instructions given to me by the General Counsel of the National Security Agency, in accordance with Department of Defense Directive 5405.2 and NSA Regulation 10–62, I must respectfully decline to [produce/disclose] that information."

(5) In the event NSA personnel receive a litigation demand for official information originated by another U.S. Government component, the GC shall forward the appropriate portions of the

[3] *See* United States ex rel. *Touhy* v. *Ragen*, 340 U.S. 462 (1951) wherein the Supreme Court held that a government employee could not be held in contempt for following an agency regulation requiring agency approval before producing government information in response to a court order.

request to the other component. The GC shall notify the requester, court, or other authority of the transfer, unless such notice would itself disclose classified information.

(b) *Acceptance of service of process.* The following are mandatory procedures for accepting service of process for NSA personnel sued or summoned in their official capacities, and for attempting service of process on NSA premises.

(1) *Service on NSA or on NSA personnel in their official capacities.* § 93.1(d) requires service of process on the NSA or NSA personnel sued or summoned in their official capacity to be made by serving the United States Attorney for the district in which the action is brought, and by sending copies of the summons and complaint by registered or certified mail to the Attorney General of the United States and to the NSA or such NSA personnel. Only the GC or an NSA attorney is authorized to accept the copies of the summons and complaint sent to the NSA or NSA personnel pursuant to § 93.1(d). Acceptance of the copies of the summons and complaint by the GC or an NSA attorney does not constitute an admission or waiver with respect to the validity of the service of process or of the jurisdiction of the court or other body. Such copies shall be sent by registered or certified mail to: General Counsel, National Security Agency, 9800 Savage Road, Fort George G. Meade, MD 20755–6000. The envelope shall be conspicuously marked "Copy of Summons and Complaint Enclosed." Except as provided in paragraph (b)(3) of this section, no other person may accept the copies of the summons and complaint for NSA or NSA personnel sued or summoned in their official capacities, including the sued or summoned NSA personnel, without the prior express authorization of the GC.

(i) Parties who wish to deliver, instead of sending by registered or certified mail, the copies of the service of process to NSA or to NSA personnel sued or summoned in their official capacities, will comply with the procedures for service of process on NSA premises in paragraph (b) of this section.

(ii) Litigants may attempt to serve process upon NSA personnel in their official capacities at their residences or other places. Because NSA personnel are not authorized to accept such service of process, such service is not effective under § 93.1(d). NSA personnel should refuse to accept service. However, NSA personnel may find it difficult to determine whether they are being sued or summoned in their private or official capacity. Therefore, NSA personnel shall notify the OGC as soon as possible if they receive any summons or complaint that appears to relate to actions in connection with their official duties so that the GC can determine the scope of service.

(2) *Service upon NSA personnel in their individual capacities on NSA premises.* Service of process is not a function of NSA. An NSA attorney will not accept service of process for NSA personnel sued or summoned in their individual capacities, nor will NSA personnel be required to accept service of process on NSA premises. Acceptance of such service of process in a person's individual capacity is the individual's responsibility. NSA does, however, encourage cooperation with the courts and with judicial officials.

(i) When the NSA person works at NSA Headquarters at Fort George G. Meade, Maryland, the process server should first telephone the OGC on (301) 688–6054, and attempt to schedule a time for the NSA person to accept process. If the NSA person's affiliation with NSA is not classified, the NSA attorney will communicate with the NSA person and serve as the contact point for the person and the process server. If the person consents to accept service of process, the NSA attorney will arrange a convenient time for the process server to come to NSA, and will notify the Security Duty Officer of the arrangement.

(ii) A process server who arrives at NSA during duty hours without first having contacted the OGC, will be referred to the Visitor Control Center (VCC) at Operations Building 2A. The VCC will contact the OGC. If an NSA attorney is not available, the process server will be referred to the Security Duty Officer, who will act in accordance with Office of Security (M5) procedures approved by the GC. Service of process will not be accepted during non-duty hours unless prior arrangements have been made by the OGC. For purposes of this part, duty hours at NSA Headquarters are 0800 to 1700, Monday through Friday, excluding legal holidays. A process server who arrives at NSA during non-duty hours without having made arrangements through the OGC to do so will be told to call the OGC during duty hours to arrange to serve process.

(iii) Upon being notified that a process server is at the VCC, an NSA attorney will review the service of process and determine whether the NSA person is being sued or summoned in his official or individual capacity. (If the person is being sued or summoned in his or her official capacity, the NSA attorney will accept service of process by noting on the return of service form that "service is accepted in official capacity only.") If the person is being sued or summoned in his or her individual capacity, the NSA attorney will contact that person to see if that person will consent to accept service.

(3) *Procedures at field activities.* Chiefs of NSA field activities may accept copies of service of process for themselves or NSA personnel assigned to their field component who are sued or summoned in their official capacities. Field Chiefs or their designees will accept by noting on the return of service form that "service is accepted in official capacity only." The matter will then immediately be referred to the GC. Additionally, Field Chiefs will establish procedures at the field site, including a provision for liaison with local judge advocates, to ensure that service of process on persons in their individual capacities is accomplished in accordance with local law, relevant treaties, and Status of Forces Agreements. Such procedures must be approved by the GC. Field Chiefs will designate a point of contact to conduct liaison with the OGC.

(4) No individual will confirm or deny that the person sued or summoned is affiliated with NSA until a NSA attorney or the Field Chief has ascertained that the individual's relationship with NSA is not classified. If the NSA person's association with NSA is classified, service of process will not be accepted. In such a case, the GC must be immediately informed. The GC will then contact the DoJ for guidance.

(5) *Suits in Foreign Courts.* If any NSA person is sued or summoned in a foreign court, that person, or the cognizant Field Chief, will immediately telefax a copy of the service of process to the OGC. Such person will not complete any return of service forms unless advised otherwise by an NSA attorney. OGC will coordinate with the DoJ to determine whether service is effective and whether the NSA person is entitled to be represented at Government expense pursuant to § 93.1(f).

§ 93.6 Fees.

Consistent with the guidelines in § 93.1(e), NSA may charge reasonable fees to parties seeking, by request or demand, official information not otherwise available under the Freedom of Information Act, 5 U.S.C. 552. Such fees are calculated to reimburse the Government for the expense of providing such information, and may include:

(a) The costs of time expended by NSA employees to process and respond to the request or demand;

(b) Attorney time for reviewing the request or demand and any information located in response thereto, and for related legal work in connection with the request or demand; and

(c) Expenses generated by materials and equipment used to search for, produce, and copy the responsive information.

§ 93.7 Responsibilities.

(a) *The General Counsel.* The GC is responsible for overseeing NSA compliance with § 93.1(a) and this part 93, and for consulting with DoJ when appropriate. In response to a litigation demand requesting official information or the testimony of NSA personnel as witnesses, the GC will coordinate NSA action to determine whether official information may be released and whether NSA personnel may be interviewed, contacted, or used as witnesses. The GC will determine what, if any, conditions will be imposed upon such release, interview, contact, or testimony. In most cases, an NSA attorney will be present when NSA personnel are interviewed or testify concerning official information. The GC may delegate these authorities.

(b) *The Deputy Director for Plans and Policy (DDPP).* The DDPP will assit the GC, upon request, in identifying and coordinating with NSA components that have cognizance over official information requested in a litigation demand. Additionally, the DDPP will advise the GC on the classified status of official information, and, when necessary, assist in declassifying, redacting, substituting, or summarizing official information for use in litigation. The DDPP may require the assistance of other Key Component Chiefs.

(c) *Chiefs of Key Components and Field Activities.* Chiefs of Key Components and Field Activities shall ensure that their personnel are informed of the contents of this part 93, particularly of the requirements to consult with the OGC prior to responding to any litigation demand, and to inform the OGC whenever they receive service of process that is not clearly in their individual capacities. Field Chiefs will notify the OGC of the persons they designate under § 93.5(b)(3).

(d) *The Deputy Director for Administration (DDA).* Within 60 days of the date of this part, the DDA shall submit to the GC for approval procedures for the attempted delivery of service of process during duty hours when an attorney of the OGC is not available.

Dated October 8, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-24633 Filed 10-10-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11-91-11]

Special Local Regulations; San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels Demonstration

AGENCY: Coast Guard, DOT.

ACTION:. Interim final rule.

SUMMARY: This document amends regulated area "Bravo" for the Blue Angels air show in 33 CFR 100.1105, for the Navy Fleetweek activities in San Francisco Bay. The amendment to the regulated area represents a four degree (4) clockwise rotation in the orientation of area "Bravo" over the originally published coordinates. This amendment is necessary in order to accommodate a corresponding shift in the orientation of the flight line to be used by the Blue Angels in their demonstrations.

DATES: This amendment to the regulations in 33 CFR 100.1105 becomes effective on October 11, 1991. Comments must be received by November 25, 1991.

ADDRESSES: Comments should be addressed to Commander, U.S. Coast Guard Group, Yerba Buena Island, San Francisco, California 94130-9309.

FOR FURTHER INFORMATION CONTACT: Lieutenant P. L. Newman, Operations Officer, U.S. Coast Guard Group, San Francisco, California. Tel: (415) 399-3445, FAX (415) 399-3521.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The details of the event were not finalized until August 22, 1991, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date. The Fleetweek activities for which these regulations are issued will occur on October 10, 11, and 12, 1991. Nevertheless, interested persons wishing to comment may do so by submitting written views, data or arguments. Commenters should include their name and address, identify this notice (CGD11-91-11) and the specific section of the proposal to which the comments apply, and give reasons for their comments. Receipt of comments will be acknowledged if a stamped, self-addressed envelope is enclosed. The regulations may be changed in light of comments received.

Drafting Information

The drafters of these regulations are QM2 Julie Moe, Coast Guard Group, San Francisco, and Lieutenant Commander Allen Lotz, Project Attorney, Eleventh Coast Guard District Legal Office, Long Beach, California.

Discussion of Regulation

This event is Fleetweek's annual Blue Angels Aerial Show over the water near the San Francisco waterfront. The regulated area to be used is approximately 2.7 nautical miles long by .6 nautical miles wide. Approximately 10,000 spectator craft are expected to watch the event. Spectators will be required to view the event from the outside of the regulated area. Coast Guard, Navy, and Coast Guard Auxiliary vessels will be enforcing the regulated area.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT policies and procedures (44 FR 11034; February 26, 1979). The Coast Guard certifies these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The rule contains no information collection or recordkeeping requirements.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined these regulations do not raise sufficient federalism implications to warrant the preparation of a Federal Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they will have no significant environmental impact and are categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

§ 100.1105 [Amended]

2. In § 100.1105, the latitude and longitude coordinates in paragraph (b)(2) are amended to read as follows:

* * * * *

(b) * * *
(2) * * *

Latitude	Longitude
37°49'31" N.	122°24'15" W.
37°49'12" N.	122°27'44" W.
37°48'33" N.	122°27'40" W.
37°48'51" N.	122°24'10" W.

* * * * *

Dated: September 13, 1991.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District

[FR Doc. 91-24190 Filed 10-10-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-91-47]

Special Local Regulations for Marine Events; New Jersey State Dragboat Championships; Moon Channel, Delaware River, Trenton, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the New Jersey State Dragboat Championships to be held in the vicinity of the Trenton Marine Center, Moon Channel, Delaware River, Trenton, New Jersey, on October 6, 1991. These special local regulations will govern vessel activities during the drag races. The regulations are necessary due to the potential danger to the waterway users, the confined nature of the waterway, and expected spectator craft congestion during the event.

EFFECTIVE DATE: These regulations are effective from 9 a.m. to 7 p.m., October 6, 1991. If inclement weather causes the postponement of the event, the regulations are effective from 9 a.m. to 7 p.m., October 13, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204, or Commander, Coast Guard Group Philadelphia (215) 271-4825.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received in the district office until September 19, 1991, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are Stephen Phillips, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

The Delaware Valley Boat Racing Club, Inc. submitted an application dated August 29, 1991 to hold the New Jersey State Dragboat Championships in the vicinity of the Trenton Marine Center, Moon Channel, Delaware River, Trenton, New Jersey, on October 6, 1991. As part of the application, the Delaware Valley Boat Racing Club, Inc. requested that the Coast Guard provide control of spectator and commercial traffic within the regulated area.

Discussion of Regulations

These regulations will regulate the area surrounding the New Jersey State Dragboat Championships. The event will consist of approximately 50 drag boats, ranging from 16 to 19 feet in length, racing on a designated course within the regulated area. The races will consist of a series of heats. A portion of the Delaware River in the vicinity of the Trenton Marine Center will be closed during the actual racing. Backed up marine traffic will be allowed to transit the area between heats. Since the waterway will not be closed for extended periods, waterborne traffic should not be severely disrupted.

Regulatory Evaluation

This final rule is not considered major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for a short period of time and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this regulation on non-participating small entities is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation, will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations: In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-T0547 is added to read as follows:

§ 100.35–T0547 Delaware River, Moon Channel, Trenton, New Jersey.

(a) *Definitions*—(1) *Regulated area.* The waters of the Delaware River bounded to the south by a line drawn from the shoreline at latitude 40°11'10.0" North, longitude 74°45'25.0" West, to the shoreline at latitude 40°11'10.0" North, longitude 74°45'14.0" West, and to the north by a line drawn from the shoreline at latitude 40°11'44.0" North, longitude 74°45'42.5" West, to the shoreline at latitude 40°11'44.0" North, longitude 74°45'29.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Philadelphia.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of this section, but may not block a navigable channel.

(c) *Effective Date:* These regulations are effective from 9 a.m. to 7 p.m., October 6, 1991. If inclement weather causes the postponement of the event, the regulations are effective from 9 a.m. to 7 p.m., October 13, 1991.

Dated: October 1, 1991.

W. T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 91–24508 Filed 10–10–91; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–4020–3]

North Dakota; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on State of North Dakota application for final approval.

SUMMARY: The State of North Dakota has applied for final approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the North Dakota application and has determined, subject to public review and comment, that the North Dakota Underground Storage Tank Program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State to operate its program unless adverse public comment shows the need for further review. The North Dakota application for final approval is available for public review and comment.

DATES: Final authorization for the North Dakota Underground Storage Tank Program shall be effective at 1 p.m. on December 10, 1991, unless EPA publishes a prior **Federal Register** action withdrawing this final rule. All comments on the North Dakota final approval application must be received by the close of business on November 12, 1991.

ADDRESSES: Copies of the North Dakota final approval application are available during the hours between 8 a.m. and 5 p.m. at the following addresses for inspection and copying: North Dakota State Department of Health and Consolidated Laboratories, Division of Waste Management, 1200 Missouri Avenue, Bismarck, North Dakota 58502–5520, phone: 701/221–5166; U.S. EPA Headquarters Library, PM211A, 401 M Street SW., Washington, DC 20460, phone: 202/260–5926; and the U.S. EPA Region VIII, Underground Storage Tank Program Section, 999 18th Street, Denver, Colorado 80202, phone: 303/293–1514. Written comments should be sent to Chief, Underground Storage Tank Program Section, Attention Debra Ehlert, Region VIII, 999 18th Street, Denver, Colorado 80202, phone: 303/293–1514.

FOR FURTHER INFORMATION CONTACT: North Dakota State Project Officer, Underground Storage Tank Program Section, Attention Gary R. Kleeman, U.S. EPA Region VIII, Denver, Colorado 80202, phone: 303/293–1495.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables the Environmental Protection Agency (EPA) to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank program. To qualify for final authorization, a State's program must: (1) Be "no less stringent" than the Federal program; and (2) provide for adequate enforcement (sections 9004(a) and 9004(b) of RCRA, 42 U.S.C. 6991c(b)).

On April 10, 1991, EPA received from the State of North Dakota an official application to obtain final approval to administer the underground storage tank program. Prior to its submission, the State of North Dakota provided an opportunity for public notice and comment in the development of its underground storage tank program as required under § 281.509(b). The State adopted rules that are no less stringent and no more stringent than the corresponding Federal UST regulations. The State's rules became effective on December 1, 1989.

B. Decision

After reviewing the North Dakota application, I conclude that the State's program meets all of the requirements necessary to qualify for program approval. Accordingly, the State of North Dakota is granted final approval to operate its underground storage tank program. The State of North Dakota now has the responsibility for managing underground storage tank facilities within its borders and carrying out all aspects of the UST program. The State of North Dakota also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA 42 U.S.C. 6991d and to take enforcement actions under section 9006 of RCRA 42 U.S.C. 6991e.

The State of North Dakota is not authorized to operate the UST program on Indian lands and this authority will remain with EPA.

Compliance With Executive Order 12291

The Office of Management and Budge has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of the Federal UST regulations in favor of the State of North Dakota's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State. It does not impose any new burdens on small

entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative Practice and Procedure, Hazardous Materials, State Program Approval and Underground Storage Tanks.

Authority: This notice is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6974(b), and 6991(c).

Dated: September 24, 1991.

Robert L. Duprey,

Acting Regional Administrator.

[FR Doc. 91-24629 Filed 10-10-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 484

[BPD-476-CN]

RIN: 0938-AD45

Medicare Program; Home Health Agencies: Conditions of Participation

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

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on July 18, 1991 (56 FR 32967) entitled "Medicare Program; Home Health Agencies: Conditions of Participation".

EFFECTIVE DATE: August 19, 1991.

FOR FURTHER INFORMATION CONTACT: Michelle Bruggy (301) 966-4683.

SUPPLEMENTAL INFORMATION: In **Federal Register** Document 91-16865 beginning on page 32967, in the issue of July 18, 1991, make the following corrections:

PART 484—[CORRECTED]

A. *Page 32974*

§ 484.14 [Corrected]

1. In column 1, § 484.14(g), after the heading, delete the first sentence that reads as follows: "All personnel furnishing services."

2. In column 1, § 484.14(i)(2)(i), line 13, delete the words "$600,000 capital items. In determining if".

§ 484.36 [Corrected]

3. In column 3, § 484.36(a)(2)(i)(F), the word "it's" is corrected to read "its".

B. *Page 32975, column 1*

§ 484.36 [Corrected]

In § 484.36(a)(2)(i)(G)(*1*), line 1, the reference to "it's" is corrected to read "its".

Dated: October 4, 1991.

Fred Wirth,

Acting Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 91-24520 Filed 10-11-91; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6890

[ID-943-4214-10; ID-7322]

Withdrawal of Public Lands for Protection of the Bruneau and Jarbidge River Systems; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 52,353.04 acres of public lands from surface entry and mining and 1,280.00 acres of reserved mineral interests in private lands from mining for 10 years to protect the recreational, scenic, and cultural values of the Bruneau and Jarbidge River systems. The subject area has been temporarily segregated from mineral entry since 1968. The lands have been and will remain open to mineral leasing. Most potential uses and management actions on these lands, such as rights-of-way, livestock grazing, and recreation will not be affected.

EFFECTIVE DATE: October 11, 1991.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM Idaho State Office, 3380 American Terrace, Boise, Idaho 83706, 208-384-3162.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws (30 U.S.C., ch. 2), but not from leasing under mineral leasing laws, to protect the Bruneau and Jarbidge River systems.

Boise Meridian

T. 8 S., R. 6 E.,
Sec. 2, Lot 4, NE¼SW¼, and S½SW¼;
Sec. 3, SE¼SE¼;
Sec. 11, NE¼, N½NW¼, SE¼NW¼, and NE¼SE¼;
Sec. 12, SW¼NW¼, SW¼, and SW¼SE¼;
Sec. 13, W½NE¼, E½NW¼, NW¼NW¼, and SE¼;
Sec. 24, NE¼ and E½SE¼.

T. 8 S., R. 7 E.,
Sec. 19, lots 2 to 4, inclusive, and E½SW¼;
Sec. 30, lots 1 to 3, inclusive, SW¼NE¼, E½W½, W½SE¼, and SE¼SE¼;
Sec. 31, lots 2 to 4, inclusive, NE¼, SE¼NW¼, E½SW¼, and N½SE¼.

T. 9 S., R. 6 E.,
Sec. 1, lots 1 to 3, inclusive, S½NE¼, and SE¼;
Sec. 11, SE¼NE¼ and NE¼SE¼;
Sec. 12, NE¼, S½NW¼, SW¼, N½SE¼, and SW¼SE¼;
Sec. 13, W½NE¼, SE¼NE¼, E½NW¼, NW¼NW¼, and SE¼;
Sec. 24, NE¼, E½SE¼, and NW¼SE¼;
Sec. 25, E½NE¼.

T. 9 S., R. 7 E.,
Sec. 18, lot 4;
Sec. 19, lots 1 to 4, inclusive, SE¼NW¼, and NE¼SW¼
Sec. 29, S½NW¼ and SW¼;
Sec. 30, lots 1 to 3, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 32, W½NE¼, N½NW¼, SE¼NW¼, E½SW¼, W½SE¼, and SE¼SE¼.

T. 10 S., R. 7 E.,
Sec. 3, SW¼;
Sec. 4, lots 3 and 4, SW¼NE¼, S½NW¼, E½SW¼, and SE¼;
Sec. 5, lots 1 to 3, inclusive, S½NE¼, and SE¼NW¼;
Sec. 9, E½, NE¼NW¼, S½NW¼, and SW¼;
Sec. 14, SW¼ and S½SE¼;
Sec. 15, SW¼NE¼, NW¼, N½SW¼, SE¼SW¼, and SE¼;
Sec. 22, N½NE¼;
Sec. 23, E½, N½NW¼, and SE¼SW¼;
Sec. 24, W½W½ and SE¼SW¼;
Sec. 25, N½NW¼;
Sec. 26, E½, NE¼NW¼, and SW¼;
Sec. 35, E½, E½NW¼, and NE¼SW¼.

T. 11 S., R. 6 E.,
Sec. 22, SE¼SE¼;
Sec. 23, S½N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 24, S½NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 25, NE¼ and NE¼NW¼;
Sec. 26, N½NW¼, SW¼NW¼, and NW¼SW¼;
Sec. 27, E½;
Sec. 34, E½ and SE¼SW¼.

T. 11 S., R. 7 E.,
Sec. 1, lot 4 and SW¼NW¼;
Sec. 2, lots 1 and 2, S½N½, and S½;
Sec. 3, S½SE¼;
Sec. 10, NE¼ and E½SE¼;
Sec. 11;
Sec. 14, W½E½ and W½;
Sec. 15, E½ and SW¼;
Sec. 19, lots 3 and 4, and SE¼SW¼;
Sec. 20, SE¼SW¼ and S½SE¼;
Sec. 21, NE¼ and W½;
Sec. 22, N½NE¼, SE¼NE¼, N½NW¼, SW¼NW¼, NE¼SE¼, and S½SE¼;
Sec. 23, NW¼NE¼, NW¼, and W½SW¼;
Sec. 26, NW¼NW¼;
Sec. 27, E½, NE¼NW¼, S½NW¼, and SW¼;

Sec. 28, N½NW¼ and SE¼;
Sec. 29, N½;
Sec. 30, lots 1 and 2, NE¼, and E½NW¼;
Sec. 33, NE¼ and NE¼SE¼;
Sec. 34, W½.
T. 12 S., R. 6 E.,
Sec. 3, lots 1 to 3, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 10, E½, E½W½, SW¼NW¼, and W½SW¼;
Sec. 15, N½NE¼, SW¼NE¼, NW¼, and NW¼SW¼;
Sec. 20, E½SE¼;
Sec. 21, N½ and SW¼;
Sec. 28, W½;
Sec. 29, SE¼SE¼;
Sec. 32, E½E½;
Sec. 33, NE¼NW¼ and W½W½.
T. 12 S., R. 7 E.,
Sec. 3, lots 2 to 4, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 9, SE¼NE¼ and SE¼;
Sec. 10, W½E½ and W½;
Sec. 15;
Sec. 21, N½NE¼, SE¼SW¼, and SE¼;
Sec. 22, N½, SW¼, and W½SE¼;
Sec. 27, NE¼NW¼ and W½W½;
Sec. 28, E½, E½NW¼, and SW¼;
Sec. 29, S½SE¼;
Sec. 31, S½NE¼ and SE¼;
Sec. 32;
Sec. 33, N½, E½SW¼, NE¼SE¼, and W½SE¼;
Sec. 34, W½NW¼ and NW¼SW¼.
T. 13, S., R. 6 E.,
Sec. 4, lot 4 and SW¼NW¼;
Sec. 5, lots 1 and 2, and S½NE¼;
Sec. 11, SE¼L;
Sec. 12, S½;
Sec. 13, N½, NW¼SW¼, S½SW¼, and SE¼;
Sec. 14, NE¼, N½SE¼, and SE¼SE¼;
Sec. 23, E½NE¼ and NE¼SE¼;
Secs. 24 and 25;
Sec. 26, SE¼NE¼ and NE¼SE¼.
T. 13 S., R. 7 E.,
Sec. 4, lots 2 to 4, inclusive, SW¼NE¼, S½NW¼, and S½;
Sec. 5;
Sec. 6, lot 1, SE¼NE¼, SE¼SW¼, and SE¼L;
Sec. 7, lots 2 to 4, inclusive, E½, and E½W½;
Sec. 8, W½NE¼, NE¼NW¼, S½NW¼, N½SW¼, SW¼SW¼, and NW¼SE¼;
Sec. 9, E½ and E½NW¼;
Sec. 10, NW¼NW¼, S½NW¼, SW¼, and SW¼SE¼;
Sec. 14, SW¼NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 15, N½, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 17, NW¼NW¼;
Sec. 18, lots 1 to 4, inclusive, NE¼NE¼, W½E½, and E½W½;
Sec. 19, lot 1;
Sec. 23, NE¼, N½NW¼, SE¼NW¼, N½SE¼, and SE¼SE¼;
Sec. 24, W½NW¼, SW¼, and W½SE¼;
Sec. 25, W½, W½SE¼, and SE¼SE¼;
Sec. 26, E½E½;
Sec. 31, lot 4.
T. 13, S., R. 8 E.,
Sec. 31, lots 1 to 4, inclusive, S½NE¼, E½W½, and SE¼;
Sec. 32, S½N½ and S½.
T. 14 S., R. 6 E.,
Sec. 1, lots 1 to 3, inclusive, S½N½, and S½;
Sec. 12;
Sec. 13, NE¼, E½W½, NW¼NW¼, and W½SE¼;
Sec. 24, W½E½, E½, NW¼, and NE¼SW¼;
Sec. 25, NW¼NE¼, S½NE¼, and E½SE¼.
T. 14 S., R. 7 E.,
Sec. 6, lots 4 to 7, inclusive;
Sec. 7, lots 1 and 2;
Sec. 18, lots 1 to 4, inclusive, and E½SW¼;
Sec. 19, lots 1 to 4, inclusive, NE¼NW¼, and SE¼SW¼;
Sec. 29, SW¼SW¼;
Sec. 30, lots 3 and 4, NW¼NE¼, S½NE¼, NE¼NW¼, E½SW¼, and SE¼;
Sec. 31, lots 1 and 2, NE¼, E½W½, NE¼SE¼, and W½SE¼;
Sec. 32, NW¼NW¼, S½NW¼, and SW¼.
T. 14 S., R. 8 E.,
Sec. 4, SW¼NW¼ and W½SW¼;
Sec. 5, lots 1 to 4 inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8, E½, E½NW¼, and NE¼SW¼;
Sec. 9, W½NW¼, SE¼NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 15, SW¼NW¼ and SW¼;
Sec. 21, NE¼;
Sec. 22, SW¼NE¼, W½, and SE¼;
Sec. 23, SW¼SW¼;
Sec. 25, SW¼SW¼;
Sec. 26, W½NW¼, SE¼NW¼, and S½;
Sec. 27, NE¼, E½NW¼, NW¼NW¼, N½SE, and SE¼SE¼;
Sec. 34, E½E½;
Sec. 35.
T. 15 S., R. 7 E.,
Sec. 5, lot 4, SW¼NW¼, and SW¼;
Sec. 6, lots 2, 6, and 7, S½NE¼, E½SW¼, and SE¼;
Sec. 7, E½ and E½NW¼;
Sec. 8, W½;
Sec. 17, NE¼NW¼ and W½W½;
Sec. 18, lots 2 to 4, inclusive, and E½W½;
Sec. 19, lot 1, E½NW¼, N½SE¼, and SW¼SE¼;
Sec. 20, W½NW¼ and NW¼SW¼;
Sec. 29, E½W½ and W½SE¼;
Sec. 30, NW¼NE¼;
Sec. 31, E½NE¼;
Sec. 32, W½NE¼, SE¼NE¼, S½NW¼, SE¼SW¼, and SE¼;
Sec. 33, NW¼SW¼ and SE¼SW¼.
T. 15 S., R. 8 E.,
Sec. 2, lots 2 to 4, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 3, lot 1, SE¼NE¼, and E½SE¼;
Sec. 10, E½NE¼ and SE¼;
Sec. 11, NW¼NE¼ and W½;
Sec. 13, W½NW¼, SE¼NW¼, and SW¼;
Sec. 14, N½, N½S½, and SE¼SE¼;
Sec. 15, N½NE¼;
Sec. 23, E½NE¼;
Sec. 24, W½NE¼, SE¼NE¼, NW¼, N½SW¼, SE¼SW¼, and SE¼.
T. 15 S., R. 9 E.,
Sec. 19, lots 2 to 4, inclusive, W½SE¼, and SE¼SE¼;
Sec. 29, W½NW¼, SE¼NW¼, and SW¼;
Sec. 30, lots 1 and 2, and E½;
Sec. 31, E½NE¼ and NE¼SE¼;
Sec. 32, S½NE¼, W½, and SE¼;
Sec. 33, SW¼ and S½SE¼.
T. 16 S., R. 7 E.,
Sec. 4, E½W½.
T. 16 S., R. 9 E.,
Sec. 3, W½NW¼, SE¼NW¼, SW¼, and W½SE¼;
Sec. 4, NE¼, N½NW¼, SE¼NW¼, and E½SE¼;
Sec. 5, NE¼NE¼;
Sec. 10, NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 11, SW¼NW¼ and NW¼SW¼.

The areas described aggregate 52,353.04 acres in Owyhee County.

2. Subject to valid existing rights, the federally reserved mineral interest in the following described private lands are hereby withdrawn from the United States mining laws, but not from leasing under the mineral leasing laws:

T. 15 S., R. 7 E.,
Sec. 18, E½;
Sec. 19, NE¼ and SE¼SE¼;
Sec. 20, SW¼SW¼;
Sec. 29, W½W½;
Sec. 30, E½NE¼ and SE¼SE¼;
Sec. 32, N½NW¼;
Sec. 33, SW¼SW¼.
T. 16 S., R. 7 E.,
Sec. 4, W½W½;
Sec. 5, W½E½.

The areas described aggregate 1,230 acres in Owyhee County.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 10 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: October 7, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-24616 Filed 10-10-91; 8:45 am]

BILLING CODE 4310-66-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-7036]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists communities where modification of the base (1 year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: These modified base flood elevations are currently in effect and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 65.4.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State	County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona	Maricopa	City of Phoenix	September 10, 1991, September 17, 1991, The Arizona Republic.	The Honorable Paul Johnson, Mayor, City of Phoenix, Municipal Building, 251 West Washington Street, Phoenix, Arizona 85002.	September 4, 1991	04013
California	Sacramento	Unincorporated Areas	August 7, 1991, August 14, 1991, Sacramento Bee..	Mr. Douglas M. Fraleigh, Director, Sacramento County Department of Public Works, 827 Seventh Street, Room 304, Sacramento, California 95814.	July 25, 1991	060262
Illinois	DuPage	City of Oakbrook Terrace.	October 11, 1991, October 18, 1991, Oakbrook Terrace Press.	The Honorable Richard Sarallo, Mayor, City of Oakbrook Terrace, 17 West—275 Butterfield Road, Oakbrook Terrace, Illinois 60185.	September 26, 1991	170215
Indiana	Marion	City of Indianapolis	August 29, 1991, September 5, 1991, The Indianapolis Star.	The Honorable William H. Hudnut, III, Mayor, City of Indianapolis, 2501 City-County Building, Indianapolis, Indiana 46204.	August 13, 1991	180159

State	County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maine	Hancock	Town of Lamoine	September 12, 1991, September 19, 1991, Ellsworth American.	Mr. Richard Davis, Selectman of the Town of Lamoine, R.F.D. 2, Box 53, Ellsworth, Maine 04605.	August 29, 1991	230285 A
Mississippi	Madison	Town of Madison	September 12, 1991, September 19, 1991, Madison County Herald.	The Honorable Mary Hawkins, Mayor, Town of Madison, P.O. Box 40, Madison, Mississippi 39110.	August 30, 1991	280229
New York	Erie	Village of East Aurora	September 12, 1991, September 19, 1991, East Aurora Bee.	The Honorable John V. Pagliaccio, Mayor of the Village of East Aurora, Erie County, 571 Main Street, East Aurora, New York 14052.	September 3, 1991	365335
Oklahoma	Cleveland	City of Norman	September 10, 1991, September 17, 1991, The Norman Transcript.	The Honorable Vick Reynolds, Mayor of the City of Norman, P.O, Box 370, Norman, Oklahoma 73070.	August 28, 1991	400046 C
South Carolina	Greenville	Unincorporated	September 12, 1991, September 19, 1991, Greenville News Piedmont.	The Honorable William J. Estabrook, County Administrator, Greenville County, 301 University Ridge, Suite 100, Greenville, South Carolina 29601.	August 6, 1991	450094
Wisconsin	Waukesha	City of Brookfield	September 12, 1991, September 18, 1991, Brookfield News.	The Honorable Kathryn C. Bloomberg, Mayor, City of Brookfield, 2000 North Calhoun Road, Brookfield, Wisconsin 53005.	August 30, 1991	550478

Issued: October 4, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-24593 Filed 10-10-91; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their

contents and for second layer coverage on existing buildings and their contents.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California:					
Sacramento	City of Sacramento (docket No. 7029).	July 10, 1991, July 17, 1991, Sacramento Bee.	The Honorable Anne Rudin, Mayor, City of Sacramento, 915 I Street, Sacramento, California 95814.	July 2, 1991	060266
Sacramento	Unincorporated areas (docket No. 7029).	July 10, 1991, July 17, 1991, Sacramento Bee.	Mr. Douglas Fraleigh, Director, Sacramento County Department, 827 Seventh Street, Room 301, Sacramento, California 95814.	July 2, 1991	060262
Sacramento	Unincorporated areas (docket No. 7033).	July 24, 1991, July 31, 1991, Sacramento Bee.	The Honorable Douglas M. Fraleigh, Director, Sacramento County Department of Public Works, 827 Seventh Street, room 304, Sacramento, California 95814.	July 18, 1991	060262
Colorado:					
Adams and Jefferson Counties.	City of Westminster (docket No. 7033).	July 25, 1991, August 1, 1991, Westminster Sentinel.	The Honorable George Hovorka, Mayor, City of Westminster, 3031 West 76th Avenue, Westminster, Colorado 80030.	July 1, 1991	080008
Boulder	City of Boulder (docket No. 7025).	May 24, 1991, May 31, 1991, Daily Camera.	The Honorable Leslie Durgin, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306.	May 6, 1991	080024
Hawaii:					
Hawaii	Unincorporated areas (docket No. 7025).	May 17, 1991, May 24, 1991, Hawaii Tribune Herald.	The Honorable Lorraine R. Inouye, Mayor, Hawaii County, Hawaii County Office Building, 25 Aupuni Street, Hilo, Hawaii 96720.	May 14, 1991	155166
Mississippi:					
Rankin (docket No. FEMA-7025).	City of Richland	June 5, 1991, June 12, 1991, Rankin County News.	The Honorable Lester Spell, Jr., Mayor, City of Richland, City Hall, P.O. Box 180127, Richland, Mississippi 39218.	June 24, 1991	280299
Missouri:					
St. Louis	City of Cool Valley (docket No. FEMA-7025).	May 15, 1991, May 22, 1991, The St. Louis Dispatch.	The Honorable Eileen H. McCartney, Mayor, City of Cool Valley, 100 Signal Hill Drive, Cool Valley, Missouri 63121.	April 29, 1991	290342
Tennessee:					
Shelby (docket No. FEMA-7025).	City of Memphis	June 6, 1991, June 13, 1991, Memphis Daily News.	The Honorable Richard C. Hackett, Mayor, City of Memphis, 125 N. Mid America Mall, Memphis, Tennessee 38103.	June 24, 1991	470177

Issued: October 4, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91– 24594 Filed 10–10–91; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood Insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
ALABAMA	
Birmingham (city), Jefferson County (FEMA Docket No. 7024)	
Unnamed Creek 31:	
About 1050 feet upstream of 10th Avenue	*591
Just downstream of 1st Avenue	*604
Maps available for inspection at the Community Planning Department, 710 North 20th Street, Birmingham, Alabama.	
Montgomery (city), Montgomery County (FEMA Docket No. 7019)	
Cloverland Ditch:	
Just downstream of Interstate 65	*173
Just upstream of Interstate 65	*178
Just downstream of South Court Street	*183
Just upstream of South Court Street	*190
About 1300 feet upstream of South Court Street	*195
Wares Ferry Ditch:	
About 600 feet downstream of Lagoon Park Drive	*190
Just upstream of Wares Ferry Road	*218
Whites Slough:	
About 0.96 mile downstream of Narrow Lane Road	*187
About 600 feet upstream of Vaughn Road	*240
Galbraith Mill Creek:	
About 0.91 mile downstream of U.S. Highway 231	*170
About 1400 feet upstream of Wares Ferry Road	*216
Hannon Slough:	
At mouth	*182
About 1450 feet upstream of Wildwood Drive	*226
Camp Creek:	
At mouth	*202
About 1.6 miles upstream of Remington Road	*240
Camp Creek Tributary:	
At mouth	*213
About 2650 feet upstream of Bell Road	*226
Maps available for inspection at the Building Inspector's Office, City Hall, 103 North Perry Street, Montgomery, Alabama.	
Montgomery County (unincorporated areas) (FEMA Docket No. 7019)	
Little Catoma Creek:	
At mouth	*208
About 2.5 miles upstream of Troy Highway	*220
Catoma Creek:	
About 600 feet downstream of Woodley Road	*200
About 600 feet upstream of Trotman Road	*214
Ramer Creek:	
About 1100 feet downstream of Hance Mill Road	*208
About 1150 feet upstream of Sprague Junction Road	*254
Tallapoosa River:	
About 3.8 miles downstream of U.S. Highway 231	*169
Just downstream of U.S. Highway 231	*170
Maps available for inspection at the County Engineering Office, County Courthouse, Montgomery, Alabama.	
ARIZONA	
Marana (town), Pima County (FEMA Docket No. 7026)	
Santa Cruz River:	
Approximately 2,500 feet downstream of Trico-Marana Road	*1,929
At Trico-Marana Road	*1,937
Approximately 7,400 feet upstream of Trico-Marana Road (At Marana Corporate Limits)	*1,957
Just upstream of Sanders Road	*1,981
Approximately 200 feet downstream of San Dario Road	*1,995
Approximately 4,400 feet downstream of Avra Valley Road	*2,054
Approximately 5,500 feet upstream of Avra Valley Road	*2,083
Approximately 150 feet upstream of Cortaro Road	*2,143
Approximately 4,000 feet upstream of Ina Road	*2,178
Coalescent Alluvial Fan Areas:	
Cochie Canyon East, Cochie Canyon West, or Unnamed Canyon:	
Approximately 1,000 feet southwest of the northeast corner of Section 25, Township 11 South, Range 11 East	#1
Cochie Canyon East, Cochie Canyon West, Unnamed Canyon, or Wild Burro Canyon:	
Approximately 2,000 feet north and 100 feet west of the southeast corner of Section 25, Township 11 South, Range 11 East	#2
Cochie Canyon East, Unnamed Canyon, Wild Burro Canyon, or Ruelas Canyon:	
Approximately 2,000 feet northeast of the intersection of Tangerine Road and Frontage Road	#2
Maps are available for review at Town Hall, 13251 North Lon Adams Road, Marana, Arizona.	
CALIFORNIA	
Portola (city), Plumas County (FEMA Docket No. 7026)	
Middle Fork Feather River:	
Approximately 0.5 mile downstream of Gulling Street	*4,834
At Gulling Street	*4,837
Approximately 0.68 mile upstream of Gulling Street	*4,845
Maps are available for review at City Hall, 47 Third Avenue, Portola, California.	
San Clemente (city), Orange County (FEMA Docket No. 7020)	
Cascadita Creek:	
Approximately 200 feet downstream of Via Cascadita	*29
Just upstream of Via Cascadita	*40
Approximately 1,700 feet upstream of Via Cascadita	*63
Approximately 250 feet downstream of the San Diego Freeway	*77
Maps are available for review at the Department of Community Development, 910 Negocio, San Clemente, California.	
GEORGIA	
Fulton County (unincorporated areas) (FEMA Docket No. 7019)	
Chicken Creek:	
Just upstream of Batesville Road	*924
Just downstream of SCS Dam	*964
Just upstream of SCS Dam	*991
Just downstream of Hamby Road	*1,004
Chicken Creek Tributary:	
At mouth	*943
Just downstream of Hopewell Road	*957
Cooper Sandy Creek:	
About 2200 feet upstream of mouth	*914
Just downstream of dam	*975
Just upstream of dam	*1,000
Just downstream of Cogburn Road	*1,022
Line Creek:	
At county boundary	*672
Just downstream of Creekwood Road	*929
White Oak Creek:	
At mouth	*719
Just downstream of Barnes Road	*759
Moss Creek:	
At mouth	*748
Just downstream of Rico Lake Dam	*779
Longeno Creek:	
At mouth	*743
Just downstream of Phillips Road	*828
Dry Branch:	
At mouth	*724
Just downstream of Sardis Road	*760
Cedar Creek:	
At county boundary	*810
Just downstream of dam	*868
Just upstream of dam	*896
Just downstream of Water Works Road	*934
Maps available for inspection at the Public Works Department, County Courthouse, 141 Pryor Street, S.W., Suite 6000, Atlanta, Georgia.	
Walker County (unincorporated areas) (FEMA Docket No. 7024)	
Chattanooga Creek:	
About 400 feet downstream of the confluence of Dry Creek	*660
Just downstream of upstream crossing of State Route 193	*685
Just upstream of upstream crossing of State Route 193	*690
Just downstream of Nickajack Road	*700
Dry Creek:	
At mouth	*660
About 1160 feet upstream of Maple Street	*660
Maps available for inspection at the Property and Records Office, P.O. Box 445, Lafayette, Georgia 30728.	
KENTUCKY	
Clay City (city), Powell County (FEMA Docket No. 7022)	
Red River:	
At the downstream corporate limits	*624
Approximately 1.6 river miles upstream of 9th Street	*633
Brush Creek:	
At confluence with Red River	*626

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 60 feet downstream of 6th Avenue	*628
Maps available for inspection at the Municipal Building, 4651 Main Street, Clay City, Kentucky.	
Cumberland (city), Harlan County (FEMA Docket No. 7020)	
Poor Fork Cumberland River:	
About 1.31 miles downstream of crossing of U.S. Route 119	*1,393
About 950 feet upstream of upstream crossing of U.S. Route 119	*1,450
Cloverlick Creek:	
At mouth	*1,427
About .82 miles upstream of mouth	*1,458
Looney Creek:	
At mouth	*1,437
About 650 feet upstream of Blair Street	*1,444
About 3600 feet upstream of Blair Street	*1,473
Maps available for inspection at the City Hall, 402 West Main Street, Cumberland, Kentucky.	
LOUISIANA	
St. Landry Parish (unincorporated areas) (FEMA Docket No. 7026)	
Bayou Courtableau:	
Approximately 0.7 mile downstream of Union Pacific Railroad	*23
At Town of Port Barre corporate limits	*26
West Atchafalaya Floodway:	
At confluence of Bayou Courtableau	*25
At upstream Parish boundary	*35
Bayou Portage:	
At downstream Parish boundary	*20
Approximately 1.1 miles upstream of State Route 741	*22
Maps available for inspection at the Courthouse Building, Court Street and Landry Street, Opelousas, Louisiana.	
MASSACHUSETTS	
Chatham (town), Barnstable County (FEMA Docket No. 7020)	
Muddy Creek:	
At Countryside Drive extended	*12
Pleasant Bay:	
South side of Strong Island	*13
At confluence with Muddy Creek	*16
At Strong Island Road extended	*14
Chatham Harbor:	
At eastern edge of Tern Island	*13
At Allen Point	*13
At Wikis Way extended	*13
At Andrew Hardings Landing	*15
Atlantic Ocean:	
Western shoreline of Nauset Beach	*13
Crows Pond:	
Entire shoreline within community	*11
Ryder Cove:	
Entire shoreline within community	*11
Stillwater Pond:	
Entire shoreline within community	*11
Maps available for inspection at the Town Office, 549 Main Street, Chatham, Massachusetts.	
Framingham (town), Middlesex County (FEMA Docket Nos. 6992 & 7017)	
Baiting Brook:	
Approximately 1,720 feet upstream of confluence with Sudbury River	*166
Upstream side of CONRAIL Culvert	*183
Upstream side of Belknap Road Culvert	*197
Approximately .5 mile upstream of Constance M. Fiske Dam	*227
Birch Meadow Brook:	
At Confluence with East Outlet	*186
Approximately 90 feet upstream of Weston Aqueduct	*196
East Outlet:	
At confluence with Sudbury River	*155
Approximately 425 feet upstream of Knight Road	*189
Maps available for inspection at the Framingham Memorial Building, Concord Square, Framingham, Massachusetts.	
MISSISSIPPI	
Pearl River County (unincorporated areas) (FEMA Docket No. 7022)	
Mill Creek:	
Approximately 3,550 feet upstream of the confluence with the Pearl River	*29
At the City of Picayune corporate limits	*49
Maps available for inspection at the County Courthouse, 200 Main Street, Courthouse Square, Poplarville, Mississippi.	
Picayune (city), Pearl River County (FEMA Docket No. 7022)	
Mill Creek:	
At the downstream corporate limits	*49
Approximately 100 feet upstream of Rosa Street	*59
Maps available for inspection at the City Hall, 203 Goodyear Boulevard, Picayune, Mississippi.	
Tylertown (town), Walthall County (FEMA Docket No. 7019)	
Magees Creek:	
At downstream corporate limits	*253
Approximately .3 mile upstream of the upstream corporate limits	*264
Dry Creek:	
At confluence with Magees Creek	*264
Approximately 100 feet upstream of State Route 27 (Tyler Avenue)	*269
Maps available for inspection at the City Hall, 308 Beulah Avenue, Tylertown, Mississippi.	
NEW YORK	
Arcade (town), Wyoming County (FEMA Docket No. 7023)	
Cattaraugus Creek:	
Most downstream corporate limits (county boundary)	*1,394
Approximately 0.7 mile upstream of East Arcade Road	*1,537
Clear Creek:	
Downstream corporate limits	*1,499
Upstream corporate limits	*1,532
Clear Creek Tributary:	
Downstream corporate limits	*1,500
Upstream corporate limits	*1,582
Maps available for inspection at the Town Hall, Route 98N, Arcade, New York.	
Arcade (village), Wyoming County (FEMA Docket No. 7023)	
Cattaraugus Creek:	
Approximately 100 feet downstream of the downstream corporate limits	*1,411
Approximately 820 feet upstream of the upstream corporate limits	*1,491
Clear Creek:	
At its confluence with Cattaraugus Creek	*1,479
At the upstream corporate limits	*1,499
Haskell Creek:	
At its confluence with Clear Creek	*1,484
Approximately 0.7 mile upstream of the Arcade and Attica Railroad culvert	*1,612
Maps available for inspection at the Village Hall, 17 Church Street, Arcade, New York.	
Clay (town), Onondaga County (FEMA Docket No. 7012)	
Mud Creek:	
Approximately 1,000 feet upstream of Caughdenoy Road	*376
Approximately 2,070 feet upstream of Caughdenoy Road	*376
Maps available for inspection at the Town Hall, 4483 Route 31, Clay, New York.	
Greenwich (town), Washington County (FEMA Docket No. 7007)	
Batten Kill:	
Approximately 0.95 mile downstream of State Route 29	*157
Approximately 1.2 miles upstream of confluence of Whittaker Brook	*410
Maps available for inspection at the Town Hall, 2 Academy Street, Greenwich, New York.	
Jackson (town), Washington County (FEMA Docket No. 7023)	
Batten Kill:	
Approximately 1,950 feet downstream of Ray Road	*349
Approximately 3 miles upstream of County Route 61	*410
Maps available for inspection at the Jackson Town Hall, R.D. 1, Cambridge, New York.	
LeRay (town), Jefferson County (FEMA Docket No. 7020)	
Black River:	
At downstream corporate limits	*510
At upstream corporate limits (approximately 0.5 mile upstream of State Route 3)	*549
Pleasant Creek:	
At downstream corporate limits	*433
At upstream side of Simonet Road	*476
Maps available for inspection at the LeRay Town Hall, Willow Street, Evans Mills, New York.	
Livonia (town), Livingston County (FEMA Docket No. 7022)	
Conesus Lake:	
Shoreline in the vicinity of Conesus Lake outlet	*821
Shoreline approximately 640 feet north of intersection of East Lake Road and Densmore Road	*821
Conesus Creek:	
At State Route 256	*817
At confluence of Conesus Lake	*821
Maps available for inspection at the Town Hall, 35 Commercial Street, Livonia, New York.	
Saranac (town), Clinton County (FEMA Docket No. 7023)	
Saranac River:	
Approximately 750 feet downstream of Duquette Road	*735
Approximately 2.2 miles upstream of Ore Bed Road	*1,109
Maps available for inspection at the Town Hall, New York State Route 3, Saranac, New York.	
Wilna (town), Jefferson County (FEMA Docket No. 7019)	
Black River:	
At downstream corporate limits	*663
At upstream corporate limits	*736
Maps available for inspection at the Town Hall, 307 Brown Street, Carthage, New York.	
NORTH DAKOTA	
Rugby (city), Pierce County (FEMA Docket No. 7024)	
Tributary to Rush Lake:	
At the downstream extraterritorial limits	*1,518
Just downstream of Fourth Avenue Southwest (State Highway 3)	*1,521
Just upstream of Third Avenue Southeast	*1,530
Approximately 1,600 feet upstream of the county road located east of the City of Rugby	*1,535
Maps are available for review at the City Auditor's Office, City Hall, 223 South Main Avenue, Rugby, North Dakota.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
OHIO	
Highland Heights (city), Cuyahoga County (FEMA Docket No. 7023)	
Tributary A:	
About 700 feet downstream of Bishop Road	*865
Just downstream of Highland Road	*934
Tributary B:	
At mouth	*923
Just downstream of Highland Road	*937
Tributary C:	
Just upstream of Interstate 271	*914
About 2100 feet upstream of Highland Road	*972
Tributary D:	
About 2750 feet upstream of mouth	*882
Just downstream of Highland Road	*944
Tributary E:	
At mouth	*904
About 800 feet upstream of Bishop Road	*931
Maps available for inspection at the Building Department, City Hall, 5527 Highland Road, Highland Heights, Ohio.	
Lorain (city), Lorain County (FEMA Docket No. 7023)	
Brownhelm Creek:	
About 1.02 miles upstream of mouth	*588
About 1.67 miles upstream of mouth	*598
Quarry Creek:	
At U.S. Route 6	*579
About 700 feet downstream of Cooper Foster Park Road	*646
Unnamed Creek:	
Just downstream of Old Lake Road	*580
About 1250 feet upstream of Old Lake Road	*583
North Stem East Branch Beaver Creek:	
At confluence with East Branch Beaver Creek	*599
At Cooper Foster Park Road	*654
East Branch Beaver Creek:	
At mouth	*592
Just downstream of Cooper Foster Park Road	*620
Maps available for inspection at the Engineering Department, City Hall, 200 West Erie Avenue, Lorain, Ohio.	
OKLAHOMA	
Bethel Acres (town), Pottawatomie County (FEMA Docket No. 7026)	
Squirrel Creek:	
Approximately 0.7 mile upstream of 13th Street	*1,006
Approximately 1,500 feet upstream of Waco Road	*1,032
North Canadian River (Lower Reach):	
Approximately .4 mile northwest of intersection of U.S. Routes 270 & 177 and Hardesty Road	*997
At northeastern corporate limit	*1,000
Shallow Flooding Area:	
West of intersection of Hardesty Road & 13th Street #1	#1
Maps available for inspection at the City Hall, Bethel Road, Bethel Acres, Oklahoma.	
Pottawatomie County (unincorporated areas) (FEMA Docket No. 7026)	
North Canadian River (Upper Reach):	
Approximately 4.2 miles downstream of the confluence of Wynnewood Creek	*1,044
Approximately 1.8 miles upstream of State Route 102	*1,063
North Canadian River (Lower Reach):	
Approximately .5 mile downstream of State Route 3	*978
Approximately 1,400 feet upstream of West Highland Street	*1,003
Tributary No. 2 to North Canadian River:	
Approximately .6 mile upstream of confluence with North Canadian River	*1,005
Approximately 325 feet upstream of the Missouri-Kansas-Texas Railroad	*1,017
Little River:	
Approximately 3.6 miles upstream of State Highway 102 Bridge	*960
Approximately 4.3 miles upstream of State Highway 102 Bridge	*964
Rock Creek:	
Approximately 1,450 feet upstream of confluence with North Canadian River	*943
Approximately 1,750 feet upstream of confluence of Tributary No. 2 to Rock Creek	*960
Tributary No. 2 to Rock Creek:	
At confluence with Rock Creek	*958
At Interstate Route 40	*973
Tributary No. 3 to Rock Creek:	
At confluence with Tributary No. 2 to Rock Creek	*965
Approximately 2,000 feet upstream of Interstate Route 40	*972
Squirrel Creek:	
Approximately 60 feet downstream of Hardesty Road (extreme downstream crossing)	*997
Approximately .5 mile downstream of Waco Road	*1,024
Pecan Creek:	
Approximately 1,700 feet upstream of confluence with Little River	*966
Approximately 1.25 miles upstream of confluence of Bullfrog Creek	*981
Shallow Flooding Area:	
West of intersection of U.S. Routes 270 & 177 and Hardesty Road	#1
Maps available for inspection at the County Courthouse, Shawnee, Oklahoma.	
Shawnee (city), Pottawatomie County (FEMA Docket No. 7027)	
Squirrel Creek:	
At confluence with North Canadian River	*987
Approximately 1.4 miles downstream of Coker Road	*1,007
North Canadian River (Lower Reach):	
Approximately 100 feet downstream of Missouri-Kansas-Texas Railroad	*982
Approximately 200 feet downstream of West Highland Street	*1,002
Tributary No. 1 to North Canadian River:	
At confluence with North Canadian River	*987
Approximately 1,650 feet upstream of confluence with North Canadian River	*989
Rock Creek:	
Approximately 1,750 feet upstream of confluence of Tributary No. 2 to Rock Creek	*960
Approximately .5 mile upstream of confluence of Tributary No. 1 to Rock Creek	*977
Tributary No. 1 to Rock Creek:	
At confluence with Rock Creek	*973
Approximately 100 feet upstream of West 45th Street	*1,016
Tributary No. 2 to Rock Creek:	
Approximately 1,900 feet downstream of Interstate Route 40	*967
Approximately 1,000 feet upstream of Interstate Route 40	*976
Tributary No. 3 to Rock Creek:	
At Interstate Route 40	*971
Approximately 0.9 mile upstream of 45th Street	*1,008
Tributary No. 3 to Squirrel Creek:	
At confluence with Squirrel Creek	*1,004
At 13th Street	*1,004
Shallow Flooding Area:	
North of 13th Street crossing of Squirrel Creek	#1
Maps available for inspection at the City Hall, 9th & Broadway, Shawnee, Oklahoma.	
Tecumseh (city), Pottawatomie County (FEMA Docket No. 7027)	
Tributary No. 3 to Squirrel Creek:	
At 13th Street	*1,004
Approximately .6 mile upstream of confluence with Squirrel Creek	*1,004
Squirrel Creek:	
Approximately 575 feet downstream of U.S. Routes 177 & 270	*1,001
Approximately 1,600 feet upstream of 13th Street	*1,005
Maps available for inspection at the City Hall, 114 N. Broadway, Tecumseh, Oklahoma.	
PENNSYLVANIA	
Greene (township), Pike County (FEMA Docket No. 7022)	
Wallenpaupack Creek:	
Approximately 50 feet upstream of the confluence of East Branch Wallenpaupack Creek	*1,301
Approximately 550 feet downstream of Pine Grove Road	*1,457
Maps available for inspection at the Township Building, Brinkhill Road, Greentown, Pennsylvania.	
Somerset (borough), Somerset County (FEMA Docket No. 7022)	
East Branch Coxes Creek:	
Approximately .7 mile downstream of Musselman Avenue	*2,096
At confluence with Unnamed Tributary to East Branch Coxes Creek	*2,105
Unnamed Tributary to East Coxes Creek (formerly East Branch Coxes Creek):	
At confluence with East Branch Coxes Creek	*2,105
At upstream corporate limits	*2,108
Maps available for inspection at the Borough Hall, 340 West Union Street, Somerset, Pennsylvania.	
Upper Dublin (township), Montgomery County (FEMA Docket No. 7017)	
Sandy Run:	
At a point approximately 200 feet downstream of the downstream corporate limits	*183
At a point approximately 200 feet upstream of the upstream corporate limits	*223
Maps available for inspection at the Township Building, 801 Loch Alsh Avenue, Fort Washington, Pennsylvania.	
Wilkes-Barre (city), Luzerne County (FEMA Docket No. 7024)	
Susquehanna River:	
Approximately .4 mile upstream of the downstream corporate limits	*545
At upstream corporate limits	*549
Mill Creek:	
At confluence with the Susquehanna River	*549
Approximately 900 feet upstream of George Avenue	*550
Laurel Creek:	
At confluence with Mill Creek	*549
Approximately 1,200 feet upstream of the confluence of Coal Brook	*561
Coal Brook:	
At confluence with Laurel Run	*551
Approximately 1,040 feet upstream of State Route 309	*553
Maps available for inspection at the City Hall, Planning Department, 40 East Market Street, Wilkes-Barre, Pennsylvania.	
SOUTH CAROLINA	
Greenville (city), Greenville County (FEMA Docket No. 7019)	
Laurel Creek:	
About 500 feet downstream of Voodruff Road	*913
Just upstream of Haywood Crossing	*949
Richland Creek Tributary No. 5:	
Just downstream of Main Street	*906
Just upstream of Main Street	*919
Just downstream of Rutherford Road	*923
Richland Creek Tributary No. 7:	
At mouth	*873
Just downstream of Townes Street	*906
Richland Creek Tributary No. 8:	
At mouth	*906
Just downstream of Stone Plaza Drive	*968
Reedy River Tributary No. 2:	
Just downstream of Wembley Drive	*867
Just upstream of Wembley Drive	*882
Just downstream of Stillwood Drive	*909
Reedy River Tributary No. 3:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 300 feet downstream of South Pleasantburg Drive	*856
Just downstream of Scarlett Street	*885
Maps available for inspection at the Planning Department, City Hall, Greenville, South Carolina.	
Greenville County (unincorporated areas) (FEMA Docket No. 7019)	
Enoree River:	
At county boundary	*673
Just downstream of Old Dam	*730
Just upstream of Old Dam	*741
Just downstream of Old Dam	*752
Just upstream of Old Dam	*777
Just downstream of Dill Road	*909
Gilder Creek:	
At mouth	*677
Just downstream of Scuffletown Road	*732
Just upstream of Scuffletown Road	*737
About 900 feet upstream of Interstate 385	*809
Saluda River:	
Just upstream of Norfolk Southern Railway	*757
Just downstream of dam	*766
Just upstream of dam	*777
About 1.70 miles downstream of U.S. Route 123	*804
Peters Creek:	
At mouth	*683
Just downstream of Godfrey Road	*853
Mountain Creek:	
At mouth	*851
Just downstream of Reservoir Road	*966
Mountain Creek Tributary No. 1:	
At mouth	*900
Just downstream of Golf Cart Road	*923
Just upstream of Golf Cart Road	*929
Just downstream of Nature Trail Road	*1,037
Graze Creek:	
At mouth	*737
About 1.32 mile upstream of McKinney Road	*862
Rocky Creek:	
At mouth	*713
Just upstream of Interstate 85	*848
Rocky Creek Tributary No. 1:	
At mouth	*835
Just downstream of CSX railroad	*941
Brushy Creek (Tributary to Enoree River):	
At mouth	*788
Just upstream of Dry Pocket Road	*798
Laurel Creek:	
About 1600 feet downstream of Transit Drive	*922
Just downstream of Transit Drive	*929
Just upstream of Transit Drive	*944
About 1200 feet upstream of Transit Drive	*945
Maps available for inspection at the Planning Department, County Complex, County Square, Greenville, South Carolina.	
SOUTH DAKOTA	
Union County (unincorporated areas) (FEMA Docket No. 7024)	
Missouri River:	
At the confluence with Big Sioux River (county boundary)	*1,090
Approximately 3.2 miles upstream of the confluence with Big Sioux River (at river mile 737.0)	*1,092
Approximately 4.4 miles upstream of the confluence with Big Sioux River (at river mile 738.2)	*1,093
Big Sioux River:	
At the confluence with Missouri River (county boundary)	*1,090
Approximately 2,200 feet downstream of Interstate Highway 29	*1,093
Just downstream of Interstate Highway 29	*1,094
Maps are available for review at the Office of the Land Use Administrator, Union County Courthouse, 200 East Main Street, Elk Point, South Dakota.	
TENNESSEE	
Franklin County (unincorporated areas) (FEMA Docket No. 7019)	
Rock Creek:	
Just upstream of Fletcher Road	*912
About 4300 feet upstream of Sahan Road	*994
Crow Creek:	
Just downstream of confluence of No Business Creek	*651
Just upstream of confluence of Dry Creek	*665
Blue Creek:	
At mouth	*979
About 1 mile upstream of Old Rock Creek Road	*1,007
Boiling Fork Creek:	
About 1800 feet downstream of Goshen Road	*939
About 3200 feet upstream of Goshen Road	*949
Wagner Creek:	
Just upstream of East Petty Lane	*920
Just downstream of County Farm Road	*932
Tims Ford Lake:	
Along entire shoreline	*893
Maps available for inspection at the Office of the Building Commissioner, County Courthouse, 1 South Jefferson Street, Winchester, Tennessee.	
Giles County (unincorporated areas) (FEMA Docket No. 7019)	
Elk River:	
About 1.14 miles downstream of confluence of Richland Creek	*603
Just downstream of Baugh Road	*613
Richland Creek:	
Just downstream of confluence of Smithson Branch	*645
Just downstream of Davy Crocket Highway	*669
Just upstream of Davy Crocket Highway	*676
About 1425 feet upstream of CSX railroad	*711
Robertson Fork Creek:	
At mouth	*709
About 1.70 miles upstream of Brick Church Road	*715
Pleasant Run Creek:	
Within community	*654
Tributary A:	
At mouth	*653
About 3600 feet upstream of U.S. Route 31	*656
Tributary B:	
At mouth	*656
Just downstream of Magazine Road	*664
Maps available for inspection at the County Executive's Office, County Courthouse, Pulaski, Tennessee.	
Spring City (town), Rhea County (FEMA Docket No. 7020)	
Piney River:	
At mouth	*746
About 850 feet upstream of Piccadilly Avenue	*807
Town Creek:	
At mouth	*746
Just downstream of County Road	*771
Tennessee River:	
Upstream of Watts Bar Dam (Watts Bar Lake—along shoreline)	*748
Maps available for inspection at the Town Hall, Spring City, Tennessee.	
VIRGINIA	
Stafford County (unincorporated areas) (FEMA Docket No. 7022)	
Austin Run:	
Approximately 620 feet downstream of northbound U.S. Route 1	*22
Approximately 130 feet upstream of northbound Interstate Route 95	*40
Tributary 3 to Austin Run:	
At confluence with Austin Run	*30
Approximately .4 mile upstream of its confluence with Austin Run	*38
Maps available for inspection at the County Administration Center, 1739 Jefferson Davis Highway, Stafford, Virginia.	
WEST VIRGINIA	
Clarksburg (city), Harrison County (FEMA Docket No. 7020)	
West Fork River:	
At downstream corporate limits	*941
At upstream corporate limits	*950
Elk Creek:	
At confluence with West Fork River	*945
Maps available for inspection at the City Hall, 227 W. Pike Street, Clarksburg, West Virginia.	

Issued: October 4, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91–24595 Filed 10–10–91; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 385

RIN 2125–AC77

Safety Fitness Procedures; Safety Fitness Information

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending Part 385 of the Federal Motor Carrier Safety Regulations (FMCSRs) to implement the requirement in the Motor Carrier Safety Act of 1990 concerning the availability of information to the public on the ratings of motor carriers which have been assigned an "unsatisfactory" safety rating. The rule amends § 385.19, Safety fitness information, to satisfy the requirements of the 1990 Act. The intent of this rule is to offer an incentive for motor carriers to comply with the FMCSRs and the Hazardous Materials Regulations by informing interested parties of the names of unsatisfactory-rated motor carriers.

EFFECTIVE DATE: This rule is effective on November 12, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Rea, Office of Motor Carrier Safety Field Operations, (202) 366–1795, Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Raymond W. Cuprill, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: As required by the Motor Carrier Safety Act

of 1984 (Pub. L. 98–554, 98 Stat. 2829, 2832; 49 U.S.C. 2501 *et seq.*), the FHWA has established procedures to determine the safety fitness of motor carriers. See 53 FR 50961, December 19, 1988. The Safety Fitness Procedures, 49 CFR part 385, are used to assess the compliance by motor carriers with applicable safety requirements and to assign a safety rating of "satisfactory," "conditional," or "unsatisfactory." If a motor carrier is rated "conditional" or "unsatisfactory," the motor carrier is entered into the Selective Compliance and Enforcement (SCE) program. The SCE program is set up to identify those motor carriers having the greatest need for improvement in their level of compliance with the FMCSRs and HMRs. The SCE program provides the means to closely monitor motor carriers which have received either an "unsatisfactory" or "conditional" safety rating. Under the SCE program, follow-up activities are undertaken to ensure that regulatory compliance has been achieved or to initiate enforcement action if necessary to induce compliance. The goal of this program is to correct unsafe motor carrier practices and promote compliance with the FMCSRs and the HMRs.

As part of the 1988 final rule, the FHWA announced its initiation of a telephone service for supplying safety rating information to the public (53 FR 50967). Section 385.19 specifically provided for this service as well as telephonic or remote computer communications with the Interstate Commerce Commission (ICC) and the Department of Defense (DOD).

The Sanitary Food Transportation Act of 1990, Pub. L. 101–500, 104 Stat. 1218; 49 U.S.C. App. 1814) was enacted on November 3, 1990. Section 15(b)(2) of the Act requires the FHWA to issue, in consultation with the ICC, by November 3, 1991, a final rule amending the FMCSRs to establish a system to make readily available to the public, and to periodically update, the safety ratings of motor carriers which have been assigned an "unsatisfactory" safety rating. The intent of this provision is to offer an incentive for motor carriers to comply with the FMCSRs and HMRs by informing shippers, insurers, Federal agencies, State enforcement officials, and other interested parties of the names of unsatisfactory-rated motor carriers. (See S. Rep. No. 332, 101st Cong., 2d Sess. 4, 7, 23 (1990)). The rule herein complies with this congressional mandate.

Final Rule

The FHWA is amending § 385.19, "Safety fitness information," of the Federal Motor Carrier Safety Regulations (FMCSRs) by (1) making the safety fitness ratings available to all Federal agencies telephonically or by remote computer terminals, (2) asking the person requesting the information to provide the motor carrier's U.S. DOT identification number, if known, (3) changing the address to which inquiries should be sent, (4) making it explicit that written responses will be provided upon request, and (5) supplying a telephone number that may be used to make oral requests.

The FHWA would like to advise the public that the safety fitness rating of any motor carrier of record may be obtained by calling (703) 276–6876 or writing to: OMC-Safety Rating, P.O. Box 13028, Arlington, Virginia 22219. It should be noted that this service is provided by a business entity under contract with the FHWA. Upon expiration of the current contract, the address and telephone number could change. Such an occurrence would be addressed by issuing a technical amendment to the rule.

The FHWA is providing the safety rating information in response to requests instead of publishing this information periodically. Periodic publication of the FHWA computerized information would be outdated when published because the data base is updated daily. The FHWA has, therefore, determined that such an approach would be impracticable at this time. If there are suggestions for making this information more readily available to the public, we will consider those suggestions when we reevaluate this rule.

As required by the MCSA of 1990, the FHWA has developed and is issuing this final rule after consultation with the ICC.

Rulemaking Analyses and Notices

Regulatory Impact

The FHWA finds that it is unnecessary to provide notice and opportunity for public comment on the amendment made by this document to the Federal Motor Carrier Safety Regulations, and that therefore there is good cause within the meaning of 5 U.S.C. 553(b) to promulgate this final rule without prior notice and opportunity for comment. This document makes a minor amendment to § 385.19 of the FMCSRs in order to comply with a statutory requirement that a final rule be issued by November 3, 1991, establishing a system to make the safety ratings of motor carriers more available to the public. The existing § 385.19 already makes this safety rating information available to the public and additionally authorizes direct access to the FHWA's computerized safety rating data system by the ICC and the Department of Defense. This document simply amends § 385.19 to establish a new mailing address and telephone number for public inquiries and to expand the access to FHWA's computerized system to all Federal agencies. The FHWA believes that this amendment, while minimally changing existing regulations, fully implements the provision of the Motor Carrier Safety Act of 1990 to make safety ratings readily available to the public, while also facilitating Federal agencies' compliance with the prohibition on their use of unsatisfactory rated carriers.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 605(b)) the FHWA has evaluated the effects of this rule on small entities. Based on this evaluation, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovermental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes

of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 385

Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: October 4, 1991.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, part 385 by revising § 385.19 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), and 3102; 49 U.S.C. App. 1814; 49 U.S.C. App. 2505 and 2512; sec. 15(b)(2), Pub. L. 101–500, 104 Stat. 1213, 1219; 49 CFR 1.48.

2. Section 385.12 is revised to read as follows:

§ 385.19 Safety fitness information.

(a) Safety rating information on motor carriers will be made available to all Federal agencies telephonically or by remote computer terminals.

(b) The safety rating assigned to a motor carrier will be made available to the public upon request. Any person requesting the assigned rating of a motor carrier should provide the FHWA with the motor carrier name, principal office address, and the ICC assigned docket number, or the U.S. DOT identification number.

(c) Requests should be addressed to: OMC—Safety Rating, P.O. Box 13028, Arlington, Virginia 22219.

(d) Oral requests by telephone will be accepted and may be made by calling (703) 276–6876. Oral requests made by telephone will be sent a written response if so requested.

[FR Doc. 91–24653 Filed 10–10–91; 8:45 am]

BILLING CODE 4910–22–M

Proposed Rules

Federal Register
Vol. 56, No. 198
Friday, October 11, 1991

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

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV-91-433PR]

Navel and Valencia Oranges Grown in Arizona Designated Parts of California Expenses and Assessment Rates for the 1991-92 Fiscal Years

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Order Nos. 907 and 908 for California-Arizona navel and Valencia oranges, respectively, for the 1991-92 fiscal years established for each order. Funds to administer these programs are derived from assessments on handlers. These actions are needed in order for the Navel and Valencia Orange Administrative Committees, which are responsible for local administration of the respective orders, to have sufficient funds to meet the expenses of operating the programs. Expenses are incurred on a continuous basis.

DATES: Comments must be received by October 21, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, DC, 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, MOAB, F&V, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3921.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order Nos. 907 and 908 (7 CFR parts 907 and 908), both as amended, regulating the handling of California-Arizona navel and Valencia oranges, respectively. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in the Executive Order 12291 and has been determined to be "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the respective marketing orders. There are approximately 4,000 producers of navel oranges and 3,500 producers of Valencia oranges in the regulated areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona navel and Valencia oranges may be classified as small entities.

The navel and Valencia orange marketing orders require that assessment rates for a particular fiscal year shall apply to all assessable navel or Valencia oranges handled from the beginning of such year. An annual budget of expenses is prepared by the Navel Orange Administrative Committee (NOAC) and the Valencia Orange Administrative Committee (VOAC) and submitted to the Department for approval. The members of the NOAC and VOAC are handlers and producers of navel and Valencia oranges. They are familiar with the NOAC's and VOAC's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of navel or Valencia oranges. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay each committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by each committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their individual expenses.

The NOAC met on September 10, 1991, and recommended, by a vote of six in favor, three opposed, and one abstention, 1991-92 fiscal year expenditures of $1,255,760 and an assessment rate of $0.0315 per carton of navel oranges. In comparison, 1990-91 fiscal year budgeted expenditures were $931,920, and the assessment rate was $0.0296 per carton. Major expenditure categories in the 1991-92 budget are $388,490 for program administration, $194,315 for compliance activities, $512,295 for the field department, $157,300 for direct expenses, and $3,360 for a salary reserve. This compares to $297,330, $143,060, $409,690, $79,900, and $1,940, respectively, for the 1990-91 fiscal year. Expenditures for the 1990-91 fiscal year were lower than those budgeted for 1991-92 since last years crop was dramatically reduced because of the December freeze. Assessment income for 1991-92 is expected to total $1,291,500, based on shipments of 41 million cartons of oranges. Interest and incidental income is estimated at $34,970. The increase in the assessment rate was recommended to minimize the expected shortfall in income. The NOAC

utilized $393,120 from its 1990–91 operational reserve and plans on allocating $70,710 back to the 1991–92 reserve. Additional reserve funds may be used to meet any other unanticipated deficit in assessment income.

The VOAC also met on September 10, 1991, and recommended, by a vote of seven in favor and one abstention, 1991–92 fiscal year expenditures of $661,540 and an assessment rate of $0.032 per carton of Valencia oranges. In comparison, 1990–91 fiscal year budgeted expenditures were $517,280 and the assessment rate was the same. Major expenditure categories in the 1991–92 budget are $189,510 for program administration, $94,785 for compliance activities, $249,905 for the field department, $125,700 for direct expenses, and $1,640 for a salary reserve. This compares to $161,770, $77,840, $222,910, $53,700, and $1,060, respectively, for the 1990–91 fiscal year. Assessment income for 1991–92 is expected to total $640,000 based on shipments of 20 million cartons of oranges. Interest and miscellaneous income is estimated at $22,730. The VOAC utilized $198,480 from its 1990–91 operational reserve and plans on allocating $1,190 back to the 1991–92 reserve. Additional reserve funds may be used to meet any unanticipated deficit in assessment income.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for these programs need to be expedited. The NOAC and VOAC need to have sufficient funds to pay their expenses, which are incurred on a continuous basis.

List of Subjects

7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

7 CFR Part 908

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR parts 907 and 908 be amended as follows:

1. The authority citation for both 7 CFR parts 907 and 908 continues to read as follows:

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

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. A new § 907.229 is added to read as follows:

§ 907.229 Expenses and assessment rate.

Expenses of $1,255,760 by the Navel Orange Administrative Committee are authorized and an assessment rate of $0.0315 per carton of navel oranges is established for the fiscal year ending on October 31, 1992. Unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

3. A new § 908.231 is added to read as follows:

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 908.231 Expenses and assessment rate.

Expenses of $661,540 by the Valencia Orange Administrative Committee are authorized and an assessment rate of $0.032 per carton of Valencia oranges is established for the fiscal year ending on October 31, 1992. Unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

Dated: October 8, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–24606 Filed 10–10–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–190–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which would require inspection for cracks and web separation of the body station (BS) 950 side fitting, and repair or replacement of the fitting, if necessary. This proposal is prompted by reports of cracks and web separations of the BS 950 side fitting. This condition, if not corrected, could result in failure of the fitting and subsequent depressurization of the airplane.

DATES: Comments must be received no later than November 29, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–190–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2778. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice

must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–190–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been several reports from operators of Boeing Model 727 series airplanes of cracks and web separation in the BS 950 side fitting between stringers 9 and 11. The cracks and separations are attributed to stress corrosion in side fittings manufactured from 7079–T6 aluminum. This condition, if not corrected, could result in failure of the fitting and subsequent depressurization of the aircraft.

The FAA has reviewed and approved Boeing Service Bulletin 727–53–0196, dated February 14, 1991, which describes procedures for visual, eddy current, and ultrasonic inspections of body station 950 side fitting between stringers (S)–9 and S–13, modification (cold working of the fastener holes), repair, and replacement of the fitting.

The FAA has also reviewed and approved Boeing Service Bulletin 727–53–0126, Revision 6, dated December 21, 1989, which describes in detail, procedures for the repair, and replacement of body station 950 fitting.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection for cracks and web separation, and repair, if necessary, of the BS 950 side fitting between stringers 9 and 13, in accordance with the service bulletins previously described.

There are approximately 800 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 640 airplanes of U.S. registry would be affected by this AD, that it would take approximately 88 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,097,600.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Boeing: Docket No. 91–NM–190–AD.

Applicability: Model 727 series airplanes, listed in Boeing Service Bulletin 727–53–0126, Revision 6, dated December 21, 1989, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent failure of the body station (BS) 950 side fitting and subsequent depressurization of the airplane, accomplish the following:

(a) Prior to the accumulation of 15,000 total flight cycles or within the next 3,000 flight cycles or 18 months after the effective date of this AD, whichever occurs later, conduct visual, eddy current, and ultrasonic inspections of the body station (BS) 950 side fitting between stringers S–9 and S–13 for cracks and web separations, in accordance with Figure 1 of Boeing Service Bulletin 727–53–0196, dated February 14, 1991.

(b) If cracks or separations are found, prior to further flight, repair the body station (BS) 950 side fitting in accordance with Boeing Service Bulletins 727–53–0196, dated February 14, 1991, or 727–53–0126, Revision 6, dated December 21, 1989. After repairs, conduct repetitive inspections as follows:

(1) For airplanes on which outboard flange cracks are removed by oversizing the fastener holes, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 6,000 flight cycles or 3 years, whichever occurs first.

(2) For airplanes on which the external doubler is used to repair only outboard flange cracks, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 6,000 flight cycles or 3 years, whichever occurs first.

(3) For airplanes on which the external doubler is used to repair either web separations or web separations and outboard flange cracks, repeat the inspections required by paragraph (a) at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first.

(4) For airplanes on which the external doubler and the internal angles are used for repair, conduct an x-ray inspection of the repaired area to detect crack growth at intervals not to exceed 12,000 flight cycles or 6 years, whichever occurs first, in accordance with Boeing Service Bulletin 727–53–0126, Revision 6, dated December 21, 1989.

(c) If no cracks or separations are found, and uncracked fastener holes have been reworked in accordance with Figure 1 of Boeing Service Bulletin 727–53–0196, dated February 14, 1991, repeat the inspection requirements of paragraph (a) of this AD at intervals not to exceed 6,000 flight cycles or three years, whichever occurs first.

(d) If no cracks or separations are found and uncracked fastener holes have *not* been reworked in accordance with Figure 1 of Boeing Service Bulletin 727–53–0196, dated February 14, 1991, repeat the inspection requirements of paragraph (a) of this AD at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first.

(e) The partial replacement of the body station (BS) 950 side fitting in accordance with Boeing Service Bulletin 727–53–0196, dated February 14, 1991, constitutes terminating action for the inspection requirements of this AD for the replaced portion of the fitting. Unreplaced portions must continue to be inspected in accordance with this AD.

(f) The complete replacement of the body station (BS) 950 side fitting in accordance with Boeing Service Bulletin 727–53–0126, Revision 6, dated December 21, 1989, constitutes terminating action for the inspection requirements of this AD.

Note: Replacement of the side fitting in accordance with Boeing Service Bulletin 727–53–0126, Revision 4, dated October 16, 1986; or Revision 5, dated May 26, 1988; constitutes compliance with this paragraph.

(g) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents

may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 27, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-24579 Filed 10-10-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-176-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require examination of flow control units for the passenger oxygen system and replacement of certain units. This proposal is prompted by two reports of flow control units not activating at the proper altitude during a maintenance check of the system; certain other units may have the same manufacturing defects. This condition, if not corrected, could result in failure of the flow control unit to automatically deploy oxygen to the passenger oxygen system in the event of loss of cabin pressure.

DATES: Comments must be received no later than November 29, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-176-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Frey, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2673. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-176-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Two operators of Boeing Model 747 series airplanes reported that the passenger oxygen system failed to activate at the proper altitude during a functional check of the passenger oxygen system. Investigation revealed that during production of the flow control unit spring frame, the heat treatment and electroless nickel coating on some internal parts were not accomplished. Tests were performed to determine how the omitted processes would affect the flow control units. The tests showed that corrosion, which is reduced by nickel coating, may cause the flow control unit to activate at a different altitude from that at which it is required to activate. This condition, if not corrected, could result in failure of the flow control unit to automatically deploy oxygen to the passenger oxygen system in the event of loss of cabin pressure.

The FAA has reviewed and approved Boeing Service Bulletin 747-35-2074, dated June 27, 1991, which describes the procedure to examine flow control units, and identifies units that must be replaced. (Affected units have been identified by part number and serial number.)

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of the serial number on the flow control unit, replacement of affected units, and a functional test of the replaced units, in accordance with the service bulletin previously described.

There are approximately 786 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 173 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $52,333.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Boeing: Docket No. 91-NM-176-AD.

Applicability: Model 747 series airplanes, as listed in Boeing Service Bulletin 747-35-2074, dated June 27, 1991, certificated in any category.

Compliance: Required within the next 4,000 flight hours after the effective date of this AD, unless previously accomplished.

To ensure that the passenger oxygen system activates at the proper altitude, accomplish the following:

(a) Inspect the flow control units to determine the serial numbers, in accordance with Boeing Service Bulletin 747-35-2074, dated June 27, 1991.

(1) If a flow control unit serial number is listed in Table 1 of the service bulletin, before further flight, replace the unit and perform a low pressure leak check and a simulated automatic actuation test in accordance with the service bulletin.

(2) If the flow control unit serial number is not listed in Table 1 of the service bulletin, no further action is necessary.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 26, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-24577 Filed 10-10-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-183-AD]

Airworthiness Directives; Boeing Model 747-100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747-100 series airplanes, which would require inspection of the wing front spar web above engine numbers 2 and 3 for cracking, and repair, if necessary. This proposal is prompted by a report of an 18-inch crack in the front spar web at the attach fitting of the number 3 engine. This condition, if not corrected, could result in fuel leakage onto an engine and a resultant fire.

DATES: Comments must be received no later than December 3, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-183-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Satish Pahuja, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2781. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-183-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

An operator of a Boeing Model 747-100 series airplane reported finding an 18-inch crack in the wing front spar web at the number 3 engine attach fitting on an airplane that had accumulated 80,905 flight hours and 19,458 flight cycles. The crack was found during a walk around inspection conducted because of fuel leakage. The FAA has determined that the crack was attributed to fatigue. Cracks in the wing front spar web, if not corrected, could result in fuel leakage onto an engine and a resultant fire.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-57A2266, dated June 6, 1991, which describes procedures for repetitive visual and ultrasonic inspections of the wing front spar to detect cracks; and if cracks are not detected, a terminating modification consisting of replacement of fasteners at the upper and lower chord with oversize fasteners.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require visual and ultrasonic inspections of the wing front spar web to detect cracks, in accordance with the service bulletin previously described. Repair, if necessary, must be accomplished in a manner approved by the Manager, Seattle Aircraft Certification Office. This proposal also provides a modification which, if accomplished on an uncracked wing front spar, would constitute terminating action for the repetitive inspections.

There are approximately 135 Model 747-100 series airplanes of the affected design in the worldwide fleet. It is estimated that 87 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $76,560.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Boeing: Docket No. 91–NM–188–AD.

Applicability: Model 747–100 series airplanes, listed in Boeing Alert Service Bulletin 747–57A2266, dated June 6, 1991, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent fuel leakage onto an engine and a resultant fire, accomplish the following:

(a) Perform a visual and an ultrasonic inspection of the wing front spar web between front spar station (FSS) 636 and FSS 675 in accordance with Boeing Alert Service Bulletin 747–57A2266, dated June 6, 1991, at the applicable time specified in the following schedule:

(1) For airplanes that have accumulated more than 20,000 flight cycles as of the effective date of this AD, perform the inspections within six months after the effective date of this AD.

(2) For airplanes that have accumulated between 15,000 flight cycles and 20,000 flight cycles as of the effective date of this AD, perform the inspections within one year after the effective date of this AD.

(3) For airplanes with fewer than 15,000 flight cycles as of the effective date of this AD, perform the inspections within the next one year after accumulating 15,000 flight cycles.

(b) If cracking is found, prior to further flight, repair in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

(c) If no cracking is found, accomplish either subparagraph (c)(1) or (c)(2) of this AD:

(1) Repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 2,000 flight cycles.

(2) Install the modification, consisting of the replacement of fasteners, specified in Boeing Alert Service Bulletin 747–57A2266, dated June 6, 1991. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 1, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–24580 Filed 10–10–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–10–AD]

Airworthiness Directives; Gulfstream Model G–IV Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: This action withdraws a Notice of Proposed Rulemaking (NPRM) which proposed a new airworthiness directive (AD), applicable to certain Gulfstream Model G–IV series airplanes, which would have required replacement of defective Honeywell PZ–880 Performance Computers, and a revision to the Limitations Section of the FAA-approved Airplane Flight Manual to prevent unsafe reduction in engine power following takeoff. Since issuance of the NPRM, the FAA has received new data documenting the fact that the unsafe condition no longer exists and is extremely unlikely to develop. Accordingly, the NPRM is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Williams, Systems Branch, ACE–130A; telephone (404) 991–3020. Mailing address: FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, ACE–115A, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to add a new airworthiness directive, applicable to certain Gulfstream Model G–IV series airplanes, was published in the **Federal Register** on March 20, 1991 (56 FR 11701). The proposal would have required replacement of defective Honeywell PZ–880 Performance Computer, and a revision to the Limitations Section of the FAA-approved Airplane Flight Manual. That action was prompted by reports of a failure condition which resulted in the use of uncertified reduced thrust climb data.

Interested persons have been afforded an opportunity to comment on the proposal. Due consideration has been given to the comments received.

All of the commenters objected to the issuance of the proposed rule.

The commenters requested that the NPRM be withdrawn as all defective Honeywell Performance Computers specified in the proposed rule have been recovered and converted to the proper configuration identified in this proposal. One commenter stated that issuance of the final rule will provide no additional level of safety, and will impose an unnecessary burden on operators of this airplane to prove compliance with the AD during subsequent maintenance inspections.

Upon further consideration and review, the FAA concurs with the commenters. Since issuance of the NPRM, the FAA has received additional data confirming that the unsafe condition no longer exists and is extremely unlikely to develop. The incident that prompted the proposal occurred on a Gulfstream Model G–IV series airplane equipped with a Honeywell Performance/Autothrottle Computer, P/N 7004609–905 PZ–800. As explained in the preamble to the NPRM, this part-numbered computer was

subject to the software error that led to the addressed unsafe condition. Recently, both Gulfstream (the airplane manufacturer) and Honeywell (the performance/autothrottle computer manufacturer) submitted documentation to the FAA verifying that all Honeywell Performance/Autothrottle Computers, P/N 7004609–905 PZ–800, installed on Model G–IV series airplanes in the worldwide fleet have been replaced with 7004609–906 computers. Such replacement is exactly what the proposal would have required. In light of this, the FAA has determined that the unsafe reduction in engine power following takeoff on Model G-IV series airplanes no longer exists and is extremely unlikely develop. Accordingly, the proposed rule is withdrawn.

Withdrawal of this Notice of Proposed Rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a Notice of Proposed Rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the Notice of Proposed Rulemaking, Docket 91–NM–10–AD, published in the **Federal Register** on March 20, 1991 (56 FR 11701), is withdrawn.

Issued in Renton, Washington, on September 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–24581 Filed 10–10–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–177–AD]

Airworthiness Directives; SAAB-Scania Models SF–340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain SAAB-Scania Models SF–340A and SAAB 340B series airplanes, which currently requires replacement of certain life-limited components associated with the main landing gear (MLG) and nose landing gear (NLG) in accordance with revised life limits. This action would require replacement of additional life-limited components specified in two additional service bulletin attachments not referenced in the existing AD. Failure to replace the landing gear components at these new life limits could result in reduced structural capability of the MLG and NLG.

DATES: Comments must be received no later than November 25, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, attention: Airworthiness Rules Docket No. 91–NM–177–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from SAAB-Scania AB, Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 227–2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–177–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On February 28, 1991, the FAA issued AD 91–07–02, Amendment 39–6932 (56 FR 11357, March 18, 1991), applicable to certain SAAB-Scania Model SF–340A and SAAB 340B series airplanes, which requires replacement of certain life-limited components associated with the main landing gear (MLG) and nose landing gear (NLG) in accordance with revised life limits. That action was prompted by an analysis in which the landing gear component life limits were recalculated in order to compensate for operation of the SAAB Model 340 series airplanes at higher weights than the projected weights used to establish the life limits during airplane certification. Failure to replace the landing gear components at these new life limits could result in reduced structural capability of the MLG and NLG.

Since issuance of that AD, further analysis of the applicable service information by the FAA has revealed that two additional attachments to SAAB-Scania Service Bulletin 340–32–066, Revision 1, dated October 17, 1990, which identify additional NLG and MLG components to be removed and replaced with serviceable components, were not identified in the existing AD. Paragraph A. of the existing AD requires the replacement of components listed in service bulletin Attachments 1 through 6; however, replacement of the components listed in two additional attachments (Attachments 7 and 8), which are also part of the service bulletin, is not specified in the existing AD. Accomplishment of the procedures contained in these two additional service bulletin attachments is necessary to ensure that all of the proper NLG and MLG components are removed and replaced with serviceable components.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the

United States, an AD is proposed which would supersede AD 91-07-02 with a new airworthiness directive that would require replacement of certain life-limited components associated with the main landing gear (MLG) and nose landing gear (NLG) in accordance with revised life limits, in accordance with Attachments 1 through 8 of the SAAB-Scania service bulletin referenced previously.

It is estimated that 121 airplanes of U.S. registry would be affected by this AD, that it would take approximately 48 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The estimated cost for required parts is $4,700 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $888,140.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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. Section 39.13 is amended by removing Amendment 39-6932 and by adding the following new airworthiness directive:

SAAB-Scania: Docket No. 91-NM-177-AD. Supersedes AD 91-07-02.

Applicability: Model SF-340A series airplanes, Serial Numbers 004 through 159; and SAAB 340B series airplanes, Serial Numbers 160 and subsequent; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To ensure proper operation of the nose landing gear (NLG) and main landing gear (MLG), accomplish the following:

(a) Remove the NLG and MLG components identified in the attachments (listed below) to SAAB Service Bulletin 340-32-066, Revision 1, dated October 17, 1990, and replace them with serviceable components prior to the accumulation of the number of landings listed in the "Fatigue-Life Flights" column of the applicable "Life Limited Parts List," or within 60 days after April 15, 1991 (the effective date of Amendment 39-6932, AD 91-07-02), whichever occurs later. Thereafter, replace these components with serviceable components at intervals not to exceed the number of landings listed in the "Fatigue-Life Limits" column of the applicable "Life Limited Parts List."

SAAB SERVICE BULLETIN 340-32-066 ATTACHMENTS

AP Precision hydraulics service bulletin No.	Date issued	Attachment No.
AIR83530-32-07	January 1990	1
AIR83570-32-04	January 1990	2
AIR83572-32-01	January 1990	3
AIR84306-32-07	January 1990	4
AIR84350-32-01	January 1990	5
AIR83022-32-18 Rev1.	August 1990	6

(b) Remove the NLG and MLG components identified in the attachments (listed below) to SAAB Service Bulletin 340-32-066, Revision 1, dated October 17, 1990, and replace them with serviceable components prior to the accumulation of the number of landings listed in the "Fatigue-Life Flights" column of the applicable "Life Limited Parts List," or within 60 days after the effective date of this AD, whichever occurs later. Thereafter, replace these components with serviceable components at intervals not to exceed the number of landings listed in the "Fatigue-Life Limits" column of the applicable "Life Limited Parts List."

SAAB SERVICE BULLETIN 340-32-066 ATTACHMENTS

AP Precision hydraulics service bulletin No.	Date issued	Attachment No.
AIR83064-32-02	January 1990	7
AIR84310-32-07	January 1990	8

(c) An alternative method compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, Product Support, S-581.88, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-24578 Filed 10-10-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-ANE-32]

Proposed Amendment to Control Zone; Hyannis, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the Hyannis, Massachusetts, Control Zone, by eliminating the portion of the Control Zone that extends southwesterly along the 227 radial of the Hyannis VORTAC (HYA). This change is necessary because of the planned relocation of HYA to North Truro, Massachusetts, effective June 25, 1992.

DATES: Comments must be received on or before January 1, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, New England Region, Docket No. 91-ANE-32, Department of Transportation, Federal Aviation Administration, Burlington, MA 01803-5299.

The Official Docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299, between the hours of 8 a.m.

and 4:30 p.m., Monday through Friday except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Gregory P. Bull, System Management Branch, ANE–530, Federal Aviation Administration, Burlington, MA 01803–5299; telephone (617) 273–7146.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91–ANE–32." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this NPRM by submitting a request to the Office of the Assistant Chief Counsel, ANE–7, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Control Zone for Hyannis, Massachusetts. This action proposes to eliminate the portion of the Hyannis Control Zone that extends southwesterly along the 227 radial of the Hyannis VORTAC (HYA). HYA is scheduled to be decommissioned and the facility relocated to North Truro, Massachusetts. The new North Truro VORTAC (TRU) is planned to be commissioned June 25, 1992. The extension to the Hyannis control zone along the HYA 227 radial will not be necessary once TRU is commissioned. Therefore, this proposal would amend the Hyannis Control Zone effective June 25, 1992. Section 171 of part 71 of the Federal Aviation Regulations was last republished in FAA Order 7400.6G, dated September 4, 1990.

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

Lists of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106 (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Hyannis, Massachusetts [Revised]

Within a 5-mile radius of the center of Barnstable Municipal Airport, Hyannis, Mass., (lat. 41°40'10"PN., long. 70°16'45'W). This control zone is effective from 0600 to 2300 hours, local time, daily or during the specific dates and times established in advance by a Notice to Airmen which thereafter will be continuously published in the Airport/Facility Directory.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 91–24583 Filed 10–10–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ASO–15]

Proposed Alteration of VOR Federal Airway V–157

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects a mistake in the **ADDRESSES** section of the notice of proposed rulemaking (NPRM) that was published in the **Federal Register** on September 17, 1991. This action corrects that mistake.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 91–22298, published on September 17, 1991, proposed to alter the description of VOR Federal Airway V–157 located in the States of North Carolina and South Carolina (56 FR 47038). The **ADDRESSES** section indicates that comments be forwarded to: "JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430" when in fact, the comments shou1d be forwarded to: "P.O. Box 20636, Atlanta, GA 30320."

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Correction to NPRM

Accordingly, pursuant to the authority delegated to me, the **ADDRESSES** section of the NPRM (**Federal Register** Document No. 91–22298), as published on September 17, 1991 (56 FR 47038), is corrected to read as follows:

In the **ADDRESSES** section (page 47038, column 2), starting on line eighteen, remove the words "JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430" and add the words "P.O. Box 20636, Atlanta, GA 30320."

Issued in Washington, DC, on October 4, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91–24582 Filed 10–10–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211, 314, and 514

[Docket No. 91N–0074]

RIN 0905 AD45

Use of Aseptic Processing and Terminal Sterilization in the Preparation of Sterile Pharmaceuticals for Human and Veterinary Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the current good manufacturing practice (CGMP) regulations for human and veterinary drug products to require manufacturers to use a terminal sterilization process when preparing a sterile drug product unless such a process adversely affects the drug product. The proposal would also amend the regulations governing the approval for marketing of new drugs and antibiotics for human use and new animal drugs to require applicants to include in their marketing applications a written justification with supporting data when terminal sterilization is not used to prepare a sterile drug product. FDA believes these actions will provide the highest possible assurance of sterility for drug products intended to be sterile.

DATES: Written comments by December 10, 1991. FDA proposes that any final rule based on this proposal be effective 18 months after its date of publication in the **Federal Register.**

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Watson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8038.

SUPPLEMENTARY INFORMATION:

I. Introduction

There are two principal processes for the preparation of sterile drug products. Aseptic processing involves the filling or assembly of presterilized drug products under aseptic conditions into presterilized containers. The drug product and its container and closure are sterilized separately, and the sterilization methods may differ depending upon the physical characteristics of the product and the container and closure. For example, liquid dosage forms are usually sterilized through filtration. Glass containers are often sterilized using dry heat; rubber closures are sterilized using pressurized steam; and plastic components may be sterilized using ethylene oxide or radiation. The sterilized drug product and sterilized container and closure are then assembled in a controlled environment. The filled container is seldom subjected to any further sterilization process but is sealed and labeled as being sterile. The many manipulations of the separately sterilized components during the assembly of the final drug product and the absence of a final sterilization process after the drug product has been sealed in its final container limit the degree of sterility assurance that can be attained. Careful control and validation of all operational phases of aseptic processing is imperative to achieve the highest possible degree of sterility assurance. The failure to satisfactorily process any component of the drug product or the product's container and closure could result in contamination of the other sterile components of the drug product.

In contrast, terminal sterilization is a process whereby a drug product, which may or may not be presterilized, is filled and sealed in a container and then subjected to final sterilization. The sterilization method is usually autoclaving, a process that can virtually eliminate the possibility of contamination if properly validated and carried out. Radiation is another method of terminal sterilization. With terminal sterilization of the final product, the possibility of poststerilization contamination of the drug product is usually due to a breach of container-closure integrity.

The principal difference between aseptic processing and terminal sterilization of a drug product in the degree of confidence regarding the assurance of sterility is most notably reflected in the statistical probability of the existence of a nonsterile unit in a lot or batch. A properly conducted and validated terminal sterilization process will achieve a degree of sterility assurance such that there will be less than one chance in a million (10^{-6}) that viable microorganisms are present in any final product container. In contrast, current aseptic processing methods, even when performed under optimal conditions, can only be validated to ensure that the contamination rate is no greater than 1 contaminated unit per 1,000 (10^{-3}) filled. In practical terms, these statistical probabilities mean that, for a drug product sterilized by a properly controlled and validated terminal sterilization process with an uncompromised container-closure system, there is virtually no chance of microbiological contamination of the drug product. For a sterile drug product prepared by aseptic processing under validated and controlled conditions, there is a substantial likelihood that at least some drug products will be microbiologically contaminated. In addition, the sterilization method most frequently used for the drug dosage form in aseptic processing is filtration. Because this physical process removes, but does not inactivate, microorganisms, it cannot prevent contamination of the final drug product by viruses or other viable biological components that cannot be contained by a filtration system.

Based on the above, the agency concludes that terminal sterilization, when properly performed, results in drug products with a higher statistical probability of sterility than those drug products that are aseptically processed. This conclusion is consistent with explicit statements that terminal sterilization is preferable and that sterilization by filtration is the least desirable method of sterilization that appear in the regulations of Canada, the United Kingdom, Australia, the European Pharmaceutical Inspection Convention, and in the good manufacturing practice guideline of the European Economic Community. In addition, an FDA analysis of recall data from October 1981 to September 1991 demonstrates that virtually all "sterile" drug products for human use that were

subject to the 40 recalls for problems involving sterility had been aseptically processed. Some of the serious problems that resulted from the marketing of some of these products prior to their recall included a contaminated bone marrow transplant resulting from a bacterial contaminant in a heparin sodium injection used in the transplant, serious eye injuries resulting from contaminated ophthalmic solutions, and a finding of mold in some injections.

All the "sterile" animal drug products which have been subject to the seven recalls between 1986 and 1991 due to sterility problems involved products which had been asceptically processed rather than terminally sterilized. While those recalled products which were implicated in adverse reactions in animals contained endotoxins, viable microorganisms (*Staphylococcus hominis, Pseudomonas fluorescens,* and *S. cohnii*) have been isolated in two products which were recently recalled. The absence of reported adverse reactions in animals as a result of viable microbial contamination of injectable products may be due to a number of factors—adverse actions may more easily go undetected in animals, and they may go uninvestigated as a matter of economics and/or lower emotional concern.

In 1987, FDA issued its "Guideline on Sterile Drug Products Produced by Aseptic Processing." The guideline recognized terminal sterilization's greater degree of sterility assurance and aseptic processing's greater risk of possible contamination. However, the guideline only provided information on acceptable practices and procedures for aseptic processing. As a matter of agency practice, FDA recently began asking applicants who are seeking marketing approval of sterile drug products for human use to use terminal sterilization whenever feasible.

II. Provisions of the Proposal

This proposed rule codifies the agency's policy on the preparation of sterile drug products. The proposal would amend the regulations regarding CGMP (21 CFR part 211) and the regulations governing the approval for marketing of new drugs and antibiotic drugs for human use (21 CFR part 314) and new animal drugs (21 CFR part 514) to require manufacturers to use terminal sterilization when preparing sterile drug products. The agency proposes to state this policy by adding new §§211.113(c) and 211.186(b)(10) and by revising 21 CFR 314.50(d)(1)(ii) and 514.1(b)(5)(vii)(*b*).

The proposal would permit manufacturers to use aseptic processing methods only if terminal sterilization compromises product integrity. For example, the manufacturer could justify using aseptic processing by establishing that the drug product is heat-labile, as in the case of certain proteins and complex biological products that are not stable under conditions created by terminal sterilization methods. In some cases, the container closure system, for example, a prefilled syringe, may offer a clear benefit to patients but the system cannot withstand terminal sterilization. To justify aseptic processing for sterile drug products, and applicant should present scientific evidence with data showing that unacceptable degradation of the product or container occurs as a result of terminal sterilization. This evidence may be supplied as a result of direct experimentation with the product in question. These data may include, for example, studies demonstrating increased content of degradation products, loss of container integrity, or stability studies demonstrating other adverse effects after terminal sterilization. Such data could be summarized in tabular form but should include the methods used. Alternatively, and applicant may submit articles from the literature that provide adequate justification in cases where the effects of terminal sterilization are known. For example, the sensitivity of some drug substances to heat, and, hence, autoclave processing, has already been established and studies demonstrating this sensitivity have been published.

Section 211.113 of the CGMP regulations requires that manufacturers establish and follow appropriate written procedures designed to prevent microbiological contamination of drug products purporting to be sterile. FDA is proposing to amend § 211.113 by adding new paragraph (c)(1) to require sterile products to be manufactured using terminal sterilization unless such a process will adversely affect the drug product. When sterile products are not sterilized by terminal sterilization, the proposal would require manufacturers to include in their written procedures an explanation of the reasons why terminal sterilization cannot be used. Data and other information demonstrating that terminal sterilization cannot be used would be retained as part of the master production and control records. The agency proposes to amend § 211.186 by adding new paragraph (b)(10) to state this requirement.

Under the proposal at revised § 314.50(d)(1)(ii) for a new drug and § 514.1(b)(5)(vii)(*b*) for a new animal drug, an applicant would be required to include in its marketing application a written justification with supporting documentation demonstrating why terminal sterilization cannot be used.

Under the proposal, applicants of both abbreviated new drug applications and abbreviated new animal drug applications would also be required to comply with these requirements.

For biological products, it is generally understood that most products cannot be terminally sterilized because they are not stable under the stress caused by the available methods of terminal sterilization, and potency of the product can be maintained only if sterility is assured through aseptic processing techniques. Therefore, the agency concludes that this proposed rule would impose a burden without any benefit with respect to biological products by requiring applicants to justify why terminal sterilization cannot be used when it has already been determined that such a process is appropriate for few, if any, biological products. Accordingly, this proposed rule would not apply to biological products. The agency proposes to amend § 211.113 of the CGMP regulations by adding new paragraph (c)(2) to state this exemption.

Failure to comply with these requirements would result in a finding that the drug product is adulterated under section 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351(a)(2)(B)). It would also result in the agency's refusal to approval a marketing application for the product.

III. Proposed Effective Date

The agency proposes that any final rule based on this proposal be effective 18 months after its date of publication in the **Federal Register**. This effective date reflects the time that FDA believes applicants may need to adapt to the new requirements. FDA specifically seeks comment on whether this is an appropriate effective date. During the 18-month transition period, any applicant who cannot use terminal sterilization for preparing the sterile drug product for which it is seeking approval should include in its new drug, new animal drug, abbreviated new drug, or abbreviated new animal drug application, or in an amendment to a pending new drug, new animal drug, abbreviated new drug, or abbreviated new animal drug application, justification with supporting data demonstrating why terminal sterilization cannot be used. Any person holding an approved application or abbreviated application for a sterile new drug or new animal drug product that was not prepared by terminal sterilization should provide FDA with a justification and supporting data demonstrating why

terminal sterilization cannot be used, or, if the product can be terminally sterilized, a supplemental application under § 314.70(b)(2) or § 514.8(a)(4) (21 CFR 314.70(b)(2)) or 514.8(a)(4)) providing for conversion to terminal sterilization. The agency does not anticipate appreciable delay in reviewing a supplemental application to provide for terminal sterilization. FDA will make every effort to complete review of these applications as quickly as possible. The agency notes that § 314.70(b) permits applicants to request expedited review of a supplement for a new drug for a change that requires prior approval.

Before the effective date of the final rule, any new drug, new animal drug, abbreviated new drug, and abbreviated new animal drug application under review by FDA on or after the date of publication of the final rule that does not provide for the use of terminal sterilization for preparing a sterile drug product that can be terminally sterilized may be approved if the application is otherwise approvable and the applicant agrees to convert to terminal sterilization by the effective date. On and after the effective date of a rule, FDA will refuse to approve a new drug, new animal drug, abbreviated new drug, and abbreviated new animal drug application if the applicant seeks approval for a sterile product where terminal sterilization is not used and the applicant has not amended its application to include a justification with supporting documentation demonstrating why terminal sterilization cannot be used.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Impact

The agency has examined the economic impact of this proposed rule in accordance with Executive Order 12291, and has determined that the proposed regulation does not constitute a major rule. Furthermore, based on preliminary data, the agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and, therefore, does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354).

This proposed rule would require, where appropriate, the use of a terminal sterilization process in the preparation of a sterile drug product in order to decrease the risk of contamination that may be associated with other methods of sterilization. FDA estimates that the total cost to firms of converting to terminal sterilization would be $43 million. This figure of $43 million is a combined cost for human drug establishments and animal drug establishments. The cost incurred by a particular establishment will depend on whether the firm needs to acquire new equipment and/or make significant renovations.

The proposed regulation will require firms producing sterile products to incur two types of costs: Capital costs for new or additional equipment plus any renovation needed for installing the equipment; and costs for validation testing of the new sterilization process, which is needed for supplementing the drug applications. After consulting with several pharmaceutical companies who recently converted their facilities to handle the terminal sterilization of drug products, FDA estimates that companies would spend an average of $500,000 to install an autoclave. If structural changes to a plant for housing the new equipment were necessary, FDA estimates that an additional $250,000 would be incurred.

The companies will also need to supplement the drug application where there has been a change in the sterilization process. The average validation testing cost is estimated at about $75,000. Because more than one product can be validated in the same cycle, the costs for validation testing for one product is assumed to be the same as the costs for validation testing of numerous products.

There are approximately 221 human drug manufacturing establishments (affiliated with 158 firms) which manufacture sterile products (small and large volume parenterals and ophthalmic products). The agency estimates that approximately 40 percent manufacture aseptically filled drug products that could be produced via a terminal sterilization process. Thus, FDA estimates that approximately 88 human drug manufacturing establishments would be affected by the proposed rule. Based on FDA's inspection experience, a little over one-half (48) of the affected establishments are already extensively equipped with terminal sterilization machinery and trained personnel. Therefore, these 48 establishments will incur costs only to run validation tests for those affected sterile drug products not already terminally sterilized. The remaining 40 establishments, have either limited or no terminal sterilization capacity. These establishments will need to purchase capital equipment and run validation tests. An estimated 22 of these 40 establishments may also need to make renovations to their plants.

The first set of 48 human drug manufacturing establishments, which must only supplement drug applications with validation tests, will incur one-time costs of $3,600,000 (48 establishments × $75,000 for validation tests) under the proposed rule. The second group of human drug manufacturing establishments, comprised of the roughly 18 establishments that will need an increased capacity for terminally sterilizing drug products, but not major structural changes to the plant, will incur one-time costs under the proposed rule of about $10,350,000 (18 establishments × ($500,000 for autoclave + $75,000 for validation tests)). The final 22 establishments are assumed to need structural changes to their facilities in addition to new autoclaves and validation tests. Thus, these human drug manufacturers will incur one-time estimated costs of $18,150,000 (22 establishments × ($500,000 for autoclave + $250,000 for renovation + $75,000 for validation tests)).

In total, the estimated one-time cost imposed on the 88 human drug establishments is $32 million. On an annual basis, assuming a 20-year equipment lifetime and a 10 percent interest rate, this amounts to about $3.8 million per year.

Similar average costs can be expected to occur in the animal drug industry. Officials of FDA's Center for Veterinary Medicine estimate that there are roughly 40 establishments manufacturing sterile animal drug products. However, 25 of these establishments also manufacture human drug products and costs associated with terminal sterilization for these establishments have been included under the human drug establishment estimate presented above The remaining 15 sterile animal drug manufacturing establishments are expected to experience varying cost impacts. The agency estimates that 10 of the 15 establishments will incur initial costs for purchasing an autoclave, renovating or reconstructing, and performing validation testing. The cost to these 10 establishments totals $8,250,000 (10 establishments × ($500,000 for autoclave + $250,000 for renovation + $75,000 for validation tests)). The remaining 5 establishments will incur costs of $2,875,000 for purchasing a new or additional autoclave and running validation tests

(5 establishments × ($500,000 for autoclave + $75,000 for validation tests)). Thus, the total one-time impact to these 15 animal drug establishments is estimated to be $11,125,000. On an annual basis these costs total $1.3 million per year.

Total annual costs amounting to $5 million ($3.8 million for human drugs and $1.3 million for animal drugs) would not have a substantial impact on the manufacture of sterile drug products as a whole. Nonetheless, while most larger firms already have terminal sterilization equipment in place and would experience few significant cost impacts, some smaller firms may not have immediate access to the necessary equipment and would either need to borrow the capital funds or revise their product lines. Although smaller operations require smaller and less expensive autoclaves, FDA is not certain that it has identified all of the costs that may be incurred by each type of establishment. Thus, the agency welcomes comments on the accuracy of its estimated costs of compliance and on the distribution of these impacts among firms of different sizes.

In the international arena, most developed countries (Canada, Australia, and the European Economic Community Countries) already have guidelines or regulations or guidelines in place which specify terminal sterilization as the preferable method of sterilization. Since the majority of imported sterile finished dosage form products come from those countries which already prefer or require terminal sterilization, no adverse effect on imports is anticipated. In addition, U.S. manufacturers which terminally sterilize products for export will experience increased demand and reduced import restrictions, since these products will meet the regulations of other countries.

A more detailed copy of the agency's assessment of the economic impact is on file with the Dockets Management Branch (address above). All public comments regarding the cost of switching from aseptic processing of a sterile drug to terminal sterilization will be reviewed and incorporated into the agency's final economic assessment.

VI. Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Use of Aseptic Processing and Terminal Sterilization In the Preparation of Sterile Pharmaceuticals for Human and Veterinary Use.

Description: This proposed rule would require manufacturers applying for marketing approval of a drug product to describe the procedures that would be taken to assure the drug product's sterility. If the manufacturer seeks approval for or has obtained approval of a sterile drug product that was not prepared using terminal sterilization, the proposed rule would require the manufacturer to justify in the marketing application why terminal sterilization was not appropriate. In addition, the proposed rule would require a manufacturer who does not use terminal sterilization to prepare a sterile drug product to keep in its files a justification with supporting data demonstrating why terminal sterilization is not appropriate.

Description of Respondents: Business.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
211.113(c)	220	1	8 hours	1,760
211.186(b)(10)	220	1	80 hours	17,600
314.50(d)(1)(ii)	220	1	1 hour	220
514.1(b)(5)(vii)(*b*)	45	1	1 hour	45
Total				19,625

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to FDA. The agency seeks comment on these estimates, particularly the industries' view of the number of firms and products affected by the collections of information contained in this proposed rule.

The agency has submitted a copy of this proposed rule to OMB for its review of these information collections. Interested persons are requested to send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to FDA's Dockets Management Branch (address above), and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

VIII. Request for Comments

Interested persons may, on or before December 10, 1991, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs, it is proposed that 21 CFR parts 211, 314, and 514 be amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 506, 507, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374).

2. Section 211.113 is amended by adding new paragraph (c) to read as follows:

§ 211.113 Control of microbiological contamination.

* * * * *

(c)(1) Drug products purporting to be sterile shall be sterilized by terminal sterilization unless such process will adversely affect those drug products. In cases where terminal sterilization is determined by the manufacturer to be inappropriate, the written procedures described in paragraph (b) of this section shall include a justification for this determination.

(2) Biological products for human use are exempt from the requirements of paragraph (c)(1) of this section.

3. Section 211.186 is amended by adding new paragraph (b)(10) to read as follows:

§ 211.186 Master production and control records.

* * * * *

(b) * * *

(10) In cases where terminal sterilization is determined by the manufacturer to be inappropriate, documentation supporting the justification included under § 211.113(c)(1).

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

4. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 376).

5. Section 314.50 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 314.50 Content and format of an application.

* * * * *

(d) * * *

(1) * * *

(ii) *Drug product.* A list of all components used in the manufacture of the drug product (regardless of whether they appear in the drug product); and a statement of the composition of the drug product; a statement of the specifications and analytical methods for each component; the name and address of each manufacturer of the drug product; a description of the manufacturing and packaging procedures and in-process controls for the drug product; such specifications and analytical methods as are necessary to ensure the identity, strength, quality, purity, and bioavailability of the drug product, including, for example, specifications relating to sterility, dissolution rate, containers and closure systems; and stability data with proposed expiration dating. The application may provide additionally for the use of alternatives to meet any of these requirements, including alternative components, manufacturing and packaging procedures, in-process controls, methods, and specifications. Reference to the current edition of the U.S. Pharmacopeia and the National Formulary may satisfy relevant requirements in this paragraph. The application for a sterile drug product that is not sterilized by terminal sterilization shall include a written justification with supporting documentation demonstrating why terminal sterilization is not appropriate.

* * * * *

PART 514—NEW ANIMAL DRUG APPLICATIONS

6. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: Secs. 501, 502, 512, 701, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360b, 371, 376, 381).

7. Section 514.1 is amended by revising paragraph (b)(5)(vii)(*b*) to read as follows:

§ 514.1 Applications.

* * * * *

(b) * * *

(5) * * *

(vii) * * *

(*b*) If the article is one that is represented to be sterile, the same information with regard to the manufacturing, processing, packaging, and the collection of samples of the drug should be given for sterility controls. Include the standards used for acceptance of each lot of the finished drug. If the article is not sterilized by terminal sterilization, a written justification with supporting documentation demonstrating why terminal sterilization is not appropriate shall be provided.

* * * * *

Dated: May 15, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-24569 Filed 10-10-91; 8:45 am]

BILLING CODE 4160-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 65 and 72

RIN 3067—AB 66

National Flood Insurance Program; Identification and Mapping of Special Flood Hazard Areas and Procedures and Fees for Processing Map Changes

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the National Flood Insurance Program (NFIP) regulations on identification and mapping of special hazard areas. The proposed rule would initiate a fee requirement for map revisions, similar to the current fee procedures for conditional Letters of Map Amendment (CLOMAs) and conditional Letters of Map Revision (CLOMRs), by establishing administrative and cost recovery procedures for the review and issuance of Letters of Map Revision (LOMRs) and map revisions requested to reflect changed flood hazards. This action is being undertaken to reduce expenses to the National Flood Insurance Program (NFIP) and will contribute to maintaining the NFIP as self-supporting.

Also, the proposed rule deletes the listing of initial fees and references to pre-authorized spending limits set forth in the current regulations at §§ 72.3 and 72.4 and substitutes language which provides for publication of fees and pre-authorized spending limits in a separate listing. This action is being undertaken to permit FEMA to adjust fees to accommodate the increased rates FEMA must pay for these activities and to eliminate the necessity of undertaking formal rulemaking solely for the purpose of adjusting fees. The listing of fees proposed to be effective through September 30, 1992, is published as a notice elsewhere in this **Federal Register** and will be finalized with the final rule. Under this proposed rule, the fees would be adjusted annually to provide for changes in the prevailing private sector labor rate upon which the fees are predicated. Revised fees will be published annually by August 1, as a

notice in the **Federal Register**, to become effective at the beginning of each fiscal year beginning with FY 1993.

DATES: Comments must be received on or before December 10, 1991.

ADDRESSES: *Send Comments To:* Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 "C" Street, SW., room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, telephone: (202) 646–2767.

SUPPLEMENTARY INFORMATION: These proposed amendments to the NFIP criteria for identification and mapping of special hazard areas are a result of a continuing reappraisal of the NFIP for the purposes of achieving greater administrative and fiscal effectiveness and encouraging sound flood plain management so that reductions in the loss of life and property and in disaster expenditures can be realized.

Establishment of Fee System for Revisions

FEMA receives a large number of requests for Letters of Map Revision (LOMRs) and map revisions resulting from the placement of fill and the completion of stream channelizations, the construction of bridges and culverts, or other flood control projects, such as levees. These projects are typically limited in scope and are frequently effected solely to reduce flood risk to a limited area of the floodplain proposed for development and to offer relief from flood insurance purchase requirements of Public Law 93–234 (87 Stat. 975), codified as sections 4012a(a) and 4012a(b) of 42 U.S.C. or to secure financing or other benefits. Thus, to reduce expenses to the NFIP, FEMA is proposing a reimbursement procedure to allow for a partial recovery of certain costs associated with these actions.

Revisions intended to show a reduced flood hazard resulting from a publicly-sponsored project which was constructed primarily to reduce the flood hazard to insurable structures in identified flood hazard areas in existence prior to the date of commencement of construction of the flood control project are not subject to this reimbursement procedure. Likewise, revisions to correct an error or other deficiency in FEMA's mapping are not subject to the fee reimbursement procedures described herein.

Under this rule, an initial fee, the amount determined by the type of flood control project, would be required of those seeking a LOMR or map revision before any review commences. The initial fee represents the minimum engineering review and administrative processing costs for a LOMR or map revision based on the type of project. The initial fee does not include costs for labor and materials associated with the cartographic processing and preparation of a map revision since these costs will vary depending on the number of map panels affected and the complexity of the changes being incorporated.

In the case of a map revision, FEMA will estimate the additional costs of cartographic preparation and processing of the revised map and will notify the requestor of those anticipated costs. Prior to initiating the map revision, FEMA will bill and collect these costs from the requestor. The requestor will not be charged for printing or distributing the revised map or for other incidental changes in the map not related to the specific request.

If it is determined that the actual cost associated with the review and processing of a LOMR or map revision will exceed the amount remitted for the initial fee, the requestor will be billed and will be required to remit payment prior to receiving FEMA's final determination. Funds collected from this fee initiative will be deposited to the National Flood Insurance Fund since it is the source of funding for this service.

FEMA has determined that the costs associated with the technical review of requests for LOMRs and map revisions vary based on the type of project involved. In addition, the review costs are generally higher for requests that contain insufficient technical data and require additional data submittals by the requestor. It was determined that, for each category of project, there are certain minimum review and processing elements common to all requests. These minimum review and processing costs were used to develop the initial fees for the various projects.

The LOMRs and map revisions were first categorized by the type of project to be reviewed. Each category was then examined and minimum review and processing times were determined for engineering review, administration, word processing, and quality control. The basic processing time common to each type of project was then converted to a dollar amount using the direct labor rates, overhead, and fee, which FEMA pays for these services. Administrative expenses to be recovered also include the cost of publishing notices of changes in base flood elevations in the local newspaper and in the **Federal Register**, when required. The costs to be recovered are those of the technical engineering and administrative review of projects, and, for map revisions, the cost of cartographic preparation and processing.

The cartographic costs for a map revision vary depending on the number of map panels affected and on the complexity of the changes to be incorporated. Therefore, these costs are calculated on a case-by-case basis and have not been included in the initial fee calculations. Cartographic costs include preparation of the revised map and report, administration, word processing, quality control, and materials.

The primary component of the cost of processing a LOMR or map revision is the prevailing private sector labor rate charged to FEMA for the conduct of the engineering review and cartographic preparation and processing. Since this rate will vary due to inflation and other economic fluctuations, FEMA proposes to publish the initial fees, pre-authorized spending limits, and the established hourly rate which are to be effective through September 30, 1992, as a notice elsewhere in this **Federal Register**, to be finalized with a Final Rule. Beginning with calendar year 1992, a notice of change in the initial fees, the pre-authorized spending limits, and the hourly rate will be published annually by August 1, as a notice in the **Federal Register**, so as to be effective the first day of each subsequent fiscal year.

In most cases, FEMA anticipates that the yearly fee adjustments will be based primarily on fluctuations in the prevailing private sector labor rate charged to FEMA. Because such periodic fee adjustments are necessary to permit FEMA to recoup its expenses and would not reflect a change in the underlying fee structures, FEMA believes there should be no need to issue a proposed notice of fees annually prior to adopting the annual updated fee schedule.

Public comments are invited on this proposed approach, which would permit FEMA to make annual fee adjustments for fluctuations in the prevailing private sector labor rate without soliciting prior public comment on these adjustments. In the future, prior public comment would only be solicited if FEMA were to make a substantive change in the method by which the fees are calculated.

FEMA has determined, based upon an Environmental Assessment, that this proposed rule will not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the

Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

This proposed rule will not have a significant economic impact on a substantial number of small entities and, hence, has not undergone a regulatory flexibility analysis.

This proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that this rule amendment does not contain a collection of information as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 65 and 72

Flood insurance, Reporting and recordkeeping requirements.

Accordingly, it is proposed to amend 44 CFR chapter I, subchapter B, as follows:

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

2. Section 65.4 is proposed to be amended by adding a new paragraph to read as follows:

§ 65.4 Right to submit new technical data.

* * * * *

(c) Requests for revisions to effective Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs) to reflect the changed flood hazard resulting from the filling of more than a single lot within the flood plain or from the construction of channel alterations, bridges, culverts, levees or similar measures for the primary purpose of reclaiming flood plain lands for future development are subject to the reimbursement procedures described in part 72. Revisions to reflect a reduced flood hazard resulting from a publicly-sponsored project constructed primarily to reduce the flood hazard to insurable structures which were in existence prior to commencement of construction of the flood-control project, or to correct deficiencies in existing flood insurance mapping will not be subject to the reimbursement procedures.

3. Part 72 is proposed to be revised as follows:

PART 72—PROCEDURES AND FEES FOR PROCESSING MAP CHANGES

Sec.
72.1 Purpose of part.
72.2 Definitions.
72.3 Initial fee schedule.
72.4 Submittal/payment procedures and FEMA response.
72.5 Exemptions.
72.6 Unfavorable response.
72.7 Resubmittals.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 72.1 Purpose of part.

The purpose of this part is to provide administrative and cost recovery procedures for the engineering review and administrative processing associated with the issuance of conditional Letters of Map Amendment (CLOMAs), conditional Letters of Map Revision (CLOMRs), Letters of Map Revision (LOMRs), and map revisions, including cartographic costs, based on manmade alterations within the flood plain, such as the placement of fill, modification of a channel, or construction of a new bridge, culvert, levee, or similar measure. These reimbursement procedures do not apply to the following:

(a) LOMAs, LOMRs, or map revisions granted to correct map deficiencies or to include the effects of natural changes within the areas of special flood hazard.

(b) LOMRs granted to remove single residential lots or structures which are not part of a new subdivision from the area of special flood hazard based solely on the placement of fill outside of the regulatory floodway.

(c) CLOMRs, LOMRs or map revisions resulting from publicly-sponsored projects constructed primarily to reduce the flood hazard to insurable structures in identified flood hazard areas which were in existence prior to commencement of the construction of the flood control project.

§ 72.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part, a CLOMA is FEMA's comment on a proposed structure that would, upon construction, be located on existing natural ground above the base flood elevation on a portion of a legally defined parcel of land which is partially inundated by the base (100 year) flood.

(c) For the purpose of this part, a CLOMR is FEMA's comment on a proposed project that would, upon construction, result in a modification of the area of special flood hazard through the placement of fill, or would affect the hydrologic and/or hydraulic characteristics of a flooding source, and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the area of special flood hazard.

(d) For the purpose of this part, a LOMR is FEMA's modification to an effective flood insurance map based on the placement of fill, or other physical measures which have been implemented that support changes in the area of special flood hazard, base flood elevations, or floodway. The LOMR officially revises the Flood Insurance Rate Map (FIRM) and/or Flood Boundary Floodway Map (FBFM) and includes a description of the modifications. In addition, the LOMR is generally accompanied by an annotated copy of the affected FIRM and/or FBFM panel(s).

(e) For the purpose of this part, a map revision is FEMA's redrawing and republication of an effective flood insurance map based on the placement of fill, or other physical measures which have been implemented that support changes in the area of special flood hazard, base flood elevations, or floodway.

§ 72.3 Initial fee schedule.

(a) For CLOMAs and for CLOMRs, an initial fee, subject to the provisions of § 72.4, shall be paid by the requestor prior to the initiation of FEMA's review. The initial fee represents the minimum number of hours required to review each type of project, multiplied by an hourly rate, which is based on the prevailing private sector labor rate and the administrative costs of processing a CLOMA or CLOMR. The initial fees for CLOMAs and CLOMRs for the categories listed below are contained in the notice published elsewhere in this **Federal Register.** Beginning in calendar year 1992, revisions to these fees are to be published annually by August 1, as a notice in the **Federal Register,** so as to be effective the first day of each subsequent fiscal year:

(1) Single lot CLOMA
(2) Single lot CLOMR (based strictly on the proposed placement of fill outside the regulatory floodway)
(3) Multi-lot/Subdivision CLOMA
(4) Multi-lot/Subdivision CLOMR (based strictly on the proposed placement of fill outside the regulatory floodway)
(5) Review of new hydrology
(6) New bridge or culvert (no channelization)
(7) Channel modifications only

(8) Channel modification and new bridge or culvert
(9) Levees, berms, or other structural measures
(10) Structural measures on alluvial fans

(b) For LOMRs or map revisions, whether or not they are in followup to a CLOMR issued by FEMA, an initial fee for all categories listed below, subject to the provisions of part 72.4, will be paid by the requestor prior to the initiation of FEMA's review. There are no fees for LOMAs or for single-lot LOMRs which are not part of a new subdivision, and are based strictly on the placement of fill outside of the regulatory floodway. The initial fee represents the minimum number of hours required to review each type of project, multiplied by an hourly rate, which is based on the prevailing private sector labor rate and the administrative costs of processing a LOMR or map revision. The initial fee does not include the costs of cartographic preparation and processing of a map revision. The initial fees for LOMRs and map revisions in the categories listed below are contained in the notice published elsewhere in this **Federal Register.** Beginning in calendar year 1992, revisions to these fees are to be published annually by August 1, as a notice in the **Federal Register,** so as to be effective the first day of each subsequent fiscal year:

(1) Multi-lot/Subdivision LOMR based strictly on the placement of fill outside the regulatory floodway
(2) New bridge or culvert (no channelization)
(3) Channel modifications only
(4) Channel modification and new bridge or culvert
(5) Levees, berms, or other structural measures
(6) Structural measures on alluvial fans

(c) For projects involving combinations of the actions listed under paragraphs (a) or (b) of this section, the initial fee shall be that charged for the most expensive action of those that compose the combination.

§ 72.4 Submittal/payment procedures and FEMA response.

(a) Initial fees shall be submitted with the request for FEMA review and processing of CLOMAs and CLOMRs, LOMRs, and map revisions.

(b) Initial fees must be received by FEMA before the review will be initiated for any CLOMA, CLOMR, LOMR, or map revision. The initial fee is non-refundable upon initiation of FEMA's review.

(c) Following completion of FEMA's review for any CLOMA, CLOMR, LOMR or map revision, the requestor will be billed at the established hourly rate for any actual costs exceeding the initial fee incurred during the review. The rate is published in a notice in this **Federal Register.** The rate will be revised on a fiscal year basis using the most current fiscal data available and, beginning with calendar year 1992, the revised hourly rate will be published annually by August 1, as a notice in the **Federal Register,** so as to be effective the first day of each subsequent fiscal year.

(1) In the event that the revision request results in a map revision, the requestor will be notified and billed for costs of cartographic preparation and processing of the revised map. This work will not be initiated until FEMA has received payment. This amount will be calculated on a case by case basis and will reflect the cost to FEMA for cartographic preparation and processing of the revised map. The cost of reprinting and distributing the revised Flood Insurance Rate Map (FIRM) and/or Flood Boundary Floodway Map (FBFM) will be borne by FEMA.

(2) Requestors of CLOMAs, CLOMRs, LOMRs and map revisions will be notified of the anticipated total cost if the total cost of processing the request, including estimated costs for cartographic preparation and processing of a map revision, will exceed the preauthorized spending limits. The limits vary according to the type of review performed and are based on the established hourly rate. The pre-authorized spending limits are listed in a notice published elsewhere in this **Federal Register.** These spending limits will be revised on an annual basis and published annually by August 1, as a notice in the **Federal Register,** so as to be effective the first day of each fiscal year.

(3) In the event that processing costs are anticipated to exceed the pre-authorized spending limits, processing of the request will be suspended pending FEMA receipt of written approval from the requestor to proceed.

(d) The entity that applies to FEMA through the local community for review will be billed for the cost of the review. The local community incurs no financial obligation under the reimbursement procedure set forth in this part as a result of transmitting the application by another party to FEMA.

(e) Payment of both the initial fee and final cost shall be by check or money order payable to the National Flood Insurance Program and must be received by FEMA before the CLOMA, CLOMR, or LOMR will be issued, or before the cartographic processing will begin for a map revision.

(f) For CLOMA requests, FEMA shall:
(1) Notify the requestor within 30 days as to the adequacy of the submittal, and
(2) Within 60 days of receipt of adequate information and fee, provide comment to the requestor on the proposed project.

(g) For CLOMR, LOMR and for map revision requests, FEMA shall:
(1) Notify the requestor within 60 days as to the adequacy of the submittal, and
(2) Within 90 days of receipt of adequate information and fee, provide comment to the requestor on the proposed project, issue a LOMR or, in the case of a map revision, notify the requestor of the results of the review and the estimate of the costs of the cartographic preparation and processing, and
(3) Within 90 days of completion of the engineering review and receipt of the payment for the total cost of the review and processing of the map revision, including cartographic costs, issue a preliminary copy of the revised FIRM and/or FBFM for review and comment by the community and the requestor.

§ 72.5 Exemptions.

Federal, State, and local governments and their agencies shall be exempt from fees for projects they sponsor if the Administrator determines or the requesting agency certifies that the particular project is for public benefit and primarily intended for flood loss reduction to insurable structures in identified flood hazard areas which were in existence prior to the commencement of construction of the flood control project. Projects undertaken primarily to protect planned floodplain development are not eligible for fee exemption.

§ 72.6 Unfavorable response.

(a) A request for a CLOMA or CLOMR may be denied or the determination may contain specific comments, concerns, or conditions regarding a proposed project or design and its impacts on flood hazards in a community. A requestor is not entitled to any refund if the determination contains such comments, concerns, or conditions, or if the request is denied. A requestor is not entitled to any refund if the requestor is unable to provide the appropriate scientific or technical documentation or to obtain required authorizations, permits, financing, etc., for which the CLOMA or CLOMR was sought.

(b) A request for a LOMR or map revision may be denied or may not revise the FIRM and/or FBFM in the manner or to the extent desired by the

requestor. A requestor is not entitled to any refund if the revision is denied or if the LOMR or map revision action does not revise the map specifically as requested.

§ 72.7 Resubmittals.

(a) Any resubmittal of a CLOMA, CLOMR, LOMR, or map revision request more than 90 days after FEMA notification that the request has been denied or after the review has been terminated because of insufficient information or other reasons will be treated as an original submission and subject to all submittal payment procedures described in § 72.4, including the initial fee. The procedure of § 72.4, including the initial fee, will also apply to any resubmitted request (regardless of when it is submitted) if the project on which the request is based has been significantly altered in design or scope other than as necessary to respond to comments, concerns, or other findings made by FEMA regarding the original submission.

(b) In addition, when a LOMR or map revision request is made as a follow-up to a previously issued CLOMR, the procedure of § 72.4 and the appropriate initial fee, as referenced in § 72.3(c), will apply when the as-built conditions differ from the proposed conditions on which the issuance of the CLOMR was based.

Dated: September 23, 1991.

C.M. "Bud" Schauerte,

Federal Insurance Administrator.

[FR Doc. 91-24602 Filed 10-10-91; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket Number FEMA-7037]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state of regional entities. These proposed elevations and proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance coverage on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations and proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with minimum Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed base flood elevations for selected locations are:

PROPOSED BASE FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground, *Elevation in feet (NGVD)
New York:	
Schuyler Falls (Town), Clinton County	
Salmon River—Approximately 50 feet downstream of the downstream corporate limits	*235
At upstream corporate limits	*646
Saranac River—Approximately 0.5 mile downstream of Old Military Turnpike	*256
At upstream corporate limits	*735
Maps available for inspection at the Town Hall, Mason Street, Schuyler Falls, Morrisonville, New York. Send comments to Mr. Bernard A. Barber, Supervisor of the Town of Schuyler Falls, Clinton County, P.O. Box 99, Morrisonville, New York 12962.	
Pennsylvania:	
Ambler (Borough), Montgomery County	
Rose Valley Creek—At downstream corporate limits	*198
At upstream corporate limits	*246

PROPOSED BASE FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground, *Elevation in feet (NGVD)
Tannery Run—At downstream corporate limits	*179
Approximately 100 feet downstream of upstream corporate limits	*227
Maps available for inspection at the Borough Building, 31 East Butler, Ambler, Pennsylvania. Send comments to Mr. Anthony J. Decembrino, President of the Ambler Borough, Council, Montgomery County, 31 East Butler Street, Ambler, Pennsylvania 19002.	

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

Source of Flooding and Location	#Depth in feet above ground *Elevation in feet (NGVD)	
	Existing	Modified
California:		
City of Perris, Riverside County		
Perris Valley Storm Drain—Approximately 1,500 feet downstream of Nuevo Road	*1,420	*1,420
Just upstream of Nuevo Road	*1,425	*1,424
At Orange Avenue	*1,432	*1,430
Approximately 2,000 feet upstream of Rider Street	*1,445	*1,444
Maps are available for review at the Civic Center, 101 North D Street, Perris, California. Send comments to The Honorable Thelma Wilson, Mayor, City of Perris, 101 North D Street, Perris, California 92370.		
Colorado:		
City and County of Denver		
Goldsmith Gulch—Approximately 100 feet upstream of Cherry Creek Drive South	*5,397	*5,397
At Mexico Avenue	*5,410	*5,408
At Jewel Avenue	*5,420	*5,419
At Evans Avenue and South Monaco Street Parkway	*5,430	*5,431
At Ilife Avenue	*5,436	*5,437
At Yale Avenue	*5,459	*5,457
At Hampden Avenue	*5,497	*5,497
At Princeton Avenue	*5,526	*5,525
At Quincy Avenue	*5,550	*5,549
At Belleview Road	*5,589	*5,591
Maps are available for review at the City and County of Denver Department of Public Works, 3840-G York Street, Denver, Colorado. Send comments to The Honorable Wellington E. Webb, Mayor, City of Denver, 1437 Bannock Street, Denver, Colorado 80201.		
Colorado:		
Town of Fruita, Mesa County		
Colorado River—At the confluence with Little Salt Wash	None	*4,473
At the Town of Fruita upstream corporate limits	None	*4,476
At the intersection of Hollyberry Way with Applewood Way	None	*4,481
At 19 Road extended to the river	None	*4,493
Big Salt Wash—Approximately 70 feet upstream of Interstate Highway 70 westbound	None	*4,474
Just upstream of U.S. Highways 6 and 50	None	4,484
Approximately 1,700 feet upstream of K¼ Road extended to Big Salt Wash	None	*4,489
Little Salt Wash—Just upstream of Interstate Highway 70	None	*4,479
Just downstream of U.S. Highways 6 and 50	*4,484	*4,484
Just downstream of 17½ Road	*4,507	*4,507
Just downstream of 18 Road	None	*4,524
Approximately 500 feet upstream of 18½ Road	None	*4,566
Maps are available for review at Town Hall, 101 West McCune Street, Fruita, Colorado. Send comments to The Honorable Jerry Beard, Mayor, Town of Fruita, 101 West McCune Street, Fruita, Colorado 81521.		
Colorado:		
City of Grand Junction, Mesa County		
Colorado River—At the downstream corporate limits, approximately 1,900 feet downstream of State Highway 340 westbound	*4,548	*4,547
Approximately 500 feet upstream of State Highway 340 eastbound	*4,555	*4,553
Approximately 150 feet upstream of U.S. Highway 50	*4,565	*4,565
At the upstream corporate limits, approximately 1.9 miles upstream of U.S. Highway 50	*4,583	*4,581
Horizon Drive Channel—At the western corporate limits, at the confluence with Leach Creek	*4,544	*4,545
Approximately 350 feet upstream of 25 Road	*4,566	*4,564
Approximately 250 feet upstream of 26 Road	*4,606	*4,603
Just upstream of Horizon Drive	*4,660	*4,658
Just downstream of G Road	*4,690	*4,686
Maps are available for review at the Planning Department, 250 North Fifth Street, Grand Junction, Colorado. Send comments to The Honorable James Baughman, Mayor, City of Grand Junction, 250 North Fifth Street, Grand Junction, Colorado 81501-2668.		

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground *Elevation in feet (NGVD)	
	Existing	Modified
Colorado:		
Mesa County, Unincorporated Areas		
Colorado River—Approximately 1.9 miles downstream of Interstate 70 Bridge at Town of Gilsonite	None	*4,448
Approximately 150 feet downstream of the new State Highway 340 bridge south of Town of Fruita	None	*4,479
Just upstream of Redlands Parkway	*4,534	*4,534
Just upstream of Denver and Rio Grande Western Railroad located near the confluence with Gunnison River	*4,563	*4,563
Just upstream of 32 Road	*4,628	*4,624
At U.S. Highway 6 and 24 bridge east of Town of Palisade	*4,698	*4,693
Approximately 900 feet upstream of the Interstate 70 bridge northeast of Town of Palisade	None	*4,723
Horizon Drive Channel—Approximately 950 feet upstream of 26½ Road	*4,635	*4,634
Approximately 500 feet upstream of Grand Valley Highline Canal	*4,658	*4,650
Big Salt Wash—Just upstream of Interstate Highway 70	None	*4,474
Just upstream of U.S. Highways 6 and 50	None	*4,484
Approximately 3,750 feet upstream of 17 Road	None	*4,521
Little Salt Wash—At confluence with Colorado River	None	*4,473
Just downstream of Interstate Highway 70 eastbound	None	*4,475
Just upstream of U.S. Highways 6 and 50	*4,485	*4,485
Approximately 140 feet upstream of 17½ Road	None	*4,511
Approximately 520 feet downstream of 18½ Road	None	*4,553
Roan Creek—Approximately 120 feet downstream of Denver and Rio Grande Western Railroad	None	*4,903
At State Highway 44	None	*4,913
At the border of Garfield and Mesa Counties	None	*5,065
Maps are available for review at the Mesa County Department of Public Works, 750 Main Street, Grand Junction, Colorado. Send comments to The Honorable John Leand, Acting Chairman, Mesa County Board of Commissioners, P.O. Box 20000, Grand Junction, Colorado 81502-5010.		
Colorado:		
Town of Palisade, Mesa County		
Colorado River—At downstream corporate limits, located approximately 2 miles downstream of U.S. Highways 6 and 24	*4,674	*4,673
Just downstream of U.S. Highway 6 (Eighth Street)	*4,698	*4,693
At the upstream corporate limits, located approximately 0.8 mile upstream of U.S. Highway 6	*4,701	*4,700
Maps are available for review at Town Hall, Department of Public Works, 175 East Third Street, Palisade, Colorado. Send comments to The Honorable Bennett Young, Mayor, Town of Palisade, 175 East Third Street, Palisade, Colorado 81526.		
Georgia:		
Unincorporated Areas of Fayette County		
Murphy Creek—At mouth	None	*771
At confluence of Nash Creek	None	*792
Nash Creek—At State Route 54	None	*827
Flint River—About 0.83 mile downstream of Woolsey Road	*766	*754
At confluence of Camp Creek	*794	*793
Camp Creek—About 1000 feet upstream of State Route 54	*796	*796
Morning Creek—At mouth	*787	*788
About 1.22 miles upstream of mouth	*789	*789
Maps available for inspection at the Fayette County Zoning Department, 105 Stonewall Avenue East, Fayetteville, Georgia. Send comments to The Honorable Billy Beckett, County Administrator, Fayette County, 200 Courthouse Square, Fayetteville, Georgia 30214.		
Illinois:		
City of Naperville, DuPage and Will Counties		
West Branch Tributary No. 6—At mouth	*660	*660
Just upstream of downstream crossing of Hobson Mill Drive	*660	*662
About 450 feet upstream of downstream crossing of Hobson Mill Drive	*662	*662
Maps available for inspection at the City of Naperville, Department of Community Development, 175 West Jackson Avenue, Naperville, Illinois. Send comments to The Honorable Margaret P. Price, Mayor, City of Naperville, 175 West Jackson Avenue, Naperville, Illinois 60566.		
Louisiana:		
St Mary Parish, Unincorporated Areas		
Gulf of Mexico—At intersection of Wax Lake Outlet and Intracoastal Waterway	None	*12
At Southern Pacific Railroad west of Wax Lake Outlet	None	*8
Local rainfall—At western corporate limits of the Town of Patterson between Wax Lake Outlet and Lower Atchafalaya River	None	*1.5
Bayou Teche (West of Wax Lake Outlet)—Approximately 2,100 feet upstream of Charenton Drainage and Navigation Canal	None	*10
Approximately 1.5 miles upstream of Charenton Drainage and Navigation Canal	None	*10
Maps available for inspection at the St. Mary Parish Courthouse, 5th Floor, Courthouse Building, Franklin, Louisiana. Send comments to Mr. Prescott Foster, President of the St. Mary Parish, Council, 5th Floor, Courthouse Building, Franklin, Louisiana 70538.		
Massachusetts:		
North Andover, Town Essex County		
Mosquito Brook—Approximately .6 mile downstream of Boxford Street	None	*114
Approximately 65 feet upstream of Chestnut Street	None	*238
Boston Brook—At downstream corporate limits	None	*85
Approximately .7 mile upstream of Haskins Lane	None	*107
Maps available for inspection at the Town Hall, 120 Main Street, North Andover, Massachusetts. Send comments to Mr. Kenneth C. Crouch, Chairman of the Town of North Andover Board of Selectmen, Essex County, 120 Main Street, North Andover, Massachusetts 01845.		

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground *Elevation in feet (NGVD)	
	Existing	Modified
Mississippi:		
Tupelo, City Lee County		
Town Creek—Approximately 100 feet upstream of Southrail Railroad	*270	*269
Approximately .4 mile upstream of U.S. Route 78	*273	*277
Town Creek Tributary No. 1—Just upstream of Southrail Railroad	*270	*269
Approximately 1,400 feet upstream of U.S. Route 78	*273	*277
Maps available for inspection at the Planning Department, 117 North Broadway, Tupelo, Mississippi. Send comments to The Honorable Jack L. Marshall, Mayor of the City of Tupelo, Lee County, P.O. Box 1485, Tupelo, Mississippi 38802-1485.		
Missouri:		
Pagedale, City St. Louis County		
Northeast Branch River Des Peres—At Julian Avenue	*507	*506
At upstream corporate limits	*543	*541
Engelholm Creek—At downstream corporate limits	*521	*516
Approximately 700 feet upstream of St. Charles Rock Road	*542	*543
Maps available for inspection at the City Hall, 1404 Ferguson Avenue, Pagedale, Missouri. Send comments to The Honorable Darlene Crawley, Mayor of the City of Pagedale, St. Louis County, 1404 Ferguson Avenue, Pagedale, Missouri.		
New Jersey:		
Fairfield, Township Cumberland County		
Delaware Bay & its estuaries:—Entire shoreline within community	None	*9
Maps available for inspection at the Township Municipal Building, Fairton-Gouldtown Road, Route 553, Fairton, New Jersey. Send comments to The Honorable Joel G. Webster, Jr., Mayor of the Township of Fairfield, Cumberland County, R.D. 4, Box 118, Bridgeton, New Jersey 08302.		
New Jersey:		
Greenwich, Township Cumberland County		
Delaware Bay—At confluence of the Cohansey River	None	*9
At confluence of Stow Creek	None	*9
Maps available for inspection at the Township Clerk's Residence, Ye Great Street, Greenwich, New Jersey. Send comments to The Honorable C. Wallis Goodwin, Mayor of the Township of Greenwich, Cumberland County, P.O. Box 64, Greenwich, New Jersey 08323.		
Ohio:		
City of Crestline, Crawford and Richland Counties		
East Branch Sandusky River—About 340 feet downstream of Thrush Avenue	None	*1132
Just downstream of North Street	None	*1141
West Branch Sandusky River—About 740 feet downstream of Park Road	None	*1129
About 1930 feet upstream of Patterson Street	None	*1154
Maps available for inspection at the City Building Department, Safety Services Director, Mr. Thomas Hoffman, 100 North Seltzer, Crestline, Ohio. Send comments to The Honorable Henry Peresie, Mayor, City of Crestline, 100 North Seltzer, Crestline, Ohio 44827.		
Ohio:		
City of North Olmsted, Cuyahoga County		
Fitch Lateral—At confluence with Roots Ditch	*769	*770
About 840 feet upstream of confluence of Westerly Lateral	None	*774
Roots Ditch—Just downstream of Canterbury Road	*757	*757
About 500 feet upstream of Canterbury Road	*763	*765
About 790 feet upstream of Stearns Road	*778	*778
Maps available for inspection at the Building Department, 5200 Dover Center Road, North Olmsted, Ohio, Attention: Mr. Dave Conway. Send comments to The Honorable Edward J. Boyle, Mayor, City of North Olmsted, 5200 Dover Center Road, North Olmsted, Ohio 44070.		
Pennsylvania:		
Butler, Township Schuylkill County		
Mahanoy Creek (Lower Reach)—Upstream side of Conrail bridge	*811	*808
Downstream side of Julia Street	*942	*938
Shenandoah Creek—Downstream corporate limits	*967	*966
Upstream corporate limits	*1,006	*1,003
Maps available for inspection at the Municipal Building, 211 Broad Street, Fountain Springs, Ashland, Pennsylvania. Send comments to Mr. Bernard Klusman, Chairman of the Township of Butler Board of Supervisors, Schuylkill County, 211 Broad Street, Fountain Springs, Ashland, Pennsylvania 17921.		
Pennsylvania:		
Mercersburg, Borough Franklin County		
Johnston Run—At a point approximately 180 feet downstream of the downstream corporate limits	None	*529
At upstream corporate limits	None	*553
Maps available for inspection at the Borough Building, 113 South Main, Mercersburg, Pennsylvania. Send comments to Mr. James W. Smith, President of The Mercersburg Borough Council, Franklin County, 113 South Main, Mercersburg, Pennsylvania 17236.		
Pennsylvania:		
State College, Borough Centre County		
Slab Cabin Run—Downstream corporate limits	None	*1,003
Upstream corporate limits	None	*1,045
Maps available for inspection at the Borough Building, 118 South Frazier, State College, Pennsylvania. Send comments to Mr. Peter Marshall, State College Borough Manager, Centre County, Borough Building, 118 South Frazier, State College, Pennsylvania 16801.		

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground *Elevation in feet (NGVD)	
	Existing	Modified
Pennsylvania:		
Upper Chichester, Township Delaware County		
Naaman Creek—At downstream corporate limits	None	*51
At upstream corporate limits	None	*142
Maps available for inspection at the Township Hall, Furey Road, Boothwyn, Pennsylvania. Send comments to Mr. Larry Spedden, President of the Township of Upper Chichester Board of Commissioners, Delaware County, P.O. Box 2187, Boothwyn, Pennsylvania 19061.		
South Carolina:		
City of Barnwell, Barnwell County		
Jordan Branch—Just upstream of Galilee Road	*198	*199
Just downstream of dam	*200	*200
Just upstream of dam	*200	*210
About 3,100 feet upstream of Main Street	None	*217
Maps available for inspection at the City of Barnwell, 1808 Burr Street, Barnwell, South Carolina. Send comments to The Honorable H. Creech Sanders, Mayor, City of Barnwell, P.O. Box 776, Barnwell, South Carolina 29812.		
South Carolina:		
City of North Augusta, Aiken and Edgefield Counties		
Savannah River—About 2.0 miles downstream of U.S. Highway 78	*141	*134
About 3.2 miles upstream of 13th Street	*154	*141
Tributary C—At mouth	*147	*141
About 1800 feet upstream of mouth	*154	*154
Maps available for inspection at the City of North Augusta, Engineering Department, North Augusta, South Carolina, Attention Mr. Gary Dernlan. Send comments to The Honorable Thomas W. Greene, Mayor, City of North Augusta, P.O. Box 6400, North Augusta, South Carolina 29841.		
Tennessee:		
Cocke County Unincorporated Areas		
Sinking Creek—Approximately 2,200 feet upstream of confluence with Pigeon River	*1,031	*1,032
Approximately 3,800 feet upstream of Carson Springs Road	None	*1,611
Maps available for inspection at the Cocke County Courthouse, Newport, Tennessee. Send comments to Mr. Harold Cates, Cocke County Executive, County Courthouse, Newport, Tennessee 37821.		
Tennessee:		
Jellico, City Campbell County		
Elk Creek—Approximately 800 feet downstream of corporate limits	*969	*972
Approximately 2,000 feet upstream from Southern Railway	None	*973
Maps available for inspection at the City Hall, Jellico, Tennessee. Send comments to The Honorable William F. Baird, Mayor of the City of Jellico, Campbell County, P.O. Drawer 419, Jellico, Tennessee 37762.		
Tennessee:		
Newport, City Cocke County		
Sinking Creek—Approximately 650 feet downstream of downstream corporate limits	*1,038	*1,043
Approximately 950 feet downstream of Fairgrounds Road	*1,056	*1,060
Maps available for inspection at the Newport City Hall, Newport, Tennessee. Send comments to The Honorable Danny Wester, Mayor of the City of Newport, Cocke County, P.O. Box 370, Newport, Tennessee 37821.		
Texas:		
Irving, City Dallas County		
Hackberry Creek—Approximately 800 feet upstream of Colwell Drive	*432	*433
At MacArthur Boulevard bridge	*440	*439
Maps available for inspection at the City Hall, Public Works Department, Engineering Division, 825 West Irving Boulevard, Irving, Texas. Send comments to The Honorable Roy Brown, Mayor of the City of Irving, Dallas County, 825 West Irving Boulevard, Irving, Texas 75060.		
Virginia:		
Smyth County Unincorporated Areas		
Nicks Creek—Approximately 80 feet upstream of confluence with Middle Fork of Houlston River	*2,275	*2,276
Approximately 2,080 feet upstream of State Route 622	None	*2,377
Maps available for inspection at the Smyth County Building Inspection Department, Smyth County Courthouse, Marion, Virginia. Send comments to Mr. Marvin Perry, Smyth County Administrator, Smyth County Courthouse, Marion, Virginia 24354.		

Issued: October 4, 1991.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-24596 Filed 10-10-91; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings.

SUMMARY: NMFS will hold public hearings to receive comments on a proposed rule to amend the regulations governing the Atlantic swordfish fishery. A proposed rule will be filed for public inspection with the Office of the Federal Register prior to these hearings. The proposed rule is intended to continue the provisions of an emergency rule, published on June 12, 1991, (56 FR 26934), and expiring on December 9, 1991.

DATES: See **SUPPLEMENTARY INFORMATION** for the dates and times of the hearings.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the addresses of the hearings:

FOR FURTHER INFORMATION CONTACT: Richard Stone (301) 427-2347, Kathi Rodrigues (301) 427-2337, or Rod Dalton (813) 893-3161.

SUPPLEMENTARY INFORMATION: Public hearings will be held to receive comments from the public on a proposed rule to continue the provisions of the emergency rule and make several additions to the regulations governing the swordfish fishery. The proposed rule: (1) Redefines the swordfish management unit to include the entire North Atlantic Ocean north of 5 degrees N latitude; (2) establishes a minimum size limit of 31 inches (78.7 cm) carcass length or 41 pounds (18.6 kilograms) dressed weight for swordfish with a 15 percent allowance for undersized swordfish based on the number of swordfish landed per trip; (3) establishes an annual quota for the directed swordfish fishery of 6.0 million pounds (2.72 million kilograms (kg)), dressed weight, divided equally between the periods January 1 through June 30, and July 1 through December 31; (4) further subdivides each of the 3.0-million pound (1.36 million kg) semi-annual quotas into a drift gillnet quota of 40,785 pounds (18,500 kg) and a quota for other allowable commercial gear (i.e., longline and harpoon) of 2,959,215 pounds (1,342,276 kg); (5) limits the possession of swordfish after a commercial gear-type closure to a bycatch of two swordfish except for vessels using or possessing harpoon gear for which no bycatch is allowed; (6) prohibits the sale of swordfish caught in the recreational fishery and restricts gear in the recreational fishery to rod and reel. In addition to continuing the above measures, with some modification, the proposed rule will revise or add sections to the regulations concerning quota adjustments, observer requirements, permitting, and directed fishing and bycatch quotas.

Copies of the proposed rule may be obtained by writing to the address above or calling the information contact above.

The public hearings are scheduled as follows:

1. October 22, 1991, 7 p.m.—Airport Hilton, Barataria Room, 901 Airline Highway, Kenner, Louisiana;
2. October 22, 1991, 7 p.m.—Fire House Meeting Hall, Central Avenue and 10th Street, Barnegat Light, New Jersey;
3. October 22, 1991, 7 p.m.—National Marine Fisheries Service, 1 Blackburn Dr., Gloucester, Massachusetts;
4. October 23, 1991, 7 p.m.—City Hall, 300 Municipal Drive, Madeira Beach, Florida;
5. October 23, 1991, 7 p.m.—The Dutch Inn, Great Island Road, Galilee, Rhode Island;
6. October 23, 1991, 7 p.m.—Holiday Inn Surfside South, 2600 N. A1A Ft. Pierce, Florida;
7. October 24, 1991, 7 p.m.—University of Texas Marine Science Institute, Port Arkansas, Texas;
8. October 24, 1991, 7:30 p.m.—Holiday Inn, Airport, 3845 Veterans Highway, Ronkonkoma, New York;
9. October 24, 1991, 7 p.m.—Wildlife and Fisheries Auditorium, 217 Fort Johnson Road, Charleston, South Carolina.

Dated: October 8, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-24607 Filed 10-10-91; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 641

[Docket No. 911050-1250]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) issues a preliminary notice of change for 1991 in the commercial quota for shallow-water grouper in the Gulf of Mexico reef fish fishery in accordance with the framework procedure of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as amended. This notice proposes an increase in the annual commercial quota for shallow-water groupers for 1991 from 9.2 to 9.9 million pounds (4.2 to 4.5 million kilograms). The intended effect is to compensate for the inadvertent early closure of the commercial fishery for shallow-water grouper in 1990, which precluded that fishery from harvesting approximately .7 million pounds (.3 million kilograms) of the 1990 quota.

DATES: Written comments must be received on or before October 22, 1991.

ADDRESSES: Comments on the proposed rule should be sent to Robert A. Sadler, NMFS, 9450 Koger Boulevard, St. Petersburg, Florida 33702. Copies of documents supporting this action may be obtained from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, Florida 33609.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3722.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP prepared and amended by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act.

In accordance with procedures approved in Amendment 1 to the FMP, a commercial quota for 1990 was established for shallow-water grouper of 9.2 million pounds (4.2 million kilograms). Shallow-water grouper consist of all groupers other than yellowedge, misty, warsaw, and snowy groupers, speckled hind, and jewfish. Based in part on records of landings in 1990 and in part on historical data, the commercial quota for shallow-water grouper was projected to be reached on November 7, 1990, and, consequently, the fishery was closed on November 8, 1990. Data now available indicate that

actual catches of shallow-water grouper in 1990 were approximately 8.5 million pounds (3.9 million kilograms), i.e., 700,000 pounds (318,182 kilograms) less than the annual quota. The Council proposes to provide an opportunity for the commercial fishery to harvest in 1991 the portion not taken in 1990.

The Council believes that addition of the 700,000 pounds to the 1991 shallow-water grouper quota: (1) is appropriate and necessary to provide commercial fishermen an opportunity to catch the full amount allocated for 1990; and (2) would not impede the rebuilding program for shallow-water grouper. A recent stock assessment of red grouper was evaluated for possible further adjustment of the grouper quota under the framework procedure at the September 16–19, 1991, Council meeting. After the evaluation, the Council reaffirmed its recommendation to add 700,000 pounds (318,182 kilograms) to the 1991 shallow-water grouper quota. For these reasons, the Secretary proposes to increase the annual commercial quota for shallow-water groupers for 1991 from 9.2 to 9.9 million pounds (4.2 to 4.5 million kilograms).

Other Matters

This action is authorized by the FMP and complies with E.O. 12291.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated October 7, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is proposed to be amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

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

2. In § 641.25, from the effective date of the final rule through December 31, 1991, paragraph (c) is suspended and a new paragraph (e) is added to read as follows:

§ 641.25 Commercial quotas.

* * * * *

(e) All other groupers, excluding jewfish, combined—9.9 million pounds (4.5 million kilograms).

[FR Doc. 91–24563 Filed 10–7–91; 5:08 pm]

BILLING CODE 3510–22–M

50 CFR Part 652

[Docket No. 900124–0127]

Atlantic Surf Clam and Ocean Quahog Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed notification requirements.

SUMMARY: NMFS issues this notice to request comments on proposed notification requirements in the surf clam and ocean quahog fishery. Vessel owners or operators would be required to provide notice to NMFS before departure for fishing, under the existing authority of § 652.9(a) that allows NMFS to specify such requirements to facilitate enforcement. The intended effect is to establish notification procedures to aid enforcement and allow for adequate monitoring of the fishery.

DATES: Written comments on the proposed requirements must be received on or before November 6, 1991.

ADDRESSES: Comments may be mailed to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Surf Clam Notification".

FOR FURTHER INFORMATION CONTACT: Myles A. Raizin, Resource Policy Analyst (508–281–9104).

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (FMP) allow the Regional Director to specify notification requirements that vessel owners or operators would have to comply with prior to departure from or return to port to fish for surf clams or ocean quahogs. Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (FMP) was published on June 14, 1990 (55 FR 24184) with the regulations becoming fully effective on September 30, 1990.

Prior to the implementation of Amendment 8, vessel owners operating in the Mid-Atlantic fishery were required to provide written notice of their intention to fish for surf clams, up to 15 days prior to the trip. With Amendment 8, the management system has changed from one of strict effort restrictions to an individual transferable quota (ITQ) based system. Individual allocations are issued as a proportion of a total annual quota. Vessel operators fish for their respective individual allocations as long as there is remaining allocation to be caught. Under such a system, the monitoring of the harvest becomes critical. This is accomplished through the use of an enhanced reporting system and shellfish cage tagging requirements.

To aid this monitoring, it is necessary to determine who is fishing at any given time. To achieve this, the Regional Director proposes a telephone call-in notification system, similar to the one employed prior to implementation of Amendment 8 for the bad weather makeup day. This would provide the necessary information while still keeping with the intent of Amendment 8 of simplifying regulatory requirements.

Vessel owners or operators would be required to provide the following information at least 24 hours prior to departure:

1. The name of the vessel;
2. The NMFS permit number assigned to the vessel;
3. The expected date and time of departure from port;
4. Whether the trip will be directed on surf clams or ocean quahogs;
5. The expected date, time and location of landing; and
6. The name of the individual providing notice.

If because of bad weather, mechanical breakdown, or similar circumstance, it becomes necessary to cancel or postpone the trip, the vessel owner or operator must contact the same office. In this situation, the vessel owner or operator must identify who is calling, the name of the vessel, and indicate that it will not be fishing.

Vessel owners or operators that have provided notice are presumed to be working in the exclusive economic zone (EEZ) for the duration of the trip indicated and the landings would be counted against the allocation for which they are fishing.

To provide notice, vessel owners or operators are required to call the Office of Enforcement nearest to offloading at the following locations:

Rockland, ME—(207) 594–7742
Otis AFB, MA—(508) 563–5721
Wakefield, RI—(401) 789–8022
Brielle, NJ—(201) 528–3315
Marmora, NJ—(609) 390–8303
Shinnecock, LI, NY—(516) 728–0343
Salisbury, MD—(301) 749–3545
Newport News, VA—(804) 441–6760

Comments on the proposed notification requirements are invited and will be accepted until November 6, 1991.

Other Matters

This action is taken under the authority of 50 CFR part 652 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: October 7, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-24562 Filed 10-7-91; 5:08 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 198
Friday, October 11, 1991

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

Public Hearings of the President's Council on Rural America

AGENCY: Department of Agriculture.

ACTION: Notice of public hearing.

SUMMARY: The Under Secretary for Small Community and Rural Development, Department of Agriculture, is announcing the latest in a series of public hearings to be held by the President's Council on Rural America. These hearings are open to all interested parties.

DATES: The hearing will be Friday, October 25, 1991, from 9 a.m. to 5 p.m.

ADDRESSES: The October 25 meeting will be held at: Radisson Hotel, 1001 Third Avenue, Huntington, West Virginia.

FOR FURTHER INFORMATION CONTACT: Jennifer Pratt, Special Assistant to the Council, Office of Small Community and Rural Development, room 5405, South Building, USDA, Washington, DC 20250 (202) 382–0394.

SUPPLEMENTARY INFORMATION: The President's Council on Rural America was established by Executive Order on July 16, 1990. Members are appointed by the President and include representatives from the private sector and from State and local governments. The Council is reviewing and assessing the Federal Government's rural economic development policy and will advise the President and the Economic Policy Council on how the Federal Government can improve its rural development policy. The purpose of the hearings is to seek information from both development experts and the public-at-large which will help the Council develop rural policy, as is their mandate.

The Council will hear from invited experts during the morning sessions, but will open the microphone in the afternoons to all interested parties, on a first come, first served basis. All speakers should be prepared to leave 5 copies of an executive summary of their presentation with the Council. Written materials may be submitted in person or by mail to the attention of Jennifer Pratt.

The Council is seeking input on the following issues:

- What is government doing right to assist you? What are they doing wrong? What are the barriers you have encountered in trying to undertake economic development.
- What roles should each level of government play in development?
- What are you doing to collaborate with other sectors and levels of government?
- Is the Federal funding delivery system working for your community?
- What is needed in your community to ensure a good quality of life (i.e., health, recreation, environment)?
- What is needed in your community to ensure that everyone has sufficient income to lead a comfortable life?
- What is needed so that people in your community will learn what they need to through the educational system?
- What is unique to your area? What needs to be done to solve * * *

(a) Isolation?
(b) Quality of life problems?
(c) Economic plight?
(d) Low income and minority probems?

Dated: October 7, 1991.

Roland R. Vautour,

Under Secretary, for Small Community and Rural Development.

[FR Doc. 91–24605 Filed 10–10–91; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

[Docket No. 91–145]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

PLACE, DATES, AND TIMES OF MEETING: The meeting will be held in the Ellicott Room of the Columbia Inn, Wincopin Circle, Columbia, Maryland, on November 19, 1991, from 8 a.m. to 5 p.m. The meeting will reconvene the following day, November 20, from 8 a.m. to noon.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Rhorer, Acting Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, room 770, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7768 The telephone number for the Columbia Inn is (301) 730–3900.

SUPPLEMENTARY INFORMATION: We are giving notice of a meeting of the General Conference Committee (Committee) of the National Poultry Improvement Plan (NPIP). The Committee, representing cooperating State agencies and poultry industry members, assists the United States Department of Agriculture in planning, organizing, and conducting the NPIP Conference. In addition, the Committee serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health and the poultry improvement regulations contained in 9 CFR parts 145 and 147.

Tentative topics for discussion at the meeting include, among other things, the expectations of the Committee for 1992, a *Salmonella enteriditis* update, mycoplasma diagnosis, pullorum updates, and proposed changes to the NPIP provisions. A representative of the National Veterinary Services Laboratories will report on antigens and reagents for mycoplasma diagnosis. The Committee will also develop recommendations and prepare comments on the results of the topics presented at the meeting.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussions. Written comments concerning meeting topics, or other aspects of the NPIP, may be filed before or after the meeting by sending them to Mr. Andrew Rhorer at the address listed under "**FOR FURTHER INFORMATION CONTACT.**" The Committee will also accept written comments at the time of the meeting. Please refer to Docket Number 91–145 when submitting your comments.

Written comments received by Mr. Rhorer may be inspected in Room 770 of

the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. No. 92-463).

Done in Washington, DC, this 7th day of October 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-24604 Filed 10-10-91; 8:45 am]

BILLING CODE 3410-34-M

Soil Conservation Service

Four Mile Creek Watershed, Ohio and Indiana; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a 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 Four Mile Creek Watershed, Preble and Butler Counties, Ohio, and Wayne and Union Counties, Indiana.

FOR FURTHER INFORMATION CONTACT: Joseph C. Branco, State Conservationist, Soil Conservation Service, 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 impacts on the environment. As a result of these findings, Joseph C. Branco, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood prevention, water quality, and watershed protection. The planned works of improvement include 17 floodwater retarding structures, 9,700 acres of conservation tillage, 311 acres of grassed waterways or outlets, 78 grade stabilization structures, 50 acres of cropland conversion to grass or trees, and accelerated technical assistance.

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 Robert L. Burris.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: October 4, 1991.

Joseph C. Branco,

State Conservationist.

[FR Doc. 91-24513 Filed 10-10-91; 8:45 am]

BILLING CODE 3410-16-M

Wild Horse Creek Watershed, OK; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a 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 Wild Horse Creek Watershed, Payne County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: C. Budd Fountain, State Conservationist, Soil Conservation Service, USDA, Agricultural Center Building, Farm Road and Brumley Street, Stillwater, Oklahoma 74074, telephone (405) 624-4360.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, C. Budd Fountain, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood prevention. The planned works of improvement include 1.7 miles of channel improvement and modification, and 2 acres of wildlife mitigation measures.

The Notice of a 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 C. Budd Fountain.

No administrative action on implementation of the proposal will be taken until 30 days after the date of the publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: October 3, 1991.

Donald R. Vandersypen,

Assistant State Conservationist (WR).

[FR Doc. 91-24519 Filed 10-10-91; 8:45 am]

BILLING CODE 3410-16-M

Availability of the Third Edition of the Hydric Soils of the United States

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of change.

SUMMARY: Pursuant to 7 CFR 12.31(a)(3)(i), the Soil Conservation Service, United States Department of Agriculture gives notice of a change in the Hydric Soils of the United States and notice of availability of the third edition of the Hydric Soils of the United States, Miscellaneous Publication 1491, U.S. Department of Agriculture, Soil Conservation Service, June 1991.

FOR FURTHER INFORMATION CONTACT: Maurice J. Mausbach, National Leader, Technical Soil Services, Soil Survey Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013-2890, Telephone (202) 382-1812.

SUPPLEMENTARY INFORMATION: The second edition of the Hydric Soils of the United States was published December 1987, and a notice of change filed in the **Federal Register**, vol. 53, no. 34, page 5206. The third edition reflects soils added and deleted since the 1987 publication.

The National Technical Committee for Hydric Soils has made minor changes in the hydric soil definition and criteria since the 1987 edition. The revisions include:

—Depth to saturation for soils with sand textures in the upper 20 inches. The change affects sandy coastal plain soils in southeastern United States.
—An increase in length of saturation from more than 1 week to more than 2 weeks.
—A sentence to clarify the definition.

The national list of hydric soils also changes as additional soil series are recognized and defined or as properties of existing soil series are updated based on additional data. The list of hydric soils is computer generated using the hydric soil criteria and properties of each soil series in the United States. Data for all the soil series is in the Soil Interpretations Record and may be reviewed by contacting the Soil Conservation Service in the appropriate state. The address for the appropriate state conservationist is provided in this edition of Hydric Soils in the United States.

Copies of the changes to the second edition of the Hydric Soils of the United States are available from Maurice J. Mausbach at the above listed address.

Dated: October 1, 1991.

Richard W. Arnold,

Director, Soil Survey Division.

[FR Doc. 91-24638 Filed 10-10-91; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Laser and Opto-Electronic Subcommittee of the Electronic Instrumentation Technical Advisory Committee; Open Meeting

A meeting of the Laser and Opto-Electronic Subcommittee of the Electronic Instrumentation Technical Advisory Committee will be held November 4, 1991, 1 p.m., in room "K", San Jose Convention Center, 150 West San Carlos Street, San Jose, California. The Subcommittee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to lasers and related equipment and technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Comments by Department of Defense representative on the topic of export controls and national security.
4. Comments by Department of Commerce representative on the topic of export controls and international competitiveness.
5. Discussion of new Core List controls on lasers and optics.

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, TAC Staff/BXA/ Room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION, CONTACT: Lee Ann Carpenter on (202) 377-2583.

Dated: October 4, 1991.

Betty Anne Ferrell,

Director, Technical Advisory Unit, Office of Technology & Policy Analysis.

[FR Doc. 91-24645 Filed 10-10-91; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 57-91]

Proposed Foreign-Trade Zone, Kent, Ottawa and Muskegon Counties, Michigan; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Kent, Ottawa, Muskegon Foreign Trade Zone Authority (KOM) (an intergovernmental public corporation associated with the Counties of Kent, Ottawa and Muskegon, Michigan), requesting authority to establish a general-purpose foreign-trade zone at sites in the Counties of Kent, Ottawa and Muskegon, Michigan, adjacent to the Grand Rapids Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 27, 1991. The applicant is authorized to make the proposal under Act 154 of the Public Acts of Michigan of 1963.

The proposed general-purpose zone would consist of seven sites (277 acres): *Site 1* (29 acres)—Warehouse Systems Co., 44th Street and Clay Avenue, City of Wyoming, Kent County, 6 miles west of the Kent County International Airport; *Site 2* (37 acres)—Great Lakes Dock and Materials Corp., 1920 Lakeshore Drive, City of Muskegon, Muskegon County; *Site 3* (22 acres)—TLC Warehousing Services, Inc., 8250 Logistic Drive, Zeeland Township, Ottawa County; *Site 4* (64 acres)—Greenbrooke Associates Ltd., 5353 52nd Street, Cascade Township, Kent County, adjacent to Kent County International Airport; *Site 5* (40 acres)—West Michigan Dock & Market Corp., 500 Mart Street, City of Muskegon, Muskegon County; *Site 6* (5 acres)—TLC Warehousing Services, Inc., 449 Howard Avenue, Holland Township, Ottawa County; and *Site 7* (80 acres)—Kent County Aeronautics Board, 48th & Thornapple River Drive, Cascade Township, Kent County. TLC Warehousing Services, Inc. will serve as operator of Sites 1, 3 and 6. An application for Site 3 is already pending with the Board. (Applicant: City of Battle Creek, grantee of FTZ 43 (Doc. 79-91, 56 F.R. 25662, 6/5/91)—the site is included in this application because KOM plans to assume the role of grantee by agreement with Battle Creek.) KOM is in the process of selecting operators for the remaining sites.

The application contains evidence of the need for zone services in the Grand Rapids port of entry area. Several firms have expressed an interest in using zone procedures for warehousing/distribution of products such as office furniture, auto components, electronic equipment and machinery, frozen and pre-packaged food products, and printing and publishing equipment. No specific manufacturing approval is being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of John J. Da Ponte, Jr. (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; William L. Morandini, District Director, U.S. Customs Service, North Central Region, Patrick V. McNamara Building, 477 Michigan Avenue, Detroit, Michigan 48266; and Colonel Richard Kanda, District Engineer, U.S. Army Engineer District, Detroit, P.O. Box 1027, Detroit, Michigan 48231-1027.

As part of its investigation, the examiners committee will hold a public hearing at 9:00 a.m. on November 6, 1991 in room A, Kleiner Commons, Grand Valley State University, Allendale, Michigan 49401.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify

the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by October 30, 1991. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through December 6, 1991.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 300 Monroe NW., Grand Rapids, Michigan 49503.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: October 4, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–24650 Filed 10–10–91; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 58–91]

Foreign-Trade Zone 84—Harris County, Texas; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority (PHA), grantee of FTZ 84, requesting authority to expand its zone in the Harris County, Texas, area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 4, 1991.

FTZ 84 was approved on July 15, 1983 (Board Order 214, 48 FR 34792, 8/1/93). After earlier expansions, the zone plan was revised on January 12, 1989 (Board Order 424, 54 FR 3516, 1/24/89). The zone currently consists of 3 sites at PHA industrial parks (535 acres), and 10 sites (559 acres) for public warehousing/storage activity.

The grantee is now requesting authority to expand four of its existing zone sites as follows: *Site A–1* (currently 409 acres)—add a parcel (12 acres) on the west bank of the Houston Ship Channel, adjacent to Wharves 8 and 9, and a parcel (14 acres) located at 9800 Clinton Drive on the eastern end of the Port Authority Industrial Park; *Site A–3* (currently 29 acres)—restore zone site to original boundaries by adding the 30-acre parcel that was deleted in a boundary modification (A–40–90); *Site A–3T* (currently 30 acres)—add 28 acres at 816 West Barbours Cut Boulevard and remove time limit (12/6/93); and *Site B–9* (currently 43 acres)—add a parcel (113 acres) at 16338 Air Center Boulevard, within the Central Green Business Park.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Office of Inspection and Control, U.S. Customs Service, Southwest Region, Suite 500, 5850 San Felipe Street, Houston, TX 77057–3012; and Colonel Brink P. Miller, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, TX 77553–1229.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before December 6, 1991.

A copy of the application is available for inspection at each of the following locations:

U.S. Department of Commerce, District Office, 2625 Federal Courthouse Building, 515 Rusk Street, Houston, TX 77002.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: October 7, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–24649 Filed 10–10–91; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[C–796–601]

Carbon Steel Wire Rod From Zimbabwe Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on carbon steel wire rod from Zimbabwe. Interested parties who object to this revocation must submit their comments in writing not later than October 31, 1991.

EFFECTIVE DATE: October 11, 1991.

FOR FURTHER INFORMATION CONTACT: Mark Spellun or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1986, the Department of Commerce (the Department) published a countervailing duty order on carbon steel wire rod from Zimbabwe (51 FR 29292). The Department has not received a request to conduct an administrative review of the countervailing duty order on carbon steel wire rod from Zimbabwe for five consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation. Accordingly, as required by § 355.25(d)(4)(i) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than October 31, 1991, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not object to the Department's intent to revoke by October 31, 1991, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: October 3, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91–24648 Filed 10–10–91; 8:45 am]

BILLING CODE 3510–DS–M

University of Maine, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301).

Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Numbers: 90–182 and 90–224R.

Applicant: University of Maine, Orono, ME 04469.

Instrument: Mass Spectrometers, Models PRISM Series II and SIRA Series II.

Manufacturer: VG Isotech Ltd., United Kingdom.

Intended Use: See notices at 55 FR 42620, October 22, 1990 and 56 FR 4046, February 1, 1991.

Reasons: The foreign instruments provide: (1) A 3-element Faraday collector array, (2) a H/D analyzer and (3) an internal precision of 0.006 per mil(c) and 0.05 per mil(c) respectively for 3 bar μl samples of CO_2.

Docket Number: 90–231R.

Applicant: Oregon State University, Corvallis, OR 97331–5503.

Instrument: Noble Gas Mass Spectrometer, Model 215–50.

Manufacturer: Mass Analyzer Products Ltd., United Kingdom.

Intended Use: See notice at 56 FR 4047, February 1, 1991.

Reasons: The foreign instrument provides: (1) A static mode background of 2.2×10^{-18} moles at m/e = 36, (2) a rate of rise of background of 4.5×10^{-17} moles/min. (3) quantitative measurement of ^3He and ^4He by dual collectors and (4) resolution of ^3He from HD and H_3 with an electrostatic analyzer.

Docket Number: 91-071.

Applicant: Wayne State University, Detroit, MI 48202.

Instrument: Mass Spectrometer, Model S/001 SIRA, Series II.

Manufacturer: VG Isogas, United Kingdom.

Intended Use: See notice at 56 FR 25412, June 4, 1991.

Reasons: The foreign instrument provides an internal precision of 0.05 per mil for 3 bar μl samples of CO_2 and a universal triple collector with a separate collector for H/D measurement.

Docket Number: 91-095.

Applicant: Lamont-Doherty Geological Observatory, Palisades, NY 10964.

Instrument: Noble Gas Mass Spectrometer.

Manufacturer: Mass Analyzer Products, United Kingdom.

Intended Use: See notice at 56 FR 32405, July 16, 1991.

Reasons: The foreign instrument provides: (1) A background at ^3He from ^4He or from scattered species or from lower energy ions of less than 0.5 ions/second, (2) precision for $^3He/^4He$ of 0.2% and (3) dual collectors and an electrostatic analyzer.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–24646 Filed 10–10–91; 8:45 am]

BILLING CODE 3510–05–M

University of Massachusetts; Decision on Application for Duty-Free Entry of Scientific Article

This is a decision made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. The applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes is not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 91–035.

Applicant: University of Massachusetts, Electrical and Computer Engineering Department, Amherst, MA 01003.

Instrument: X-Ray Diffractometer System.

Manufacturer: Bede Scientific Instruments Ltd., United Kingdom.

Date of Denial Without Prejudice to Resubmission: July 10, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–24647 Filed 10–10–91; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Poland

October 7, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: October 16, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated September 26, 1991 between the Governments of the United States and the Republic of Poland, agreement was reached, among other things, to increase the 1991 specific limit for man-made fiber textile products in Category 611. As a result, the limit for Category 611, which is currently filled, will re-open. A formal exchange of diplomatic notes will follow.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 50756, published on December 10, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the

implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 7, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Poland and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on October 16, 1991, you are directed to amend the December 4, 1990 directive to increase the current limit for Category 611 to 3,775,000 square meters [1], as provided under the terms of the Memorandum of Understanding dated September 26, 1991 between the Governments of the United States and the Republic of Poland.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-24651 Filed 10-10-91; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

October 7, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: October 11, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8791. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 50862, published on December 11, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 7, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the period beginning on January 1, 1991 and extending through December 31, 1991.

Effective on October 15, 1991, you are directed to amend further the directive dated December 5, 1990 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
200	614,651 kilograms.
218	19,200,196 square meters.
611	2,719,492 square meters.
613/614/615/617.	17,163,763 square meters.
625/626/627/628/629.	16,263,917 square meters.
Sublevels in Group II	
239	5,379,500 kilograms.
333/334/335	263,220 dozen of which not more than 142,578 dozen shall be in Category 335.
338/339	818,616 dozen.
340	1,282,826 dozen.
359-C/659-C [2]	1,563,048 kilograms.
631	4,534,363 dozen pairs.
633/634/635	1,610,498 dozen of which not more than 968,910 dozen shall be in Categories 633/634 and not more than 818,292 dozen shall be in Category 635.
636	363,379 dozen.
642	761,407 dozen.
647/648	5,830,329 dozen.
651	455,508 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-24538 Filed 10-10-91; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1990.

COMMITTEE FOR PURCHASE FROM BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons with severe disabilities.

EFFECTIVE DATE: November 12, 1991.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 9, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice

(56 FR 37900) of a proposed addition to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to the Procurement List: Janitorial/Custodial, U.S. Army Corps of Engineers, Raystown Lake, Raystown, Pennsylvania.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–24608 Filed 10–10–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 12, 1991.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities and service to the Procurement List:

Commodities

Tray, Plastic MM—P.S. Item 3925

Harness, Night Vision 5855–01–334–6594

Service

Janitorial/Custodian—Naval Supply Center for the following locations in Alameda, California—Buildings 4 & 5 (Floor 1)

Defense Subsistence Region Pacific—Warehouse 1, Building 6 (Floors 6 & 7), Building 7

Naval Regional Contracting Center—Building 6 (Floor 2)

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–24609 Filed 10–10–91; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical and Dental Reimbursement Rates for Fiscal Year 1992

Notice is hereby given that the Deputy Comptroller of the Department of Defense (Management Systems), in a September 30, 1991, memorandum, established the following reimbursement rates for inpatient and outpatient medical and dental care provided during fiscal year 1992:

The following reimbursement rates shall be charged for inpatient and outpatient medical and dental care for FY 1992.

	International military education and training	Other Federal agency sponsored patients	Other
Per Inpatient Day:			
Burn Unit	$1,396	$2,215	$2,346
General	277	657	[1] 701
Military Dependents		8.95	
Per Outpatient Visit	27	[2] 72	77
Per FAA Air Traffic Controller Examination	N/A	93	N/A

[1] The following daily rates (subdivisions of charges) will be used to bill third party payers pursuant to the provisions of 10 U.S.C. 1095: Hospital—$428; Physician—$35; Ancillary—$238; For a total of—$701.

[2] DoD civilian employees located in overseas areas shall be rendered a bill when services are performed. Payment is due 60 days from the date of the bill.

Dated: October 7, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–24534 Filed 10–10–91; 8:45 am]

BILLING CODE 3810–01–M

Base Closure and Realignment Commission; Meetings

ACTION: Public announcement of a general business meeting of the Defense Base Closure and Realignment Commission.

SUMMARY: An open public general business meeting of the Defense Base Closure and Realignment Commission will be held on October 22, 1991 from 10 a.m. until noon at the Commonwealth Building, 1625 K Street, NW., suite 400, Washington, DC 20006. Discussions will focus on review of actions to date, actions pending for the remainder of 1991, and direction for 1992.

FOR FURTHER INFORMATION: Please contact the Defense Base Closure and

Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, telephone: 202–653–0823.

Dated: October 7, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–24536 Filed 10–10–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Lessons Learned During Operation Desert Shield/Desert Storm

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Lessons Learned During Operation Desert Shield/Desert Storm will meet in closed session on November 19–20 and December 12–13, 1991 at the BDM Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine the lessons learned during Operation Desert Shield/Desert Storm that may have potential impacts on future weapons acquisition decisions and approaches, technology developments, operational concepts, and U.S. qualitative combat advantages.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: October 7, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–24537 Filed 10–10–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

National Council on Education Standards and Testing; Task Force; Meetings

AGENCY: National Council on Education Standards and Testing; Education.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and agenda of meetings of the Task Forces of the National Council on Education Standards and Testing. This notice also describes the functions of the Council. Notice of these meetings is required under section 10(a)(2) of the Federal Advisory Committee Act.

MEETINGS, DATES AND TIME: The following meetings have taken place: Standards Task Force, September 19, 1991; Implementation Task Force, October 3; Mathematics Task Force, October 8; English Task Force, October 9; Geography Task Force, October 10; and Assessment Task Force, October 11. Forthcoming meetings are scheduled as follows: Science Task Force, October 15; Standards Task Force, October 20; History Task Force, October 23; Implementation Task Force, October 30; and Assessment Task Force, October 31. All meetings are scheduled approximately for 10 a.m. to 5 p.m.

ADDRESS: The Task Force meetings will be held in Washington, DC. For locations, please call Elizabeth Barnes at (202) 632–1032.

FOR FURTHER INFORMATION CONTACT: Elizabeth Barnes, 1850 M Street, NW., suite 1050, Washington, DC 20036. Telephone: (202) 632–1032.

SUPPLEMENTARY INFORMATION: The National Council on Education Standards and Testing is established under section 403 of the Education Council Act of 1991 (20 U.S.C. 1221–1 note). The Council is established to provide advice on whether suitable specific education standards should and can be established and whether an appropriate system of voluntary national tests or examinations should and can be established.

The meetings of the Council and its Task Forces are open to the public. The Task Forces were established to focus discussion in topic areas and to gather information from consultants by November 19 to aid the Council in its deliberations. The public is being given less than fifteen days' notice of these meetings because of the short timeframe in which the Task Forces were created and must make their reports to the Council.

Records are kept of all Council proceedings, and are available for public inspection at the Office of the Council, 1850 M Street, NW., suite 1050, Washington, DC 20036, from the hours of 10 a.m. to 4 p.m.

Dated: October 9, 1991.

Diane Ravitch,

Assistant Secretary, Educational Research and Improvement.

[FR Doc. 91–24791 Filed 10–10–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Advisory Committee on Nuclear Facility Safety; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

NAME: Advisory Committee on Nuclear Facility Safety (ACNFS).

DATE & TIME: Friday, November 1, 1991, 10 a.m. to 3 p.m.

PLACE: Peachtree Summit Building, 401 W. Peachtree Street, 28th Floor, suite 2810, Atlanta, Georgia 30365–2500

CONTACT: Wallace R. Kornack, Executive Director, ACNFS, AC–21, 1000 Independence Ave., SW., Washington, DC 20585, 202/586–1770

PURPOSE OF THE COMMITTEE: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tenatative Agenda

Friday, November 1, 1991

10:00 a.m.—Chairman John F. Ahearne Opens Meeting Review and Approval of Committee's Final Report

Noon—Lunch

1:00 p.m.—Resume Meeting—Continue Review of Final Report Public Comment Session

3:00 p.m.—Meeting Ends

PUBLIC PARTICIPATION: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

TRANSCRIPTS: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on October 7, 1991.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-24621 Filed 10-10-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-675-000, et al.]

Arkansas Power & Light Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 4, 1991.

Take notice that the following filings have been made with the Commission:

1. Arkansas Power & Light Co.

[Docket No. ER91-675-000]

Take notice that on September 27, 1991, Arkansas Power & Light Company (AP&L) submitted for filing the Seventeenth Amendment to the Power Coordination, Interchange and Transmission Service Agreement between AP&L and Arkansas Electric Cooperative Corporation (AEC). The Amendment provides for the addition of one point of delivery and the transfer of capacity at one point of delivery.

AP&L requests that the Commission waive any requirements with which AP&L has not already complied.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Vermont Electric Power Co., Inc.

[Docket No. ER91-678-000]

Take notice that Vermont Electric Power Company, Inc. (VELCO) on September 27, 1991, tendered for filing proposed changes in its FERC Tariff No. 236, entitled, Substation Participation Agreement.

The nature of the change is as follows: Under the existing rate schedule, a carrying charge is assessed with respect to certain transmission facilities used in common with VELCO. The carrying charge is determined by applying a multiplier, calculated by formula on an annual basis, to the pro rata amounts of investment in those facilities. The only change to be effected by the rate schedule change is to eliminate the requirement of an annual recalculation of the multiplier and, instead, set it at a fixed rate of twenty percent.

VELCO states that the reasons for the change are as follows: Under the existing rate schedule, the carrying charge multiplier must be calculated on an annual basis. This requires annual filings with this Commission, and for any year in which the multiplier is higher than that for the previous year, a substantial filing fee must be paid. The multiplier in recent years has varied within a very narrow range, from a high of 20.43 percent to a low of 19.60 percent, with an average of 19.95 percent. The effort required in making annual filings, and the substantial filing fees required in years when the multiplier rises, are not justified in view of the insignificant changes in revenues that occur as a result of changes in the multiplier. The purpose of the rate schedule change, therefore, is to set the multiplier at a fixed rate of twenty percent and thereby eliminate the routine, but time consuming and expensive filings with the Commission.

Copies of the filing were served upon the following: Central Vermont Public Service Corporation, Citizens Utilities Company, Green Mountain Power Corporation, Washington Electric Cooperative, Inc., Vermont Department of Public Service, and the Vermont Public Service Board.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Central Illinois Public Service Co.

[Docket No. ER91-547-000]

Take notice that on September 9, 1991, Central Illinois Public Service Company (CIPS) tendered for filing an amendment to its filing of July 19, 1991.

Comment date: October 15, 1991, in accordance with Standard Paragraph E end of this notice.

4. The United Illuminating Co.

[Docket No. ER92-7-000]

Take notice that on October 1, 1991, The United Illuminating Company (UI) tendered for filing rate schedules for coordination transactions involving the exchange with or sale of capacity and energy to Montaup Electric Company (Montaup). The sales are pursuant to a System Power Sales Agreement (Agreement) dated May 1, 1990 and UI proposes that service under the Agreement commence on May 1, 1990.

Copies of the filing were served upon Montaup and on the Massachusetts Department of Public Utilities.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Iowa Power Inc.

[Docket No. ER92-9-000]

Take notice that on October 1, 1991, Iowa Power Inc. ("Iowa Power") tendered for filing a Notice of Cancellation of a Transmission Service Agreement between Iowa Power and the City of Pelia ("City") dated June 1, 1982.

Iowa Power states that the Agreement expired on August 16, 1990, that the Notice of Cancellation was mailed to the City, the only purchaser under the Agreement; and that the filing was mailed to the Iowa State Utilities Board.

Iowa Power requests an effective date of August 16, 1990, and therefore requests a waiver of the Commission's notice requirements.

Comment date: October 18, 1991, in accordance with Standard Paragraph E end of this notice.

6. The United Illuminating Co.

[Docket No. ER92-2-000]

Take notice that on October 1, 1991, The United Illuminating Company (UI) tendered for filing rate schedules for coordination transactions involving the exchange with or sale of capacity and energy to Connecticut Municipal Electric Energy Cooperative (CMEEC). The sales are pursuant to a System Power Sales Agreement (Agreement) dated January 1, 1986, and UI proposes that service under the Agreement commence on that same date.

Copies of the filing were served upon CMEEC and on the Connecticut Department of Public Utility Control.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Power Inc.

[Docket No. ER92-6-000]

Take notice that on October 1, 1991, Iowa Power Inc. ("Iowa Power") tendered for filing an Interchange Agreement between Iowa Power and the City of Pelia, Iowa ("City") dated August 26, 1980.

Iowa Power states that the Interchange Agreement is a negotiated agreement specifying the respective rights and obligations of the parties; that it supersedes the 1968 Interchange agreement; and that the City and the State Utilities Board have been mailed copies of the Agreement.

Iowa Power requests an effective date of August 26, 1980, and therefore requests a waiver of the Commission's notice requirements.

Comment date: October 18, 1991, in accordance with Standard Paragraph E end of this notice.

8. The United Illuminating Co.

[Docket No. ER92-4-000]

Take notice that an October 1, 1991, The United Illuminating Company (UI) tendered for filing rate schedules for coordination transactions involving the

exchange with or sale of capacity and energy to UNITIL Power Corp. (UNITIL). The sales are pursuant to a System Power Sales Agreement (Agreement) dated July 23, 1990 and UI proposes that service under the Agreement commence on that same date.

Copies of the filing were served upon UNITIL and on the New Hampshire Public Utilities Commission.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. The United Illuminating Co.

[Docket No. ER92–3–000]

Take notice that on October 1, 1991, The United Illuminating Company (UI) tendered for filing rate schedules for coordination transactions involving the exchange with or sale of capacity and energy to Boston Edison Company (Boston Edison). The sales are pursuant to an agreement dated January 20, 1988, and UI proposes that the rate schedule also commence on January 20, 1988.

Copies of the filing were served upon Boston Edison and on the Massachusetts Department of Public Utilities.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. The Dayton Power and Light Co.

[Docket No. ER92–11–000]

Take notice that the Dayton Power and Light Company (Dayton) tendered for filing on September 27, 1991, an executed Letter Agreement extending the term of the existing Purchase and Resale Agreement (Agreement) between Dayton and the Village of Eldorado, Ohio (Village).

The proposed Letter Agreement extends the term of the existing Agreement to allow Village to continue to purchase energy requirements from third parties who will use their existing Interconnection Agreement Rate Schedules to deliver the energy requirements to Dayton for final delivery to Village. An October 1, 1991, effective date has been requested. A copy of this filing was served upon Village and The Public Utilities Commission of Ohio.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. The Dayton Power and Light Co.

[Docket No. ER92–10–000]

Take notice that the Dayton Power and Light Company (Dayton) tendered for filing on October 1, 1991, an executed Letter Agreement extending the term of the existing Purchase and Resale Agreement (Agreement) between Dayton and the Village of Versailles, Ohio (Village).

The proposed Letter Agreement extends the term of the existing Agreement to allow Village to continue to purchase energy requirements from third parties who will use their existing Interconnection Agreement Rate Schedules to deliver the energy requirements to Dayton for final delivery to Village. An October 1, 1991, effective date has been requested. A copy of this filing was served upon Village and The Public Utilities Commission of Ohio.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. The Dayton Power and Light Co.

[Docket No. ER91–676–000]

Take notice that the Dayton Power and Light Company (Dayton) tendered for filing on September 27, 1991, an executed Letter Agreement extending the term of the existing Purchase and Resale Agreement (Agreement) between Dayton and the Village of New Bremen, Ohio (Village).

The proposed Letter Agreement extends the term of the existing Agreement to allow Village to continue to purchase energy requirements from third parties who will use their existing Interconnection Agreement Rate Schedules to deliver the energy requirements to Dayton for final delivery to Village. An October 1, 1991, effective date has been requested. A copy of this filing was served upon Village and The Public Utilities Commission of Ohio.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Boston Edison Co.

[Docket No. ER91–149–003]

Take notice that on August 30, 1991, Boston Edison Company tendered for filing its compliance refund report in the above-referenced docket.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Ohio Power Co. and Indiana Michigan Power Co.

[Docket No. ER91–669–000]

Take notice that American Electric Power Service Corporation (AEPSC) on September 25, 1991, tendered for filing on behalf of its American Electric Power System affiliates, Ohio Power Company (OPCO) and Indiana Michigan Power Company (I&M), Modification No. 12 dated September 1, 1991 to the Interconnection Agreement dated December 12, 1949 among OPCO, I&M (sometimes collectively referred to as the AEP Parties), and The Cincinnati Gas & Electric Company (CG&E), I&M Rate Schedule FERC No. 16, OPCO's Rate Schedule FERC No. 21, and CG&E's Rate Schedule No. 13.

Modification No. 12 revises (i) CG&E's and the AEP Parties' Economy energy transmission rates, (ii) the AEP Parties Non-Displacement transmission rates, and (iii) the AEP Parties Limited Term transmission rates. All of the proposed rates included in this filing have been previously accepted for filing by the Commission and are currently in effect between the respective parties and other neighboring electric utility systems. The parties requested an effective date of October 1, 1991.

A copy of the filing was served upon the Public Utilities Commission of Ohio, Public Service Commission of Indiana, and the Michigan Public Service Commission.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

15. The Northeast Utilities Service Co.

[Docket No. ER91–671–000]

Take notice that on September 26, 1991, Northeast Utilities Service Company (NUSCO), as agent for The Connecticut Light and Power Company and Western Massachusetts Electric Company (collectively referred to as the "NU Companies"), tendered for filing Letter Agreements dated January 23, 1990 and September 16, 1991, to extend the term of service under an existing Transmission Service Agreement, between the NU Companies and Long Island Lighting Company ("LILCO").

NUSCO requests that the Commission waiver its standard notice and filing requirements to the extent necessary to permit the extension to become effective November 1, 1990.

NUSCO states that a copy of the rate schedule has been mailed to LILCO.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

16. Northeast Utilities Service Co.

[Docket No. ER91–672–000]

Take notice that on September 26, 1991, Northeast Utilities Service Company (NUSCO) as agent for The Connecticut Light and Power Company and Western Massachusetts Electric Company (collectively referred to as the "NU Companies") tendered for filing a proposed Letter Agreement, to temporarily increase the level of the service being taken under an existing

Transmission Service Agreement between the NU Companies and Boston Edison Company ("BE") dated May 17, 1990.

NUSCO requests that the Commission waive its filing requirements to the extent necessary to permit the temporary increase in service to become effective as of November 1, 1989.

NUSCO states that a copy of the rate schedule has been mailed to BE.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

17. West Texas Utilities Co.

[Docket No. ER91-677-000]

Take notice that on September 27, 1991, West Texas Utilities Company ("WTU") tendered for filing an Agreement for Firm Transmission Service between WTU and Texas Municipal Power Agency ("TMPA"). The Agreement provides for transmission service across WTU facilities between four TMPA member-cities and the Texas-New Mexico Power Company. The Agreement follows an agreement between TNP and the TMPA cities of Bryan, Denton, Garland and Greenville, Texas by which TNP will purchase firm generating capacity for the cities.

WTU requests an effective date of June 1, 1988 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served upon TMPA and the Public Utility Commission of Texas.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

18. Iowa Power Inc.

[Docket No. ER92-8-000]

Take notice that on October 1, 1991, Iowa Power Inc. ("Iowa Power") tendered for filing an Interchange Agreement between Iowa Power and the City of Pella, Iowa, ("City") dated June 13, 1991.

Iowa Power states that the Interchange Agreement is a negotiated agreement specifying the respective rights and obligations of the parties; that it supersedes the 1980 Interchange agreement; and that the City and the State Utilities Board have been mailed copies of the Agreement.

Iowa Power requests an effective date of May 1, 1991, and therefore requests a waiver of the Commission's notice requirements.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

19. Southern California Edison Co.

[Docket Nos. ER82-427-008 and ER83-301-002]

Take notice that on September 30, 1991, Southern California Edison Company tendered for filing its compliance filing in the above-referenced dockets.

Comment date: October 18, 1991, in accordance with Standard Paragraph E end of this notice.

20. Arkansas Power & Light Co.

[Docket Nos. ER91-302-000, ER91-303-000 and ER91-304-000]

Take notice that on September 26, 1991, Arkansas Power and Light Company (AP&L) filed an amendment to formula rate schedules in the above regulatory proceedings so as to allow, commending with the 1992 formula rate redeterminations, the reclassification of certain AP&L costs representing administrative and general costs and payroll related taxes.

AP&L request that the Commission waive any requirements with which AP&L has not already complied.

Comment date: October 18, 1991, in accordance with Standard Paragraph E end of this notice.

21. Cambridge Electric Light Co.

[Docket No. ER90-283-002]

Take notice that on September 16, 1991, Cambridge Electric Light Company ("Cambridge") tendered for filing its compliance refund report pursuant to the Commission's order issued December 6, 1990.

Copies of the tendered filing have been served by Cambridge upon the Town of Belmont, Massachusetts, the Commission Staff and the Massachusetts Department of Public Utilities.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

22. Kansas Gas and Electric Co.

[Docket No. ER91-673-000]

Take notice that Kansas Gas and Electric Company on September 26, 1991, tendered for filing a proposed change in its FERC Electric Service Tariff No. 151. Kansas Electric Power Cooperative, Inc., Exhibit A, and Revisions thereto, specifies the delivery points for each cooperative together with the associated voltage pursuant to Para. 4.10 of the Transmission Agreement between Kansas Gas and Electric Company (KG&E) and Kansas Electric Power Cooperative, Inc. (KEPCo).

KEPCo Exhibit A, and Revisions thereto, is necessary because KEPCo has requested changes in the contract maximums and the energizing and discounting of certain Delivery Points and is required by the terms of the Transmission Agreement.

Copies of this filing were served upon Kansas Electric Power Cooperative, Inc. and the Kansas Corporation Commission.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

23. The Connecticut Light and Power Co.

[Docket No. ER91-670-000]

Take notice that on September 26, 1991, The Connecticut Light and Power Company (CL&P) tendered for filing proposed Sales Agreements for the sale of capacity and associated energy from Base Load/Pumped Storage units for one month to UNITIL Power Corporation, dated September 1 and for seven months to Canal Electric Company, dated October 1, 1989, and from Base Load/Gas Turbine units for six months to Boston Edison Company, dated March 1, 1990 (collectively, Buyers).

CL&P states that the Sales Agreements are substantially similar to an agreement already accepted by the Commission that provides for sales of capacity and energy from certain CL&P generating units.

CL&P requests that the Commission permit the rate schedules to become effective on September 1, 1989, October 1, 1989, and May 1, 1990, as appropriate.

CL&P states that a copy of the rate schedules have been mailed or delivered to Buyers.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

24. PacifiCorp Electric Operations

[Docket No. ER91-674-000]

Take notice that on September 27, 1991, PacifiCorp Electric Operations (PacifiCorp) tendered for filing a Transmission Service and Operating Agreement (Agreement) between PacifiCorp and Utah Municipal Power Agency (UMPA) dated July 31, 1991.

Under terms of the Agreement, PacifiCorp will provide firm transmission services for energy transfers on PacifiCorp's transmission system and scheduling, system dispatch, accounting and load following services associated with the transmission service.

PacifiCorp requests that a waiver of prior notice be granted and that an effective date of August 1, 1991 be assigned to the Agreement, this date being consistent with the effective date shown in the Agreement.

Copies of this filing were supplied to UMPA, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

25. Canal Electric Co.

[Docket No. ER91-613-000]

Take notice that on September 27, 1991, Canal Electric Company (Canal) submitted additional information in support of the Power Contract between itself, Cambridge Electric Light Company and Commonwealth Electric Company that Canal filed on August 29, 1991. The Power Contract implements the terms of the Capacity Acquisition Agreement (FERC Rate Schedule No. 21) and the Commitment. Such Power Contract recognizes the purchase of demand and energy by Canal from The Connecticut Light and Power Company over the time period September 1, 1991 to April 30, 1993 and the sale of such power to Cambridge Electric Light Company and Commonwealth Electric Company. Canal states that the transaction, which replaces the two existing power contracts being terminated with a single contract with more favorable economic terms, will result in a net decrease in its wholesale rates to Cambridge and Commonwealth of approximately $3.1 million over the term of the contract.

Canal has requested that the Commission waive its notice requirements pursuant to § 35.11 of the Commission's Regulations in order to allow the tendered rate schedules to become effective as of September 1, 1991, the date on which the transactions are scheduled to commence, and to allow the power contract which they replace to terminate as of August 31, 1991.

Comment date: October 18, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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 the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24547 Filed 10-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-1-48-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 4, 1991.

Take notice that ANR Pipeline Company (ANR), on September 30, 1991, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective November 1, 1991:

Forty-Sixth Revised Sheet No. 18

ANR states that the purpose of the instant filing is to implement ANR's quarterly PGA rate adjustment pursuant to section 15 of the General Terms and Conditions of ANR's Tariff.

ANR states that Forty-Sixth Revised Sheet No. 18 reflects a $0.7124 per dekatherm (dth) increase in the gas cost component of the commodity rate of ANR's CD-1/MC-1 Rate Schedules, from rates effective October 1, 1991. ANR further states that there is a decrease of $0.188 in the gas cost component of the monthly D-1 demand rate and a decrease of $0.0080 in the D-2 demand rate, from rates in effect October 1, 1991.

ANR also states that the instant filing further reflects an increase in the gas cost component of ANR's one-part rate applicable to SGS-1 of $0.6695 per dth, from rates in effect October 1, 1991.

ANR states that copies of the filing were served upon its jurisdictional customers 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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 11, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24548 Filed 10-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-3-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 4, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 30, 1991, tendered for filing to become part of its FERC Gas Tariff, First Volume No. 1 to be effective November 1, 1991:

Sixth Revised Sheet Nos. 30A01-30A05
Second Revised Sheet Nos. 30A06-30A09

Columbia states that by this filing, Columbia proposes to reallocate to its customers the currently billed fixed monthly demand surcharge applicable to Transcontinental Gas Pipe Line Corporation's Docket Nos. RP88-68, RP91-147 and RP90-179 to be flowed through from November 1, 1991 to November 1, 1992.

Columbia states that copies of the filing were served upon Columbia's jursidictional customers, interested state commissions, and upon each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP88-187 *et al.*, and RP91-90 et al.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 11, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24549 Filed 10-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-1-21-000 & TM92-4-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 4, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on October 1, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective November 1, 1991.

Fourth Revised Eleventh Revised Sheet No. 26
Third Revised Sheet No. 26.1
Fourth Revised Eleventh Revised Sheet No. 26A
Third Revised Sheet No. 26A.1
Fourth Revised Eleventh Revised Sheet No. 26B
Second Revised Sheet No. 26B.1
Fourth Revised Tenth Revised Sheet No. 26C
Fourth Revised First Revised Sheet No. 26D
Twelfth Revised Sheet No. 163

Columbia states that the sales rates set forth on Third Revised Sheet No. 26.1 reflect an overall decrease of 39.23 cents per Dth in the commodity rate and a decrease of $.060 per Dth in the demand rate. In addition, the transportation rates set forth on Fourth Revised Tenth Revised Sheet No. 26C reflect a decrease in the Fuel Charge component of 1.07 cents per Dth.

The purpose of the subject tariff sheets is to reflect the following:

(1) A Current Purchased Gas Cost Adjustment Applicable to sales Rate Schedules;

(2) A continuation of certain surcharges which were accepted by the Commission to be effective through April 30, 1992;

(3) A Transportation Fuel Charge Adjustment; and

(4) Transportation Cost Recovery Adjustment.

Columbia states that copies of the filing were served on Columbia'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 protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 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 October 11, 1991. 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 Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24551 Filed 10-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-1-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 4, 1991.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on September 30, 1991 certain revised tariff sheets included in appendix A attached to the filing. The tariff sheets are proposed to be effective October 1, 1991.

ESNG states that the purpose of the instant filing is to adjust ESNG's rates for the month of October 1991 to reflect a projected increase in commodity purchased gas costs from the cost levels reflected in the PGA filing.

ESNG states that copies of the filing were served upon its jurisdictional customers 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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 11, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24550 Filed 10-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-1-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 4, 1991.

Take notice that Florida Gas Transmission Company (FGT) on October 1, 1991, tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets to be effective November 1, 1991:

Fourth Revised Twentieth Revised Sheet No. 8
Second Revised Sheet No. 22
Third Revised Sheet No. 223
Second Revised Sheet No. 224
Third Revised Sheet No. 225
Third Revised Sheet No. 226
Fourth Revised Sheet No. 227
Third Revised Sheet No. 228
Third Revised Sheet No. 229
Third Revised Sheet No. 230
Second Revised Sheet No. 231
Fourth Revised Sheet No. 232

FGT states that Fourth Revised Twentieth Revised Sheet No. 8 is being filed in accordance with § 154.308 of the Commission's Regulations and pursuant to section 15 of FGT's FERC Gas Tariff, Second Revised Volume No. 1 to reflect an increase in FGT's jurisdictional rates due to an increase in its average cost of gas purchased from that reflected in its Out-of-Cycle PGA filing, Docket No. TQ91-5-34-000, effective September 1, 1991. FGT also states that the remaining tariff sheets are being filed to update its Index of Entitlements.

FGT states that copies of the filing were mailed to all customers served under the rate schedules affected by the filing and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 11, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91 24554 Filed 10-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

October 4, 1991.

Take notice that K N Energy, Inc. ("K N") on October 1, 1991 tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, First Revised Volume No. 1-B to reflect

changes in the Current Adjustment. The filing proposes increases (decreases) to K N's rates per Mcf as set forth in the table below:

	Zone 1	Zone 2
CD, SF and WPS Commodity	0.1167	0.1167
D1 Demand	(0.0033)	(0.0041)
D2 Demand	(0.0008)	(0.0024)
WPS Demand	(0.0066)	0.0082)
IOR Commodity	0.1126	0.1102

K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending February 29, 1992. The proposed effective date for the rate changes is December 1, 1991.

K N states that copies of the filing were served on K N's jurisdictional customers and interested public bodies.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 25, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–24555 Filed 10–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–2–46–000]

Kentucky West Virginia Gas Co.; Proposed Changes in FERC Gas Tariff

October 4, 1991.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on October 1, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Quarterly PGA filing, which includes Thirty-second Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective November 1, 1991.

Kentucky West states that the revised tariff sheet reflects a current increase of $.4809 per Dth in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $1.9500 per Dth.

Kentucky West states that, effective November 1, 1991, pursuant to obligations under various gas purchase contracts, it has specified a total price of $1.9531 per Dth, inclusive of all taxes and any other production-related cost add-ons, that it would pay under these contracts.

Kentucky West states that copies of the filing were served upon its jurisdictional customers 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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 11, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–24552 Filed 10–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EL89–34–000, E–7777 (Phase II), ER76–296–000, ER86–107–001, ER86–120–001 and ER90–355–000; Project Nos. 137, 233, 1988 and 2735]

Northern California Power Agency v. Pacific Gas and Electric Co.; Technical Conference

October 4, 1991.

Take notice that a technical conference will be convened on Friday, October 25, 1991 at 10 a.m., in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of discussing the Settlement Agreement between Pacific Gas and Electric Company (PG&E) and Northern California Power Agency (NCPA) in the above captioned proceedings. The management of PG&E and the NCPA Commission have approved the Settlement Agreement and proposed Interconnection Agreement between the parties, which they expect to file in December 1991, following approval by the members of NCPA.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend.

For additional information, contact Jo Ann Scott at (202) 208–0764.

Lois D. Cashell,

Secretary.

[FR Doc. 91–24557 Filed 10–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–2–59–000]

Northern Natural Gas Co.; Changes in FERC Gas Tariff

October 4, 1991.

Take notice that Northern Natural Gas Company (Northern), on September 30, 1991 tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483–A. The instant filing reflects a Base Average Gas Purchase Cost of $1.8863 per MMBtu to be effective October 1 through December 31, 1991.

Northern states that copies of the filing were served on Northern'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 protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 11, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–24556 Filed 10–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–1–86–000]

Pacific Gas Transmission Co; Change in Sales Rates Pursuant to Purchased Gas Adjustment

October 4, 1991.

Take notice that on October 1, 1991, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to

Part 154 of the Federal Energy Regulatory Commission's (Commission) regulations a proposed change in rates applicable to service rendered under Rate Schedule PL–1, affected by and subject to Paragraph 21, "Purchased Gas Cost Adjustment" (PGA), of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Such rates are proposed to become effective November 1, 1991.

PGT states that copies of the filing were served on PGT'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 protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 11, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–24553 Filed 10–10–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

NAME: High Energy Physics Panel (HEPAP).

DATE AND TIME: Monday, October 28, 1991, 10:30 a.m.–6 p.m., Tuesday, October 29, 1991, 8:30 a.m.–12 noon.

PLACE: U.S. Department of Energy, room 1E–245, 1000 Independence Avenue SW., Washington, DC 20585.

CONTACT: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–221, GTN, Washington, DC 20585, Telephone: (301) 353–4829.

PURPOSE OF PANEL: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Monday, October 28, 1991 and Tuesday, October 29, 1991

—Discussion of the September 19 and 20, 1991, Meeting of the Secretary of Energy Advisory Board's Task Force on Energy Research Priorities
—Discussion of Department of Energy High Energy Physics Programs
—Discussion of Scientific Priorities and Options
—Reports on and Discussions of Topics of General Interest in High Energy Physics
—Public Comment

PUBLIC PARTICIPATION: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

MINUTES: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on October 7, 1991.

Marcia Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 91–24622 Filed 10–10–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 91–46–NG]

Washington Natural Gas Co.; Order Granting Blanket Authorization To Import Canadian Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Washington Natural Gas Company blanket authorization to import up to 50 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery after the expiration of FE/DOE Opinion and Order 310 on November 30, 1991.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 8, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–24623 Filed 10–10–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed During the Week of September 13 Through September 20, 1991

During the week of September 13 through September 20, 1991, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 4, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 13 Through September 20, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 4, 1991	Texaco/Raymond's Texaco, Guymon, OK	RR321-80	Request for modification/recession in the Texaco refund processing. *If Granted:* The March 27, 1991 decision and order (Case No. RF321-80) regarding the firm's application for refund submitted in the Texaco refund proceeding would be modified.
Do	Texaco/College Center, Texaco Service, Memphis, TN.	RR321-79	Request for modification/recession in the Texaco refund proceeding. *If Granted:* The August 22, 1991 decision and order (Case Nos. RF321-9839 & RF321-16348) issued to College Center Texaco regarding the firm's application for refund submitted in the Texaco refund proceeding would be modified.
Do	The Gazette Newspapers, Schenectady, NY	LFA-0149	Appeal of an information request denial. *If Granted:* The August 15, 1991 freedom of information request denial issued by the Naval Reactors Office would be rescinded, and the Gazette Newspapers would receive access to certain DOE information.
Do	Bellman Oil Co., Inc., Bremen, IN	LEE-0029	Exception to the reporting requirements. *If Granted:* Bellman Oil Company, Inc., would be relieved of the requirement to file with the DOE Energy Information Administration Form EIA-782B, "Resellers'/Retailers' monthly petroleum product sales report."
Do	Hoffman Oil Co., Montgomery City, MO	LEE-0030	Exception to the reporting requirements. *If Granted:* Hoffman Oil Company would be relieved of the requirement to file with the DOE Energy Information Administration Form EIA-782B, "Resellers'/Retailers' monthly petroleum product sales report."
Do	Natural Resources Defense Council, Washington, DC.	LFA-0150	Appeal of an information request denial. *If Granted:* The August 26, 1991 freedom of information request denial issued by the Office of Defense Programs would be rescinded, and the Natural Resources Defense Council would receive access to a complete history of the nuclear weapons stockpile, FY 1945-FY 1985, TID-269990-7.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
Sept. 13, 1991 Thru Sept. 20, 1991	Texaco Refund Applications Received	RF321-16845 Thru RF321-16896
Do	Crude Oil Refund Applications Received	RF272-89781 Thru RF272-89929
Do	Gulf Oil Refund Applications Received	RF300-17585 Thru RF300-17737
Sept. 16, 1991	Everdyke Oil Co	RF333-15
Sept. 17, 1991	Jandura's 66 Auto Serv. Center	RF341-9
Do	Lascelles Oil Company	RF330-54
Do	Bear Creek Mini Mart	RF304-12501
Sept. 19, 1991	Mrs. Stanley Davis	RF335-42
Do	General Gas & Oil Co	RF304-12502
Do	Metropolitan Petroleum Co	RF304-12503
Sept. 20, 1991	Smith Arco	RF304-12504

[FR Doc. 91-24619 Filed 10-10-91; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of September 20 through September 27, 1991

During the Week of September 20 through September 27, 1991, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aprrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 4, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 20 through September 27, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 23, 1991	David DeKok, Harrisburg, PA	LFA-0151	Appeal of an Information Request Denial. If Granted: The September 9, 1991 freedom of information request determination issued by the Office of Administrative Services would be rescinded, and David DeKok would receive access to DOE information.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of September 20 through September 27, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Do.	James L. Schwab, Spokane, WA	LFA-0152	Appeal of an Information Request Denial. If Granted: The September 13, 1991 determination issued by the Office of Administrative Services would be rescinded, and James L. Schwab would receive a waiver of fees for processing his Freedom of Information Requests.
Do.	Texaco/West College Texaco, Atlantic Beach, FL	RR321-81	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The September 5, 1991 dismissal letter (Case No. RF321-4003) issued to West College Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Sept. 24, 1991	Federation of American Scientists, Washington, DC	LFA-0153	Appeal of an Information Request Denial. If Granted: The Federation of American Scientists would receive access to a copy of the Environmental Assessment for the Saddle Mountain Test Site at the Nevada Test Site.
Sept. 25, 1991	Aminoil/Fred G. McKenzie Co., St. Louis, MO	RR139-73	Request for Modification/Rescission in the Aminoil Refund Proceeding. If Granted: The December 7, 1988 and May 9, 1989 decision and orders (Case No. RF139-159 & RR139-45) issued to Fred G. McKenzie Company would be modified regarding the firm's application for refund submitted in the Aminoil refund proceeding.
Do.	Gulf/James L. Johnson Gulf, Woodbridge, VA	RR300-110	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The September 12, 1991 decision and order (Case No. RF300-11630) would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
Sept. 18, 1991	A.T. Sistare Construction Co.	RF315-10167
Sept. 20, 1991	Avalon Petroleum Co.	RF342-1
Do.	Aspen Hill Arco	RF304-12505
Do.	Entenmann's, Inc.	RF315-10165
Sept. 20, 1991 Thru Sept. 27, 1991	Texaco Refund Applications Received	RF321-16897 Thru RF321-16958
Do.	Crude Oil Refund Applications Received	RF272-89930 Thru RF272-90006
Do.	Gulf Oil Refund Applications Received	RF300-17738 Thru RF300-17778
Sept. 23, 1991	Barbara Armou	RF341-10
Do.	Rogers Corp.	RF336-25
Do.	Wirck Bros. Oil Co.	RF340-17
Do.	Marion Corp.	RF340-18
Sept. 24, 1991	Casey Goddard Oil Co.	RF315-10166
Sept. 27, 1991	Merrill A. Snider	RF315-10168

[FR Doc. 91-24620 Filed 10-10-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 4020-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before November 12, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Underground Injection Control Program Renewal (ICR #0370.11, OMB Control #2040-0042).

Abstract: ICR 0370.11 concerns the collection of monitoring and enforcement information as part of the Underground Injection Control (UIC) program under the Safe Drinking Water Act. The UIC program serves the purpose of establishing a Federal and State regulatory system to protect underground sources of drinking water from contamination by injected materials. EPA is authorized under the Safe Drinking Water Act to collect information in order to administer the program and to determine what actions must be taken to meet the mandate of the program. The information requirements of the UIC program are laid down in section 1445 of the Safe Drinking Water Act and are established in CFR 40, sections 144 through 148.

The program, which involves quarterly and annual reporting for monitoring and enforcement purposes, is administered by EPA Regions and by the 35 States which have been granted primacy. Specifically, EPA requires the following information concerning the various classes of underground injection wells:

Class I, II, III—information on permits, compliance, enforcement, inspection,

mechanical testing, grant utilization, and inventory.

Class IV—plugging and abandonment reports.

Class V—a subset of the above requirements.

Owners and operators of underground injection wells provide the information to the primary States and Regions, which then submit information to EPA Headquarters in summary reports.

In addition to enforcement and regulatory uses, the information serves EPA Headquarters in planning, in tracking Regional performance, and in responding to inquiries from OMB, GAO, Congress, and the public. EPA also uses the information to help States develop UIC programs, to enforce UIC programs in States without an approved program, and to evaluate State and Regional programs.

The information is reported using standardized forms, including a computerized system, the Well Activities Tracking, Evaluation, and Reporting System (WATERS), for voluntary use in the reporting of Class II well information.

Burden Statement: The average burden imposed by the Underground Injection Control program is 6.3 hours per response. This figure includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Underground Injection Control Program also imposes upon respondents an annual record-keeping burden of one hour.

Respondents: Owners and Operators of underground injection wells, States.

Estimated No. of Respondents: 5265.

Estimated Total Annual Burden on Respondents: 336,765 hours.

Frequency of Collection: On occasion, quarterly, annually.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget; Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: October 4, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–24635 Filed 10–10–91; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4020–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed September 30, 1991 Through October 04, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910355, Draft EIS, SCS, KS, Doyle Creek Watershed Protection Plan, Funding and Implementation, Possible 404 Permit, Arkansas-White-Red River Basin, Harvey and Marion Counties, KS, Due: December 01, 1991, Contact: James Habiger (913) 823–4565.

EIS No. 910356, Draft EIS, NPS, NY, Great Basin National Park General Management and Development Concept Plans, Implementation, White Pine County NV, Due: December 31, 1991, Contact: Jim Hammett (303) 969–2260.

EIS No. 910357, Draft EIS, AFS, ID, Big Eightmile, North Fork of Timber and Alder Creek timber Sale, Reforestation and Road Construction, Implementation, Lemhi Range Roadless Area, Salmon National Forest, Lemhi County, ID, Due: November 25, 1991, Contact: Lynn Bennett (208) 756–2215.

EIS No. 910358, Final EIS, FHW, OH, Trotwood Connector Construction, Turner Road Extension between OH-49/Salem Avenues and U.S. 35/West Third Street, Turner Road/Wolf Road to Trotwood Connector, Funding and Section 404 Permit, Montgomery County, OH, Due: November 12, 1991, Contact: Fred Hempel (614) 469–6896.

EIS No,. 910359, Draft EIS, FHW, NC, US 17 New Bern Bypass Construction, Jones-Craven County Line to NC–1438 near Vanceboro, Funding, Section 404 and U.S. Coast Guard Bridge Permit, Craven County, NC, Due: November 25, 1991, Contact: Nicholas Graf (919) 856–4346.

EIS No. 910360, Final EIS, FHW, WA, Riverside Parkway/Bothell Bypass Construction, Funding, Section 10 and 404 Permits, City of Bothell, King County, WA, Due: November 12, 1991, Contact: Barry Morehead (206) 753–2120.

EIS No. 910361, Final EIS, FAA, Terminal Doppler, Weather Radar (TDWR) Site Determination Program, Implementation and Funding, Due: November 12, 1991, Contact: Ray C. Weimer, Jr. (202) 606–4683.

EIS No. 910362, Final EIS, FHW, CA, I–880 Cypress Replacement, I–980 Interchange to I–80/I–580/I–880 Cypress Structure, Funding and Section 404 Permit, City of Oakland, Alameda County, CA, Due: November 12, 1991, Contact: John Schultz (916) 551–1314.

EIS No. 910363, Final EIS, COE, PR, Upper Rio Grade De Loiza Basin Flood Control Plan, Implementation, PR, Due: November 12, 1991, Contact: Dr. Jonathan Moulding (904) 791–2286.

EIS No. 910364, Final EIS, FHW, CA, CA–1 Improvement, Carmel River Bridge to CA–1/Pacific Grove (Route 68) Interchange, Funding, Section 404 Permit, Monterey County, CA, Due: November 12, 1991, Contract: John Schultz (916) 551–1314.

EIS No. 910365, Final EIS, UAF, SD, Ellsworth Air Force Base Minuteman II of the 44th Strategic Missile Wing Deactivation, Implementation, Rapid City, Pennington County, SD, Due: November 12, 1991, Contact Julia Cantrell (402) 294–3684.

Amended Notices

EIS No. 910228, Final EIS, AFS, OR, Shasta Costa Timber Sale and Integrated Resource Projects, Implementation, Siskiyou National Forest, Gold Beach and Galice Ranger Districts, Curry County, OR, Due: December 16, 1991, Contact: Susan Mattison (503) 247–6651. Published FR 07–19–91—Review period extended.

EIS No. 910250, Draft EIS, CDB, NY, City of Rochester School No. 25 and School No. 36 Replacement, CDBG, Rochester, Monroe County, NY, Due: October 31, 1991, Contact: Robert M. Barrows (716) 428–6924.

Published FR 08–02–91—Review period extended.

Dated: October 8, 1991.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 91–24617 Filed 10–10–91; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4020–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 23, 1991 Through September 27, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D–AFS–JO2022–00 Rating EC2, Pike and San Isabel National Forests/ Comanche and Cimarron National Grasslands Oil and Gas Exploration and Development, Leasing, Several Counties, CO and KS.

Summary: EPA expressed environmental concerns regarding the potential impacts of the proposed action to ground and surface water resources. Additional analysis for leasing and production of oil and gas resources in non-federal ownership was requested for subsequent site-specific decisions.

ERP No. D–FHW–H40143–IA Rating LO, US 20 Relocation, US 65 south of Iowa Falls to existing US 20 at the Grundy/ Black Hawk County Line, Funding and Section 404 Permit, Hardin and Grundy Counties, IA.

Summary: EPA believes that the alternatives analysis is adequate.

Final EISs

ERP No. F–AFS–J65172–UT, Chepeta Lake, Whiterocks River and Lakeshore Basin Allotment Management Plans, Updated and Issuance of Grazing Permits, Ashley National Forest, Vernal Ranger District, Duchesne and Uintah Counties, UT.

Summary: EPA expressed no objections to the preferred alternative.

ERP No. F–AFS–J65176–MT, St. Joseph Timber Sale and Road Managemnt, Implementation, Bitterroot National Forest, Stevensville Ranger District, Ravalli and Missoula Counties, MT.

Summary: EPA has no objections to the preferred alternative.

ERP No. F–FHW–E40727–AL, Patton Island Bridge and Approach Roads Construction, crossing the Tennessee River and connecting the cities of Florence and Muscle Shoals, Funding, 404 Permit, TVA Permit, and CGD Bridge Permit, Colbert and Lauderdale Counties, AL.

Summary: EPA expressed concern about potential impacts to the smallmouth bass and mussel communities, and recommended that appropriate mitigation is implemented to protect these aquatic resources and upland forest habitat losses.

ERP No. F–FHW–E40731–NC, NC–226/ Spruce Pine Bypass Construction, US 19E southwest of Spruce Pine to NC–226 northwest of Minpro, Funding, COE Section 404 Permit and TVA Section 26A Permit, North Toe River, Mitchell County, NC.

Summary: EPA believes that impacts should be minimal if best management practices are used to control nonpoint source pollution.

ERP No. FS–AFS–J65105–CO, Grand Mesa, Uncompahgre and Gunnison National Forests, Land and Resource Management Plan, Timber Management Amendment, Implementation, Several Counties, CO.

Summary: EPA has no significant objections to the preferred Forest Service alternative.

Other

ERP No. LD–NOA–A91057–00 Rating EC2, Regime to Govern the Incidental Taking of Marine Mammals during Commercial Fishing Operations after October 1, 1993 Development and Management, Permit Approval.

Summary: EPA has concerns about amending the Endangered Species Act, threats to marine mammals from pollution, Native American subsistence takes, depleted stocks and insufficient information to determine allowable biological removal values.

Dated: October 8, 1991.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 91–24618 Filed 10–10–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL-4020-6]

Science Advisory Board; Drinking Water Committee; Open Meeting

Under Public Law 92–463, notice is hereby given that a meeting of the Drinking Water Committee of the Science Advisory Board will be held on October 31 and November 1, 1991, at the Howard Johnson National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, Virginia 22202, Phone: (703) 684–7200.

The meeting will start at 9 a.m. on October 31, and will adjourn no later than 1 p.m. November 1, and is open to the public. The main purposes of this meeting are to plan the agenda for the Drinking Water Committee for Fiscal Year 1992, and to obtain briefing from EPA on a number of issues of interest to the Committee.

A draft agenda for the meeting is available from Mrs. Frances Dolby, Staff Secretary, Drinking Water Committee, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460 (202) 260–6552 Fax: (202) 260–7118. Members of the public desiring additional information about the meeting should contact Mr. A. Robert Flaak, Assistant Staff Director, Science Advisory Board, at the address or number noted above. Anyone wishing to make a brief oral presentation at the meeting should contact Mr. Flaak by October 21, 1991. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Seating at the meeting will be on a first come basis.

Dated: September 23, 1991.

A. Robert Flaak,

Acting Director, Science Advisory Board.

[FR Doc. 91–24630 Filed 10–10–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL-4020-7]

Science Advisory Board; Environmental Engineering Committee; Open Meeting; October 31-November 1, 1991

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC), will conduct a planning, coordination and review meeting on Thursday, October 31, and Friday, November 1, 1991. The meeting will be at the U.S. Environmental Protection Agency Headquarters, Waterside Mall Conference Center, room 3—North, 401 M Street, SW., Washington, DC 20460. The meeting will begin at 9 a.m. on Thursday, October 31st and 8:30 a.m. on Friday, November 1st and will adjourn no later than 4 p.m. on November 1st. The meeting is open to the public and seating is on a first come basis.

At this meeting, the EEC will: (a) Plan and coordinate upcoming EEC review activities for FY 1992; (b) conduct a consultation with the staff from the Technical Assessment Branch of the Office of Solid Waste (OSW) on the assumptions and data to be used in the subsurface fate and transport model for oily wastes. Oily wastes include petroleum wastes, used oil, coke and coke byproducts, and several other waste streams, such as wood preserving wastes; (c) review draft EEC subcommittee reports on the Agency's pollution prevention research strategic plan, explosives and flammables criteria, and constructed wetlands research. The pollution prevention draft report resulted from the EEC's Pollution

Prevention Subcommittee's (PPS) review of April 11 and 12, 1991 on the Agency's research strategic plan for pollution prevention, as well as an editing teleconference which was held by the PPS on September 6, 1991. The explosives and flammables criteria draft report resulted from a review meeting of May 29 and 30, 1991 by the EEC's Explosives and Flammables Criteria Subcommittee. The constructed wetlands research letter draft report resulted from a review by the EEC's Constructed Wetlands Subcommittee on July 17 and 18, 1991; and (d) receive a courtesy briefing on how the Office of Research and Development (ORD) staff in the Office of Health and Environmental Assessment (OHEA) in Cincinnati, Ohio has incorporated advice of the EEC's Municipal Solid Waste Recycling Subcommittee in a consultation conducted December 19, 1990.

Other EEC topics which require planning and coordination will be discussed including development of the charge and the timing of these planned future reviews. Topics requiring coordination with other SAB standing committees and ad-hoc subcommittees, as well as with other Agency groups such as the Agency's Office of Cooperative Environmental Management will be addressed as time permits.

Any member of the public wishing further information on the meeting or those who wish to submit written 925 copies) or oral comments should contact Dr. K. Jack Kooyoomjian, Designated Federal Official by October 24, 1991. Any member of the public wishing further information on the meeting including copies of the proposed agenda or roster should contact Mrs. Diana L. Pozun, Staff Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/260–6552, FAX (202) 260–7118.

Dated: September 23, 1991.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board (A101F).

[FR Doc. 91–24631 Filed 10–10–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4020–5]

Science Advisory Board; Executive Committee

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB's) Executive Committee, will conduct a meeting on Tuesday and Wednesday, October 29th and 30th, 1991. The meeting will be held in the Administrator's Conference Room, 1145 West Tower at the Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. It will begin at 8:30 a.m. and adjourn no later than 5:30 p.m. on October 29th and on the 30th it begins at 8:30 a.m. and adjourns no later than 1 p.m.

At this meeting, the Executive Committee will review reports from the Drinking Water Committee (Corrosion Research; Cyanogen Chloride), Ecological Processes and Effects Committee (Monitoring guidance for the National Estuarine Program; Expert System Research; Ecological Risk Assessment Research; and (possibly) Wetland Research), the Indoor Air/ Total Human Exposure Committee ((possibly) Exposure Assessment Guidelines), and the Radiation Advisory Committee (Commentary on Residual Radioactivity); Electromagnetic Fields Cancer Risk Assessment; Idaho Radionuclide Study; Radon Citizens guide; and (possibly) Commentary on Radionuclides in Drinking Water.

In addition, the Executive Committee will hear a report from the Staff Director on activities for FY92 and hear briefings from Agency personnel, including Dan Esty, Deputy Assistant Administrator for the Office of Policy Planning and Evaluation.

The meeting is open to the public. Any member of the public wishing further information concerning the meeting or who wish to submit comments should contact Dr. Donald G. Barnes, Staff Director of the Science Advisory Board (A–101), U.S. Environmental Protection Agency, Washington, DC 20460, at (202) 260–4126 or by Fax at (202) 260–9232. Limited unreserved seating will be available at the meeting.

Dated: October 29, 1991.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 91–24632 Filed 10–10–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4021–1]

Public Meeting on Used Oil Issues

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that three public meetings will be held to discuss the Agency's recent action concerning the regulation of used oil and other issues related to used oil. Interested parties will be given an opportunity to speak for five munutes each at these meetings.

DATES: The three public meetings will be held over the course of two days, October 24 and 25th, 1991. Each meeting will have a primary theme, but participants may speak on any topic related to the Agency's rulemaking on used oil. The first meeting will run from 9 a.m. to 12 noon on Thursday, October 24th. The focus of this meeting will be generators, independent collectors, and transporters, particularly small businesses. The second meeting will be held from 1 p.m. until 4 p.m. on the same day, Thursday, October 24th. The focus of this meeting will be recyclers, rerefiners, and reprocessors of used oil. The third meeting will be held on Friday, October 25th, from 9 a.m. until 12 noon. The meeting will focus on all aspects of the rulemaking.

ADDRESSES: The public meetings will be held at the Ramada Renaissance Techworld Hotel, 999 9th Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Michaelle D. Wilson, Chief, Special Programs Section, Regulatory Development Branch, (OS-333), U.S. Enviromental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone: (202) 260–8551.

SUPPLEMENTARY INFORMATION: On November 29, 1986, EPA proposed to list all used oils as hazardous wastes (50 FR 49258). On the same date, the Agency proposed management standards for recycled used oils (50 FR 49212) and promulgated a final rule governing the burning of used oil fuel for energy recovery (50 FR 49164).

On November 19, 1986, EPA published a decision not to list used oils as hazardous wastes (51 FR 41900), because the Agency believed a hazardous waste listing would discourage the recycling of used oils. This decision not to list used oil was challenged by the Hazardous Waste Treatment Council, Natural Resources Defense Council, and the Association of Petroleum Re-refiners, on the grounds that a listing determination must be based on the technical characteristics of used oil and not the stigmatic effects a listing might have on the recycling of used oil.

On October 7, 1988, the Court of Appeals for the District of Columbia found that EPA acted contrary to law in its determination not to list used oil as a hazardous waste under section 3001 of RCRA. (See *Hazardous Waste Treatment Council* v. *EPA*, 861 F.2d 270 (D.C. Cir. 1988). The court ruled that EPA must determine whether to list any

used oils based on the technical criteria for waste listings specified in the statute.

After the 1988 court decision, EPA began to reevaluate its basis for listing used oil as a hazardous waste. As a result of new data gathered and received by the Agency, EPA published a Supplemental Notice of Proposed Rulemaking on September 23, 1991 (56 FR 48000). This supplemental notice presents several options the Agency is currently considering for a used oil listing and used oil management standards and requests comments on these options. The comment period for this notice will close on November 7, 1991. The final rule will be signed by the Administrator on May 1, 1992.

The purpose of the public meetings announced in today's notice is to provide information to and collect information from the regulated community and the general public on issues surrounding the regulation of used oil. A sign-in sheet for speakers will be available fifteen minutes prior to the start of each session. Speakers will be called in the order that they have signed in. Participants may speak for up to 5 minutes each. Please provide an original and two copies of your remarks. These will be placed in the rulemaking docket. This information will be used by the Agency in developing final standards for the management of used oils and in making a final used oil listing determination.

Dated: October 3, 1991.

Sylvia K. Lowrance,

Director, Office of Solid Waste.

[FR Doc. 91-24634 Filed 10-10-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59917; FRL 3998-9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 4 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 91-214, September 23, 1991.

Y 91-240, 91-241, October 16, 1991.

Y 91-242, October 17, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 91-214

Importer. Confidential.

Chemical. (G) Polyester polymer.

Use/Import. (G) Electronic devices coating. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 458 mg/kg. Mutagenicity: negative.

Y 91-240

Manufacturer. Confidential.

Chemical. (S) Castor oil; linseed oil, oxidized; homopolymer of hexamethylene; diisocyanate; alkyd resin, acrylic modified.

Use/Production. (G) Resin for coating. Prod. range: Confidential.

Y 91-241

Manufacturer. Confidential.

Chemical. (G) Acrylic graft copolymer.

Use/Production. (G) Coating resin. Prod. range: Confidential.

Y 91-242

Manufacturer. C. J. Osborn, Div. of Suvar Corp.

Chemical. (G) Coconut based polyester.

Use/Production. (S) Pigmented coatings. Prod. range: Confidential.

Dated: October 8, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-24637, Filed 10-10-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4020-4]

Revision of the Mississippi National Pollutant Discharge Elimination System (NPDES) Program to Issue General Permits

AGENCY: Environmental Protection Agency.

ACTION: Notice of Approval of the National Pollutant Discharge Elimination System General Permits Program of the State of Mississippi.

SUMMARY: On September 27, 1991, the Regional Administrator for the Environmental Protection Agency (EPA), Region IV, approved the State of Mississippi National Pollutant Discharge Elimination System General Permits Program. This action authorizes the State of Mississippi to issue general permits in lieu of individual NPDES permits.

FOR FURTHER INFORMATION CONTACT: Jim Patrick, Chief, Permits Section, Facilities Performance Branch, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347-2913.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater which result from substantially similar operations, are to the same type wastewaters, require the same effluent limitations or operating conditions, require similar monitoring, and are appropriately controlled under a general permit rather than by individual permits.

Mississippi was authorized to administer the NPDES Permit program in May 1974. Its program as previously approved, did not include provisions for the issuance of general permits. There are several categories which could appropriately be regulated by general permits. For those reasons the Mississippi Department of Environmental Quality requested a revision of its NPDES program to provide for issuance of general permits. The categories which have been proposed for coverage under the general permits program include: storm water discharges, hydrostatic test water, cooling water, backwash from water treatment plants, small slaughter houses and small domestic discharges.

Each general permit will be subject to EPA review as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of Mississippi submitted, in support of its request, copies of the relevant statutes and regulations and proposed regulations. The State also has submitted a statement by the Attorney General certifying, with appropriate citations to the statutes and regulations, that the State will have adequate legal authority to administer the general permits program consistent with 40 CFR 123.28. Based upon Mississippi's Program Description and its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program.

Under 40 CFR 123.62, NPDES program revisions are either substantial (requiring publication of proposed program approval in the **Federal Register** for public comment) or non-substantial (where approval may be granted by letter from EPA to the state). EPA has determined that assumption by Mississippi of general permit authority is a non-substantial revision of its NPDES program. EPA has generally viewed approval of such authority as non-substantial because it does not alter the substantive obligations of any discharger under the State program, but merely simplifies the procedures by which permits are issued to a number of point sources.

Moreover, under the approved state program, the State retains authority to issue individual permits where appropriate, and any person may request the state to issue an individual permit to a discharger otherwise eligible for general permit coverage. While not required under 40 CFR 123.62, EPA is publishing notice of this approval action to keep the public informed of the status of its general permits program approvals.

III. Federal Register Notice of Approval of State NPDES Program or Modifications

The following table provides the public with an up-to-date list of the status of State NPDES permitting authority throughout the country. Today's Federal Register notice is to announce the approval of Mississippi's authority to issue general permits.

STATE NPDES PROGRAM STATUS

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State Pretreatment program	Approved state general permits program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75	.....	.....	03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	
Delaware	04/01/74			
Georgia	06/28/74	12/08/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	
Illinois	10/23/77	09/20/79	.....	01/04/84
Indiana	01/01/75	12/09/79	.....	04/02/91
Iowa	08/10/78	08/10/78	06/03/81	
Kansas	06/28/74	08/28/85		
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	
Michigan	10/17/73	12/09/78	06/07/83	
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	09/27/91
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81	.....	04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/9/75	08/31/78		
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	.....	.....
North Carolina	10/19/75	09/28/84	06/14/82	09/06/91
North Dakota	06/13/75	01/22/90	.....	01/22/90
Ohio	03/11/74	01/28/83	07/27/83	
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78		
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74	.....	03/16/82	
Virgin Islands	06/30/76			
Virginia	03/31/75	02/09/82	04/14/89	05/20/91
Washington	11/14/73	.....	09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81	.....	09/24/91
TOTALS	39	34	27	25

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this State General

Permits Program will not have a significant impact on a substantial number of small entities. Approval of the Mississippi NPDES State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Mississippi NPDES State General Permits Program merely provides a simplified administrative process.

Dated: September 27, 1991.

Patrick M. Tobin,

Deputy Regional Administrator.

[FR Doc. 91–24636 Filed 10–10–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

FEDERAL RESERVE SYSTEM

NATIONAL CREDIT UNION ADMINISTRATION

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

Credit Standards Advisory Committee Meeting

AGENCIES: Federal Deposit Insurance Corporation; Federal Reserve System; National Credit Union Administration; Office of the Comptroller of the Currency, Treasury; and Office of Thrift Supervision, Treasury.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the next meeting of the Credit Standards Advisory Committee ("Committee"), which will be held in Washington, DC on October 29 and 30, 1991. The Committee encourages persons interested in the credit standards and lending practices of insured depository institutions, and the supervision of such standards and practices by the Federal financial institutions regulators, to attend.

DATES: Tuesday, October 29, 1991, from 11 a.m. to 12:45 p.m. and 2 p.m. to 2:30 p.m.; and Wednesday, October 30, 1991, from 10:30 a.m. to 12 p.m. and 1:15 p.m. to 2 p.m.

ADDRESSES: Office of the Comptroller of the Currency, 250 E. St. SW., Washington, DC 20219. Please see receptionist upon arrival.

FOR FURTHER INFORMATION CONTACT: William C. Kerr, National Bank Examiner, Paul E. James, National Bank Examiner, or Marlene J. O'Connor, Committee Recording Secretary, Office of the Comptroller of the Currency, 250 E. St. SW., Washington, DC 20219, (202) 874–5070.

SUPPLEMENTARY INFORMATION: The Committee was established by Congress in section 1205 of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183. The Committee will review, monitor, and make recommendations concerning the credit standards and lending practices of insured depository institutions and the supervision of such standards and practices by the Federal financial institution regulators. For further details on the Committee's purposes and its membership, please see 56 FR 30613 (July 3, 1991).

At its first meeting on July 24, and 25, 1991, the Committee formed three working groups to look at practices and policies relating to consumer loans, commercial and industrial loans, and real estate loans. The working groups, in accordance with 41 CFR 101–6.1004(k), are not subject to the Federal Advisory Committee Act or the General Services Administration's regulations thereunder. Therefore, the working group sessions are not open to the public. The purposes of the working groups are simply to gather information or conduct research, to analyze relevant issues and facts, and to draft proposed position papers for the Committee. The results of any working group activities will, however, be subject to deliberation by the Committee during the advisory committee meetings.

The agenda for the meeting is as follows. On Wednesday, July 24, 1991, the advisory committee meeting will commence at 11 a.m. The Committee will discuss until approximately 12:45 p.m. the activities of the working groups and any other such business as may come before it. The Committee will recess for lunch from approximately 12:45 p.m. until 2 p.m. The advisory committee meeting will reconvene at approximately 2 p.m. until 2:30 p.m. to continue the morning's discussions. The advisory committee meeting will adjourn at approximately 2:30 p.m. so that the Committee may break into its working groups, which will meet until approximately 5 p.m.

On Thursday, October 30, 1991, the working groups will work from 9 a.m. until approximately 10:30 a.m. The advisory committee meeting will reconvene at 10:30 a.m. until approximately 12 p.m. to discuss items developed from the previous day's session and any other business that may come before the Committee. The Committee will recess for lunch from approximately 12 p.m. to 1:15 p.m. Following the lunch recess, the Committee will reconvene at approximately 1:15 p.m. to continue its discussions. The advisory committee meeting will adjourn at approximately 2 p.m.

Members of the general public may attend the advisory committee meetings, but not the working group sessions. The Committee specifically encourages any persons interested in the credit standards and lending practices of insured depository institutions, and the supervision of such standards and practices by the Federal financial institutions regulators, to attend the advisory committee meetings. The Committee will attempt to accommodate as many persons as possible. However, admittance will be limited to the seating available.

Dated: October 2, 1991.

William C. Kerr,

Designee of the Comptroller of the Currency and Acting Committee Chairman.

[FR Doc. 91–24249 Filed 10–10–91; 8:45 am]

BILLING CODE 4810–33–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Extension of 3067–0138.

Title: State Administrative Plan.

Abstract: The State Administrative Plan is a formal description of a State's total civil defense program and operational capability. The plan includes related State and local laws, executive directives, rules, plans, and procedures, as well as documentation on administrative and financial systems to assure compliance with uniform grant-in-aid administrative requirements for States and subgrantees. The plan is a one-time submission with annual updates to keep it current.

FEMA uses the plan and plan updates to determine if a State legally qualifies for up to 50 percent Emergency

Management Assistance matching funds.

The requirement for the State Administrative Plan is established by section 205 of the Federal Civil Defense Act of 1950, as amended, and is implemented by FEMA regulations contained in 44 CFR 302.3.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 2,240 hours.

Number of Respondents: 56.

Estimated Average Burden Hours per Response: 40 hours.

Frequency of Response: Annually.

Copies of the above collection of information and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this collection of information, including suggestions for reducing the burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, within four weeks of this notice.

Dated: October 4, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91–24592 Filed 10–10–91; 8:45 am]

BILLING CODE 6718–01–M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Extension of 3067–0201.

Title: Federal Assistance for Offsite Radiological Emergency Planning and Preparedness.

Abstract: In accordance with Executive Order 12657 and under FEMA regulation 44 CFR part 352, FEMA will need certain information from nuclear power plant licensees to determine whether State or local governments have declined or failed to prepare commercial nuclear power plant radiological emergency preparedness plans that meet NRC licensing requirements or to participate in the preparation, demonstration, testing, exercise or use of such plans. Also, when a licensee requests Federal facilities or resources, FEMA will need information from the NRC as to whether the licensee has made maximum use of its resource and the extent to which the licensee has complied with 10 CFR 50.47(c)(1) and 44 CFR 352.5.

Type of Respondents: State and local governments, Businesses or other for-profit, Federal agencies or employees.

Estimate of Total Annual Reporting and Recordkeeping Burden: 160 hours.

Number of Respondents: 1.

Estimated Average Burden Hours per Response: 160 hours.

Frequency of Response: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: September 17, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91–24603 Filed 10–10–91; 8:45 am]

BILLING CODE 6718–01–M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Extension of 3067–0196.

Title: National Flood Insurance Program; Erosion Benefits.

Abstract: The information to be collected is necessary to implement section 1306 of the National Food Insurance Act of 1968, as amended by section 544 of the Housing and Community Development Act of 1987 (Pub. L. 100–242). FEMA regulations 44 CFR 63, subpart B, defines procedures to be followed by State authorities for certification of structures subject to imminent collapse as a result of erosion or undermining caused by waves or current of water exceeding anticipated cyclical levels.

Information is to be collected at two different levels under the regulation. First, States who wish to make certifications of imminent collapse are asked to submit documents demonstrating that they meet the qualifications listed in the regulation. Second, once a State is approved for certification and a claim for flood insurance benefits is filed by an insured, the State is asked to collect data at the site of the threatened structure demonstrating that the condition of the structure meets criteria defined in the regulation for certification that it is subject to imminent collapse. Such a certification is necessary for insured property owners to file claims for relocation or demolition benefits established under Public Law 100–242.

Provision for a certification process is an alternative to a condemnation requirement which varies widely among jurisdictions. The certification process will allow for more uniform and expeditious processing of flood insurance claims in those States that qualify. Failure to collect this information will result in FEMA's inability to pay claims under Public Law 100–242 unless the local or State government condemns the property.

Type of Respondents: State or local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 732 hours.

Number of Respondents: Level 1 — 2; Level 2 — 120.

Frequency of Response: One-Time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the accuracy of the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above, address; and to Gary Waxman, (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: September 18, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91–24598 Filed 10–10–91; 8:45 am]

BILLING CODE 6718–01–M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the

Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Extension of 3067–0146.

Title: State Administrative Plan for the Individual and Family Grant Program.

Abstract: This collection of information is necessary for the Federal Emergency Management Agency (FEMA) to carry out its role in the Individual and Family Grant (IFG) program. FEMA must approve States' IFG administrative plan in order for them to receive Federal grants. These Federal grants are intended to provide individual and family grants for disaster-related necessary expenses. Governors are required by law to administer the IFG program in accordance with FEMA regulations.

Type of Respondents: State governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 168 hours.

Number of Respondents: 56.

Estimated Average Burden Hours per Response: 3 hours.

Frequency of Response: Annually or at the time of a Presidential disaster declaration.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the accuracy of the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: September 20, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91–24599 Filed 10–10–91; 8:45 am]

BILLING CODE 6718–01–M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Extension of 3067–0198.

Title: CAC and CAV Forms on the Effectiveness of a Community Implementation of the NFIP.

Abstract: FEMA's National Flood Insurance Program (NFIP), Community Assistance Program (CAP), administered by the Federal Insurance Administration (FIA), is designed to assure that communities participating in the NFIP are achieving the flood loss reduction objectives of the program. The CAP also provides needed floodplain management assistance services to NFIP communities to identify, prevent, and resolve floodplain management issues before they develop into problems requiring enforcement actions by the FIA.

FIA uses two methods to obtain information from local participating communities to determine community assistance needs. The methods are Community Assistance Contact and Community Assistance Visit. The Community Assistance Contact is a telephone contact or brief visit with an NFIP community to determine if program-related problems exist and to offer assistance.

The Community Assistance Visit is a scheduled visit to a NFIP community for the purpose of conducting a comprehensive assessment of the community's floodplain management program and to assist the community in understanding the NFIP and its requirements and implementing effective flood loss reduction measures.

FEMA Form 81–69, Community Contact Report, and FEMA Form 81–68, Community Visit Report, are used by FEMA Regional Office and State government personnel, who conduct the collection of information on behalf of FEMA, to document contacts, visits, and discussions with community officials.

Type of Respondents: State or local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 12,000.

Number of Respondents: 5,000.

Estimated Average Burden Hours per Response: The burden estimate for the forms associated with this collections of information are as follows: FEMA Form 81–68 ranges from 2 to 4 hours per response; and FEMA Form 81–69 ranges from 1–2 hours per response, with an estimated average burden for this collection of information of 2.4 hours.

Frequency of Response: One-Time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the accuracy of the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: September 20, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91–24600 Filed 10–10–91; 8:45 am]

BILLING CODE 6718–01–M

National Flood Insurance Program; Proposed Fee Schedule for Processing Map Changes for FY 1992

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Notice.

In the matter of fees to be effective from the date of publication of the final amendment rule for 44 CFR part 72 through September 30, 1992.

SUMMARY: This notice contains the proposed fee schedule to be effective through September 30, 1992, for processing certain changes to the NFIP maps. The initial fees, preauthorized spending limits, and hourly rate to be effective through September 30, 1992, for conditional Letters of Map Amendment (CLOMAs) and conditional Letters of Map Revision (CLOMRs) have been established through prior rule-making. The procedures for calculating the initial fees, pre-authorized spending limits, and hourly rate for engineering review and administrative processing of Letters of Map Revision (LOMRs) and map revisions listed in this notice are published for comment in the proposed rule for 44 CFR part 72 elsewhere in this **Federal Register.**

This action is being undertaken to reduce expenses to the National Flood Insurance Program (NFIP), by allowing for partial recovery of certain costs associated with reviewing projects intended to support changes in NFIP maps. These projects frequently involve the placement of fill, stream channelizations, or construction of bridges, culverts, or levees. In addition, these projects are typically limited in scope and are often effected solely to reduce flood risk to a limited area of the floodplain proposed for development so as to offer relief from flood insurance purchase requirements of Public Law

93–234 (87 Stat. 975), codified as sections 4012a(a) and 4012a(b) of 42 U.S.C. or to secure financing or other benefits.

The fees collected under this activity will be deposited into the National Flood Insurance Fund which is the source of funding for this service. Cost recovery will contribute to maintaining the NFIP as self-supporting.

DATES: Comments must be received on or before December 10, 1991.

SEND COMMENTS TO: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, telephone: (202) 646–2767.

SUPPLEMENTARY INFORMATION: The proposed fee schedule to be effective through September 30, 1992, sets forth the fees to be charged for review and processing of certain changes to NFIP maps and would go into effect as of the effective date of the final rule amending 44 CFR part 72. The initial fees, pre-authorized spending limits, and hourly rate for CLOMAs and CLOMRs have been established through prior rulemaking. The procedures for determining initial fees, pre-authorized spending limits and hourly rate for LOMRs and map revisions are published for comment in the proposed rule for 44 CFR part 72 elsewhere in this **Federal Register.**

Since the primary component of the fees is the prevailing private sector labor rate charged to FEMA for review and processing of the map changes, the fees will vary due to inflation and other economic fluctuations. Therefore, beginning in calendar year 1992, a revised fee schedule will be published annually by August 1, as a notice in the **Federal Register,** so as to be effective the first day of each subsequent fiscal year. These fees are intended to reduce expenses to the NFIP by allowing for a partial recovery of certain costs associated with effecting these map changes.

In the proposed fee schedule the initial fees are listed according to the type of flood control project involved. The appropriate initial fee would be required to be paid by those seeking a LOMR or map revision prior to FEMA's initiation of the review. The initial fee represents the minimum engineering review and administrative processing costs for a LOMR or map revision based on the type of project. The initial fee does not include costs for the labor and materials associated with the cartographic processing and preparation of a map revision. The cartographic costs vary depending on the number of map panels affected and the complexity of the changes being incorporated. Therefore, these costs will be calculated on a case-by-case basis. However, based on recent experience, these costs average approximately $2,800 per map panel.

If it is determined that the actual cost associated with the review and processing of a LOMR or map revision will exceed the amount remitted for the initial fee, the requestor will be billed and will have to remit payment prior to receiving FEMA's final determination.

The pre-authorized spending limits listed in the fee schedule below denote the amount at which FEMA will suspend review of a given case and seek written authorization from the requestor prior to proceeding with the review. This limitation gives the requestor the option of discontinuing the review at that time. This affords the requestor protection against the possibility of a given review becoming more costly than anticipated by the requestor.

Initial fee schedule.

The hourly rate for FY 1992, upon which the following fees and pre-authorized spending limits are based, is $35 per hour.

(a) For CLOMAs and for CLOMRs, the initial fees, to be effective through September 30, 1992, has been established by prior rulemaking. Those initial fees, subject to the provisions of § 72.4 shall be paid by the requestor in the following amounts:

(1) Single lot CLOMA	$175
(2) Single lot CLOMR (based strictly on the proposed placement of fill outside the regulatory floodway)	175
(3) Multi-lot/Subdivision CLOMA	245
(4) Multi-lot/Subdivision CLOMR (based strictly on the placement of fill outside the regulatory floodway	245
(5) Review of new hydrology	245
(6) New bridge or culvert (no channelization)	490
(7) Channel modifications only	560
(8) Channel modification and new bridge or culvert	735
(9) Levees, berms, or other structural measures	945
(10) Structural measures on alluvial fans	2,800

(b) For LOMRs or map revisions that are in followup to a CLOMR issued by FEMA, the initial fee, subject to the provisions of § 72.4, for all categories listed under paragraph (c) below will be $200, so long as the as-built conditions are the same as the proposed conditions upon which FEMA based the issuance of the CLOMR. There are no fees for LOMAs, and no fees for single-lot LOMRs, which are not part of a new subdivision, and are based strictly on the placement of fill outside of the regulatory floodway, regardless of whether they are issued in followup to a CLOMA or CLOMR.

(c) For LOMRs or map revisions which are not in followup to a CLOMR issued by FEMA, the initial fee, subject to the provisions of § 72.4, shall be paid by the requestor in the following amounts:

(1) Multi-lot/Subdivision LOMR (based strictly on the placement of fill outside the regulatory floodway)	$445
(2) New bridge or culvert (no channelization)	690
(3) Channel modification only	760
(4) Channel modification and new bridge or culvert	935
(5) Levees, berms, or other structural measures	1,145
(6) Structural measures on alluvial fans	3,000

(d) For projects involving combinations of the actions listed under paragraphs (a), (b), or (c) above, the initial fee shall be that charged for the most expensive action of those that compose the combination.

(e) Following completion of FEMA's review for any CLOMA, CLOMR, LOMR, or map revision, the requestor will be billed at the established hourly rate for any actual costs exceeding the initial fee incurred during the review. The hourly rate is currently $35.00 per hour.

(1) In the event that the revision request results in a map revision, the requestor will be notified and billed for costs of cartographic preparation and processing of the revised map. This work will not be initiated until FEMA has received payment. The cost of reprinting and distributing the revised Flood Insurance Rate Map (FIRM) and/or Flood Boundary Floodway Map (FBFM) will be borne by FEMA.

(f) Requestors of CLOMAs, CLOMRs, LOMRs and map revisions will be notified of the anticipated total cost if the total cost of processing the request, including estimated costs for cartographic preparation and processing of a map revision, will exceed the preauthorized spending limits listed in (1) through (4) below. The pre-authorized spending limits vary according to the type of review performed and are based on the established hourly rate.

(1) CLOMAs, CLOMRs, LOMRs and map revisions based on fill outside the regulatory floorway	$700
(2) CLOMRs for the review of new hydrology and CLOMRs, LOMRs and map revisions based on channel modifications, bridges and culverts, or a combination of these	1,500
(3) CLOMRs, LOMRs and map revisions based on levees, berms, or other structural measures	2,500
(4) CLOMRs, LOMRs and map revisions based on structural measures on alluvial fans	5,000

(g) In the event that processing costs are anticipated to exceed the pre-authorized spending limits listed in (1) through (4) above, processing of the request will be suspended pending FEMA receipt of written approval from the requestor to proceed.

(h) The entity that applies to FEMA through the local community for review will be billed for the cost of the review. The local community incurs no financial obligation for fees under the reimbursement procedures of 44 CFR part 72 as a result of transmitting the application by another party to FEMA.

(i) Payment of both the initial fee and final cost shall be by check or money order payable to the National Flood Insurance Program and must be received by FEMA before the CLOMA, CLOMR, or LOMR will be issued, or before the cartographic processing will begin for a map revision.

Dated: September 23, 1991.

C. M. "Bud" Schauerte,

Federal Insurance Administrator.

[FR Doc. 91-24601 Filed 10-10-91; 8:45 am]

BILLING CODE 6718-03-M

State and Local Programs and Support, Board of Visitors for the Emergency Management Institute; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI)

Dates of meeting: October 21-22, 1991.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, Maryland 21727.

Time: October 21-8:30 a.m. to 5 p.m.; October 22-8:30 a.m. to 12 noon

Proposed Agenda: The Board will continue its review of EMI's programs through independent meetings of its three subcommittees.

The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number, 301-447-1251) on or before October 11, 1991.

Minutes of the meeting will be prepared and will be available for public viewing in the Superintendent's Office, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: September 10, 1991.

Grant C. Peterson,

Associate Director State and Local Programs and Support.

[FR Doc. 91-24597 Filed 10-10-91; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Tampa Port Authority, et al., Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit protests or 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 and protests are found in §§ 560.7 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-002810-006.

Title: Tampa Port Authority/Harborside Refrigerated Services, Inc., Marine Terminal Agreement.

Parties: Tampa Port Authority ("Authority"), Harborside Refrigerated Services, Inc. ("Harborside").

Filing Party: H.E. Welch, Registered Practitioner, Tampa Port Authority, P.O. Box 2192, Tampa, Florida 33601.

Synopsis: The Agreement filed, September 30, 1991, sets forth a payment schedule wherein Harborside will reimburse the Authority for monies due under the provision of the Agreement.

Dated: October 7, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-24566 Filed 10-10-91; 8:45 am]

BILLING CODE 6730-01-M

Tampa Port Authority, et al; 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.: 224-003079-011.

Title: Tampa Port Authority/Eller & Company Terminal Agreement.

Parties: Tampa Port Authority ("TPA"), Eller & Company, Inc. ("Eller").

Synopsis: The proposed amendment would establish a schedule whereby Eller would pay TPA monies due under the Agreement.

Agreement No.: 202-010748-011.

Title: West Coast/Middle East Rate Agreement.

Parties: A.P. Moller-Maersk Line; American President Lines, Ltd.

Synopsis: The proposed amendment deletes Canada from the geographic scope of the Agreement.

Agreement No.: 224-200573

Title: South Carolina State Ports Authority/Star Shipping A/S Terminal Lease Agreement

Parties: South Carolina State Ports Authority ("Authority") Star Shipping A/S ("Star")

Synopsis: Under the proposed agreement, Authority permits Star to use

seven (7) acres at North Charleston Terminal. Star will pay a per unit inclusive fee for empty or loaded containers. The agreement's term is three (3) years.

Dated: October 7, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-24567 Filed 10-10-91; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Kloster Cruise Ltd. (d/b/a Norwegian Cruise Line and Royal Viking Line), 95 Merrick Way, Two Alhambra Plaza, Coral Gables, FL 33134.

Vessel: SUNWARD (ex ROYAL VIKING SKY).

Dated: October 7, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-24565 Filed 10-10-91; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Kloster Cruise Ltd. (d/b/a Norwegian Cruise Line and Royal Viking Line), 95 Merrick Way, Two Alhambra Plaza, Coral Gables, FL 33134.

Vessel: SUNWARD (ex ROYAL VIKING SKY).

Dated: October 7, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-24564 Filed 10-10-91; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Starlite Cruises, Inc. and Sun Cruises Maritime Co., 1520 State Street, #100, San Diego, CA 92101.

Vessel: EMPRESS

Dated: October 4, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-24509 Filed 10-10-91; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Unitrans Consolidated Inc., 180-02 Eastgate Plaza, Jamaica, NY 11434; Officers: Louis Chan, President; Cheuk Kwan Chiu, Vice President; Pi-Yun Kuang Yeh, Treasurer; Julie Chan, Secretary.

Trade Trans Line, 14326 Manecita Drive, La Mirada, CA 90638, Myung Ku Moon, Sole Proprietor.

Universal Trade Services, Ltd., 1691 Summerfield SE., Grand Rapids, MI 49508, Officer: Johnnie Melvin Toles, President.

Laufer Group International Ltd., 33 Rector Street, 8th Fl., New York, NY 10006, Officers: Mark Laufer, President, Chris Karalekas, Vice President.

N.D. International, 36 Ivanhoe Drive, Manalapan, NJ 07726, Officer: Nydia Dos Santos; Sole Proprietor.

AERO-Mar Cargo, Inc., 7225 NW 25th St., suite 310, Miami, FL 33122, Officers: Lillian M. Brito, President, Jorge L. Brito, Secretary/Treasurer.

Tampa International Forwarding, Inc., 4611 North Hale Ave., Tampa, FL 33687, Officers: Dominique W. Root, Director, Edward J. Henderson, Director of Operations.

C-Air Shipping, P.O. Box 90836, Houston, TX 77290-0836, Officers: Carol Beilman; Sole Proprietor.

Carlos G. Medina-Luque, 2485 West 70th Place, Hialeah, FL 33016, Sole Proprietor.

Fujiwara America Incorporated; 801 2nd Ave., Norton Bldg., suite 617, Seattle, WA 98104, Officers: Motomu Euchidani, President, Yasuhito Araki, Vice President; Yasushi Iwasaka, Treasurer.

Sterling International Services, Inc., 336 A North Water Street, Philadelphia, PA 19106, Officers: Dennis G. Dougherty, President, Thomas J. Newman, Vice President, Jack M. Brown, Secretary, John M. Brown, Jr., Treasurer.

SCL Shipping (U.S.A.) Inc., 150-14 132nd Ave., Jamaica, NY 11434, Officer: Frank Bellow, General Manager.

Aero Repido Miami, Inc., 10540 NW 26th St., suite 104, Miami, FL 33172, Officer: Robert Alencar, Manager.

Seair Export Import Services, Inc., 8000 NW 14th St., Miami, FL 33126, Officers: Nicholas I. Tawil, President/Secretary, Rafael Pellerano, Vice President/Treasurer, Maria E. Lamadrid, Assistant Treasurer, Manuel J. Rojas, Vice President.

Hoyco Cargo Inc., 9440 Fountainbleau Blvd., #114, Miami, FL 33172, Eric J. Marie Hoytink; Sole Proprietor.

BMA International Traders and Forwarders, Inc., 250 So. Maple Ave., #B, So. San Francisco, CA 94080; Officers: Benjamin M. Arcayena, Sr., President/Director, Dimas Mariano, Jr., Vice President, Glenn G. Overholt, Vice President, Carmelita S. Arcayena, Chief Financial Officer, Benjamin S. Arcayena, Jr., Director, Ann Arcayena, Secretary/Director.

Mercashipping, Inc., 8346 NW 68th St., Miami, FL 33166, Officer: Zaida Pereira, Manager.

Todd Maritime Services, 1406 45th Street, North Bergen, NJ 07047, Richard Todd, Sole Proprietor.

Dated: October 7, 1991.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-24510 Filed 10-10-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91M-0376]

Softlensco, Inc.; Premarket Approval of Elastimide™ Models AQ-1000, AQ-1001, AQ-1002, AQ-1005, and AQ-1016 Silicone Posterior Chamber Intraocular Lenses, Also Known as the Chiroflex™ II Models 32-C20 SX/XX, 32-C21 SX/XX, 32-C22 SX/XX, 32-C23 SX/XX, and 32-C24 SX/XX Silicone Posterior Chamber Intraocular Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Softlensco, Inc., Los Angeles, CA, for premarket approval of the Elastimide™ Models AQ-1000, AQ-1001, AQ-1002, AQ-1005, and AQ-1016 Silicone Posterior Chamber Intraocular Lenses, also known as the Chiroflex™ II Models 32-C20 SX/XX, 32-C21 SX/XX, 32-C22 SX/XX, 32-C23 SX/XX, and 32-C24 SX/XX Silicone Posterior Chamber Intraocular Lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 17, 1991, of the approval of the application.

DATES: Petitions for administrative review by November 12, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1212.

SUPPLEMENTARY INFORMATION: On July 2, 1990, Softlensco, Inc., c/o Paul, Hastings, Janofsky and Walker, 555 Flower St., 23d Floor, Los Angeles, CA 90071, submitted to CDRH an application for premarket approval of the Elastimide™ Models AQ-1000, AQ-1001, AQ-1002, AQ-1005, and AQ-1016 Silicone Posterior Chamber Intraocular Lenses, also known as the Chiroflex™ II Models 32-C20 SX/XX, 32-C21 SX/XX, 32-C22 SX/XX, 32-C23 SX/XX, and 32-C24 SX/XX Silicone Posterior Chamber Intraocular Lenses. These posterior chamber intraocular lenses are indicated for primary implantation for the visual correction of aphakia in persons 60 years of age or older in whom a cataractous lens has been removed by extracapsular cataract extraction. These devices are intended to be placed in the ciliary sulcus, or capsular bag.

On October 11, 1990, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 17, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 12, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 4, 1991.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 91-24568 Filed 10-10-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-47]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has

reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Air Force:* Bob Menke, USAF, Bolling AFB, SAF–MIIR, Washington, DC 20332–5000; (202) 767–6235; *U.S. Air Force Base Closures:* John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 693–0674; *Dept. of Interior:* Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; *Dept. of Energy:* Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW., Washington, DC 20585; (202) 586–1191; (These are not toll-free numbers.)

Correction: The Notice published on September 13, 1991, listed Air Force Properties at Port Austin, Michigan, as suitable/available. The properties should have been listed as suitable/not available. The properties had been reported excess to GSA and are now in the disposal process.

Dated: October 4, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/11/91

Suitable/Available Properties

Buildings (by State)

California

Bldg. 21180
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246, Coast Road, PT Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Number: 189130384
Status: Unutilized
Comment: 7487 sq. ft., 1 story/wood shingle structure, most recent use—contracting administrative office, needs major rehab

Colorado

Otis Repeater Building
Otis Co: Washington CO 80743–
Landholding Agency: Energy
Property Number: 419130001
Status: Excess
Comment: 144 sq ft., one story metal structure, most recent use—communication equipment storage, off-site use only.

Limon Repeater Station
Limon Co: Lincoln CO 80828–
Landholding Agency: Energy
Property Number: 419130002
Status: Excess
Comment: 144 sq. ft., one story metal structure, most recent use—communication equipment storage, off-site use only.

Oregon

Bldg. #3 (Ranger Residence)
1900 Caves Highway
Caves Junction Co: Josephine OR 97523–
Landholding Agency: Interior
Property Number: 619130004
Status: Excess
Comment: 732 sq. ft., one story cabin, off-site use only.

Texas

Administration Bldg.
Guadalupe Mountains National Park
Pine Springs Co: Culberson TX 79847–
Landholding Agency: Interior
Property Number: 619130005
Status: Excess
Comment: 2016 sq. ft., one story frame structure, most recent use—office, off-site use only.

Unsuitable Properties

Buildings (by State)

California

Bldg. 7015
Mather Air Force Base
Sacramento Co: Sacramento CA 95655–
Landholding Agency: Air Force–BC
Property Number: 199130001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 7020
Mather Air Force Base
Sacramento Co: Sacramento CA 95655–
Landholding Agency: Air Force–BC
Property Number: 199130002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 7040
Mather Air Force Base

Sacramento Co: Sacramento CA 95655–
Landholding Agency: Air Force–BC
Property Number: 199130003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

[FR Doc. 91–24457 Filed 10–10–91; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–020–02–1540–11–F397]

Public Land Closures and Restrictions

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closures and restrictions on public land because of wild fire damage.

SUMMARY: Notice is hereby given relating to the use of off-road vehicle use on public lands in accordance with the regulations contained in 43 CFR part 8364.1. Eleven thousand acres of public land in the Hanzel Mountain and Little Hollow area were burned by wildfire in the summer of 1991. To allow successful revegetation of the area, the Bureau of Land Management is closing the following described public lands to off-road vehicle use:

T. 16S., 33E., B.M.
sections 1–3, 10–15, 22–27
T. 15S., R. 35E., B.M.
sections 8, 9, 17–20, 29, 30

Personnel that are exempt from the area closure include any Federal, State, or local officer, or member of any organized rescue or firefighting force in the performance of an official duty.

DATES: The effective date of the closure will be October 11, 1991 and will expire on September 30, 1993.

PENALTIES: Violations are punishable by a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: John R. Christensen, Deep Creek Area Manager, Bureau of Land Management, Deep Creek Resource Area Office, 138 South Main St. Malad, ID 83252, (208)766–4766. Maps of the area described above may be viewed in the Deep Creek Area Office.

Dated: September 30, 1991.

Gerald L. Quinn,

District Manager.

[FR Doc. 91–24512 Filed 10–10–91; 8:45 am]

BILLING CODE 4310–GG–M

MT–921–4120–14

Availability of Record of Decision for Northern Cheyenne Tribe v. Manuel Lujan, Jr., et al.

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Notice of availability.

SUMMARY: The BLM is issuing this Notice to advise that the Record of Decision implementing the Order of the District Court of Montana in *Northern Cheyenne Tribe* v. *Manuel Lujan, Jr., et al.* for Federal Coal Leases M 54711, M 54712, M 54713, and M 54716; and the Economic, Social and Cultural Supplement to the Powder River I Regional Environmental Impact Statement (SEIS) are available for review.

The Secretary of the Interior through the Record of Decision has directed that Federal coal leases M 54711, M 54712, and M 54713 remain in full force and effect and that suspended Federal Coal Lease M 54716 be reinstated Provided That all lessees accept the mitigation measures described in the Record of Decision.

EFFECTIVE DATE: September 20, 1991.

FOR FURTHER INFORMATION CONTACT: Donald L. Gilchrist, Chief, Branch of Solid Minerals, Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings Montana 59107–6800, telephone (406) 255–2816.

SUPPLEMENTARY INFORMATION: The Opinion and Order of the District Court of Montana in *Northern Cheyenne Tribe* v. *Manual Lujan, Jr., et al.* dated October 6, 1986, stated in part, "Upon completion of the supplemental EIS, the Secretary shall reconsider whether all leases, including M 54711, M 54712 and 54713, should have been issued and whether additional mitigation measures should be imposed. If the Secretary concludes that the leases should not have been issued, he shall rescind them and halt all operations. If the Secretary concludes that the leases should be approved, he shall issue a decision supporting his conclusion and order reinstatement of the leases."

Based on the analysis in the SEIS, the Secretary finds no reason to alter the socioeconomic ranking of the Montana tracts as to their desirability for leasing or to change the decision to offer the tracts for lease, or to issue the Colstrip leases (M 54711, M 54712, and M 54713) and the West Decker Lease (M 54716). The SEIS indicates that the leasing and development of the Colstrip and West Decker tracts could have cultural resource impacts; therefore, the Secretary directs that Federal coal leases M 54711, M 54712, and M 54713 remain in full force and effect and that suspended Federal Coal Lease M 54716 be reinstated Provided That all lessees accept the revised cultural resource stipulation provided by the Record of Decision.

A copy of the Record of Decision is available by contacting Donald L. Gilchrist. The SEIS is available for review at the Montana State Office, Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings Montana 59107–6800.

Dated: September 26, 1991.

Francis R. Cherry Jr.,

Associate State Director.

[FR Doc. 91–24628 Filed 10–10–91; 8:45 am]

BILLING CODE 4310–DN–M

[WY–030–01–4212–14; WYW–123051]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; sale of public lands in Carbon County.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for public sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, 1719 (1982).

Sixth Principal Meridian

T. 18 N., R. 84 W.,
Sec. 26, S½S½SW¼NE¼SW¼.
The above land contains 2.5 acres.

FOR FURTHER INFORMATION CONTACT: Jennene Nelson, Supervisory Realty Specialist, Great Divide Resource Area, Bureau of Land Management, 812 E. Murray St./P.O. Box 670, Rawlins, Wyoming 82301, 307–324–4841.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the above lands, surface and mineral estates, to the Bell Ranch pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of 1976. The sale of 2.5 acres of land would be a final solution to a long standing occupancy trespass. This would give the Bell Ranch title to the land upon which a portion of the cabin and water well are located.

The proposed direct non-competitive sale to Bell Ranch would be made at fair market value. The proposed sale is consistent with the Great Divide Resource Management Plan.

Conveyance of the above public lands will be subject to:

1. Reservation to the United States of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Oil and gas lease BLM serial number WYW–120994.

3. Those rights for a telephone right-of-way BLM serial number WYW–86440 granted to Carbon Power & Light, Inc.

The public lands described above shall be segregated from all forms of appropriation under the public laws, including the mining laws upon publication of this notice in the **Federal Register**. The segregative effect will end upon issuance of the patent or 270 days from the date of publication, whichever comes first.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed sale of the lands to the District Manager, Rawlins District Office, P.O. Box 670, Rawlins, WY 82301. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of objections, this proposed realty action will become final.

Dated: October 3, 1991.

Judith I. Reed,

Associate District Manager.

[FR Doc. 91–24586 Filed 10–10–91; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Santa Monica Mountains National Recreation Area Minor Boundary Change and Addition of Certain Lands

By virtue of the authority contained in the Act of November 19, 1978, Public Law 95–625, notice is hereby given that the boundaries of Santa Monica Mountains National Recreation Area are modified to include the following described lands:

All that certain real property situated in the City of Los Angeles, County of Los Angeles, State of California, encompassing approximately 30.33 acres and described as follows:

Parcel A

Lots 1 to 4 inclusive and 7 to 33 inclusive of Tract No. 35493, in the City of Los Angeles, in the County of Los Angeles, State of California, as per map recorded in Book 1117, Page 1 to 10 inclusive of maps, in the Office of the County Recorder of said County.

Parcel B

Lot 5 of Tract No. 35493, in the City of Los Angeles, in the County of Los Angeles, State of California, as per map recorded in Book 1117, Pages 1 to 10 inclusive of maps, in the Office of the County Recorder of said County.

Except therefrom that portion of said Lot 5, described as follows:

Beginning at the intersection of the southeasterly line of the land as described in the deed to the City of Los Angeles recorded June 19, 1940, as instrument no. 1007 in Book 17516, page 390, official records of said county with the westerly boundary of Lot 8 of Tract No. 28139 as per map recorded in Book 1085, pages 65 to 68 inclusive of maps, in said Recorders Office, said intersection being a point in a non-tangent curve concave westerly and having a radius of 140.00 feet, in said westerly boundary a radial line that bears north 73 degrees 35 minutes 55 seconds east to said point; thence along said westerly boundary as follows: Southerly along a non-tangent curve concave westerly and having a radius of 140.00 feet, through central angle of 8 degrees 34 minutes 42 seconds, an arc distance of 20.97 feet, south 7 degrees 49 minutes 10 seconds east 118.95 feet, southwesterly along a tangent curve concave northwesterly and having a radius of 75.00 feet; through central angle of 89 degrees 53 minutes 39 seconds, an arc distance of 117.67 feet south 7 degrees 55 minutes 31 seconds east 110.00 feet and south 41 degrees 23 minutes 11 seconds east 30.00 feet; thence north 17 degrees 27 minutes 17 seconds west 174.44 feet to the southwesterly prolongation of the southeasterly line of said hereinabove mentioned deed to the City of Los Angeles thence along said southwesterly line and its prolongations thereof north 28 degrees 06 minutes 53 seconds east 213.00 feet to the point of beginning.

Parcel C

Lot 6 of Tract No. 35493, in the City of Los Angeles, in the County of Los Angeles, State of California, as per map recorded in Book 1117, pages 1 to 10 inclusive of maps, in the Office of the County Recorder of said County.

Except therefrom that portion of said Lot 6, described as follows:

Beginning at the intersection of the southeasterly line of the land as described in the deed to the City of Los Angeles recorded June 19, 1940, as instrument no. 1007 in Book 17516, page 390, official records of said county with the westerly boundary of Lot 8 of Tract No. 28139 as per map recorded in Book 1085, pages 65 to 68 inclusive of maps, in said recorder's office, said intersection being a point in a non-tangent curve concave westerly and having a radius of 140.00 feet, in said westerly boundary a radial line that bears north 73 degrees 35 minutes 55 seconds east to said point; thence along said westerly boundary as follows: southerly along a non-tangent curve concave westerly and having a radius of 140.00 feet, through central angle of 8 degrees 34 minutes 42 seconds, an arc distance of 20.97 feet, south 7 degrees 49 minutes 10 seconds east 118.95 feet, southwesterly along a tangent curve concave northwesterly and having a radius of 75.00 feet; through central angle of 89 degrees 53 minutes 39 seconds, an arc distance of 117.67 feet south 7 degrees 55 minutes 31 seconds east 110.00 feet and south 41 degrees 23 minutes 11 seconds east 30.00 feet; thence north 17 degrees 27 minutes 17 seconds west 174.44 feet to the southwesterly prolongation of the southeasterly line of said hereinabove mentioned deed to the City of Los Angeles thence along said southeasterly line and its prolongations thereof north 28 degrees 06 minutes 53 seconds east 213.00 feet to the point of beginning.

Dated: September 20, 1991.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 91–24516 Filed 10–10–91; 8:45 am]

BILLING CODE 4310–70–M

Vancouver Historical Study Commission; Meetings

AGENCY: National Park Service Department of the Interior.

ACTION: Notice of meetings of Vancouver Historical Study Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), of the next four scheduled meetings of the Vancouver Historical Study Commission. The next four meetings will be held on Tuesday, January 14, 1991, Tuesday, February 11, 1991, Tuesday, March 10, 1991, and on Tuesday, April 14, 1991. All four meetings will be held in the Vancouver, Washington City Council Chambers, 210 East 13th Street, Vancouver, Washington. Commission meetings start at 1 p.m., and are planned to adjourn no later than 5 p.m.

The purpose of the meetings are for the Vancouver Historical Study Commission to conduct discussions on the preparation of a study report for Congress which will make recommendations regarding:

(1) The preservation, protection, enhancement, enjoyment, and utilization of the historic, cultural, natural, and recreational resources of the Area; and

(2) The feasibility of establishing a Vancouver National Historical Reserve.

All commission meetings are open to the public. Seating space and facilities of the Vancouver City Council Chambers to accommodate members of the public are somewhat limited, and persons will be accommodated on a first-come, irst served basis. Anyone may file with the Commission a written statement concerning matters to be discussed. At each meeting, the public will be provided an opportunity to provide both written and verbal comment to the Commission. However, the Commission Chairman may restrict the length of public statements as necessary to allow the Commission to complete its agenda within the allotted time.

Persons wishing information concerning the meeting, or who wish to submit written statements, may contact Mr. Keith Dunbar, Chief of Planning and Environmental Compliance, Pacific Northwest Region, National Park Service 83 South King Street, suite 212,Seattle Washington 98104 or telephone 206–553–4579.

Draft summary minutes of each Commission meeting will be available for public inspection approximately three (3) weeks after the meeting in Park Headquarters, Fort Vancouver National Historic Site, 612 East Reserve Street, Vancouver, Washington.

Dated: September 27, 1991.

Charles H. Odegaard,

Regional Director.

[FR Doc. 91–24518 Filed 10–10–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 28, 1991. 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, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by October 28, 1991.

Carol D. Shull,

Chief of Registration, National Register.

MARYLAND

Anne Arundel County

Aisquith Farm E Archeological Site (Prehistoric Human Adaptation to the Coastal Plain Environment of Anne Arundel County MPS), Address Restricted, Riva Vicinity, 91001601

Katcef Archeological Site (Prehistoric Human Adaptation to the Coastal Plain Environment of Anne Arundel County MPS), Address Restricted, Crofton vicinity, 91001600

Magothy Quartzite Quarry Archeological Site (Prehistoric Human Adaptation to the Coastal Plain Environment of Anne Arundel County MPS), Address Restricted, Pasadena vicinity, 91001599

MISSOURI

Boone County

First Christian Church, 101 N. Tenth St., Columbia, 91001590

TENNESSEE

Fentress County

Allardt Historic District (Fentress County MPS), Jct. of TN 52 and Base Line Rd., Allardt, 91001593

Hardin County

Graham, James, House, Jct. of TN 69 and Airport Rd., Savannah vicinity, 91001594

Humphreys County

McAdoo, Hugh M., House, 113 N. Church St., Waverley, 91001595

Madison County

President's Home, Lane Ave., Lane College campus, Jackson, 91001591

Robertson County

Highland Chapel Union Church, Highland Ave., Ridgetop, 91001592

TEXAS

Brazoria County

East Columbia Historic District (East Columbia MPS). S. Main St., East Columbia, 91001602

VIRGINIA

Augusta County

Hanger Mill, Jct. of VA 801 and US 250, Churchville vicinity, 91001596

Halifax County

Black Walnut, VA 600, 850 ft. S of jct. with VA 778, Clover vicinity, 91001597

Roanoke Independent City

Huntingdon, 320 Huntingdon Blvd., Roanoke (Independent City), 91001598

[FR Doc. 91–24517 Filed 10–10–91; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Consent Decree in Clean Water Act Action

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *City of Pryor Creek, Oklahoma and State of Oklahoma,* Civil Action No. 91–C–638–E, was lodged with the United States District Court for the Northern District of Oklahoma on August 22, 1991. This consent Decree concerns a Complaint filed by the United States against the City of Pryor Creek pursuant to section 309 of the Clean Water Act, 33 U.S.C. 1319, to require the City of Pryor Creek to comply with the terms of its National Pollutant Discharge Elimination System permit issued pursuant to section 402 of the Clean Water Act, 33 U.S.C. 1342.

The consent decree provides for a schedule for the City to come into compliance with its NPDES permit and sets interim limits on the City's discharges. The decree provides for stipulated penalties for failure to meet the milestones in the schedule and for violations of the interim limits. The decree also provides for a payment of $20,000 for past violations.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *City of Pryor Creek, Oklahoma and State of Oklahoma,* DOJ. Ref. No. 900–5–1–1–3136.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Oklahoma, 3600 U.S. Federal Building and Courthouse, room 333 West Fourth Street Tulsa, Oklahoma, 74103, and at Region 6 Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004, (202) 347–2072. A copy of the proposed Consent Decree may be obtained in person or may be obtained by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. When requesting a copy of the Consent Decree, please enclose a check in the amount of $3.57 (25 cents per page reproduction costs) payable to the "consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–24446 Filed 10–10–91; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on June 11, 1991, Abbott Laboratories, 14th Street & Sheridan Road, Attn: Customer Service D–345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufcturer of the besic classes of controlled substances listed below:

Drug	Schedule
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Fedearl Register Representative (CCR), and msut be filed no later than November 12, 1991.

Dated: September 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–24542 Filed 10–10–91; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated July 8, 1991, and published in the **Federal Register** on July 16, 1991, (56FR32446), Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
3,4–methylenedioxyamphetamine (MDA) (7400)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–24543 Filed 10–10–91; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated June 18, 1991, and published in the **Federal Register** on June 28, 1991, (56 FR 29713), Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–24544 Filed 10–10–91; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated June 28, 1991, and published in the **Federal Register** on July 10, 1991, (56FR31424), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Pholcodine (9314)	I
Alphacetylmethadol (9603)	I
Methylphenidate (1724)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Meperidine (pethidine) (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Oxymorphone (9652)	II
Poppy Straw Concentrate (CPS) (9670)	I
Phenazocine (9715)	II
Fentanyl (9801)	II
Alfentanil (9737)	II
Sufentanil (9740)	II

A registered manufacturer did make a comment with respect to methylphenidate. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted, with the exception of methylphenidate.

Dated: September 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–24545 Filed 10–10–91; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated July 9, 1991, and published in the **Federal Register** on July 16, 1991, (56FR32446), Radian Corporation, P.O. Box 201088, 8501 Mopac Boulevard, Austin, Texas 78759, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-methylenedioxamphetamine (MDA)(7400)	I
3,4-methylenedioxymethamphetamine (MDMA)(7405)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Phencyclidine (7471)	II
Methadone (9250)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–24546 Filed 10–10–91; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–25,830]

American Sign and Indicator Corp., Spokane, WA; Negative Determination Regarding Application for Reconsideration

By an application dated August 23, 1991, the Washington State Labor Council, AFL-CIO requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice for petition TA–W–25,830 was signed on July 31, 1991 and published in the **Federal Register** on August 13, 1991 (56 FR 38468).

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 Spokane facility of American Sign & Indicator (AS&I) produced electronic scoreboard equipment, electronic message centers and other peripheral electronic signage.

The union claims that the Department did not include customers of LED (Smart Signs), Electronic message centers or the domestic customer base for AED.

AED is an independent firm which purchased AS&I's leased signs business. The Department would not include customers of a firm other than the subject firm in its survey to demonstrate whether the "contributed importantly" test was met.

The findings also show that no LED Smart Signs were produced during the period relevant to the petition. Section 223(b)(1) of the Trade Act does not permit the certification of workers laid off prior to one year of the petition date which in this case is May 2, 1991.

The names of the additional customers submitted by the union were considered in the Department's initial investigation. The customers were either outside the scope of the Department's investigation or their purchases were too small to provide a basis for a worker group certification.

The Department's denial was based on the fact that the sale and production criterion as well as the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. Investigation findings show that sales increased in 1990 compared to 1989. The Department's lost bids survey did not show any import impact.

Other findings show that all production at Spokane was transferred to Norcross, Georgia by mid-1991. A domestic transfer of production would not provide a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the facts or of the law which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 3rd day of October 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–24641 Filed 10–10–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–26, 041]

Nerco Oil and Gas, Inc. Vancouver, WA; Revised Determination on Reconsideration

On September 20, 1991, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Nerco Oil and Gas, Inc., Vancouver, Washington.

Nerco Oil and Gas is an integrated company engaging in the exploration and production of crude oil and natural gas. The major portion of the company's revenues comes from the sale of crude oil.

Findings on reconsideration, show that Nerco Oil and Gas met the decreased sales and production criterion when 1991 sales data from the two major acquisitions which occurred in January 1991. Other findings show significant worker separations occurred in 1991.

The Department's survey found that crude oil customers accounting for a major portion of Nerco's sales decline increased their import purchases, in quantity, while reducing their purchases from Nerco in the first six months of 1991 compared to the same period in 1990.

U.S. imports of crude oil increased absolutely and relative to domestic shipments in 1990 compared to 1989.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with crude oil and natural gas produced at Nerco Oil and Gas, Inc., Vancouver, Washington contributed importantly to the decline in sales or production and to the total or partial separation of workers at Nerco Oil and Gas, Inc., Vancouver, Washington. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of Nerco Oil and Gas, Inc., Vancouver, Washington who became totally or partially separated from employment on or after January 1, 1991 are eligible to apply for

adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 3rd day of October 1991.

Stephan A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-24642 Filed 10-10-91; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fring benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers.

Volume I

Tennessee:
TN91-25(Oct. 11, 1991)..... p. 1232s, pp. 1232t-1232v.
TN91-26(Oct. 11, 1991)..... p. 1232w, pp. 1232x-1232z.
TN91-27(Oct. 11, 1991)..... p. 1232aa, pp. 1232bb-1232dd.
TN91-28(Oct. 11, 1991)..... p. 1232ee, pp. 1232ff-1232hh.
West Virginia, WV91-8(Oct. 11, 1991). p. 1467, p. 1468.

Volume II

Louisiana:
LA91-12(Oct. 11, 1991)..... p. All.
LA91-13(Oct. 11, 1991)..... p. All.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Georgia, GA91-3 (Feb. 22, 1991). p. 223, pp. 224-227.
Massachusetts, MA91-1 (Feb. 22, 1991). p. 421, pp. 422-427.
New Jersey, NJ91-2 (Feb. 22, 1991). p. 701, pp. 703, 705.
New York:
NY91-2 (Feb. 22, 1991)..... p. 777, pp. 778-780, pp. 782-784, 786, p. 788.
NY91-13 (Feb. 22, 1991)..... p. 901, pp. 902-909.
Virginia:
VA91-15 (Feb. 22, 1991)..... p. 1273, pp. 1274-1275.
VA91-17 (Feb. 22, 1991)..... p. 1281, p. 1282.
VA91-18 (Feb. 22, 1991)..... p. 1285, p. 1286.

Volume II

Arkansas, AR91-1 (Feb. 22, 1991). p. 3, p. 4.
Iowa, IA91-2 (Feb. 22, 1991).... p. 29, p. 30.
Kansas:
KS91-7 (Feb. 22, 1991)..... p. 369, pp. 370-371.
KS91-9 (Feb. 22, 1991)..... p. 381, p. 383.
KS91-10 (Feb. 22, 1991)..... p. 387, p. 388.
KS91-11 (Feb. 22, 1991)..... p. 389, p. 390.
Louisiana:
LA91-4 (Feb. 22, 1991)..... p. 399.
LA91-5 (Feb. 22, 1991)..... p. 405, pp. 406-412, pp. 415-416, 418, pp. 419, 421.
New Mexico, NM91-1 (Feb. 22, 1991). p. 779, pp. 781-794b.
Wisconsin:
WI91-1 (Feb. 22, 1991] ..... p. All.
WI91-3 (Feb. 22, 1991)..... p. 1205, p. 1206.

Volume III

California, CA91-4 (Feb. 22, 1991). p. 75, pp. 76-82.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 4th day of October 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91–24349 Filed 10–10–91; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 91–60; Exemption Application No. D–8476, et al.]

Grant of Individual Exemptions; Austin Supply, Incorporated Defined Benefit Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Austin Supply, Incorporated Defined Benefit Pension Plan (the Plan) Located in Sacramento, California

[Prohibited Transaction Exemption 91–60; Application No. D–8476]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b) (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to a loan of $180,000 by the Plan to Austin Supply, Incorporated provided that the terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 3, 1991 at 56 FR 43612.

FOR FURTHER INFORMATION CONTACT: Allison Padcams of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

USPCI, Inc. Savings Plan (the Plan) Located in Houston, Texas

[Prohibited Transaction Exemption 91–61; Exemption Application No. D–8671]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain real estate limited partnership interests (the Interests) to USPCI, Inc., the sponsor of the Plan, provided that the price for each of the Interests is the greater of either (i) the original purchase price for each of the Interests, plus additional contributions or expenses relating to the holding of the Interests, or (ii) the fair market value of each of the Interests on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 15, 1991 at 56 FR 40641.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department at (202) 523–8883. (This is not a toll-free number.)

Daiwa Securities America, Inc. (Daiwa) Located in New York, New York

[Prohibited Transaction Exemption 91–62; Exemption Application No. D–8749]

Exemption

I. Transactions

A. Effective January 1, 1991, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in

the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of the Excluded Plan.[1]

B. Effective January 1, 1991, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective January 1, 1991, the restrictions of sections 406(a), 406(b), and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective January 1, 1991, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code, solely because of the plan's ownership of certificates.

II. General Conditions.

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

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[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has descretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a convenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, and such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

With respect to certificates defined in (1) and (2) for which Daiwa or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either—

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) *Guaranteed governmental mortgage pool certificate,* as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) Daiwa;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Daiwa; or

(3) Any member of an underwriting syndicate or selling group of which Daiwa or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations there in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservices, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any sub-servicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) any obligor with respect to obligations or receivables including in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the

initial issuance of certificates by the trust; or.

(7) Any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and.

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified administrative fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified equipment note secured by a lease* means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *Qualified motor vehicle lease* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and servicing agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 15, 1991 at 56 FR 40632.

EFFECTIVE DATE: This exemption is effective for transactions occurring on or after January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of thee exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of October, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–24639 Filed 10–10–91; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–8674, et al.]

Proposed Exemptions; PKF—Mark III, Inc.; Profit Sharing Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions,

unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

PKF-Mark III, Inc., Profit Sharing Plan (the Plan), Located in Newtown, Pennsylvania

[Application No. D–8674]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash of an interest in Kings Woods Associates (the Interest) from the Plan to PKF-Mark III, Inc. (the Employer), a party in interest with respect to the Plan, provided the Plan receives no less than the greater of $621,500 or the net fair market value of the Interest at the time of sale.

Summary of Facts and Representations

1. The Employer is a general independent contractor engaged in the design and building of roads, bridges, water and sewer treatment plants and similar kinds of facilities. The Plan is a profit sharing plan which had 96 participants and total assets of $7,247,989 as of June 30, 1990.

2. Kings Woods Associates is a limited partnership (the Partnership) formed in September 1986 for the purpose of investing in real property. The sole asset of the Partnership is a parcel of land (the Property) consisting of approximately 132 acres, exclusive of legal right-of-way, located in New Hope Borough and Solebury Township, Bucks County, Pennsylvania. The applicant represents that the other partners in the Partnership are unrelated to the Plan and the Employer. The Employer does not own any interest in the Partnership and the Property is not adjacent to any property of the Employer. However, the Employer has in the past loaned money to the general partner of the Partnership for a project which is unrelated to the Partnership.

3. The Interest represents a 50 percent ownership of the Partnership. The Plan said $2,000 in cash at the time of purchase of the Interest when the Partnership was formed. The Plan also borrowed $106,000 from the Employer in connection with its purchase of the Interest. Subsequently, in August 1987, the Partnership was granted a construction loan of $1,955,000 from the Bucks County Bank (the Bank) to finance the building of roads and improvements, such as the preparation of subdivided lots, on the Property. The applicant represents that neither the Employer nor any related entity built any of the roads or various other improvements on the Property. The Bank served in a fiduciary capacity to the Plan from September 1981 through December 1988. However, the Bank was not involved in the decision by the Plan to invest in the Partnership. Security for the loan was evidenced, in part, by a note secured by a first lien mortgage on the Property and by surety of $977,500 by the Plan. In November 1988, the Partnership was granted an additional $2,000,000 loan from the Bank.[1] As of June 30, 1990, the indebtedness of the Partnership to the Bank was $3,667,000, representing the Partnership's total indebtedness. Through that date, the Plan's total cash expenditure for acquiring and holding the Interest was approximately $403,000.

4. The Plan obtained an appraisal on the Property from Albert F. Laubmeier, MAI and Melanie Pittner (the Appraisers) located in Doylestown, Pennsylvania. The applicant represents that the Appraisers are independent of the Plan and the Employer. According to the Appraisers, a portion of the Property is located in Solebury Township and is zoned rural residential, while another portion is located in New Hope Borough and is zoned low density residential. The Solebury portion is assessed as raw undeveloped land and the New Hope portion is assessed as a project of subdivided lots. The Appraisers believe that the highest and best use of the Property would be for residential development. Placing emphasis on the

[1] The Department determined in an audit of the Plan that certain of these transactions constituted prohibited transactions under section 406 of the Act. By letter of November 28, 1989, the Department suggested certain corrective actions to the Plan fiduciaries, including the immediate release of Plan assets being used as security on the initial loan and repayment to the Plan of the interest paid on the $106,000 loan of money from the Employer. By letter of March 8, 1990, to the Plan fiduciaries, the Department determined that these corrective actions had been completed. Also, in that letter the Plan fiduciaries were informed that, pursuant to section 3003(c) of the Act, information indicating that prohibited transactions had occurred would be transmitted to the Department of the Treasury. Subsequently, the applicant represents that the Employer paid excise taxes to the Internal Revenue Service for the three Plan years ending in June 1990 in regard to the loan of $106,000 from the Employer to the Plan.

sales comparison approach to value, the Appraisers estimated that the fair market value of the Property as of June 29, 1990 was $4,910,000. The net fair market value of the Property was $1,243,000, taking account of the Partnership's indebtedness of $3,667,000. The applicant thus represents that on June 29, 1990, the net fair market value of the Interest was $621,500.

5. According to the applicant, the Plan purchased the Interest in order to earn capital appreciation on what appeared to be a prudent investment at the time. In fact, the Interest did appreciate in value during the Plan year ended in June 1988. Since that time, however, the real estate market has declined in the area of the Property. Accordingly, in order to avoid further depreciation in the value of the Property, the Plan proposes to sell the Interest to the Employer. The Employer. The Employer will pay no less than the net fair market value for the Interest at the time of sale, based on an updated independent appraisal of the Property and taking account of the remaining debt of the Partnership at that time. Following the sale, the Employer will replace the Plan as a partner in the Partnership and the Plan will have no liability in regard to the outstanding indebtedness of the Partnership. The transaction will be entirely for cash, and the Plan will pay no fees or commissions in regard to the sale.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The fair market value of the Interest will be established by independent real estate appraisers; (2) the Plan will receive no less than the net fair market value of the Interest at the time of sale; (3) the sale will be entirely for cash; and (4) the transaction will relieve the Plan of an investment in real property which has been decreasing in value in recent years.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of October, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–24640 Filed 10–10–91; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Meetings/Public Hearings Announcement

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: October 14, 1991, 9:30 a.m.–3 p.m.

ADDRESSES: Columbus Housing Authority, Board Room, 960 East 5th Avenue, Columbus, OH 43201, (614) 294–4901.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1100 L Street, NW., #7121, Washington, DC 20005 (202) 275–6933.

TYPE OF MEETING: Open.

Due to scheduling difficulties, this notice could not be published 15 days prior to this meeting as required by Federal Advisory Committee Act.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 91–24558 Filed 10–10–91; 8:45 am]

BILLING CODE 6820–07–M

Meetings/Public Hearings Announcement

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In according with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: October 11, 1991, 9:30 a.m.–3 p.m.

ADDRESSES: Cobo Conference Exhibition Center, 1 Washington Boulevard, room D–17, Detroit, MI 48226.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1100 L Street, NW., #7121, Washington, DC 20005 (202) 275–6933.

TYPE OF MEETING: Open.

Due to scheduling difficulties, this notice could not be published 15 days prior to this meeting as required by Federal Advisory Committee Act.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 91–24559 Filed 10–10–91; 8:45 am]

BILLING CODE 6820–07–M

Meetings/Public Hearings Announcement

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Commission on Severely Distressed

Public Housing announces a forthcoming meeting of the Commission.

DATES: October 21, 1991, Public Hearing, 9:30 a.m.—3 p.m. Full Commission Meeting, 4 p.m.—6 p.m. October 22, 1991, Commissioners Retreat 8 a.m.—4 p.m.

ADDRESSES: Public Hearing:
City Council Chambers, City Hall, 4th Floor, Philadelphia, PA.
Full Commission Meeting:
Philadelphia Airport Marriott.
Commissioner Retreat:
Philadelphia Airport Marriott.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1100 L Street, NW., #7121, Washington, DC 20005 (202) 275–6933.

TYPE OF MEETING: Open.

Due to scheduling difficulties, this notice could not be published 15 days prior to this meeting as required by Federal Advisory Committee Act.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 91–24560 Filed 10–10–91; 8:45 am]

BILLING CODE 6820–07–M

Meetings/Public Hearings Announcement

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In according with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: October 16, 1991, 9:30 a.m.–3 p.m.

ADDRESSES: Lafayette Hotel, Grand Ballroom A, 1 Avenue DeLafayette (adjacent to Chauncey St.), Boston, MA.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1100 L Street, NW., #7121, Washington, DC 20005 (202) 275–6933.

TYPE OF MEETING: Open.

Due to scheduling difficulties, this notice could not be published 15 days prior to this meeting as required by Federal Advisory Committee Act.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 91–24561 Filed 10–10–91; 8:45 am]

BILLING CODE 6820–07–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506:

FOR FURTHER INFORMATION CONTACT: David Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4) and (6) of section 552b of title 5, United States Code.

1. *Date:* November 1, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Study Grants for College and University Teachers applications in Art, Music and Dance, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1992.

2. *Date:* November 4, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Study Grants for College and University Teachers applications in World History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1992.

3. *Date:* November 4, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review Study Grants for College and University Teachers applications in Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1992.

4. *Date:* November 5, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: M07.
Program: This meeting will review Study Grants for College and University Teachers applications in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1992.

5. *Date:* November 5, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Study Grants for College and University Teachers applications in Politics and Social Sciences I, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1992.

6. *Date:* November 5, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review Study Grants for College and University Teachers applications in American History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1992.

7. *Date:* November 5, 1991.
Time: 9:00 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the October 1, 1991 deadline in the Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after March 1992.

8. *Date:* November 6, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: M07.
Program: This meeting will review Study Grants for College and University Teachers applications in American Literature and History I, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1992.

9. *Date:* November 6, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review Study Grants for College and University Teachers applications in Philosophy and Religion, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1992.

10. *Date:* November 7, 1991.
Time: 8:30 a.m. to 5:30 p.m.

Room: 430.
Program: This meeting will review Study Grants for College and University Teachers applications in Politics and Social Sciences II, submitted to the Division of Fellowships and Seminars, for projects beginning after May, 1992.

11. *Date:* November 7, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: M07.
Program: This meeting will review Study Grants for College and University Teachers applications in British Literature and Literary Criticism, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1992.

12. *Date:* November 7, 1991.
Time: 9:00 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the October 1, 1991 deadline in the Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after March 1992.

13. *Date:* November 8, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of Public Programs, for projects beginning after April 1, 1992.

14. *Date:* November 8, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: M14.
Program: This meeting will review Study Grants for College and University Teachers applications in Languages and Literatures, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1992.

15. *Date:* November 8, 1991.
Time: 8:30 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in American Literature and History II, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1992.

16. *Date:* November 12, 1991.
Time: 9:00 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the October 1, 1991 deadline in the Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after March 1992.

17. *Date:* November 19, 1991.
Time: 9:00 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the October 1, 1991 deadline in the Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after March 1992.

18. *Date:* November 21, 1991.
Time: 9:00 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the October 1, 1991 deadline in the Higher Education in the Humanities Programs, submitted to the Division of Education Programs, for projects beginning after March 1992.

19. *Date:* November 22, 1991.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review State and Regional Exemplary Award applications, submitted by state humanities council to the Division of State Programs, for projects beginning after April 1, 1992.

David Fisher,
Advisory Committee Management Officer.
[FR Doc. 91–24590 Filed 10–10–91; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Advanced Scientific Computing; Notice of Meeting

The National Science Foundation announces the following meeting:

Name: Committee of Visitors on Advisory Panel for Advanced Scientific Computing.
Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, room 417.
Date & Time: October 28–29, 1991—8:30 a.m.–5 p.m.
Type of Meeting: Closed.
Contact Person: Lillian Ellis, Administrative Assistant, Division of Advanced Scientific Computing, 1800 G Street, NW., room 417, Washington, DC 20550, Phone: (202) 357–9778.
Purpose of Meeting: To provide oversight review within the Division of Advanced Scientific Computing.
Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviews, and other privileged materials.
Reason for Closing: The oversight committee's review of proposal actions will include privileged intellectual property and personal information that could harm individuals if it were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: October 7, 1991.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 91–24521 Filed 10–10–91; 8:45 am]
BILLING CODE 7555–01–M

Advisory Committee for Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act, as amended, Public Law 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Chemistry.
Date and Time: October 31, 1991 8:30 a.m. to 5:00 p.m. Open—November 1, 1991 8:30 a.m. to 3:00 p.m. Open.
Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Type of Meeting: Open.
Contact Person: Dr. Kenneth G. Hancock, Director, Division of Chemistry, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7947.
Summary Minutes: May be obtained from Dr. Kenneth G. Hancock.
Purpose of Committee: To provide advice and recommendations concerning NSF support for research in chemistry.
Agenda: Discussion of the current status and future plans of the Chemistry Division's activities. Discussion with NSF Leadership.

Dated: October 7, 1991.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 91–24522 Filed 10–10–91; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Cross-Disciplinary Activities; Notice of Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Cross-Disciplinary Activities.

Dates & Times: October 28–29, 1991–8:30 a.m. –5 p.m.

Location: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, room 543.

Type of Meeting: Closed.

Agenda: Review and evaluate CISE Institutional Infrastructure research proposals.

Contact Person: Barbara H. Palmer, Administrative Officer, Office of Cross-Disciplinary Activities, room 304, National Science Foundation, Washington, DC 20550. Telephone (202) 357–7349.

Dated: October 7, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–24523 Filed 10–10–91; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Electrical and Communications Systems (ECS); Notice of Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee Meeting, Division of Electrical and Communications Systems (ECS).

Place: Diplomat Room at the State Plaza Hotel, 2117 E Street, NW., Washington, DC 20037.

Date: Wednesday, October 30, 1991—Thursday, October 31, 1991.

Time: 8:30 a.m.–5:30 p.m. (10/30)—8:30 a.m.–3 p.m. (10/31).

Type of Meeting: Open.

Contact Person: Dr. Irene C. Peden, Director, Division of Electrical and Communications Systems, room 1151, National Science Foundation, Washington, DC 20550, Telephone: 202/357–7925.

Committee Reports: May be obtained from the contact person, Dr. Irene C. Peden, at the above address.

Purpose of Committee and Agenda: The advisory Committee to the Division of Electrical and Communications Systems will meet to review the activities of the Division, to hear reports from subgroups of the Committee, which will provide oversight on the management of program activities of the Division, and to provide input to future directions that the Division should take. The Advisory Committee will provide advice on personnel priorities, funding priorities, and on other interactions between the Division and the engineering community.

Dated: October 7, 1991.

M. Rebecca Winkler

Committee Management Officer.

[FR Doc. 91–24524 Filed 10–10–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Materials Research.

Dates & Times: 10/31 and 11/1/91—8:30a.m.-p.m.

Location: Arizona State University, Tempe, Arizona.

Type of Meeting: Closed.

Contact Person: Dr. Lorretta J. Inglehart, Program Director, Division of Materials Research, Room 408, National Science Foundation, Washington, DC 20550, Phone: (202) 357–9794.

Agenda: Review and evaluate research proposals for the Arizona State University Center.

Purpose of Meeting: To provide recommendations concerning the support of the Arizona State University Center for High Resolution Microscopy proposal.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

Dated: October 7, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–24525 Filed 10–10–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

The National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research.

Date: Monday, November 4 and Tuesday, November 5, 1991.

Location: Florida State University, Tallahassee, Florida.

Time: 8 a.m.–5 p.m., Monday, November 4, 1991; 8 a.m.–2 p.m., Tuesday, November 5, 1991.

Type of Meeting: Closed.

Contact Person: Dr. Adriaan M. de Graaf, Deputy Division Director, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550, Telephone: (202) 357–9794, FAX: (202) 357–7959.

Purpose of Committee: To provide advice and recommendations concerning the continued support for the National High Magnetic Field Laboratory (NHMFL) being established by Florida State University, the University of Florida, and Los Alamos National Laboratory.

Agenda: The Panel will review the progress report from the NHMFL.

Reason for Closing: The progress report being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

Dated: October 7, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–24526 Filed 10–10–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Mathematical Sciences.

Dates & Times: 10/31–11/1/1991—8 a.m.-5: 30 p.m. daily.

Location: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, room 523.

Type of Meeting: Closed.

Agenda: Review and evaluate Research Experiences for Undergraduates proposal.

Contact Person: John V. Ryff, Program Director, Division of Mathematical Sciences, National Science Foundation room 339, Washington, DC 20550, Telephone (202) 357–3455.

Dated: October 7, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–24527 Filed 10–10–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Meeting

SUMMARY: In accordance with the Federal Advisory Commission Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552d(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Mathematical Science.

Dates & Times: November 6–8, 1991—8 a.m.–5:30 p.m. daily.

Location: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, room 540B.

Type of Meeting: Closed.

Agenda: Review and evaluate collaborative research in Geosciences, Geography and Mathematical Sciences.

Contact Person: Nell Sedransk, Program Director, Division of Mathematical Sciences, National Science Foundation, room 339, Washington, DC 20550. Telephone (202) 357–3455.

Dated: October 7, 1991.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 91–24528 Filed 10–10–91; 8:45 am]
BILLING CODE 7555–01–M

Advisory Committee for Ocean Sciences (ACOS); Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Ocean Sciences (ACOS)

Date and Time: October 29–31, 1991 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G Street NW., room 1242, Washington, DC 20550.

Type of Meeting:

Open—October 29–8:30 a.m. to 5 p.m.; October 30–10 a.m. to 12 Noon.
Closed—October 30–1 p.m. to 5 p.m.; October 31–8:30 a.m. to 5 p.m.

Contact: Dr. M. Grant Gross, Director, Division of Ocean Sciences, room 609, National Science Foundation, Washington, DC—Telephone: 202/357–9639.

Purpose of Meeting: To provide advice and recommendations and oversight concerning support for support activities in the Ocean Sciences.

Agenda:

Closed—Oversight review of OCE's Special Projects including examination of proposals, reviewers comments, and other privileged material.
Open—Discussion of Ocean Sciences' (OCE) budgets, LRP, cross-directorate programs, and educational issues in Ocean Science.

Reason for Closing: The Oversight Committee's review of proposal actions will include privileged intellectual property and personal information that could harm individuals if it were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b (c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: October 7, 1991.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 91–24530 Filed 10–10–91; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Physiological Processes; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Public Law 92–463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Physiological Processes.

Date and Time: October 28–31, 1991, 8:30 a.m. to 5 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Part Open—October 29, 12 p.m.–1 p.m. (open); October 30, 1 p.m. (open). All other times the meeting is closed.

Contact Person: Dr. Donald Jackson, Program Director, Physiological Processes, room 321, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7975.

Purpose of Advisory Panel: To provide advice and recommendations relative to research in Physiological Processes.

Agenda:

Open—General discussion of the current status and future plans of the Physiological Processes Program.
Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Public Law 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

Dated: October 7, 1991.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 91–24529 Filed 10–10–91; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–13204, License No. 21–00864–02, EA 91–130]

In the Matter of Lafayette Clinic Detroit, MI; Order Modifying License (Effective Immediately)

I

Lafayette Clinic (Licensee) is the holder of Byproduct Material License No. 21–00864–02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorizes possession and use of a limited number of radioisotopes in millicurie quantities for in-vitro laboratory research studies. The license, originally issued on September 13, 1977, was renewed on December 21, 1990, and is due to expire on January 31, 1996.

II

On May 31, 1988, Dr. Natraj Sitaram, an individual researcher, circumvented the clinic's procedures for "Ordering and Use" of radioactive materials and ordered 500 microcuries of phosphorus-32. This material was used in room 256R of the Clinic during the period June 4 through 7, 1988. On June 7, 1988, Dr. Sitaram was informed by the Licensee's Radiation Safety Officer (RSO) that his unauthorized procurement and use of these materials was a violation of the clinic's license conditions, and he was informed of the proper procedures for ordering licensed materials through Mr. Warner. Subsequently, Dr. Sitaram violated procedures and used phosphorus-32 again during the weekend of June 18 through 19, 1988.

The NRC's Office of Investigation (OI) conducted an investigation into this matter and determined that Dr. Sitaram deliberately violated the clinic's license conditions when he used licensed material the second time.

On June 6, 1988, the research assistant working in Room 256R for Dr. Sitaram

became concerned about her exposure to radiation and requested a radiation monitoring badge. This request for a monitoring badge led to the discovery by the RSO of violations of the clinic's license conditions by Dr. Sitaram. The research assistant advised the RSO that Dr. Sitaram told her he "would nip the squealers in the bud." The RSO also informed Dr. Sullivan, the clinic's Acting Director, by memorandum dated June 14, 1988, that the termination of Dr. Sitaram's research assistant for asking the RSO for a radiation monitoring badge could be considered discriminatory. On June 20, 1988, the research assistant received a letter of termination from Dr. Sitaram, her supervisor. This termination appeared to be directly linked to her involvement in identifying the unauthorized use of radioactive materials. On June 30, 1988, the RSO advised Dr. Sullivan and others that Dr. Sitaram told him that he would not have "whistle blowers" working in his laboratory. This incident of alleged discrimination was investigated by the Michigan Department of Labor (MDL) and a finding was made in favor of the research assistant. The NRC has determined that the research assistant was discriminated against in her dismissal by Dr. Sitaram. This discrimination was a violation of 10 CFR 30.7(a) and is described in a Notice of Violation and Proposed Imposition of Civil Penalty issued this date. Currently, Dr. Sitaram is no longer employed by Lafayette Clinic.

During June and July 1988, the clinic's RSO investigated several matters dealing with regulatory compliance related to the events discussed above, and reported his findings, including unauthorized use of material and potential discrimination against the research assistant, to the upper management of both Lafayette Clinic and Wayne State University. This individual had been appointed to the position of RSO in March 1988, and had never been informed of any prior dissatisfaction with his job performance. However, on August 26, 1988, shortly following the RSO's identification of the compliance issues, Dr. Sullivan issued a memorandum advising him of his removal from the Radiation Safety Committee (RSC) and his position as RSO effective September 1, 1988. The NRC finds this removal action to have been discriminatory. At the time the RSO was removed from the RSC, Dr. Sitaram was placed on the RSC by Dr. Sullivan. Dr. Sitaram is the same individual the RSO had previously reported to Dr. Sullivan for violating the clinic's procedures and discriminating against his research assistant.

At the enforcement conference, you denied that discrimination occurred; however you did not present any evidence to dispute our finding. You claimed that the RSO was replaced because of his poor performance and to have a more qualified RSO prior to the proposed reorganization when Wayne State University would take over the clinic's function. There is no documentation of the RSO's poor performance or evidence of counselling. In addition, in Dr. Sullivan's memorandum removing the RSO, Dr. Sullivan commended the RSO for his hard work and stated that he was surprised that the removal was occurring at that time. Additionally, Wayne State University's RSO was about to take over the clinic's RSO function after the reorganization; therefore, it appears unnecessary to have replaced the RSO for this short period of time unless discrimination was the motivating factor. Dr. Sullivan may have been influenced by the views of Dr. Rosenzweig, Chairman, Department of Psychiatry, Wayne State University, who would have been his supervisor if the reorganization had occurred. Dr. Rosenzweig was a supporter of Dr. Sitaram. Furthermore, Dr. Rosenzweig had expressed concern about the RSO's actions concerning Dr. Sitaram and questioned why disciplinary action was not taken against the RSO.

The NRC Office of Investigations conducted an investigation into this matter and concluded termination of the RSO was the result of willful discrimination. As a result, the NRC has determined that the RSO was discriminated against in his removal by Dr. Sullivan from Lafayette Clinic's Radiation Safety Committee and his position as RSO. This discrimination was a violation of 10 CFR 30.7(a) and is described in a Notice of Violation and Proposed Imposition of Civil Penalty issued this date. Currently, Dr. Sullivan works at Lafayette Clinic but no longer is involved with activities involving licensed materials.

III

The deliberate unauthorized procurement and use of licensed materials in violation of license conditions by Dr. Sitaram and the discrimination against a research assistant engaged in protected activities cannot be tolerated. In addition, NRC requirements emphasize the importance of maintaining an environment in which employees are free to raise safety concerns without fear of discrimination. The discriminatory activities by Dr. Sullivan against the RSO are considered to be very significant in that they were carried out by the highest level of management. The NRC does not have reasonable assurance that with Drs. Sitaram or Sullivan involved in licensed activities the licensee will in the future comply with NRC requirements necessary to protect the public health and safety.

Consequently, I have concluded that the public health, safety, and interest require that this order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 30, it is hereby ordered, effective immediately, that License No. 21–00864–02 is modified as follows:

A. The Licensee shall not utilize Dr. Natraj Sitaram in any licensed activities for a period of three years from the effective date of this Order.

B. The Licensee shall not utilize Dr. Thomas M. Sullivan in any licensed activities for a period of three years from the effective date of this Order.

The Regional Administrator, Region III, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

The Licensee, Dr. Sitaram, Dr. Sullivan, or any other person adversely affected by this Order may submit an answer to this Order within 20 days of the date of this Order. The answer shall set forth the matters of law on which the Licensee, Dr. Sitaram, Dr. Sullivan, or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer filed within 20 days of the date of this Order may also request a hearing. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, Region III, U.S. Nuclear Regulatory Commission, 799 Roosevelt Road, Glen Ellyn, Illinois 60137, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee, Dr. Sitaram, or Dr. Sullivan requests a

hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee, Dr. Sitaram, Dr. Sullivan, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for a hearing, the provisions specified in section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for a hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 3rd day of October 1991.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 24613 Filed 10–10–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

In the Matter of Philadelphia Electric Company; Public Service Electric and Gas Company; Delmarva Power and Light Company; Atlantic City Electric Company; (Peach Bottom Atomic Power Station, Units 2 and 3); Exemption

I

The Philadelphia Electric Company, et. al. (the licensee), is the holder of Facility Operating License Nos. DPR–44 and DPR–56, which authorizes operation of the Peach Bottom Atomic Power Station, Units 2 and 3, at a power level not in excess of 3293 megawatts thermal each. The facilities are boiling water reactors located at the licensee's site in York County, Pennsylvania. The license provides, among other things, that the facilities are subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new appendix R to 10 CFR part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised 10 CFR 50.48 and appendix R became effective on February 17, 1981; section III of appendix R contains 15 subsections lettered A through O, each of which specifies requirements for particular aspects of the fire protection features at a nuclear power facility. Two of the 15 subsections, III.G, and III.M are the subjects of the exemption.

By letter dated December 10, 1986, the licensee requested that the NRC staff review and concur with a Philadelphia Electric Company analysis of three fire barrier configurations that did not meet 10 CFR part 50, appendix R.

Section III.G.2 fire rating requirements. In that same letter, the licensee also requested that the NRC staff review and concur on a Philadelphia Electric Company analysis of two penetration seal configurations that did not meet 10 CFR part 50, appendix R, section III.M penetration seal qualification requirements.

Section III.G.2 of appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

1. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such barriers shall be protected to provide fire resistance equivalent to that required of the barrier;

2. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area; or

3. Enclosure of cable and equipment and associated nonsafety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

If these conditions are not met, section III.G.3 requires an alternative shutdown capability independent of the fire area of concern. It also requires that a fire detection and fixed fire suppression system be installed in the fire area of concern. These alternative requirements are not deemed to be equivalent; however, they provide equivalent protection for those configurations in which they are accepted.

Section III.M of appendix R requires that fire barrier cable penetration seal designs shall use only noncombustible materials and shall be qualified by tests that are comparable to the tests used to rate fire barriers. The acceptance criteria for such test shall include:

1. The cable fire barrier penetration seal has withstood the fire endurance test without passage of flame or ignition of cables on the unexposed side for a period of time equivalent to the fire resistance rating required of the barrier;

2. The temperature levels recorded for the unexposed side are analyzed and demonstrate that the maximum temperature is sufficiently below the cable insulation ignition temperature; and

3. The fire barrier penetration seal remains intact and does not allow projection of water beyond the unexposed surface during hose stream test.

The Commission may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are: (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2)(ii) of 10 CFR part 50 indicates that special circumstances exist when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

1. Turbine Building, Elevation 135 Feet, Emergency Switchgear and Battery Rooms (12 Rooms)

1.1 Exemption Considered

The licensee presented an analysis which, if approved, would require an exemption from section III.G.2.a to the extent that the wall separating the individual Emergency Switchgear and Battery Rooms from each other and from an access corridor and 2 duct chases are constructed of concrete block with a fire resistance rating of only 2 hours.

1.2 Discussion

The licensee provides (in Attachment 1 of licensee's letter dated December 10, 1986) that the maximum combustible loading in any of the Emergency Switchgear and Battery Rooms is 28,800 BTU/ft^2 with a corresponding equivalent fire severity of 19 minutes. The licensee contends that the 2-hour rated walls are sufficient to withstand a fire of this duration. In addition, an automatic smoke detection system is provided in each of the rooms which would trigger a rapid response by the Fire Brigade to any actual fire. Upgrading of the walls would require an encapsulation type of fire proof coating. The high cost involved due the number of penetrations and walls and difficulty of installation would not be offset by a significant

increase in fire protection. The licensee, therefore, contends that the purpose of the rule is achieved with the existing installation.

1.3 Evaluation

The technical requirements of section III.G.2.a are not met because the concrete block walls of the Emergency Switchgear and Battery Rooms do not meet the 3-hour resistance rating.

The staff concurs with the licensee's technical analysis. The largest combustible loading of 28,800 BTU/ft² in any of the rooms has a corresponding fire severity of approximately 20 minutes. It is reasonably expected that a fire in one of these spaces would be quickly detected in the control room by an alarm of the installed smoke detectors. The prompt response of the fire brigade is expected to rapidly suppress the fire. The staff expects that even if a fire occurs that is not detected for an extended period of time, the installed fire barriers and low fuel loading would prevent the fire from spreading out of the room of origin.

Section III.G.2.a requires separation of redundant trains of safe shutdown equipment by fire barriers having a 3-hour rating in order to limit fire damage to systems required to achieve and maintain safe shutdown. The existing 2-hour rated walls are adequate to withstand a fire involving the maximum combustible loading of 28,800 BTU/ft² in any of the Emergency Switchgear and Battery Rooms. The installed fire protection configuration provides an equivalent level of protection as that required by section III.G.2.a.

1.4 Conclusion

Based on our review of the licensee's proposal, the staff concludes that the installed fire protection configuration in the Emergency Switchgear and Battery Room is acceptable. Therefore, an exemption for the lack of 3-hour rated fire barriers in the Emergency Switchgear and Battery Room delineated in Attachment 1 to the December 10, 1986 letter to the staff should be approved.

2. Turbine Building, Elevation 135 Feet, Access Corridor Behind the Emergency Switchgear and Battery Rooms

2.1 Exemption Considered

The licensee presented an analysis which, if approved, would require an exemption from section III.G.2.a to the extent that fire barriers between the access corridor on elevation 135 feet and 13KV switchgear area on elevation 116 feet consists in part of 2 duct chases in two 4KV Emergency Switchgear Rooms, penetration fire stops and fire dampers within ducting inside the chase. The fire dampers and penetration stops are in different planes and different elevations and this configuration requires an exemption since the intervening ducting does not meet the 3-hour resistance requirement of section III.G.2.a.

2.2 Discussion

In Attachment 1 of the licensee's letter dated December 10, 1986, the licensee described the fire barrier configuration between the Access Corridor behind the Emergency Swithgear and Battery Room and the 13KV Switchgear area below. Two HVAC duct chases, which are actually located in two 4KV Emergency Switchgear Rooms, form part of the current fire boundary between the two areas described. The HVAC ducting within the chase contains fire dampers. The opening between the duct chase and the duct is sealed by a 3-hour rated penetration stop located at the floor level. The issue necessitating the exemption is that the penetration seal and the fire dampers are in different planes and thus, do not meet the requirements of section III.G.2.a. The largest combustible loading in any of the affected surrounding fire areas is estimated at 22,000 BTU/ft² with a corresponding equivalent fire severity of 14 minutes. The licensee contends that any fire in the 13KV area will be prevented from passing to the corridor by the penetration stops in the chase at the floor level and that combustion products that entered the actual ducting would be stopped at the corridor wall by the fire dampers. In addition, automatic smoke detection devices are provided for the areas in question. It is estimated by the licensee that the alarms and subsequent prompt response by the Fire Brigade would rapidly extinguish any actual fires. The licensee justifies the exemption based on the adequacy of the fire dampers and penetration seals, even though they are on different planes, and on the low combustible loading in any of the described areas and on the ability of the smoke detection system and fire brigade to quickly suppress actual fires.

2.3 Evaluation

The technical requirements of section III.G.2.a are not met in that the configuration of rated fire dampers and penetration seals in different planes and the use of non-three-hour rated ducting between the planes does not meet the 3-hour resistance rating.

The staff essentially concurs with the licensee's analysis. It is expected that due to the low combustible loading in the described areas any fire that would develop would not be large enough to seriously challenge the combination of duct walls, fire stops, and fire dampers so as to cause them to fail and allow passage of fire. Should a fire occur that went undetected by the smoke detection system, it would be prevented from spreading from one fire area to another by the installed configuration of barriers, dampers and penetration stops. No combustibles are located in either the ducts or the duct chases. It is expected that the installed smoke detection system would provide for a rapid response by the fire brigade. Installed fire fighting equipment, including fire hoses and portable extinguishers is adequate to fight any projected fire. Section III.G.2.a requires separation of redundant trains of safe shutdown equipment by fire barriers having a 3-hour rating in order to limit fire damage to systems required to achieve and maintain safe shutdown. The existing configuration of fire dampers, penetration fire stops and ducts combined with low combustible loading provides a level of protection equivalent to that required by section III.G.2.a.

2.4 Conclusion

Based on our review of the licensee's proposal, the staff concludes that the fire barrier protection provided by the dampers and penetration stops in the ducting and chase is adequate. Therefore, an exemption from the requirements of section III.G.2.a of appendix R should be approved.

3. Radwaste Building, Elevation 135 Feet, Remote Shutdown Panel Area

3.1 Exemption Considered

The licensee presented an analysis which, if approved, would require an exemption from section III.G.2.a of appendix R to the extent that a ⅛" steel angle atop a 3-hour rated fire barrier between the Radwaste Centrifuge and Sample Tank Area (Fire Area 2) and the Remote Shutdown Panel Area circumvents the installed rated barrier.

3.2 Discussion

The separation between the Remote Shutdown Panel Area and the Radwaste and Centrifuge Area is a 3-hour rated fire barrier consisting of a reinforced concrete wall. The ceiling to the Radwaste Sample and Centrifuge Area is a 10-gauge steel plate. The steel plate is fastened to the fire barrier by 10-gauge steel angle brace. From a fire protection point of view, the steel angle tends to short circuit the protection provided by the wall. The licensee proposes that the geometry of the

surrounding spaces and the low fire loading in those spaces allows for adequate fire protection.

Attachment II to licensee's letter of December 10, 1986, depicts the geometry of the spaces involved. The barrier between the Remote Shutdown Panel Area and the Radwaste Centrifuge and Sample Tank Area is a rated fire wall approximately 70 feet long. For a length of 32 feet, additional fire barrier protection is provided by the Centrifuge Area on the Fire Area 2 side of the barrier. The Centrifuge rooms are 22 feet deep and have 3-foot thick reinforced concrete ceilings below the 10-gauge steel plate ceiling.

On the Remote Shutdown Panel side of the barrier, a walk-in metal plenum runs along the length of the barrier for 49 feet. The depth of the centrifuge rooms and the walk-in plenum serves as a buffer region between the two fire areas and the geometry of these two spaces leaves an approximately 20-foot length of the fire barrier in which the steel angle is exposed to fire on both sides.

The area above the Radwaste Centrifuge and Sample Tank Room, of which the 10-gauge steel plate forms the floor, serves as a fresh air ventilation plenum. There are no safety related or safe shutdown components located in the fresh air ventilation plenum.

With respect to combustible material, there is no combustible material in the ventilation plenum nor in the walk-in plenum. There are no cable penetrations through the steel angle nor through the steel wall including the area where it is adjacent to both fire areas. There is no combustible material in the immediate vicinity of the angle. The maximum combustible loading of the Remote Shutdown Panel Area is 54,775 BTU/ft^2 with a corresponding fire severity of 41 minutes. The maximum combustible loading in the Radwaste Centrifuge and Sample Tank Area is 10,440 BTU/ft^2 with a corresponding fire severity of 5 minutes.

The licensee projects that no postulated fire in any of the areas would cause flame penetration from one fire area to the other. In addition, it is expected that any fire that impacted on the steel angle that is exposed to both sides of the fire barrier would not cause ignition on the opposite side of the barrier due to overheating. Automatic smoke detection system and cable tray line type heat detectors are installed in the Remote Shutdown Panel Area.

3.3 Evaluation

The technical requirements of section III.G.2.a are not met because the ⅛-inch steel angle atop the 3-hour rated fire barrier with possible exposure to fire on both sides, does not meet the 3-hour resistance rating.

The staff concurs with the licensee's analysis. The Centrifuge Rooms and walk-in plenums provide a significant barrier against ignition caused by conduction through the steel angle. In order for fire in one area to spread into the other areas, it would have to fail either the steel floor of the fresh air plenum or the angle brace connecting the plenum floor to the separating reinforced concrete wall. Neither of these possibilities is considered likely given the low fuel loading in each area, and the fact that no combustibles are located adjacent to the angle brace.

In addition, installed smoke detectors would provide warning of a projected fire in any of the areas under discussion. It is expected that prompt response by the fire brigade would provide rapid suppression of any fires. In the event that a fire went undetected for a period of time, the low combstible loading provides adequate margin against fire spreading across the fire boundaries. Section III.G.2.a requires separation of redundant trains of safe shutdown equipment by fire barriers having a 3-hour rating in order to limit fire damage to systems required to achieve and maintain safe shutdown. The existing 3-hour rated barriers and low combustible loading in the vicinity of the steel angle provide a level of protection equivalent to that required by section III.G.2.a.

3.4 Conclusion

Based on our analysis of the licensee's existing fire barrier geometry and combustible loading, the staff concludes that fire barrier protection is adequate in the Remote Shutdown Panel area and the Radwaste Centrifuge and Sample Tank area. Therefore, an exemption from section III.G.2.a of appendix R should be approved.

4. Station Wide, Internal Conduit Seals

4.1 Exemption Considered

The licensee presented an analysis which, if approved, would require an exemption from section III.M of appendix R to the extent that the penetration seal configurations in approximately 1300 applications have not been tested for their ability to withstand a 3-hour fire.

4.2 Discussion

Fire barrier cable penetrations are required to be constructed of noncombustible material and are to be qualified by tests equivalent to those used to qualify the fire barrier itself. At Peach Bottom, in applications where conduits penetrate fire barriers and where access into the conduit is possible at the barrier or on the side closest to the barrier, the conduits are sealed internally with a qualified 3-hour rated fire seal. In applications where access into the conduit is greater than 5-feet from both sides of the barrier, a 3-hour rated penetration seal is not used. If there is an open termination point in a space on either side of the barrier, a smoke and hot gas seal is provided. Where closed termination points exist, such as in a lighting panel, a closed junction box, etc., no seal is provided. In no case is there a direct path into any conduit in areas containing safe shutdown components.

The purpose of penetration seals is to interrupt the three mechanisms by which fire or combustion products can penetrate a fire barrier through an electrical conduit. Those three mechanisms are: (1) Conduction of heat along the conduit walls, (2) direct passage of flame or burning gases through an open conduit, and (3) passage of smoke or other combustion products through an open conduit.

The licensee contends that the configuration in conduits without rated penetration seals can meet the criteria for fire exposure in the plant for the following reasons:

1. Heat conduction through the barrier is along conduit walls. With or without the internal seal, the thermal conductivity of the conduit wall remains the same.

2. The fact that the conduit is closed at the end prevents the direct entry of smoke and hot gases. Although there is a potential for some passage of smoke and hot gases in later stages of the fire, this is not expected to be significant given the relatively small cross section of the path and the integrity of the end closures during the fire.

3. In addition to the protection provided by the expected integrity of the end closures during a fire, flame spread through the conduit via the cabling is not expected to occur either. Most cabling is IEEE–383 qualified except for an extremely small amount of instrument cabling. The combustibles (i.e. cabling) occupies a significant portion of the cross section of the conduit. As such, the initial availability of air for combustion is limited. As cabling at the end of the conduit burns, combustion products will decrease the availability of air and will limit the spread of flame through the conduit.

4.3 Evaluation

The technical requirements of section III.M are not met in that conduits

through fire barriers are not provided with qualified 3-hour rated penetration seals.

The staff concurs with the licensee's analysis. Section III.M requires fire barrier cable penetration seals use only noncombustible materials and be qualified by tests comparable to tests used to rate fire barriers in order to ensure a fire does not spread from one fire area to another via electrical conduits. The Peach Bottom conduit sealing program addresses all three mechanisms by which fire can penetrate a fire barrier through a cabling conduit. The program ensures that there are no open conduits in any areas containing safe shutdown equipment. Since all conduits are provided with (1) a 3-hour fire rated penetration seal, or (2) smoke and hot gas seal, or (3) end closures such as lighting panels or closed junction boxes, reasonable assurance exists that the flame or burning gases will not be spread from one fire area to another via electrical conduits. In addition, any smoke that night migrate from one fire area to another through conduit openings will be so limited in quantity as to preclude concern to safe shutdown components. The Peach Bottom conduit sealing program adequately addresses the three mechanisms by which fire can penetrate a fire barrier via a cable penetration and therefore provides an equivalent level of protection as that required by section III.M.

4.4 Conclusion

Based on our review of the licensee's proposal, the staff concludes that the electrical conduit penetration configuration at Peach Bottom is adequate to prevent the spread of fire across fire barriers via electrical conduits. Therefore, an exemption from the requirements of section III.M should be approved.

5. Emergency Switchgear Rooms and Unit 2 MG Set Room, Elevation 135 Feet Bus Duct Penetrating Assemblies

5.1 Exemption Considered

The licensee presented an analysis which, if approved, would require an exemption from section III.M to the extent that 17 normally energized 4KV bus ducts lack 3-three hour rated penetration seals.

5.2 Discussion

Seventeen normally energized bus ducts penetrate fire rated barriers on the 135-foot elevation of the turbine building. These penetrations are located in the Unit 2 MG Set Room, room 206 and Emergency Switchgear Rooms 217, 226, 227, 231, 261, 263, 265 and 267 and Emergency Switchgear Corridor 262. Three of the bus ducts are 1'4"×3'0" while the remaining 14 ducts are 1'4"×2'2". The ducts are constructed of .0833" steel plate (Gage No. 14) and penetrate the fire barriers approximately 10'6" off the floor. Each duct penetration is sealed with a smoke-tight porcelain through-bushing to seal off the movement of air or ionized gases through the bus duct. There are no combustible materials located within the duct.

The combustible material in the affected spaces consists of IEEE–383 cable insulation. The MG Set Room has a combustible loading approximately 152,000 BTU/ft^2 with a fire severity of about 2 hours. The combustible loading in the other affected spaces ranges from 9000 BTU/ft^2 to 29,000 BTU/ft^2 with a corresponding fire severity range of seven to 22 minutes. The MG Set Room has 3-hour rated fire walls while the Energency Switchgear Corridor has two hour and 3-hour rated fire walls and the Emergency Switchgear Rooms have 2-hour rated fire walls.

The licensee contends that the worst-case postulated fire in these spaces would be a cable spreading fire involving cable insulation. Such a fire would be slow to propagate and develop heat due to the inherent slow burning nature of the IEEE 383 qualified cable materials.

The Emergency Switchgear Rooms and Corridor have installed smoke detection with remote alarms in the control room.

The licensee contends that the combination of metal duct plating and porcelain barriers is sufficient to contain a fire to the room of origin. In addition, the licensee contends that early warning smoke detection system and the subsequent response of the fire brigade would be sufficient to minimize the likelihood that a fire would penetrate the bus duct and adversely affect equipment in adjacent areas. Fire fighting equipment in the area consists of hose stations and portable fire extinguishers.

The MG Set Room is protected by a local automatic preaction sprinkler system. The sprinkler is actuated by an area smoke detection system. The combustible material in the MG Set Room consists of lubricating oil in the MG sets and cable insulation. The licensee contends that a fire in this area would be detected and controlled by the preaction sprinkler system. The licensee also contends that the combination of metal plate ducting and porcelain barriers, together with the early warning detection system and fire brigade response, would preclude the likelihood of a fire penetrating the bus ducts and exposing equipment in adjacent areas.

5.3 Evaluation

The technical requirements of section III.M are not met in that the 4KV bus ducts do not have 3-hour rated fire penetration seals.

The staff concurs with the licensee's technical analysis. Section III.M requires that fire barrier cable penetration seals use only noncombustible materials and be qualified by tests comparable to tests used to rate fire barriers in order to ensure a fire does not spread from one fire area to another via electrical conduits. The fire barriers in the affected spaces are adequately rated for the combustible loading in those spaces. For the Emergency Switchgear Rooms and Corridor, the metal duct plate and porcelain barriers within the ducts are adequate to contain any postulated fires to the room of origin. The combination of ducting, fire barriers, automatic smoke detection and fire brigade response in the Emergency Switchgear Rooms and Corridor is adequate to prevent adverse exposure of equipment in adjacent spaces.

The combination of metal duct plating, porcelain barriers, automatic smoke detection and sprinklers and fire brigade response is adequate to prevent equipment in adjacent spaces from being adversely affected by a fire in the Unit 2 MG Set Room and therefore provides a level of protection equivalent to that required by section III.M.

5.4 Conclusion

Based on our review of the licensee's proposal, the staff concludes that the fire protection configuration with regard to the 4KV duct penetrations in the Unit 2 MG Set Room, Emergency Switchgear Rooms 217, 226, 227, 231, 261, 263, 265 and 267 and Emergency Switchgear Corridor 262 is acceptable. Therefore, an exemption for the lack of 3-hour rated fire penetration seals in the above 4KV ducting should be approved.

III

Accordingly, the Commision has determined that pursuant to 10 CFR 50.12(a), the exemptions described in section II are authorized by law and will not present an undue risk to public health and safety, and are consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 50.12(a)(2)(ii), are present for the exemptions in that application of the regulation in these particular circumstances is not necessary to

achieve the underlying purposes of appendix R to 10 CFR part 50 because the licensee's alternate fire protection configuration provides a level of safety equivalent to that provided by compliance with appendix R. Therefore, the Commission hereby grants the following exemption from the requirements of section III.G and section III.M of appendix R to 10 CFR part 50:

1. Lack of complete 3-hour rated fire barrier in the Turbine Building, Elevation 135 Feet, Emergency Switchgear and Battery Rooms (12 rooms) (License Exemption Part 1)

2. Lack of complete 3-hour rated fire barrier in the Turbine Building, Elevation 135 Feet, Access Corridor Behind the Emergency Switchgear and Battery Rooms (License Exemption Part 2) 1

3. Lack of complete 3-hour fire barrier in the Radwaste Building, Elevation 165 Feet, Remote Shutdown Panel Area (License Exemption Part 3)

4. Lack of qualified 3-hour penetration seals for conduit fire barrier penetrations where closed termination points exist or where smoke and hot gas seals are used in open termination conduits. (License Exemption Part 4)

5. Lack of 3-hour rated fire penetration seals in 4KV bus ducting in Unit 2 MG Set Room, room 206, Emergency Switchgear Rooms 217, 226, 227, 231, 261, 263, 265 and 267 and Emergency Switchgear Corridor 262 of the Turbine Building. (License Exemption Part 5)

Pursuant to 10 CFR 51.32, the Commision has determined that the granting of this exemption will have no significant impact on the quality of the human environment (56 FR 50142).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 3rd day of October 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

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[Docket No. 40–8027, License No. SUB–1010, EA 91–067]

Sequoyah Fuels Corporation, Gore, Oklahoma; Order Modifying License (Effective Immediately) and Demand for Information

I

Sequoyah Fuels Corporation (SFC or Licensee) is the holder of Source Material License No. SUB–1010 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 40. The license authorizes possession and use of source material in the production of uranium hexafluoride (UF6) and depleted uranium tetrafluoride (DUF4) in accordance with the terms and conditions of the license. The license was due to expire on September 30, 1990, but currently remains in effect based on a timely renewal application submitted by the Licensee.

II

The NRC requires its licensees to adhere to the safety standards that are contained in its regulations and the conditions specified in the facility license. The Licensee described its management organization and the responsibilities assigned to key personnel in SFC's license renewal application dated August 23, 1985, as supplemented. The NRC expects those Licensee managers holding the key positions described in the application to ensure compliance with the regulations that are within their area of licensed responsibility so as to protect the health and safety of the general public, the Licensee's workers, any contractors that work at the facility, and the environment. Furthermore, the NRC must be able to rely upon the integrity of those Licensee managers in their conduct of licensed activities and their provision of complete and accurate information to NRC.

At the time of the solvent extraction tank excavation, SFC described its management organization and the responsibilities and authorities assigned to key personnel in its license as follows:

A. The President, Sequoyah Fuels Corporation (Mr. Reau Graves at the time), shall have overall responsibility for the safe operation of the Sequoyah Facility. Additional responsibility has been assigned to the Senior Vice President, the Vice President, Business Development, the Controller, the Manager, Regulatory Compliance and Quality Assurance, and the Manager, Health, Safety, and Environment for various functions as described in this license. These individuals report directly to the President, Sequoyah Fuels Corporation.

B. The Senior Vice President (Mr. James H. Mestepey) shall be responsible for all nuclear manufacturing activities, which include operations, maintenance, engineering, and the process laboratory. He specifically oversees the operations, modifications, and process and equipment criteria. He shall be responsible for safe and efficient plant operations. He reviews all operating procedures, plant modifications and processes, equipment criteria and other general and administrative matters. Mr. Mestepey reports to the President, SFC. (The organization chart shows that Mr. Mestepey is also responsible for the Training Department.)

C. The Manager, Regulatory Compliance and Quality Assurance (Mr. Lee R. Lacey), who reports to the President, SFC, is responsible for the development and implementation of a Facility Quality Assurance Plan to assure that all operations and safety-related activities are performed in accordance with facility procedures. He is also responsible for maintaining the company's NRC licenses and preparing correspondence and reports submitted to the NRC. He advises management on nuclear regulatory issues and provides regulatory compliance oversight in environmental compliance and other regulatory areas. (In September 1990, Mr. Lacey was promoted to Vice President, Regulatory Affairs, and now has additional responsibilities which include oversight of the health and safety programs, the environmental compliance [protection] programs, and the environmental laboratory.)

D. The Manager, Health, Safety, and Environment (formerly Mr. Michael M. Nichols, who resigned on April 19, 1991), who reports to the President, SFC, shall be responsible for developing and implementing programs, procedures and guidance in the functional areas of health physics, industrial hygiene, industrial safety, physical security, and environmental analyses. He shall be responsible for the effluent monitoring program, the respiratory protection program, the bioassay program, the health and safety program, the environmental laboratory, and the program for surveillance of all plant activities related to these areas.

E. The Manager, Environmental (Ms. Carolin L. Couch), who reports to the Manager, Health, Safety and Environment, shall be responsible for developing and implementing programs and procedures to comply with all environmental monitoring requirements required by federal and state agencies. This includes the maintenance of environmental records required by SFC and by regulatory agencies.

Another key individual involved with the solvent extraction tank excavation, but whose position is not described in the license, is the Health Physics Supervisor/Assistant Radiation Safety Officer (Mr. Kenneth G. Simeroth). He reports to the Manager, Health, Safety, and Environment. During the August 1990 SX excavation activities his prime responsibility was oversight of the SX

excavation for Health & Safety (H&S) Department. All of the H&S technicians reported to him at the time. After September 1990 he was assigned special programs in the H&S department, and was no longer responsible for oversight of H&S technicians.

Since August 1990, several events have occurred that demonstrate a failure on the part of key SFC managers to ensure that NRC requirements were met in their area of responsibility and indicate that a certain SFC manager failed to provide complete and accurate information to the NRC during an inspection and subsequent investigation. The first event involved the identification and reporting to the NRC on August 22, 1990, of uranium contaminated soil and water during excavation work near the solvent extraction building from approximately August 1 through August 29, 1990. An Augmented Inspection Team (AIT) conducted an onsite review of the event from August 27–29, 1990. The AIT found that concerns involving uranium contaminated water in the excavation pit were expressed by the Manager, Environmental to the Senior Vice President as early as August 7, 1990. The AIT also found that responsible personnel did not become aware of the actual elevated sample results until August 17, 1990. Another five days elapsed before this information was communicated to the NRC. Test results for several water samples taken prior to August 8, 1990, that showed elevated levels of uranium, had apparently been lost during this time period. The Licensee was unable to determine the reason for the loss of the sample results. The AIT concluded that the Licensee's staff did not demonstrate the necessary sensitivity to the potential for uranium contamination, or understand the urgency and potential significance of such a problem. A formal investigation was initiated by the NRC on September 4, 1990, to determine whether willful violations of NRC regulations of occurred.

As result of the AIT's findings, in a letter dated August 30, 1990, the Licensee committed to: (1) Assure the integrity of the solvent extraction building floor, (2) characterize the quantity and location of licensed material under the solvent extraction building, (3) identify potential migration pathways, and (4) control contaminated soil and water from the excavation. These commitments were reviewed by an AIT follow-up inspection from September 10–13, 1990. That inspection determined that the Licensee's actions taken to satisfy those commitments were appropriate. Therefore, on September 13, 1990, the NRC verbally concurred on the restart of the solvent extraction process, and documented this concurrence in a letter dated September 14, 1990. The AIT followup inspection also found that no evaluations were performed to assess the potential for worker exposure prior to workers entering the excavation, and that the radiological surveys performed were inadequate to meet 10 CFR 20.201(b) requirements. These findings, however, had no significant impact on the safe operation of the facility and were evaluated for appropriate enforcement action when the AIT followup inspection report was issued.

The second event concerned the Licensee's identification and reporting of uranium contaminated water beneath the main process building (MPB) on September 14, 1990, a few hours after restart activities began. Information pertaining to the contamination under the MPB had been known to the Licensee since the 1970's. This information was of concern to the NRC because it indicated that there could be extensive contamination under the MPB. Due to the location of the MPB and lack of monitoring wells around the MPB, licensed material could have migrated into the unrestricted area and contaminated ground-water. Because the NRC did not believe the Licensee exhibited a sense of urgency for this potentially larger problem, an Order Modifying License was issued on September 19, 1990. The September 19, 1990 Order required SFC to characterize the site, take actions to prevent further releases of contaminated water, and conduct appropriate monitoring of ground water. Additional inspection coverage was instituted to verify the activities performed by the Licensee in response to the Order.

By early November 1990, those followup NRC inspections progressed to the point where the NRC was concerned that certain aspects of the SFC Safety and Environmental Programs were not being performed in full accord with NRC requirements. Consequently, a Demand for information was issued on November 5, 1990, to have the Licensee describe (1) an oversight program it was willing to put into place while management deficiencies and weaknesses in the permanent organization were being remedied, and (2) plans for an independent written appraisal of site and corporate programs and activities, that would develop recommendations for improvements in management controls and oversight to provide assurance that personnel would comply with regulatory requirements and site procedures. The Licensee responded to the Demand in a letter dated November 20, 1990.

SFC contracted with a consulting company to perform the independent assessment of SFC's management, in accordance with the Demand, and the assessment was transmitted to the NRC via a letter dated May 15, 1991. SFC responded to the management assessment on July 15, 1991. In its response SFC stated that "the assessment gave the facility a positive bill of health in many respects, provided numerous valuable insights into our operation, and contained many useful recommendations for continual improvements." In many of the responses to the recommendations, SFC did not provide an analysis of the recommendations, but merely quoted the assessment. Additionally, neither the independent assessment nor SFC's response included a discussion and analysis of the causes of the deficiencies referenced in the Demand. SFC has agreed to implement most of the recommendations contained in the assessment over the next 18 months. In the meantime, the NRC is concerned that there continues to be observed deficiencies and weaknesses in the licensee's safety program.

NRC investigation activities concluded on June 28, 1991. The investigation concluded that certain Licensee managers failed to provide complete and accurate information to the NRC, willfully failed to comply with NRC regulations, and made false statements during NRC inspection and investigation activities.

III

As a result of a series of events at the Sequoyah facility, a number of violations and weaknesses were identified that indicate a significant management breakdown has occurred. Beginning with the August 1990 SX excavation, it became evident that significant communication weaknesses existed within the SFC organization, key licensee managers did not fully understand licensed responsibilities, and a complete failure occurred on the part of the Health & Safety organization to assure that adequate radiological controls were implemented. NRC investigation activities related to the SX event identified a number of willful violations of NRC requirements. Increased NRC inspection efforts have identified indications that the Licensee continues to experience problems with control over activities involving licensed materials.

A. SX Excavation Activities

To comply with EPA regulations for underground storage tanks, the Licensee planned to excavate two underground tanks adjacent to the solvent extraction (SX) building during the August 1990 annual plant shutdown, and encase them in a concrete vault. One of the tanks contained licensed material (uranium bearing solvent) and was identified by the Licensee as being under NRC jurisdiction. Messers. Mestepey and Lacey and Ms. Couch stated that prior to the August 1990 annual plant shutdown, the possibility of encountering uranium contamination around the tank excavation was discussed in staff and other Operational Departmental meetings. A number of plant supervisors and managers interviewed stated that the reason that they believed that contamination could be present was due to past process fluid seepage through the SX building floor prior to its 1983/1984 repair. On August 1, 1990, the Licensee began excavating soil around the two underground tanks.

The Hazardous Work Permit (HWP) covering the excavation required the assignment of Health & Safety (H&S) technicians to provide extensive hexane monitoring due to the explosive potential of the vapors trapped in the gound. However, the HWP did not specify any contamination control measures for the workers or require that radiation surveys be made; and no provisions existed to modify the HWP to account for new or changing radiological conditions at the worksite.

During the week of August 1–6, 1990, Licensee personnel observed surface rocks coated with uranium. Mr. Nichols stated that he was notified of this condition by Ms. Couch and had operations personnel gather the material. A followup interview with Mr. Lacey, then the Manager of Regulatory Compliance & Quality Assurance, indicated that Ms. Couch had also notified him of the yellow rock discovery between August 1–4, 1990, but he failed to follow facility operating procedure HS–010, paragraph 4.7, "Visual Detection of Uranium", and forward a contamination report to the Health & Safety office.

Ms. Couch, Manager, Environmental, testified that her sole responsibility for the SX excavation project was the collection of two soil samples in conjunction with the EPA underground storage tank enclosure regulations. The samples were only required to be analyzed for total petroleum hydrocarbon (TPH) content. Those soil samples were obtained on August 7, 1990, and submitted to a laboratory for TPH analysis. Ms. Couch also obtained additional soil samples, however; no request for a uranium analysis was made for any of the soil samples until August 22–23, 1990.

Liquid samples were taken from the excavation site on August 1, 4, 6 and 7, 1990. The August 1 sample, obtained by an engineer, indicated 0.02 grams uranium/liter (g-U/l) and was known to the Licensee on August 2, 1990. Ms. Couch had liquid samples taken on August 4, 6 and 7, 1990. She testified that Mr. Nichols had not directed her to obtain the samples; but that she had done so out of curiosity. An additional liquid sample was taken on August 7 by Mr. Barrett, the SFC Safety Engineer. Mr. Knoke, the Facility Laboratory Manager, told NRC investigators that on August 7, he reviewed the August 6 sample results which indicated about 3 g-U/l, and brought it to the attention of several individuals, including Mr. Lacey, who was responsible for regulatory compliance. In a subsequent interview, Mr. Lacey stated that he did not recall Mr. Knoke discussing this item with him. In addition, Mr. Nichols, who was responsible for health and safety, claims that he was not aware of the results of the August 4–7 liquid sampling until about August 22, 1990. Throughout the project, no liquid samples were required to be taken by the Health & Safety group to evaluate the potential hazards to workers from licensed material (uranium).

It was the Licensee's practice to have the Operations Department obtain all liquid samples and H&S obtain all air samples for laboratory analyses. However, no plant procedure existed that required the Operations Department to forward the results of the liquid sample analysis to the H&S Department. After H&S had sampled the air (alpha monitoring) around the excavation site on August 3 and 4, 1990, no further radiological evaluations of the potential worker exposure occurred until August 22, 1990, even though workers continued to move dirt or work in the excavation throughout that time.

The SX excavation job was the critical project scheduled for completion during the 1990 annual plant shutdown. As a consequence, key management and supervisory personnel, including Mr. Mestepey, often visited the site. The H&S supervisor, Mr. Simeroth, stated that he was frequently present at the excavation, and that his immediate supervisor, Mr. Nichols, the Manager of Health, Safety, and Environment, was also at the excavation on an almost daily frequency. Mr. Lacey stated that he occasionally visited the work site and saw water in the excavation during the week of August 6, 1990.

Messers. Mestepey and Simeroth and Ms. Couch accompanied two NRC inspectors on a general facility tour that included the excavation site on August 6, 1990. During this tour an NRC inspector received no reply when he casually asked what was "in the water" in the excavation around the underground tanks. In subsequent testimony, Mr. Mestepey stated that he had not heard the question. However, both Ms. Couch and Mr. Simeroth stated that they had heard the question. Ms. Couch first stated in a September 4, 1990 interview that she did not respond to the inspector's question because she did not feel it was her responsibility since Mr. Mestepey was present, and she felt that she would be chastised for speaking up. However, she later testified on March 1, 1991, that Mr. Mestepey was not in the immediate group when the question was asked, and that she gave a flippant reply to the inspector because in her view it was not a serious question and if the inspector really wanted an answer, it would be addressed formally. She also testified that she did not answer the question because Mr. Mestepey was at the entrance meeting and was well aware of the contamination in the pit and the question was not addressed specifically to her. Mr. Simeroth stated that he did not respond because he felt it was Ms. Couch's responsibility. He also stated that after the tour he discussed the question with Ms. Couch, they both agreed it has not been answered, and Ms. Couch said she was waiting to see if the inspector would pursue it. Further NRC investigation revealed that Ms. Couch met later with Mr. Lacey to discuss the inspector's question. However, neither contacted the inspector to provide a response during the course of the inspection.

Mr. Mestepey stated in an interview that the presence of yellow water as a "rule of thumb" indicates 1 gram per liter (g/l) of uranium contamination. Other Licensee personnel, including Messers. Lacey and Nichols and Ms. Couch, acknowledged that yellow water at the site was considered contaminated. Although Mr. Nichols testified that he did not see any "yellow water" during his almost daily site visits until August 22, 1990, all of the contractor and other Licensee personnel interviewed (including the H&S supervisor, Mr. Simeroth, who claims to have discussed the matter with Mr. Nichols during the first week) indicated they observed the presence of yellow water by approximately August 4, 1990. Mr. Lacey testified that he had been at

the excavation site several times during the first week and had seen standing water in the pit.

Both SFC and contractor employees involved in this project worked in close proximity to this contaminated liquid, coming into contact with it on numerous occasions. After the August 1, 1990 sample, taken during the first day of the excavation, the next analysis results (for the August 4 sample, at 2.06 g/l) were available in the laboratory on August 7. On that same day, one day after the NRC inspector's question went unanswered, Ms. Couch observed a black liquid (potential hydrocarbons that are not releasable) in the pit and ordered the workers out. She also ordered that the liquid be drummed. Work in the pit was resumed later that day.

In addition to the expected ground water seepage, significant amounts of water entered the excavation due to the heavy rainfall of August 11 and 12, 1990. On August 13, 1990, at the direction of Mr. Mestepey, about 3,000 gallons of accumulated water were pumped from the excavation to the north ditch. This water was pumped onto the ground and allowed to follow the natural terrain, contaminating the ground along the way. The north ditch feeds the facility's combination stream, which is the normal monitored plant effluent path. The next day, SFC resumed pumping water into barrels.

The results of the August 6 and 7 samples requested by Ms. Couch ranged from 0.02 to 8.2 g-U/l. The result of the August 7 sample taken by Mr. Barrett, available that same day, was not expressed as g-U/l, but as a percentage (1% uranium). However, no action was taken to evaluate the potential radiological hazards until the results were sent to the UF6 Area Manager (Acting Manager, Operations) on August 17, 1990. Even then, the results were not forwarded to the H&S group until about August 22, 1990. Ms. Couch told various inspectors in the Augmented Inspection Team (AIT) during the week of August 27, 1990, that she had seen an August 4, 1990 laboratory analysis showing 2.06 g/l uranium and had informed Mr. Mestepey of the contamination in the pit. During interviews with NRC investigators on September 3 and 4, 1990, Ms. Couch stated that on August 7, 1990, she had taken two soil samples from around the tanks, and showed them to Messrs. Nichols, Lacey, and Mestepey because the samples appeared contaminated (yellow). In discussions with Mr. Mestepey on that day, she indicated that the material on the excavation wall made it obvious that the water was contaminated. However, she made no mention to the NRC inspectors of reviewing laboratory analysis of the liquid samples taken on August 6 and 7, 1990.

During a followup interview on September 5, 1990, and in sworn testimony on September 12, 1990, Ms. Couch stated that she had no specific knowledge of the uranium contamination levels in the SX excavation water during her August 7 discussion with Mr. Mestepey. She further stated that she was not aware of the sample concentrations until August 22, 1990. During a subsequent sworn interview on March 1, 1991, Ms. Couch stated she might have seen the August 4, 1990, laboratory report.

However, during a subsequent OI telephone interview on March 19, 1991, (with SFC's attorney present) Ms. Couch then admitted that on August 7 or 8, 1990, she had seen an August 7, 1990, laboratory report (for the sample taken by Mr. Barrett) which indicated the presence of uranium contamination in SX excavation liquids. Because the uranium level was expressed in percentages, Ms. Couch claimed this laboratory report was meaningless to her, and later admitted she never asked anyone what this percentage would equate to in g-U/1. Ms. Couch said that even though she received this laboratory report shortly after the NRC inspector asked his August 6, 1990, question, she did not inform the NRC inspectors of this result because she thought the inspector's question was informal. She also stated that she had a copy of the August 7 laboratory analysis taken by Mr. Barrett with her during the March 1 and 19, 1991, OI interviews, but forgot to bring it to the investigator's attention.

NRC investigative inquiries revealed that several contractor employees working in the SX excavation site did not receive the instructions required by 10 CFR part 19. The training that five contractor employees who worked in the excavation received consisted of only viewing a short visitor orientation video that appeared to be designed for visitors who were to tour the facility or possibly work in areas that did not involve exposure to hazardous materials. It did not provide adequate instructions about potential hazards and potential health effects from exposure to licensed materials in the excavation pit. The NRC interviewed about 13 of the contractor employees. Most of the contract workers interviewed stated that they did not know that uranium was present in the SX excavation where they were working. One individual indicated that he asked a H&S technician what was in the liquid and was told that it contained a very small amount of uranium that was not harmful. These contract workers informed the NRC, as verified by other SFC employees, that liquids from the excavation were routinely in contact with their skin, that these liquids burned their skin for a short period of time (burning sensation would not be due to uranium), and that they complained to various SFC individuals. One individual stated that he was sprayed in the face with contaminated liquid while pumping liquid out of the pit on August 4, 1990. They further stated that they obtained some boots and rubber gloves only through their own initiative. The excavation site was roped off for industrial safety purposes, but not posted as a radiation or contaminated area.

The air samples taken on August 3 and 4, 1990, were not adequate to detect worker exposure to airborne contamination from August 6-22, 1990 because of changing conditions in the pit. Further, the Licensee failed to evaluate the need to obtain bioassay samples from contract workers (see NRC Inspection Reports 40–8027/90–05 and 90–06, dated November 20, 1990 and February 21, 1991). Although bioassay samples were obtained for some SFC personnel, NRC interviews of SFC employees indicated that none of them had experienced working conditions similar to the contractors who had been assigned to work in the SX excavation (uranium-contaminated liquids potentially in contact with the skin for several hours per day, for two to four weeks). SFC failed to evaluate the need for bioassays and as a consequence the contractors did not submit urine samples between August 1 and 22, 1990, and many did not submit any urine samples.

NRC investigation and inspections found that SFC Health & Safety employees failed to conduct adequate radioactive contamination surveys of articles leaving the facility. The surveys conducted were deficient in that the licensee monitored only for alpha activity, and not for beta/gamma. Although SFC maintained that no equipment went off-site that exceeded permissible release limits, on November 15, 1990, the NRC found articles that had been contaminated to approximately ten times the SFC license limit in the cab of a truck parked at the residence of one of the contractor employees. The following day the Licensee surveyed the truck and other items at the employee's residence. However, the Licensee's survey instrument was not sensitive enough to

identify all contamination above the release limits of the licensee (see NRC Inspection Report 40–8027/90–06).

SFC asserted that the contaminated equipment discovered under the seat of the truck was in a location not ordinarily surveyed and that the responsibility for the equipment going off-site rested with the contractor, not with the Licensee. The NRC, however, holds its licensees, not contractors, responsible for ensuring that adequate release surveys are performed. The failure of SFC's managers to understand this fundamental principle resulted in contaminated articles being removed from the site by its contractor employees.

Testimony from Messrs. Mestepey, Lacey, and Nichols established that Licensee management was aware of the elevated uranium concentrations on August 17, 1990. However, the Licensee did not inform NRC Region IV by telephone of its discovery until August 22, 1990. This report was not made within 24 hours, as required by 10 CFR 20.403(b). In its November 20, 1990 response to NRC's November 5, 1990 Demand for Information, the Licensee asserted that "A release of radioactive material did not occur; the water was in an excavation, well within the restricted area boundary." Notwithstanding the Licensee's rationale, the NRC has determined that the discovery of the elevated uranium concentrations in the SX excavation constituted a reportable event because it was apparent even then that it might have caused or threatened to cause property damage in excess of $2,000. Specifically, the cost of decontamination activities (characterization and remediation) to address contamination related to the SX excavation clearly exceeded $2,000. In its May 1, 1990, response to a similar reporting violation that occurred in March 1990, SFC had stated "SFC now has a much better understanding of NRC notification requirements and recognizes that conservative standards are to be applied in determining whether an event should be reported." Although Mr. Mestepey was present at the enforcement conference where the violation was discussed, he failed to assure that the SX excavation event was promptly reported. (see NRC Inspection Report 40–8027/90-05).

Additionally, none of SFC's managers took actions to stop work in the excavation once the contamination levels were known, and work was allowed to progress to the extent of placing the concrete floor in the vault over contaminated soil even after the issue was reported to the NRC (see NRC Inspection Report 40-8027/90-04 dated October 11, 1990).

In response to NRC concerns during the AIT inspection of August 27-29, 1990 (see NRC Inspection Report 40-8027/90-04), SFC drilled five boreholes with an air auger to determine if contamination had spread through the ground away from the SX building. However, it was not until February 1991, that an NRC inspector identified that SFC had existing "SX sandwells" in utility trench sand backfill zones that essentially already provided this information. SFC personnel had sampled these "sandwells" since the late 1970s and the data clearly indicate that uranium contamination had migrated away from the SX building.

Information about the existence of the pre-1990 "sandwells" was sent to Mr. Lacey on August 30, 1990, by memorandum from the Manager, Process Laboratory in response to an internal SFC investigation of the SX excavation issues. Mr. Lacey in turn sent the information to Ms. Couch. However, neither Mr. Lacey nor Ms. Couch informed NRC inspectors of the existence of this data. In fact, NRC identified this information in February 1991 only through its inspection efforts. At no time did SFC personnel advise the NRC of this relevant data that clearly demonstrated the migration of licensed materials away from the SX building over an extended period of time. Furthermore, information about the SX sandwells was not in SFC's decommissioning file (required by 10 CFR 40.36(f)).

B. Notification of Contamination Under the Main Process Building (MPB)

After the AIT was initiated, SFC agreed to perform several tasks prior to the restart of the facility (reference the letter from Reau Graves, former President of SFC to Robert Martin, Regional Administrator, NRC Region IV, dated August 30, 1990). An AIT Followup Inspection occurred on September 10–13, 1990, and NRC verbally concurred on restart of the Sequoyah facility on September 13, 1990. A few hours after restart on September 14, 1990, SFC informed NRC about a "well" in the denitration area that penetrated the floor of the MPB to the ground beneath it. Since the mid-1970s, SFC operators had routinely pumped uranium-contaminated liquids from under the MPB using this well (see NRC Inspection Reports 40–8927/90–05, 90–06, and 90–07 dated November 20, 1990, February 21 and March 1, 1991, respectively).

NRC investigation determined that Mr. Lacey was informed about the "well" (later called the "subfloor process monitor") by a former SFC manager on or about August 31, 1990. Mr. Lacey subsequently discussed this information with Mr. Mestepey sometime during the week of September 3, 1990. The presence of liquids under the MPB indicated the potential for floor degradation and significant contamination, which were similar to the NRC's concerns regarding the SX event. However, Mr. Lacey neither requested that a sample of the liquid be taken and analyzed, nor that further investigation of the issue be undertaken until September 14, 1990, just prior to informing NRC after the restart of the facility. After the notification, SFC managers did not promptly evaluate the contamination problem.

Since the Licensee could not assure the NRC that all migration pathways to the unrestricted area were known or that the ground water had not been contaminated, the NRC issued an Order Modifying License (Order) on September 19, 1990 (see the letter dated September 20, 1990, from James M. Taylor of NRC to Reau Graves of SFC and attached Order dated September 19, 1990), to require a plan that would quantify and locate the contamination under the MPB.

C. NRC Demand for Information and Related Activities

In response to concerns resulting from the identification of contamination in, around and under the SX building and the MPB, SFC implemented an Interim Compliance Oversight Team. This action was taken as a result of NRC concerns involving the SX excavation issues. NRC issued a Demand For Information (Demand) (letter from Hugh L. Thompson, Jr., of NRC to Reau Graves, of SFC dated November 5, 1990) which requested, among other things, that SFC describe an oversight program it was willing to put into place while management deficiencies and weaknesses in the permanent organization were remedied. The Demand also requested SFC to submit a plan for an independent appraisal of site and corporate organizations and activities that would develop recommendations for improvements in management controls and oversight.

SFC responded to the Demand on November 20, 1990 and agreed to set up a Sequoyah Oversight Team (SOT) to provide NRC additional assurance that NRC's regulations would be satisfied during operations of the Sequoyah facility. Secondly, SFC agreed to provide an impartial comprehensive management assessment and proposed the details for its implementation.

In that response, SFC made several statements that were subsequently found by the NRC to be inaccurate or misleading. This is significant because it demonstrates that as of November 20, 1990, SFC still did not understand the extent of its problems. Examples of such statements and related problems are as follows:

"Significant steps were taken to prevent any kind of problem that could have resulted from elevated levels of uranium * * *"

A. "Discolored water was tested immediately on August 4 * * * ordered the water to be drummed;"

This part of the Licensee's assertion is misleading because the water sample was not obtained as part of any pre-planned requirement by the Health & Safety Department, but rather due to Ms. Couch's curiosity. Additionally, 3,000 gallons that accumulated in the pit were not drummed, but pumped directly on the ground on August 13, 1990.

B. "Health & Safety technicians took air samples on August 3 and 4, which did not show any unusual level of contamination;"

This assertion is misleading because a significant amount of work occurred from August 4–22, 1990. Additionally, air sampling is not an adequate method for identifying and quantifying liquid contamination.

C. "Many soil samples were taken;"

This statement is misleading in that the Licensee did not require any soil samples to be taken for uranium analysis. Ms. Couch was only required to take two soil samples for TPH analysis to meet EPA requirements. Other soil samples that she obtained (not required) were not analyzed for uranium until August 23, 1990.

D. "Although special urinanalysis of the contract workers began on August 22, routine urine samples were taken from Sequoyah personnel working in the excavation prior to August 22;"

This assertion is misleading because most of the contractors were finished with their work at SFC by August 22, 1990, and had been discharged. Additionally, the working conditions differed significantly between SFC and contractor personnel, as the contractors actually came into contact with the contaminated liquid.

IV

NRC inspection efforts have identified numerous weakness and violations of NRC requirements since the August 1990 SX contamination event in SFC's Health & Safety and Environmental Protection Programs. In total, NRC concludes that these weaknesses and deficiencies indicate a significant failure of the management control program at the Sequoyah facility.

A. Overflow of the Solvent Rework Centrifuge

On September 15 and 16, 1990, an NRC inspector observed operations personnel draining process liquids on the floor of the SX building (see NRC Inspection Report 40–8027/90–05). These activities were contrary to statements that SFC managers, including Messers. Graves, Lacey and Mestepey, had made to NRC that the floor of the SX building would no longer be used as part of the process operation. Under a previous owner, this type of operational activity apparently contributed to the degradation of the SX floor in the early 1980s.

An NRC inspection conducted in February 1991 (see NRC Inspection Report 40–8027/91–03 dated April 29, 1991) described an event where operations personnel were unaware of a SFC internal requirement to clean the solvent rework centrifuge every 24 hours. The operations personnel apparently cleaned the centrifuge "when needed." Because the requirement to clean the solvent rework centrifuge every 24 hours was not adhered to, process solutions overflowed onto the floor. This event was noteworthy given FSC's commitment to improve contamination controls.

B. Depleted Uranium Tetrafluoride (DUF4) Facility Contamination Event

On June 5, 1991, NRC inspectors observed workers who were visibly contaminated and were not adhering to procedural requirements or appropriate health physics practices, while changing filters in the Depleted Uranium Tetrafluoride (DUF4) facility (See NRC Inspection Report 40–8027/91–10–dated July 22, 1991). The most significant problems identified were:

(1) Responsible Licensee personnel failed to adequately review the planned work activity to develop a Hazardous Work Permit appropriate for the control of the task.

(2) The workers' lapel air sampler failed to function properly.

(3) Appropriate protective clothing was not worn, resulting in head, neck, abdomen, thigh, hand, and other skin contamination.

(4) The plastic "tent" erected for the job was not posted as either an airborne or contamination area.

(5) No step-off pad was used to prevent the spread of contamination (as a result, the area outside the tent was also visibly contaminated where the workers had walked with contaminated boots).

(6) One of the workers exited the tent, removed his respiratory protection and then re-entered the tent without it.

(7) No provisions were made to change out of contaminated clothing at the job site (to change or shower, the workers would have had to walk over 100 yards to the Main Process Building).

(8) No health physics covered was provided for a maintenance activity involving a system that had not been previously opened.

These problems were particularly significant because they demonstrated that the corrective actions undertaken by the Licensee to strengthen its Health and Safety Program since the SX event were not yet effective.

C. Radiation Safety Program

The following items, some of which have been discussed above, demonstrate a signficant failure in SFC's radiation safety program.

- An NRC inspector observed on September 16, 1990, operators draining process solutions onto the floor in the SX building to the point that liquids overflowed the sump and dispersed on the floor (see NRC Inspection Report 40–8027/90–05). Interviews with Licensee personnel indicated that the floors were made, and used, as a method of secondary containment of process fluids. This occurred despite a previous Licensee commitment to minimize contaminated solutions on the floor.
- NRC. investigation identified that the Licensee had no mechanism to identify visitors who were minors in order to take the extra precautions required by NRC regulations to limit their exposures. In fact, NRC investigation revealed that one minor worked in the SX excavation.
- On October 23, 1990, a shift supervisor, in the presence of an NRC inspector, wiped the bottom of a valve with his bare hand, while looking for leaks of potentially contaminated liquids in the SX building (see NRC Inspection Report 40–8027/90–06).
- On November 23, 1990, an NRC inspector observed an operator not wearing respiratory protection (as required by procedures) when manually unclogging a conveyor that transported yellowcake (see NRC Inspection Report 40–8027/90–06).
- On December 1, 1990, an NRC inspector found that an SFC shift supervisor turned off a malfunctioning frisker, but did not inform the responsible H&S personnel. Later two female employees did not frisk themselves prior to exiting the change room, because the frisker was turned off

(see NRC Inspection Report 40–8027/90–06).

• NRC Inspectors found an ash receiver area high radiation area door left unlocked and unattended in January 1991. This problem has reoccurred on three separate occasions within a 3-month period (see NRC Inspection Reports 40–8027/90–06, 91–01 and 91–02).

• On February 15, 1991, NRC inspectors observed poor contamination control practices during an ash receiver change-out, when the activity resulted in visible contamination in a hallway. No attempts were made to limit access to the area to control highly contaminated equipment. Ash receivers were changed out at least two to three times per day, and appropriate contamination controls had never been instituted (see NRC Inspection Report 40–8027/91–02). In May 1991, an inspector identified that SFC provided no training, guidance, or procedures that describe to workers how to undress from highly contaminated protective clothing in a manner so as to prevent skin contamination. As a result, the hands of two workers were contaminated during removal of highly contaminated protective clothing, after changing out ash receivers (see NRC Inspection Report 40–8027/91–09).

• During the week of May 6, 1991, an NRC inspector observed poor contamination controls when a highly contaminated cart outside the ash receiver area was not attended or controlled (see NRC Inspection Report 40–8027/91–08).

• On May 16, 1991, an NRC inspector observed a worker outdoors near the clarifiers (in the restricted area) dressed in protective clothing and a full face respirator sawing on PVC pipes on the ground. Although SFC's H&S staff took action to protect the worker from potential contamination by requiring the use of a respirator, they failed to adequately consider the potential for this activity to contaminate the ground adjacent to the work area (see NRC Inspection Report 40–8027/91–09).

• SFC's license requires only surveying for alpha contamination inside the restricted area; however, the Licensee identified a problem with beta contamination in the spring of 1990, and informed NRC that the problem would be evaluated (see NRC Inspection Report 40–8027/90–03). In November 1990, SFC again committed to evaluating the issue after NRC found contaminated materials at a private residence off-site (see NRC Inspection Report 40–8027/90–06). However, by may 1991 the Licensee still had no limits for beta contamination inside the restricted area, approximately one year after the problem was first identified (see NRC Inspection Report 40–8027/91–09).

• In June 1991, NRC inspectors identified that SFC has failed to survey laundered protective clothing, as required by procedure, for over a year. This failure is potentially significant in that workers continually overloaded the washers with protective clothing which provided the potential for inadequate decontamination. SFC identified that potential in March 1991, yet took no corrective actions to assure that laundered protective clothing was suitably free of contamination until NRC inspectors identified this same problem (see NRC Inspection Report 40–8027/91–10).

• Health and Safety technicians receive little to no formal health physics training, with most having only on-the-job experience. H&S technicians frequently depended on operations and maintenance personnel to establish the protection requirements described in a hazardous work permit (see NRC Inspection Reports 40–8027/90–04 and 91–10). This is contrary to the intent of a hazardous work permit which is to independently establish worker protection requirements appropriate to a specific hazardous task.

D. Environmental Protection Program

The NRC was aware that some ground contamination existed at the Sequoyah facility, as documented in NUREG 1157 "Environmental Assessment for Renewal of Special Nuclear Material License No. SUB–1010" dated August 1985, and NRC Inspection Report 40–8027/88–03. However, the NRC was unaware of the magnitude or the extent of the contamination. NRC investigation and inspections found that SFC had many indications of the magnitude of the ground contamination, and found that SFC had a number of weaknesses in its environmental protection program. The following six items demonstrate these failures and weaknesses:

• As discussed in Section III of this Order, NRC's investigation and inspections determined that SFC had monitored and analyzed the water from "sandwells" in the vicinity of the SX building. This data indicated contamination levels below the ground surface of the restricted area that averaged about 100 times above SFC's environmental action level for unrestricted areas and at least 20,000 times above background. However, prior to August 1990, the Licensee had taken no action to evaluate the extent of this contamination, develop remedial actions, or identify the areas in their decommissioning file. The sandwells provided the Licensee with data that indicated that SFC's environmental action level had been exceeded by as much as four orders of magnitude. Nevertheless, the Licensee discontinued the sampling of the sandwells in June 1989.

• The SX sandwells, which monitored utility trench sand backfill zones, provided SFC with data for several years which indicated that these zones were potential migration pathways for licensed material. As a result of the failure to investigate available data, SFC managers Couch, Lacey, Nichols, and Simeroth were unaware that licensed materials below the ground surface had migrated to the unrestricted area although still within the owner-controlled area.

• Operators often discharged process solutions to the north ditch, relying on dilution in the combination stream to assure release limits were satisfied. Intentional dilution, without any attempt to treat contaminated water, is a poor practice to limit releases to levels as low as reasonably achievable (see NRC Inspection Report 40–8027/90–07).

• As discussed in Section III of this Order, operators routinely recovered contaminated process liquids from under the main process building through the "subfloor process monitor" since the mid-1970s and Licensee personnel had never attempted to characterize the contamination under the building. Mr. Mestepey stated that he had been aware of this activity since about 1988, yet did not question the activity.

• The current characterization of the site has identified concentrations of uranium in the Sewage Lagoon as high as 16 g-U/1. These high values are apparently the result of discharges from the laundry. Uranium has been identified to a depth of about 40 ft in some monitoring wells inside the restricted area.

• Outside the restricted area fence but still inside the Licensee's property, uranium has been found in at least four locations. Uranium has also been found in the streambed of one formerly used outfall, outside SFC's property.

V

Based on the above, it appears that a number of significant deficiencies and weaknesses exist in the Licensee's Health & Safety and Environmental programs. These deficiencies include a failure on the part of the Licensee management to fully understand and exercise their licensed responsibilities; poor communication within the SFC organization, particularly between the

H&S and operations (production) staff; numerous inadequacies with regard to Licensee procedures and failures on the part of SFC employees to comply with SFC procedural requirements and health and safety practices; deficiencies in training and instruction of SFC personnel working in restricted areas; and serious weaknesses in the Licensee's contamination control practices, including failures to exercise basic controls to prevent contamination to the environment and to adequately evaluate contamination. The foregoing deficiencies in the Licensee's Health & Safety and Environmental Programs are significant and adversely impact health and safety.

In addition, the Licensee's Manager, Environmental, Carolyn L. Couch, intentionally provided false testimony to OI investigators. Specifically, notwithstanding knowledge of the scope of the NRC investigation and the relevance of the liquid samples and analyses, and after informing the AIT that she first saw the August 4 analysis result of 2.06 g-U/1 on August 7, 1990, and then discussed the contamination in the SX area with Mr. Mestepey, (1) on September 5, 1990, Ms. Couch stated to OI investigators that she was unaware of the exact yellow water sample concentrations of uranium until August 22, 1990, and (2) on September 12, 1990, she stated to OI investigators that she did not remember specifically looking at any laboratory results concerning the excavation prior to approximately August 20, 1990, (3) on March 1, 1991, she stated to OI investigators that she might have seen prior to August 20 a laboratory analysis of a water sample which she had taken on August 4 which indicated approximately 2 g/1 of uranium, (4) she admitted to OI investigators on March 19, 1991, that she had received and seen on August 7 or 8 a laboratory analysis of a water sample taken on August 7 which indicated a 1-percent concentration of uranium, and (5) she failed to provide OI with a copy of the August 7, 1990 analysis until March 19, 1991 although OI had previously requested all laboratory results regarding the SX excavation. These communications indicate a pattern whereby Ms. Couch either provided false information or willfully withheld material information. Furthermore, Ms. Couch did not respond to an NRC inspector on August 6 when questioned about the contents of the water in the SX excavation pit, and did not subsequently ensure that the inspector received a response to his question.

Finally, Ms. Couch was aware that in the past, sampling had been undertaken of water in pipes embedded in the ground known as "sandwells" to determine whether there was uranium contamination. In fact, she had discussed with Mr. Nichols in 1989 the sandwell data and whether the collected data was of value to the Health & Safety and Environment Departments. In addition, Ms. Couch had received a copy of a memorandum from Mr. Lacey, dated August 30, 1990, which assigned selected SFC personnel certain tasks in connection with an investigation of the issues surrounding the excavation, and had received a copy of a memorandum from the Licensee's Manager, Facility Laboratory, also dated August 30, 1990, sent in response to Mr. Lacey's memorandum, which noted the existence of the data collected from the sandwell sampling. However, Ms. Couch failed to inform the NRC of the existence of the sandwells and sandwell data.

The Commission must be able to rely on its licensees to provide complete and accurate information. Licensees' willful violations of Commission requirements and Licensees' false statements to Commission officials cannot and will not be tolerated. The problem of false statements and the willful withholding of information by Ms. Couch undermine the NRC's reasonable assurance that the licensee with Ms. Couch involved in licensed activities will comply with NRC requirements, including the requirement that information provided be complete and accurate in all material respects.

Based on the foregoing, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. SUB 1010 in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees, and the environment will be protected. Therefore, the public health, safety, and interest require that License No. SUB 1010 be modified to prohibit Ms. Carolyn L. Couch from supervisory or managerial involvement in NRC-regulated activities for a specified period of time and to require the rectification of deficiencies in the Health & Safety and Environmental Programs. Furthermore, pursuant to 10 CFR 2.202, I find the public health, safety and interest require that this Order be immediately effective.

VI

Accordingly, pursuant to sections 161b, 161c, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 2.204, and 10 CFR parts 19, 20, and 40, *It Is Hereby Ordered, Effective Immediately, That License No. SUB–1010 Is Modified as Follows:*

A.1. Carolyn L. Couch shall be removed from supervisory or managerial responsibilities over NRC-regulated activities at the SFC facility for a period of one year from the date of this Order. Additionally, if Ms. Couch remains involved in NRC-regulated activities, she is not to be directed or supervised by any of the individuals named in the Demand for Information (see section VIII). For two years after that initial period, SFC shall not reassign her to supervisory or managerial functions of NRC-regulated activities without providing 30-day prior notice to the NRC.

A.2. Sequoyah Fuels shall provide the Director, Office of Enforcement, within 30 days of the date of this Order, in writing under oath or affirmation, information to demonstrate why License No. SUB–1010 should not be modified to prohibit Ms. Couch from serving in any capacity involving the performance of any NRC-regulated activities.

B. SFC shall not operate the Sequoyah facility to produce Uranium Hexafluoride (UF6) or Depleted Uranium Tetrafluoride (DUF4) following its upcoming shutdown (currently scheduled to begin on September 23, 1991) until SFC submits and obtains NRC approval of the plan and schedule to review the adequacy of the Health & Safety and Environmental Programs, and the qualifications of the individuals from outside SFC performing the review. The purpose of the review is to assure that the procedures provide clear instructions, are current, and are technically adequate, such that the intent of the procedure will be met. The schedule is to indicate which procedures will be reviewed, revised (as necessary) and implemented prior to startup. The dates by which the remaining procedure reviews, revisions, and implementation will be completed as well as a basis for their deferral until after start-up shall be provided. The schedule shall provide for appropriate personnel training in the procedures prior to their implementing the procedures reviewed and, as appropriate, revised. Following the review, the procedures are to be revised as necessary, and thereafter implemented. As a minimum, that review shall address the following areas:

1. Health & Safety

—Measures to keep internal and external exposures As Low As Reasonably Achievable (ALARA).
—Measures to ensure confinement of licensed materials. In cases where confinement systems failed, procedures shall require evaluation of the quantity of material released outside the confinement system, the root cause of the condition, and corrective actions to prevent recurrence.
—Use of appropriate protective clothing to prevent personnel contamination.
—Measures to ensure Hazardous Work Permits (HWP) provide clear guidance and instructions for personnel protection requirements and define responsibilities, including the qualifications of the individuals permitted to issue, approve, and modify HWPs.
—Measures to ensure personnel dosimetry and internal dose assessment programs are supplied and implemented.
—Measures to ensure radiation, contamination, and airborne activity survey instruments and equipment and properly calibrated so accurate surveys can be performed, and that the survey instruments are appropriate for the type of radiation monitoring performed.
—Measures to ensure that a respiratory protection program is implemented so that respiratory protection equipment is used to minimize personnel exposure.
—Measures to ensure that all SFC and contractor personnel receive appropriate radiation protection and contamination control training.
—The responsibilities, qualifications and reporting requirements for H&S technicians and supervisors are clearly defined and these individuals receive appropriate indoctrination and training to implement their responsibilities.

2. Environmental Program

—Measures to maintain releases of licensed material to the restricted and unrestricted area As-Low-As-Reasonably-Achievable.
—Measures for sampling of ground water monitor wells, analysis of samples, and evaluating the adequacy of the ground water monitoring program.

The Regional Administrator, Region IV, may relax or rescind, in writing, any of the above conditions upon demonstration by the Licensee of good cause.

VII

The Licensee, Ms. Couch, or any other person adversely affected by this Order may submit an answer to this Order or request a hearing on this Order within 30 days of the date of this Order. The answer shall set forth the matters of fact and law on which the Licensee, Ms. Couch, or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer filed within 30 days of the date of this Order may include a request for a hearing. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN:, Chief, Docketing and Service Section, Washington, DC 20555. Copies shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, suite 400, Arlington, TX 76011, and to the Licensee if the answer or hearing request is by a person other than the Licensee.

If a person other than the Licensee or Ms.Couch requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee, Ms. Couch, or any other person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

In the absence of any request for a hearing, the provisions specified in this Order shall be final 30 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

VIII

In addition to issuance of this Order modifying License No. SUB-1010, the Commission requires further information from the Licensee in order to determine whether the Commission can have reasonable assurance that in the future the Licensee will conduct its activities in accordance with the Commission's requirements and the below-named managers will carry out the responsibilities and authorities assigned to their respective key position descriptions as outlined in the License.

Based on the above, it appears that key SFC management officials failed to carry out their responsibilities with regard to licensed activities and have not been candid with the NRC. Specifically:

A. The Senior Vice President, James Mestepey, is responsible for all nuclear manufacturing activities, including operations, maintenance, engineering, training, and the process laboratory, and reviews all operating procedures, plant modifications and processes, equipment criteria and other general and administrative matters.

During the SX excavation, Mr. Mestepey was the senior manager onsite, and was responsible for conducting the excavation and vault construction project. Mr. Mestepey acknowledged that he had a responsibility for the health and safety of the workers involved in completing the project.

Mr. Mestepey was apparently aware of the potential for and existence of contamination in the SX excavation from the onset of the excavation project. Mr. Mestepey had attended meetings prior to and during the excavation at which the potential for or existence of contamination had been discussed; had often been present at the excavation and observed yellow water in the pit; had informed NRC inspectors that SFC personnel, not contractors, would perform most of the work involving contaminated material; and was aware that such water was being barrelled and acknowledged that he had assumed that if the water was discolored and was being put into drums it was contaminated. Furthermore, on approximately August 8, 1990, Mr. Mestepey had seen a laboratory analysis of a sample taken on August 7, 1990, of the water in the excavation which showed uranium contamination of approximately 1 percent. As of August 20, Mr. Mestepey was aware of the existence of laboratory analyses of water samples taken from the excavation pit indicating levels of uranium of as high as 8 g/1.

Notwithstanding Mr. Mestepey's responsibility for the excavation project, his acknowledged responsibility to ensure the health and safety of the workers involved in the project, and his awareness that the water in the excavation pit contained some uranium contamination, Mr. Mestepey failed to take any action to notify his Health and Safety personnel of such contamination or to assure that workers were being adequately protected, and with at least careless disregard for regulatory requirements, failed to instruct the

workers as to the presence of uranium contamination in the excavation, in violation of 10 CFR 19.12.

Furthermore, on August 13, Mr. Mestepey made the decision to pump a large quantity of water to the north ditch, contaminating the ground. In addition, Mr. Mestepey failed to have SFC submit a report to the NRC within 24 hours of the discovery of elevated uranium levels in the excavation, in violation of 10 CFR 20.403(b)(4).

In addition, as fully described in sections III and IV of this Order, the NRC investigation and inspections determined that there were serious deficiencies in the Licensee's radiation safety, environmental protection and operation safety programs. As Mr. Mestepey was responsible for such matters as operations, training, and review of operating procedures, it appears that Mr. Mestepey has failed to adequately exercise his responsibilities to ensure that these activities were in compliance with NRC and license requirements.

B. The Vice President, Regulatory Affairs, Lee R. Lacey, is responsible for the oversight of the Licensee's health and safety programs, the environmental protection program, the environmental laboratory, the quality assurance program and the licensing program. He is responsible for the implementation of the Facility Quality Assurance Plan to assure that all operations and safety related activities are performed in accordance with facility procedures. Mr. Lacey advises SFC management on nuclear regulatory issues and provides regulatory compliance oversight in environmental monitoring and other regulatory areas. He is also responsible for the timely, accurate, and comprehensive flow of information from the Licensee to the NRC. Mr. Lacey had formerly held the position of Manager, Health, Safety and Environment.

Mr. Lacey was apparently aware of the potential for and existence of contamination in the SX excavation from the onset of the excavation project. Mr. Lacey had attended meetings prior to and during the excavation at which the potential for and existence of contamination had been discussed, and had often been present at the excavation and observed yellow water in the pit, but failed to complete a "visual detection for uranium" form (HS–010).

Mr. Lacey also was aware that one of the tanks to be excavated was under NRC jurisdiction. Mr. Lacey had also observed solidified uranium on the surface of the ground in the excavation area. By August 17, 1990, Mr. Lacey was aware of the existence of laboratory analyses indicating levels of uranium in the water of the excavation pit as high as 8 g/1.

Notwithstanding his responsibilty for the environmental protection and QA programs and his awareness that the water in the excavation pit contained uranium contamination, Mr. Lacey, with at least careless disregard, violated the provision of 10 CFR 19.12 by failing to ensure that contractor personnel working in the SX excavation were provided with information regarding the contamination in the excavation and with radiological protection. In addition, notwithstanding Mr. Lacey's responsibility for interfacing with the NRC and providing the NRC with timely, accurate and comprehensive information, Mr. Lacey took no action to inform the NRC of the contamination in the excavation, or any matters associated with the excavation, until August 22, 1990. Although Mr. Lacey was aware that the NRC inspector had inquired as to the contents of the water in the excavation pit, Mr. Lacey took no action to ensure that the inspector was provided with a response. Although Mr. Lacey was aware by August 17 of the laboratory analyses showing elevated levels of uranium in the water in the excavation, he failed to have SFC submit a report to the NRC within 24 hours of the discovery of these elevated uranium levels, in violation of 10 CFR 20.403(b)(4).

In addition, Mr. Lacey was aware that SFC was conducting an internal investigation regarding the SX excavation. In fact, OI interviews established that the investigation was his responsibility. Mr. Lacey sent other management officials a memorandum dated August 30, 1990, requesting information in connection with this investigation and, in response to this request, received a memorandum from the Manager, Process Laboratory, also dated August 30, that there had been a series of samples taken from sandwells and that the data might be valuable in the investigation of the SX history. However, Mr. Lacey failed to investigate this data, which demonstrated the migration of licensed materials away from the SX building over an extended period of time, and failed to inform the NRC of the existence of the data.

Furthermore, on August 31, 1990, Mr. Lacey was informed about the existence of a subfloor process monitor in the SFC Process Building which had been used to pump uranium-contaiminated liquids from under the building. However, Mr. Lacey failed to evaluate the contamination of the liquids under the floor, to further investigate the issue, or to inform the NRC of this matter until September 14, 1990, following restart of the facility.

Finally, Mr. Lacey was responsible for the Licensee's regulatory compliance and quality assurance programs, and had previously been responsible for the health and safety programs. As described in sections III and IV of this Order, the NRC has identified serious deficiencies in the Licensee's radiation safety, environmental protection and operation safety program. Consequently, it appears that Mr. Lacey has failed to adequately exercise his responsibilities to ensure that the Licensee has conducted these activities in compliance with NRC and license requirements.

C. The Health Physics Supervisor/ Assistant Radiation Safety Officer, Kenneth G. Simeroth, was responsible for oversight of the SX excavation for the H&S Department, and the physical safety of the workers in the excavation. At the time of the excavation, all of the H&S technicians reported to him.

Mr. Simeroth apparently was aware of the potential for and existence of contamination in the SX excavation pit. Mr. Simeroth was at the excavation frequently, and observed "off-colored" water in the pit, and indicated that he was aware that it was very likely that the water would have some uranium in it.

Mr. Simeroth had also been the principal individual who had sampled the SFC sandwells and, during the period that such sampling was conducted, was aware that there was uranium contamination in the water that leaked into the surrounding area of the SX building. Nevertheless, Mr. Simeroth, together with Mr. Nichols, made the decision to discontinue the sampling because the numbers meant nothing to him, as he had no knowledge of any limit levels pertaining to them.

Nothwithstanding Mr. Simeroth's responsibility for the safety of the workers in the excavation and his awareness that the water in the excavation contained some uranium contamination, Mr. Simeroth, with at least careless disregard, failed to instruct the workers as to the presence of uranium contamination, or to assure that these workes were being adequately protected, in violation of 10 CFR 19.12. In addition, Mr. Simeroth stated that he had received no technical, formal training regarding the radiation protection of employees and that he did not feel qualified to be Assistant Radiation Safety Officer because of his lack of training in radiological protection.

Furthermore, notwithstanding Mr. Simeroth's awareness that the water in

the excavation contained some uranium contamination, Mr. Simeroth failed to respond when the NRC inspector inquired on Augsut 6, 1990, as to contents of the water in the excavation. Although Mr. Simeroth and Ms. Couch later discussed the fact that they had not answered the inspector's question, Mr. Simeroth took no further action to ensure that the inspector received a response to his question.

D. The former Manager, Health, Safety, and Environment, Michael M. Nichols, had been responsible for developing and implementing programs, procedures and guidance in the areas of health physics, industrial hygiene, industrial safety, and physical security. During the SX excavation activities, Mr. Nichols was responsible for the effluent monitoring program, the respiratory protection program, the bioassay program, the health and safety program, and the program for surveillance of all plant activities related to those areas.

Mr. Nichols apparently was aware of the potential for and existence of contamination in the SX excavation pit. Mr. Nichols was frequently at the excavation site, and numerous SFC employees, as well as NRC inspector, stated that, from early on in the excavation project, there was yellow water in the pit, indicating the presence of some level of uranium contamination, although Mr. Nichols denied seeing yellow water prior to approximately August 22, 1990, when the walls were poured. In any event, Mr. Nichols had observed solidified uranium on the surface of the ground in the excavation area, had been made aware of low levels of contamination in the excavation from early on in the excavation project, and was told by Mr. Lacey on August 17 that there had been rumors of lab analyses of the water which indicated high readings of contamination.

Notwithstanding Mr. Nichols' responsibilities as described above, and notwithstanding his awareness of potential and actual contamination, Mr. Nichols, with at least careless disregard violated the provisions of 10 CFR 19.12 by failing to ensure that contractor personnel working in the SX excavation were provided with information regarding the contamination in the excavation and with radiological protection. In addition, Mr. Nichols, whose department informed the training department of contractors who were to receive training, admitted that he had seen contractor personnel around the SX excavation with only visitor badges, and did not question their being in the area without assurances that they had received the proper training.

Furthermore, Mr. Nichols failed to evaluate the contamination in the excavation, to adequately survey articles used at the excavation, and to obtain bioassays. Specifically, Mr. Nichols never instructed or ensured that his staff performed sampling of the water and soil in the excavation and report to SFC management any laboratory test results, even after he was aware of low levels of uranium-contaminated water in the excavation. Mr. Nichols' staff took only airborne samples on August 3 and 4, 1990, although workers continued to move dirt in the excavation throughout an extended time period, and Mr. Nichols admitted that, due to moisture in the soil, these airborne samples may not have been adequate. In addition, articles that had been contaminated in excess of the limits in the SFC license were released from the facility and found at the home of one of the contractor employees, and the NRC determined that the instrumentation used by SFC personnel to survey these materials was not adequate to satisfy license requirements. Although he was informed on August 18, 1990 that the contractor's concrete forms were too contaminated to release, Mr. Nichols took no action to determine the root cause of these elevated contamination survey results.

Moreover, bioassay samples were not obtained for some contract workers until August 22, 1990, and were not obtained at all for the remaining contract workers. In addition, although Mr. Nichols was informed by Mr. Lacey on August 17, 1990, about "rumors" of elevated uranium contamination readings at the excavation area, Mr. Nichols never contacted the Facility Laboratory or took any further action to determine the validity of this information.

Finally, Mr. Nichols was aware that the sandwells had been sampled for uranium contamination, and had made the decision to discontinue the sampling because he did not understand the data that was being collected. He also had apparently received a copy of the memorandum from the Manager, Process Laboratory, dated August 30, 1990, that referenced the sandwell data. Although Mr. Nichols was extensively questioned during early September 1990 by OI regarding the potential source of the contaminated water in the excavation, he never advised the NRC of the existence of the sandwell data prior to late February or March, 1991.

Accordingly, pursuant to sections 161c, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, 10 CFR 2.204 and 10 CFR Part 40, in order for the Commission to determine whether your license should be further modified, suspended or revoked, or other enforcement action taken to ensure compliance with NRC regulatory requirements, the Licensee is required to submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the date of this Order and Demand for Information, the following information, in writing and under oath or affirmation:

Sequoyah Fuels Corporation shall provide information to demonstrate why License No. SUB–1010 should not be modified (1) to prohibit Messers. Mestepey, Lacey, and Simeroth from serving in any capacity involving the performance or supervision of any NRC-regulated activities, and (2) to require 30 days prior notice to the NRC of reinvolvement of Mr. Nichols by SFC in any capacity in NRC-regulated activities.

Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, suite 400, Arlington, Texas 76011.

After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

Dated at Rockville, Maryland this 3d day of October 1991.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operational Support.

[FR Doc. 91–24611 Filed 10–10–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of OFI 41–44 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), this notice announces a proposed extension of four forms that collect information from the public. Executive Order 10450 requires that investigations be conducted on all persons entering the Federal service. OFI Form 41 is a voucher sent to former employers and/or supervisors for employment data and supervisory

information. The OFI Form 42 is a voucher form sent to references for personal information. The OFI Form 43 is a form sent to educational institutions for student record information, and the OFI Form 44 is a voucher sent to local law enforcement agencies in conducting OPM investigations as prescribed in section 3 (a) of Executive Order 10450. These checks are a part of the investigation conducted for determining suitability for Federal employment/security clearances. Each form takes approximately 5 minutes to complete. There will be approximately 1,898,400 forms completed annually for a total public burden of 158,200 hours. For copies of this proposal call C. Ronald Trueworthy, Agency Clearance Officer, on (703) 908–8550.

DATES: Comments on this proposal should be received by November 12, 1991.

ADDRESSES: Send or deliver comments to: Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Exeuctive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Peter Garcia, (202) 376–3800.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–24655 Filed 10–10–91; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

October 7, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("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:

Carrington Laboratories, Inc.
Common Stock, $.01 Par Value (File No. 7–7361)
Medeva Plc
American Depositary Shares (representing 10 ordinary shares, 10 pence Par Value) (File No. 7–7362)
Public Storage Properties XV, Inc.
Series A Common Stock, $.01 Par Value (File No. 7–7363)
Public Storage Properties XVII, Inc.
Series A Common Stock, $.01 Par Value (File No. 7–7364)
Tiphook Plc
American Depositary Shares (each representing three ordinary shares, 10 pence Par Value) (File No. 7–7365)
York International Corporation
Common Stock, $.005 Par Value (File No. 7–7366)
Smucker (J.M.) Company
Class B Common Shares (File No. 7–7367)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 29, 1991, 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, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–24540 Filed 10–10–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29787; File No. SR–NASD–91–48]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Listing Requirements for Index Warrants

October 7, 1991.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 19, 1991 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing amendments to Schedule D of the NASD By-Laws regarding listing requirements for index warrants.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 NASD is proposing to amend Schedule D of the NASD By-Laws to include qualification requirements for index warrants based on established foreign or domestic indexes, and to amend the Policy of the Board of Governors regarding Fair Dealing With Customers in article III, section 2 to the Rules of Fair Practice so that certain options requirements will also apply to index warrant products. The listing standards applicable to index warrants qualifying for inclusion in the Nasdaq/National Market System shall include public distribution of one million warrants; 400 public holders; aggregate market value of $4,000,000; issuers required to have assets in excess of $100,000,000; and term of index warrants for a period of one to five years.

Specific index warrants will conform to the qualifications standards of Schedule D and will be direct obligations of their issuer subject to cash-settlement in U.S. dollars either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of an index warrant structured as a "put" would receive payment in U.S. dollars to the extent that the index has declined below a pre-stated cash settlement value.

[1] The NASD submitted a letter to the Commission to clarify the proposed rule change by specifying that, in transactions with customers, members may effect index warrant transaction only with customers whose accounts are approved for options trading. See letter from Robert E. Aber, Vice President and Deputy General Counsel, NASD, to Thomas Gira, Branch Chief, SEC, dated September 24, 1991.

Conversely, holders of an index warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the index has increased above the pre-stated cash value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The NASD is also proposing to amend the Board of Governors Policy in article III, section 2 of the Rules of Fair Practice to require the use of certain options standards applicable to customers of index warrants and transactions in customer accounts. The amended policy applies options suitability, discretionary account and supervision standards to customers from appendix E to the Rules of Fair Practice and requires that index warrants be sold only to options-approved accounts. Section 19 of appendix E prohibits members from recommending transactions that are unsuitable for customers based upon the members' reasonable beliefs regarding customers' investment objectives, financial situations and needs and any other information known by the member. Section 18 of appendix E requires members to obtain written authorization from customers prior to exercising discretionary power over the accounts and also requires each transaction effected pursuant to the grant of discretionary power to be approved by the branch office manager or the Registered Options Principal. Additionally, section 20 of Appendix E requires members to develop and implement written procedures for the diligent supervision of all customer accounts, especially as the accounts relate to trading of options contracts. In its policy statement, the NASD is requiring members to apply these same standards and requirements to customers that wish to trade index warrant products in accounts that have been approved for options trading.

In addition, prior to the commencement of trading a particular index warrant, the Association will distribute a circular to the membership calling attention to specific risks associated with trading that particular index warrant.

Finally, with respect to warrants overlying foreign stock indexes, the NASD proposes to ensure that there are adequate mechanisms for sharing surveillance information between the NASD and the markets on which the securities underlying the foreign indexes are traded. Accordingly, prior to listing a warrant on an index of foreign securities, the NASD will undertake to establish an appropriate means to accomplish information sharing, such as entering into a surveillance sharing agreement with the relevant foreign self-regulatory organization.

The NASD believes that amending the qualifications requirements to add specific criteria for index warrants is appropriate to assure members that the NASD will be in a position to list specific index warrants. The Association believes that it would be advantageous for market makers and investors to be able to trade index warrants listed as Nasdaq/NMS securities as an effective means to hedge a portfolio of securities or to facilitate market timing transactions, e.g., quickly increasing or decreasing a position in the underlying index. Accordingly, the NASD believes that amending the qualifications requirements to enable listing of index warrants is appropriate at this time.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market." Listing index warrants in the Nasdaq market will facilitate members and investors desiring to trade index warrants in a dealer environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with 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 filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 1, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-24624 Filed 10-10-91; 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.

October 7, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("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:

He Ro Group Incorporated
Common Stock, $.01 Par Value (File No. 7-7368)

Redwood Empire Bancorp
Common Stock, No Par Value (File No. 7-7369)

United HealthCare Corporation
Common Stock, $.01 Par Value B (File No. 7-7370)

General Physics Corporation
Common Stock, $.25 Par Value (File No. 7-7371)

Public Storage Properties XV, Inc.

Common Stock, $.01 Par Value (File No. 7–7372)
Public Storage Properties XVII, Inc.
Common Stock, $.01 Par Value (File No. 7–7373)
Carrington Laboratories, Inc.
Common Stock, $.01 Par Value B (File No. 7–7374)
Medeva Plc
Foreign American Depository Shares, 10 pence Par Value (File No. 7–7375)
Tiphook Plc
American Depository Shares (File No. 7–7376)
York International Corporation
Common Stock, $.005 Par Value (File No. 7–7377)
Property Trust of America
Shares of Beneficial Interest, $1 Par Value (File No. 7–7378)
Inefficient-Market Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–7379)
Biopharmaceutics, Inc.
Common Stock, $.001 Par Value (File No. 7–7380)
American Exploration Company
Common Stock, $.005 Par Value and Purchase Warrants $2.25 each (File No. 7–7381)
Provena Food, Inc.
Common Stock, No Par Value (File No. 7–7382)
Universal Matchbox Group
Common Stock, $0.10 Par Value B (File No. 7–7383)
Gemini II, Inc.
Capital Shares $1 Par Value (File No. 7–7384)
European Warrant Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–7385)

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 October 29, 1991, 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, 450 5th Street NW., 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.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–24541 Filed 10–10–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25391]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 4, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 28, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates, et al. (70–7630)

Ocean State Power I ("OSP I") and Ocean State Power II ("OSP II"), both located at One Bowdoin Square, Boston, Massachusetts 02114, general partnerships and subsidiaries of EUA Ocean State Corporation ("EUA–OS"), Washington Highway, Lincoln, Rhode Island 02865, and Narragansett Energy Resources Company ("NERC"), 280 Melrose Street, Providence, Rhode Island 02901; and their respective indirect and direct parent companies, Eastern Utilities Associates ("EUA"), One Liberty Square, Boston, Massachusetts 02107, and New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, registered holding companies; EUA Service Corporation, 750 West Center Street, West Bridgewater, Massachusetts 02379, and New England Power Service Company, 25 Research Drive, Westborough, Massachusetts 01582, service company subsidiaries of EUA and NEES, respectively; Blackstone Valley Electric Company, Washington Highway, Lincoln, Rhode Island 02865, a public-utility subsidiary of EUA; TransCanada PipeLines Limited, 54 Commerce Court West, Toronto, Ontario M5L 1C2, Canada, and its indirect subsidiary, TCPL Power Limited, 123 Dyer Street, Providence, Rhode Island 02903, an affiliate of OSP I and OSP II, have filed a post-effective amendment under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder to their application-declaration filed under sections 6(a), 7, 9(a) (1) and (2), 10, 12(b), 12(c), 12(d), 12(f), 13(b) and 13(e) of the Act and rules 43, 44, 45, 50(a)(5), 90, 91 and 95 and thereunder.

By orders dated October 13, 1988 (HCAR No. 24727), December 23, 1988 (HCAR No. 24790), September 28, 1989 (HCAR No. 24960), December 18, 1990 (HCAR No. 25217) and May 30, 1991 (HCAR No. 25321), the Commission authorized, among other things, certain transactions with respect to Unit I and Unit II of the Ocean State Power Project ("Project"), a combined cycle electric generating facility located in Rhode Island, which included: (1) The formation by EUA and NEES of new subsidiary companies, EUA–OS and NERC, respectively; (2) the respective acquisition by EUA–OS and NERC of 29.9% and 20% equity interests, respectively, in each of the two partnerships, OSP I and OSP II, formed to own and operate Unit I and Unit II of the Project, respectively, for aggregate investment amounts of $71.27 million and $50 million; (3) the funding by EUA and NEES of EUA–OS and NERC to enable them to meet their obligations to make capital contributions to OSP I and OSP II in the same aggregate investment amounts; and (4) the financing of 100% of the construction of each of the units through non-recourse loans under separate general construction loan credit facilities (herein, "Unit II Credit Facility"). In connection with the construction and term financing for Unit II, OSP II entered into the Unit II Credit Facility with certain banks ("Banks") to obtain up to $222.2 million of borrowings and agreed to pay certain fees to the Banks.

OSP II now proposes to pay the Banks an additional fee in the amount of $150,000 in consideration for the Banks' agreement to enter into Amendment No. 1 to the Unit II Credit Facility ("Amendment"). The Unit II Credit Facility provided for a $222.2 million commitment by the Banks to make construction loans to OSP II and for the conversion of a portion of those loans to long-term loans upon the satisfaction of

certain conditions, including the achievement of commercial operation of Unit II ("Commercial Date"), which occurred on October 1, 1991. Under the Amendment, OSP II will draw down as a final construction loan a portion of the remaining unused commitment in the amount of approximately $24.1 million, of which approximately $17.1 million will be deposited in a Construction Account, as defined in the Amendment, and used to pay construction costs payable after the Commercial Date. The remaining amount of approximately $7 million will be reallocated to fund working capital requirements, during the period between the Commercial Date and the time that OSP II begins to receive payments under its power purchase agreements.

Central and South West Corporation (70–7758)

Central and South West Corporation ("CSW"), a registered holding company, and its wholly owned nonutility subsidiary company, CSW Energy, Inc. ("Energy"), both of 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202, have filed a post-effective amendment under sections 9(a) and 10 to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 43, 45, 51, 86, 87, 90 and 91 thereunder.

By order dated September 28, 1990 (HCAR No. 25162), CSW and Energy were authorized, among other things, to: (1) Spend an aggregate of $75 million to conduct preliminary studies of, investigate, research, develop, agree to construct (such construction subject to further Commission authorization), and, except with respect to independent power projects ("IPP's"), consult with respect to qualifying cogeneration facilities, small power production facilities and IPP's; and (2) finance such activities through capital contributions, open account advances and loans.

CSW and Energy now request authorization to have Energy provide consulting services with respect to IPP's. Energy states that such consulting would involve the following: (1) Discussion with and advice to utilities and other persons with respect to their power needs; (2) advice to utilities and other persons with respect to the structuring of IPP's; (3) provision of engineering services to utilities and other persons and advice with respect to engineering services provided by others; and (4) either directly or through subsidiaries, services for and under the direction and management of the owners or operators of IPP's. Such services to the owners or operators of IPPs include preoperational services and certain support services.

Preoperational services may include: (a) Preparation of schedules and plans for mobilizing and staffing IPP's; (b) provision of operating support to the construction contractors of IPP's during startup; (c) scheduling and coordinating initial training programs for operation of IPP's; (d) establishment of cost and budget accounting systems for IPP's; and (e) other services consistent with and necessary to implement the foregoing.

Support services may include: (a) Support services to construction contractors for IPP's during startup; (b) support services in the creation of punchlists; (c) monitoring of performance tests; (d) performance on behalf of owners and operators of IPP's, all other support services for such IPP's (including the supply of all services, goods and materials required to operate and maintain such IPP's in accordance with agreed terms); and (e) other services consistent with and necessary to implement the foregoing.

Additional services include: (a) Assistance in complying with all terms, conditions and requirements of all applicable Federal, State and local laws and regulations in connection with the operation and maintenance of an IPP; and (b) assistance in securing all necessary governmental approvals (and renewals of the same) relating to such IPP's.

West Penn Power Company (70–7887)

West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, an electric public-utility subsidiary company of Allegheny Power System, Inc., a registered holding company, has filed an application under section 6(b) of the Act and rule 50(a)(5) thereunder.

West Penn proposes to issue short-term notes ("Notes") to banks and to issue and sell commercial paper ("Commercial Paper") in the form of promissory notes to dealers in commercial paper, in an aggregate principal amount not to exceed $147 million outstanding at any one time. It is proposed that the Notes and Commercial Paper will be issued from time-to-time prior to December 31, 1993, provided that no such Notes or Commercial Paper will mature after June 30, 1994.

Each Note will be dated as of the date of the borrowing which it evidences; will mature not more than 270 days after the date of issuance or renewal thereof; will bear interest at a mutually agreed upon rate, provided that the effective rate for any 30-day period on an annualized basis will not exceed prime plus two percentage points; and may or may not have prepayment privileges. West Penn and its affiliates have agreed to pay for lines of credit with a group of banks ("Banks") by paying an annual cash fee no greater than 15 basis points on all or the balance of the lines of credit.

The Commercial Paper will not be prepayable and will have varying maturities, with no maturity more than 270 days after the date of issue. The Commercial Paper will be sold directly to dealers in commercial paper at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. The dealers may reoffer the Commercial Paper at a discount rate of up to ⅛ of 1% per annum less than the discount rate to West Penn. West Penn intends to issue the Commercial Paper only if the interest cost thereof is reasonably believed by West Penn to be equal to or less than the effective interest cost at which it could borrow the same amount from the Banks at that time, or it cannot at that time borrow the same amount for the same period of time from the Banks.

West Penn requests that the proposed issuance and sale of the Commercial Paper be excepted from the competitive bidding requirements of rule 50 pursuant to rule 50(a)(5).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–24627 Filed 10–10–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18345; File No. 812–7751]

Sun Life Assurance Company of Canada (U.S.), et al.

October 4, 1991

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Sun Life Assurance Company of Canada (U.S.) (the "Company"), Sun Life of Canada (U.S.) Variable Account F (the "Variable Account"), and Clarendon Insurance Agency, Inc. ("Clarendon").

RELEVANT 1940 ACT SECTIONS: Exemptions requested pursuant to section 6(c) from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of mortality and expense risk charges from the assets of the Variable Account under the variable portion of certain combination fixed/variable annuity contracts (the "Contracts").

FILING DATES: The Application was filed on July 10, 1991, and amended on September 20, 1991 and October 4, 1991.

HEARING OF NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on October 29, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Company and the Variable Account, c/o Bonnie S. Angus, One Sun Life Executive Park, Wellesley Hills, Massachusetts 02181, and Clarendon, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Attorney, at (202) 272–3045, or Heidi Stam, Assistant Chief, at (202) 272–2060, Office of Insurance Products and Legal Compliance, (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance corporation organized under the laws of Delaware on January 12, 1970. The Company is authorized to do business in 48 States, the District of Columbia and Puerto Rico, and has applied for authorization to do business in Vermont. The Company issues life insurance policies and individual and group annuity contracts.

2. The Variable Account is a separate account of the Company established for the purpose of funding the variable portion of the Contracts and other annuity contracts. The Variable Account is registered under the 1940 Act as a unit investment trust. The assets of the Variable Account are divided into Sub-Accounts, each of which invests exclusively in shares of one of eight designated series of MFS/Sun Life Series Trust (the "Series Fund"), an open-end management investment company registered under the 1940 Act. Massachusetts Financial Services Company ("MFS"), a wholly-owned subsidiary of the Company, is the investment adviser to the Series Fund.

3. The Contracts will be distributed by Clarendon, a wholly-owned subsidiary of MFS, and sold by insurance agents licensed in those States where the Contracts may be lawfully sold. Such agents will be registered representatives of broker-dealers registered under the Securities Exchange Act of 1934 who are members of the National Association of Securities Dealers, Inc.

4. The assets of the Variable Account will be derived from the Contracts and from other contracts participating in the investment performance of the Variable Account. The Contracts are flexible payment deferred combination fixed/variable group annuities which provide that annuity payments will begin on a selected future date.

5. The Company will establish a participant's account for each participant under a Contract. Net purchase payments will be credited to a participant's account in the form of variable accumulation units of one or more of the Sub-Accounts and/or allocated to the Company's general account (the "Fixed Account"). The value of the variable portion of a participant's account will vary with the investment performance of the respective Sub-Account(s).

6. No sales charges are deducted from purchase payments. However, a withdrawal charge (contingent deferred sales charge), when applicable, will be assessed in the event of a full or partial withdrawal of a participant's account value, and a market value adjustment, when applicable, will be applied to withdrawals from the Fixed Account. All withdrawals will be processed on a first-in, first-out basis. All purchase payments held by the Company for seven complete account years or more and 10% of those purchase payments held for less than seven account years may be withdrawn in each account year on a non-cumulative basis without the imposition of a withdrawal charge. Also, no withdrawal charge is assessed upon annuitization, upon payment of the death benefit, or upon transfer of participant's account value. However, the Company reserves the right to charge up to $15.00 for each transfer. All other full or partial withdrawals are subject to a withdrawal charge which varies according to the number of complete account years between the account year in which a purchase payment was credited to a participant's account and the account year in which it is withdrawn, in accordance with the following table:

Number of complete account years	Withdrawal charge
0–1	6%
2–3	5%
4–5	4%
6	3%
7 or more	0%

Applicants represent that the withdrawal charges assessed against a participant's account will not exceed 6% of purchase payments. The Company may modify the withdrawal charges; however, such modification shall apply only to participant's accounts established after the effective date of such modification. In addition, the Company will not increase the withdrawal charges unless it has concluded that there is a reasonable likelihood that the Variable Account's distribution financing arrangements will benefit the Variable Account and the participants. Upon such increase, the Company will maintain and make available to the Commission upon request a memorandum setting forth the basis for this conclusion. Applicants propose to rely on Rule 6c-8 for the exemptive relief necessary to impose the withdrawal charge, including any modifications thereto.

7. On each account anniversary and on surrender of a participant's account for full value on other than the account anniversary, the Company deducts from each participant's account an account administration fee ("Account Fee") as partial compensation for expenses relating to the issuance and maintenance of the Contract, related certificates, and the participant's account. The amount of the fee is equal to the lesser of $30.00 or 2% of the participant's account value for the first five account years. Thereafter the fee may be changed annually but it may never exceed $50.00. In addition, the Company makes a deduction from the Variable Account at the end of each valuation period (during both the accumulation period and after annuity payments commence) at an effective annual rate of 0.15% to reimburse the Company for those administrative expenses attributable to the Contracts, related certificates, the participant's accounts and the Variable Account which exceed the revenues received from the Account Fee. These charges are

designed not to exceed the Company's current estimates of the administrative costs attributable to the Contracts and related certificates over their expected lifetimes and are not designed or expected to generate a profit. The Company may modify the Account Fee and the administrative expense charge, provided that such modification shall apply only with respect to participant's accounts established after the effective date of such modification. Applicants propose to rely on rule 26a-1 under the 1940 Act for the exemptive relief necessary to charge such fees, including any modifications thereto.

8. The Company assumes certain mortality and expense risks under the Contracts. For assuming these risks, the Company will make a deduction from the Variable Account at the end of each valuation period at an effective annual rate of 1.25%. The Company does not believe it feasible to identify precisely that portion of the deduction applicable to either the mortality risk or expense risk, but estimates that a reasonable allocation would be 0.80% for the assumption of the mortality risk, and 0.45% for the assumption of the administrative expense risk.

9. Applicants state that the mortality risk arises from the contractual obligation under some annuity options available under the Contract to continue to make annuity payments to each annuitant regardless of how long the annuitant lives and regardless of how long all annuitants as a group live. The Company assumes this risk by virtue of the annuity rates incorporated into the Contracts which cannot be changed except with respect to participant's accounts established after the effective date of such change. Applicants understand that if such charges are increased, further exemptive relief will be required, either pursuant to another application for exemptive relief or such exemptive rules as may be in effect at such time.

10. The expense risk assumed by the Company is the risk that the administrative charges assessed under the Contracts may be insufficient to cover the actual administrative expenses incurred by the Company.

11. If the mortality and expense risk charges are insufficient to cover the actual costs of the mortality and expense risk undertaking, the Company will bear the loss. Conversely, if the deduction proves more than sufficient, any excess will be profit to the Company and would be available for any proper corporate purpose including the payment of distribution expenses.

12. Applicants submit that the mortality and expense risk charges are within the range of industry practice for comparable variable annuity products. This representation is based on the Company's analysis of publicly available information about comparable annuity products, in light of such products' particular annuity features, taking into consideration such factors as annuity rate guarantees, current charge levels, charge guarantees, and sales loads. The Company undertakes to maintain and make available to the Commission upon request a memorandum incorporating its analysis, including its methodology and results.

13. The Company has concluded that there is a reasonable likelihood that the Variable Account's distribution financing arrangements will benefit the Variable Account and participants. The Company will maintain and make available to the Commission upon request a memorandum setting forth the basis for this conclusion.

14. Applicants represent that the Variable Account will invest only in open-end management investment companies that have undertaken to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve any plan adopted under rule 12b-1 under the 1940 Act to finance distribution expenses. The Series Fund has entered into such an undertaking.

15. Applicants assert that for the reasons and upon the facts set forth above, the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-24625 Filed 10-10-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18344; File No. 812-7750]

Sun Life Insurance and Annuity Company of New York, et al.

October 4, 1991.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Sun Life Insurance and Annuity Company of New York (the "Company"), Sun Life (N.Y.) Variable Account C (the "Variable Account"), and Clarendon Insurance Agency, Inc. ("Clarendon").

RELEVANT 1940 ACT SECTIONS: Exemptions requested pursuant to section 6(c) from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of mortality and expense risk charges from the assets of the Variable Account under the variable portion of certain combination fixed/variable annuity contracts (the "Contracts").

FILING DATE: The Application was filed on July 10, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on October 29, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Company and the Variable Account, c/o Bonnie S. Angus, One Sun Life Executive Park, Wellesley Hills, Massachusetts 02181. Clarendon, 500 Boylston Street, Boston, Massachusetts 02116.

FOF FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Attorney, at (202) 272-3045, or Heidi Stam, Assistant Chief, at (202) 272-2060, Office of Insurance Products and Legal Compliance, (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance corporation organized under the laws of New York on May 25, 1983. The Company issues group life and long term disability insurance policies and individual fixed and variable annuities only in the state of New York.

2. The Variable Account is a separate account of the Company established for the purpose of funding the variable portion of the Contracts and other

annuity contracts. The Variable Account is registered under the 1940 Act as a unit investment trust. The assets of the Variable Account are divided into Sub-Accounts, each of which invests exclusively in shares of one of seven designated series of MFS/Sun Life Series Trust (the "Series Fund"), an open-end management investment company registered under the 1940 Act. Massachusetts Financial Services Company ("MFS"), a wholly-owned subsidiary of the Company's parent, is the investment adviser to the Series Fund.

3. The Contracts will be distributed by Clarendon, a wholly-owned subsidiary of MFS, and sold by insurance agents licensed in the state of New York. Such agents will be registered representatives of broker-dealers registered under the Securities Exchange Act of 1934 who are members of the National Association of Securities Dealers, Inc.

4. The assets of the Variable Account will be derived from the Contracts and from other contracts participating in the investment performance of the Variable Account. The Contracts are individual single-payment combination fixed/variable group annuity contracts which provide that annuity payments will begin on a selected future date.

5. The Company will establish an accumulation account for each Contract. Only one purchase payment may be made per Contract. The net purchase payment will be credited to the Contract's accumulation account in the form of variable accumulation units of one or more of the Sub-Accounts and/or allocated to the Company's general account (the "Fixed Account"). The value of the variable portion of a Contract's accumulation account will vary with the investment performance of the respective Sub-Account(s).

6. No sales charge is deducted from the purchase payment. However, a withdrawal charge (contingent deferred sales charge), when applicable, will be assessed in the event of a full or partial withdrawal, and a market value adjustment, when applicable, will be applied to withdrawals from the Fixed Account. During the first seven contract years, 10% of the net purchase payment may be withdrawn in each contract year on a non-cumulative basis without the imposition of the withdrawal charge. Amounts withdrawn in excess of such amount (adjusted by any applicable market value adjustment) are subject to the withdrawal charge assessed against such excess amount as follows:

Contract Year	Withdrawal Charge
1	6%
2	6%
3	5%
4	5%
5	4%
6	4%
7	3%
thereafter	0%

The withdrawal charge is not imposed after the end of the seventh contract year, nor is the withdrawal charge imposed upon payment of the death benefit or upon annuitization. Applicants propose to rely on rule 6c–8 for the exemptive relief necessary to impose the withdrawal charge.

7. On each contract anniversary and on surrender of the Contract for full value on other than the contract anniversary, the Company deducts an account administration fee ("Account Fee") as partial compensation for administrative expenses relating to the issuance and maintenance of the Contract. The Account Fee is equal to the lesser of $30.00 or 2% of the value of the Contract's accumulation account. The Company makes a deduction from the Variable Account at the end of each valuation period (during both the accumulation period and after annuity payments commence) at an effective annual rate of 0.15% to reimburse the Company for those administrative expenses attributable to the Contracts and the Variable Account which exceed the revenues received from the Account Fee. These charges are designed not to exceed the Company's current estimates of the administrative costs attributable to the Contracts over their expected lifetimes and are not designed or expected to generate a profit. Applicants propose to rely on rule 26a–1 under the 1940 Act for the exemptive relief necessary to charge these fees.

8. The Company assumes certain mortality and expense risks under the Contracts. For assuming these risks, the Company will make a deduction from the Variable Account at the end of each valuation period at an effective annual rate of 1.25%. The Company does not believe it feasible to identify precisely the portion of the deduction applicable to either the mortality risk or expense risk, but estimates that a reasonable allocation would be 0.80% for the assumption of the mortality risk, and 0.45% for the assumption of the expense risk.

9. Applicants submit that the mortality risk arises from the contractual obligation under some annuity options available under the Contract for the Company to continue to make annuity payments to each annuitant regardless of how long the annuitant lives and regardless of how long all annuitants as a group live. The Company assumes this risk by virtue of annuity rates incorporated into the Contracts that cannot be changed.

10. The expense risk assumed by the Company is the risk that the administrative charges assessed under the Contracts may be insufficient to cover the actual administrative expenses incurred by the Company.

11. If the mortality and expense risk charges are insufficient to cover the actual costs of the mortality and expense risk undertaking, the Company will bear the loss. Conversely, if the deduction proves more than sufficient, any excess will be profit to the Company and would be available for any proper corporate purpose including the payment of distribution expenses.

12. Applicants submit that the mortality and expense risk charges are within the range of industry practice for comparable variable annuity products. This representation is based on the Company's analysis of publicly available information about comparable annuity products, in light of such products' particular annuity features, taking into consideration such factors as annuity rate guarantees, current charge levels, charge guarantees, and sales loads. The Company undertakes to maintain and make available to the Commission upon request a memorandum incorporating its analysis, including its methodology and results.

13. The Company has concluded that there is a reasonable likelihood that the Variable Account's distribution financing arrangements will benefit the Variable Account and Contract owners. The Company will maintain and make available to the Commission upon request a memorandum setting forth the basis for this conclusion.

14. Applicants represent that the Variable Account will invest only in open-end management investment companies that have undertaken to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve any plan adopted pursuant to rule 12b–1 under the 1940 Act to finance distribution expenses. The Series Fund has entered into such an undertaking.

15. Applicants assert that for the reasons and upon the facts set forth above, the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes

fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-24626 Filed 10-10-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1494]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea and Associated Bodies, Working Group on Ship Design and Equipment, and Working Group on Stability and Load Lines and on Fishing Vessels Safety; Meetings

The Working Group on Ship Design and Equipment and the Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct open meetings on October 30, 1991 at 9:30 a.m. and 1 p.m., respectively, in room 2415 at Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC. The purpose of these Working Group meetings is to discuss the preparations for the 35th Session of the International Maritime Organization (IMO) Subcommittee on Ship Design and Equipment (DE), which is scheduled for March 23 to 27, 1992, and the 36th Session of the IMO Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF), which is scheduled for February 3 to 7, 1992.

Items of discussion at the DE Working Group meeting will include the following: Materials other than steel for pipes; underpressure in cargo oil tanks due to oil outflow after damage; revision of the Code of Safety for Dynamically Supported Craft; bilge de-watering requirements in open-top container ships; improved standards for bulk carriers; review of existing ships' standards; coating requirements for ballast tanks; and requirements for access openings in double hull tankers.

Items of discussion at the SLF Working Group meeting will include the following: Subdivision and damage stability of dry cargo ships; the new Code of Intact Stability; subdivision and damage stability standards of passenger ships; future revisions to the 1966 Load Line Convention; stability aspects of open-top container ships; double hull tanker stability; and the Work Program of SLF 36.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information on the DE Working Group meeting, contact Captain T.E. Thompson at (202) 267-2967; and for further information on the SLF Working Group meeting, contact Mr. H.P. Cojeen or Mr. W.M. Hayden at (202) 267-2988; U.S. Coast Guard Headquarters (G-MTH), 2100 Second Street, SW., Washington, DC 20593-0001.

Dated: October 2, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91-24587 Filed 10-10-91; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 4, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46352.

Date filed: October 2, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 30, 1991.

Description

Third Amendment to Application of Air Aruba, N.V., pursuant to section 402 of the Act and subpart Q of the Regulations, requests amendment of its foreign air carrier permit to serve the points New York/Newark and Miami on a coterminalized basis.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-24654 Filed 10-10-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Proposed Advisory Circular 25-XX; Transport Category Airplanes Modified for Cargo Service

ACTION: Notice of availability of proposed Advisory Circular 25-XX and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to transport category airplanes modified for cargo service. Guidance information is provided in that AC for showing compliance with the regulations pertaining to transport category passenger airplanes converted for use in all-cargo or combination passenger/cargo (combi) service and the relationship of those regulations to the requirements of parts 121 and 135 of the FAR. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before February 10, 1992.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards, Staff ANM-110, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (206) 227-2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under "FOR FURTHER INFORMATION CONTACT." Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they desire. Commenters should identify AC 25.XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

Although many transport category airplanes currently used in an all-cargo role were manufactured specifically for that purpose, a significant number were manufactured as passenger-carrying airplanes and later converted by persons other than the original manufacturer for all-cargo service.

These converted airplanes range in size from the smaller business jets to very large airplanes, such as Boeing 747's.

Unlike most AC's, this AC is not intended to provide an acceptable means of compliance with certain standards. The primary purpose of this AC is to simply acquaint the readers with the standards that are applicable when the airplanes are converted to the all-cargo role.

Issued in Renton, Washington, on October 3 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service, ANM-100.

[FR Doc. 91-24571 Filed 10-10-91; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 91-25-IP-No. 2]

Navistar International and Mack Trucks, Inc.; Grant of Petitions for Determination of Inconsequential Noncompliance

This notice grants the petitions by Navistar International (Navistar) of Fort Wayne, Indiana, and Mack Trucks, Inc. (Mack) of Allentown, Pennsylvania to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (the Act) (15 U.S.C. 1381 *et seq.*) for noncompliances with 49 CFR 571.106, Federal Motor Vehicle Safety Standard No. 106, "Brake Hoses." The basis of the grants is that the noncompliances are inconsequential as they relate to motor vehicle safety.

Notice of receipt of the petitions was published on June 13, 1991, and an opportunity afforded for comment (55 FR 27288).

Paragraph S7.3.7 of Standard No. 106 requires that, except for hose reinforced by wire, an air brake hose shall withstand a tensile force of 8 pounds per inch of length before adjacent layers separate. A routine compliance test by the National Highway Traffic Safety Administration discovered that certain air brake hoses (Weatherhead H33806 and H33808) manufactured by the Dana Corporation failed the adhesion requirement of Standard No. 106.

Upon finding the failure, NHTSA opened a noncompliance investigation, file NCI 3166. As a result, Dana agreed to conduct a notification and remedy campaign. The recall campaign number is 90E-045. Both Navistar trucks and Mack trucks are equipped with these hoses and each petitioned the agency in response to the notification issued by Dana.

Navistar Petition

Navistar reported that 147,612 vehicles built between January 4, 1988, and June 29, 1990, could be equipped with the noncompliant hoses. The air brakes hoses on these vehicles may not comply with the adhesion strength requirement of Standard No. 106.

In supporting its petition, Navistar included the following assertions:

The eight pound adhesion test is directly derived from SAE standards developed in the 1960s. This test provision was a reflection of concern that brake hoses experiencing an adhesion problem under a vacuum condition could present a safety problem. No air brake hose in Navistar air brake systems is subjected to vacuum.

Navistar questioned the possibility that an air brake hose assembly could experience a sudden and unexpected failure in actual vehicle service due to lower than required layer adhesion. It is not aware of anyone having been able to demonstrate the failure mode caused by this condition. All Navistar hose assemblies have crimped-on end fittings that capture the layers of hose. As assembled, this negates the need for adhesion as a performance requirement once the hose is made into an assembly and used in a typical air brake system. Navistar projects no reduction in life expectancy resulting from low layer adhesion as compared to an assembly containing hose meeting the specification.

An additional factor that Navistar believes should be considered is the air brake system design. All Navistar trucks, truck-tractors and buses are manufactured with dual or split braking systems which provide emergency braking capability should failure of a component occur in the service brake system. The concept is similar to that used in all passenger cars. Air brake systems have gone one step further, however, by providing an additional backup emergency feature, that being automatic application of the parking system (spring brakes) in the event all service and emergency reserve air pressure is depleted.

To demonstrate the effect of a hose failure in a worst case situation, Navistar conducted a series of stopping tests. A short wheelbase single drive axle tractor with large steer axle brakes was used in the bobtail (empty) condition for the evaluation. This vehicle represents the least stable configuration found on the road today. The road surface was wet asphalt and stops were conducted at speeds varying from 20 to 50 mph. The right steer axle brake hose was selected to induce conditions which ranged from a small rupture to complete venting to atmosphere. The tractor was brought to a safe controlled stop within a twelve foot lane under all of these test conditions by means of the rear axle section of the dual brake system. Air pressure loss in the steer axle circuit was indicated by the air gauge, audible warning alarm and visual light.

Because of the installation procedures, typical in the industry, the brake hoses are painted during the painting of the vehicle chassis. This, along with weathering and the effects of road contamination, makes it virtually impossible to identify the date codes on the hoses. As a result, the practical alternative is to change approximately 980,000 Weatherhead hoses. This would involve 865,000 hose assemblies that are in compliance with Standard 106. Making the changes would disrupt many hose connections in a vehicle brake system, in excess of 85 percent of which would be unnecessary if the date codes were discernable.

Also, to correct this condition would place an undue burden on owners through disruption of commerce. Navistar estimates a minimum of four hours road time loss per vehicle to inspect and replace the hoses. Navistar asserts that the time and money lost to correct this condition, combined with the risk of tampering with a satisfactorily performing system, far outweighs any possible benefit this action would provide.

Mack Petition

Mack determined that 65,000 of its vehicles manufactured between January 15, 1988, and March 25, 1991, may be equipped with noncompliant air brake hose assemblies manufactured by Dana. It supports its petition with the following:

Because the air brake hoses in question have only been used as the trailer service/emergency hose assemblies connecting the tractor to the trailer and as jumper hoses connecting frame mounted brake valves to axle mounted tees or quick release valves and because its research has determined that none of the suspect air brake hoses have failed in service due to low adhesion, the hoses will not fail in any way while performing as designed.

Mack agreed with the Navistar assertion that the adhesion requirement more appropriately applies to hoses used in a vacuum application. However, the hoses on the Mack trucks are used in

a pressure application. Therefore, Mack does not believe that the noncompliance with the adhesion requirements is consequential to safety in this case.

Mack holds the position that the condition of low adhesion resulting in buildup of air between plies, which can cause inward ballooning of the hose, can only occur if there is a pressure differential across the inner tube, *i.e.*, if the pressure on the outside of the tube is higher than that on the inside. Mack believes that this condition is feasible in a vacuum application where the inside of the tube is normally at a pressure below atmospheric. However, it does not believe it is feasible in the pressure application where the subject hoses exist.

The noncompliant hoses were subjected to internal pressures up to 120 psi above atmospheric. Under this condition, Mack envisioned two scenarios as to how a higher pressure can exist on the outside of the inner tube.

The first scenario requires that a path for air exist between the tube and the tube support, the plies at the cut end of the hose inside the fitting must separate and allow air to leak between the plies (this leak area must extend beyond the fitting to the unsupported hose), and this air must remain between the plies while the inner tube is exhausted. Mack believes this scenario is rendered invalid by the design of the end fittings and hose. The end fittings used in its applications prevent this type of failure. In the trailer hose, layers are forced together by a compression sleeve in the end fitting which prevents air from traveling between layers to the hose beyond the end fitting. Inside the fitting, the inner tube is held by a tube support preventing it from collapsing. In the jumper line application, a crimped end fitting produces this same effect. Again, the inner tube is supported from collapse by a tube support inside the fitting. The hoses in question consist of an inner tube, a braided layer and a cover. Only the inner tube is designed to contain air; both the braided layer and cover are permeable. This precludes air from being trapped between the layers.

The second scenario requires the following sequence of events: First, a path for air through the inner tube must exist; second, a build up of pressure causing a separation of plies must occur; and third, this air must then remain between the plies while the inner tube is exhausted. Mack believes that this scenario is not valid in the case of the subject hose because it has no reason to suspect that the inner tube of the hoses in question is prone to leakage. In addition, the layers of the hose are not designed to trap air as previously noted.

To support its conclusions, Mack requested that Dana-Weatherhead conduct testing that required twenty sections of suspect hose (with the adhesion values shown) to be subjected to 150 psi and 300 psi for one hour (simulating a hose in the spring brake circuit). Both types of end fittings were tested. Upon inspection, neither of the two conditions described above was found.

There was one comment on the petition, submitted by Dana Corporation, the manufacturer of the noncompliant hoses. Dana presented this comment to the agency at a meeting held on July 17, 1991 (a tape of the meeting is available in the docket).

In notifying its customers of the noncompliance, Dana had stated that hose failure "because of * * * layer separation * * * could [cause] hose rupture [and] * * * leakage of air. If this occurs, automatic spring brakes would be applied, precluding any loss of braking capability." Mack and Navistar had taken issue with this characterization as it affected their respective air brake system designs. These manufacturers had asked Dana to conduct further testing to confirm that low adhesion had no effect upon vehicular braking performance. Dana conducted the tests and found that the results supported the premise of the petitions that low layer adhesion does not result in air leakage. The tests indicated that the braking systems of Mack and Navistar vehicles function properly, because the inner tube of the brake hoses are subject to pressure, and not vacuum, applications; therefore, the level of adhesion does not present any adverse consequence to safety. Further, a vacuum condition caused by leaking of air between the plies cannot occur because the assemblies into which the hoses are incorporated are designed so as to tightly secure the hose layers by a compression sleeve or crimping in the end fittings. Thus there can be no trapping of air between the layers.

The agency has considered the petitions, and Dana's comment. The tests conducted by Navistar and Dana make a convincing case that the low adhesion strength of the Dana hoses will have a negligible effect on the safety of the vehicles in which they are utilized by petitioners Mack and Navistar. To examine Mack's first scenario (that a path for air must exist between the tube and tube support) for air to enter and collect, Dana examined the integrity of the end fittings. It ran the Flexure Test of SAE J1402 on 10 of the noncompliant hoses. This test requires that the assembly be subjected to 1,000,000 cycles without failure. Nine of the assemblies passed, and the tenth failed at 989,421 cycles (for reasons unrelated to the noncompliance; in fact, this hose had the highest adhesion value of those tested). In addition, the Tensile Strength Test of Standard No. 106 (S7.3.10) was performed on five test samples. This requires that the hose withstand a pull of 325 pounds without separation from its end fittings. The test samples were tested successfully up to pulls ranging from 677 to 824 pounds.

Under the second scenario, a path for air must exist between the inside of the tube and the outer layers, pressure must build within to separate the layers, and the air must remain trapped within these layers. This will not occur in the Mack and Navistar assemblies. If there is any permeation of air from the inner tube, the hoses are designed to release it through the pin-pricked outer layer.

As Navistar noted in its petition, in order to demonstrate the effect of a hose failure in a worst-case situation, a series of stopping tests were conducted at its test track, with a vehicle representing the least stable configuration found on the roads today. The tractor was brought to a safe, controlled stop within a twelve foot lane under all of these conditions by means of the rear axle section of the dual brake system. In addition, Mack's research has determined that none of the suspect air brake hoses in service on Mack vehicles have failed due to low adhesion.

In consideration of the foregoing, it is hereby found that the petitioners have met their burden of persuasion, and that the noncompliance herein described is inconsequential as it related to motor vehicle safety. Accordingly, the petitions are granted.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued October 8, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91–24570 Filed 10–10–91; 8:45 am]

BILLING CODE 4910–59–M

National Driver Register Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. I), notice is hereby given of a meeting of the National Driver Register Advisory Committee to be held on October 25, 1991, in Washington, DC. The meeting will be held at the Department of Transportation, 400 7th Street, SW., from

9 a.m. to 4:30 p.m. in room 2201. Issues to be discussed are the National Driver Register Final Rule and implementation of the Problem Driver Pointer System (PDPS).

The meeting is open to the interested public, but may be limited in attendance to space available. Members of the public may present a written statement to the Committee at any time. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Additional information is available from the National Driver Register, room 6124, 400 Seventh Street, SW., Washington, DC 20590, telephone 202/366–4800.

Issued in Washington, DC on October 2, 1991.

Clayton E. Hatch,

Chief, National Driver Register.

[FR Doc. 91–24652 Filed 10–10–91; 8:45 am]

BILLING CODE 4910–59–M

Saint Lawrence Seaway Development Corp.

Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2 p.m., November 6, 1991, at the Corporation's Administration Headquarters, room 5424, 400 Seventh Street, SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business; and Closing Remarks.

Attendance at meeting is open to the interested public but is limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than, October 25, 1991, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202/366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on October 3, 1991.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 91–24511 Filed 10–10–91; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 4, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0045.

Form Number: ATF REC 5130 and ATF F 5130.10.

Type of Review: Extension.

Title: Letterhead Applications and Notices Filed by Brewers (ATF REC 5130/2; Brewer's Notice (ATF F 5130.10).

Description: The Internal Revenue Code requires brewers to file a notice of intent to operate a brewery. ATF Form 5130.10, Brewer's Notice, is similar to a permit to operate. Letterhead applications and notices are necessary to identify specific activities that brewers engage in, to insure the proposed activities will not jeopardize Federal revenues.

Respondents: Business or other for-profit; Small businesses or organizations.

Estimated Number of Responses: 250.

Estimated Burden Hours Per Respondent: 49 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,250 hours.

OMB Number: 1512–0390.

Form Number: ATF F 5020.29.

Type of Review: Extension.

Title: Request for Disposition of Offense.

Description: The information provided on this form determines whether an applicant is eligible to receive a Federal license or permit. If an applicant applies for a license or permit and has an arrest record charged with a violation of Federal or State law and there is no record present of the disposition of the case(s), the form is sent to the Custodian of records to ascertain the disposition of the case.

Respondents: State or local governments.

Estimated Number of Responses: 3,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,500 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–24531 Filed 10–10–91; 8:45 am]

BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

October 7, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0028.

Form Number: IRS Forms 940 and 940PR.

Type of Review: Revision.

Title: Employer's Annual Federal Unemployment (FUTA) Tax Return (940); Planilla Para La Declaracion Anual Del Patrono—La Contribucion Federal Para El Desempleo (FUTA) (940PR).

Description: Internal Revenue Code (IRC) section 3301 imposes a tax on employers based on the first $7,000 of taxable annual wages paid to each employee. IRS uses the information reported on Forms 940 and 940PR (Puerto Rico) to ensure that employers have reported and figured to correct FUTA wages and tax.

Respondents: Individuals or households, farms, businesses or other

for-profit, small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 4,385,470.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 12 hours, 55 minutes.

Learning about the form or the law: 12 minutes.

Preparing and sending the form to IRS: 25 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 59,326,659 hours.

OMB Number: 1545–1110.

Form Number: IRS Form 940–EZ.

Type of Review: Revision.

Title: Employer's Annual Federal Unemployment (FUTA) Tax Return.

Description: Form 940–EZ is a simplified form that most employers with uncomplicated tax situations (e.g., only pay unemployment contributions to one state and paying them on time) can use to pay their FUTA tax. Most small businesses and household employers will be able to use the form.

Respondents: Individuals or household, farms, businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 700,476.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 5 hours, 31 minutes.

Learning about the law or the form: 7 minutes.

Preparing and sending the form to IRS: 26 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 4,258,894 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–25532 Filed 10–10–91; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 198
Friday, October 11, 1991

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).

CIVIL RIGHTS COMMISSION

October 8, 1991.

DATE AND TIME: Friday, October 18, 1991, 9:00 a.m.–5:00 p.m.

PLACE: U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW., room 512, Washington, DC 20425.

STATUS: Open to the Public.

October 18, 1991

I. Approval of Agenda
II. Approval of Minutes of September Meeting
III. Announcements
IV. Appointments for the Iowa, Montana, Utah and Wyoming Advisory Committees
V. *A Broken Trust: The Hawaiians Homelands Program: Seventy Years of Failure of the Federal and State Governments to Protect the Civil Rights of Native Hawaiians*
VI. Commissioner Task Force Report
VII. Staff Director's Report
- Commission Response to June 27 letter from New York SAC regarding the census undercount

VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications, (202) 375–8312.

Emma Monroig,

Solicitor.

[FR Doc. 91–24704 Filed 10–9–91; 10:11 am]

BILLING CODE 6335–01–M

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

TIME AND DATE: October 20, 1991 from 4 p.m. to 8 p.m. and October 21, 1991 from 8 a.m. to 4:30 p.m.

PLACE: Herzfeld Auditorium, Hannan Hall, Catholic University of America, 4th Street and Michigan Avenue, N.E., Washington, D.C.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Board of Directors of the Commission on National and Community Service will meet on October 20–21, 1991 to discuss the Commission's goals and regulations to implement the National and Community Service Act of 1990, as well as the internal operating guidelines for the Commission. The public is invited to address the Board from 6:30 p.m. to 7:45 p.m. on October 20. Statements may not exceed three minutes, although supplementary written material may be provided. Please provide at least 28 copies of any such materials, either in advance or at the meeting. To request a time slot for the public comment period, please send a request in writing to the Commission on National and Community Service, P.O. Box 33119, Washington, D.C. 20033–0119, or by FAX by calling (202) 606–4928. Requests must be received no later than close of business, October 18. Any remaining time during the public comment period will be made available for other persons who submit a request to the Commission on October 20 from 4:00 p.m. to 6:00 p.m. at a place in Herzfeld Auditorium to be designated at the meeting.

CONTACT PERSON FOR MORE INFORMATION: Catherine Milton, Executive Director, Commission on National and Community Service, P.O. Box 33119, Washington, D.C. 20033–0119. (202) 606–4880.

Catherine Milton,

Executive Director, Commission on National and Community Service.

[FR Doc. 91–24792 Filed 10–9–91; 3:37 pm]

BILLING CODE 3195–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published September 23, 1991, 56 FR 47994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 22, 1991, 5:30 p.m.

PLACE: The Conference Center (Municipal Auditorium), 214 Park Avenue, S.W., Aiken, South Carolina. The entrance to the facility is located at 215 The Alley.

STATUS: Open.

CHANGE IN THE MEETING: The meeting date has been changed to October 31, 1991.

Note: Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Kenneth M. Pusateri or Carole J. Council, (202) 208–6400.

Dated: October 9, 1991.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 91–24716 Filed 10–9–91; 2:37 pm]

BILLING CODE 6820–KD–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on October 7, 1991, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for November 4, 1991, in Washington, D.C. The members will consider the October 4, 1991, Opinion and Recommended Decision Upon Further Reconsideration of the Postal Rate Commission in Docket No. R90–1.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Griesemer, Hall, Mackie, Nevin, Pace and Setrakian; Postmaster General Frank, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Hughes.

The Board determined that pursuant to section 552(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with proceedings under Chapter 36 of title 39, United State Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code.

The Board determined further that pursuant to section 552b(c)(10) of title 5 United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, this discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after an opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of title 5, United States Code; section 410(c)(4) of title 39,

United States Code; and section 7.3 (c) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 91–24790 Filed 10–9–91, 2:50 pm]

BILLING CODE 7710–12–Mu

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Amend Agenda

Prior to its October 7–8, 1991, meeting, the Board of Governors of the United States Postal Service gave due notice of its intention to hold the meeting, the notice and agenda for the meeting having been published in the **Federal Register** on September 25, 1991 (56 FR 48609). On October 7, while in closed session, the Board decided by unanimous vote to add to the open meeting agenda on October 8, 1991, consideration of an adjustment to reduced rate (non-profit) mail and that no earlier public announcement of the new item on the agenda was possible.

David F. Harris,

Secretary.

[FR Doc. 91–24789 Filed 10–9–91; 3:37 pm]

BILLING CODE 7710–12–M

federal register

Friday
October 11, 1991

Part II

Department of Education

34 CFR Part 400, et al.

State Vocational and Applied Technology Education Programs and National Discretionary Programs of Vocational Education; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 400, 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, and 428

RIN 1830-AA08

State Vocational and Applied Technology Education Programs and National Discretionary Programs of Vocational Education

AGENCY: Department of Education.

ACTION: Proposed rule.

SUMMARY: The Secretary proposes to issue regulations governing three State-administered programs and 23 discretionary programs authorized by the Carl D. Perkins Vocational and Applied Technology Education Act, as amended by Public Law 101-392, 104 Stat. 753 (1990). These regulations explain the types of activities that the Secretary may support under each program, and the basis on which the Secretary would make awards.

DATES: Comments must be received on or before December 10, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dr. Thomas L. Johns, Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education (Mary E. Switzer Building, room 4050), 400 Maryland Avenue, SW., Washington, DC 20202-7120. Telephone: (202) 732-2237. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

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: Sharon A. Jones, Chairperson, Vocational Education Regulations Taskforce, U.S. Department of Education (Mary E. Switzer Building, room 4050), 400 Maryland Avenue SW., Washington, DC 20202-7120. Telephone: (202) 732-2237.

SUPPLEMENTARY INFORMATION:

Background

The Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Act), which was enacted on September 25, 1990, amends the Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.* (1988)). Furthermore, technical amendments to the Act were made by Public Law 102-103, 105 Stat. 497 (1991). The Act authorizes Federal assistance for vocational education through Fiscal Year 1995.

The Act makes several significant amendments to redirect Federal assistance for vocational education in order to focus the Federal funds on improving vocational education and, in particular, on improving vocational education and services for members of special populations, including disabled and disadvantaged individuals. Under the Act, a State must make broad assurances that members of the special populations will be given equal access to vocational education. In addition, an eligible recipient under title II of the Act must make broad assurances that members of special populations will receive supplementary and other services necessary to succeed in vocational education, and must give priority for assistance to limited numbers of sites or programs that serve the highest concentrations of special population members.

Subject to these requirements for services to special population members and to certain requirements for the distribution of funds, the State and its eligible recipients share increased authority to direct the use of the funds awarded under the Act to improve their vocational education programs. In exchange for this increased flexibility, the Act imposes new requirements on both a State and its eligible recipients, making them accountable for improving vocational education. Specifically, a State is required to assess the quality of its vocational education program using measurable objective criteria during each State plan cycle. Furthermore, a State is required to develop and implement a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs. Using these statewide standards and measures, a recipient of funds under title II, part C of the Act must annually evaluate the effectiveness of its vocational education program and, in cases where substantial progress is not made toward meeting these standards and measures, implement a local program improvement plan, and, if that is not successful, a State and local joint plan for improvement.

The Secretary strongly supports increased flexibility for State and local recipients in exchange for increased accountability. "AMERICA 2000, An Educational Strategy," which was announced by the President on April 18, 1991, emphasizes the need for better and more accountable schools as well as the need to provide opportunities for adults to continue learning. Clearly, these needed improvements must be implemented by the States and local recipients. Also consistent with promoting accountability in education is the Secretary's goal to conduct evaluations of all Federal grant programs, to the extent resources permit. To conduct these evaluations, the Secretary will collect uniform data from grantees about project results.

Vocational education must play a crucial role in achieving the six national goals for educational improvement underlying the AMERICA 2000 strategy. Vocational education must be improved and made more accessible for special population members in order for this Nation to achieve the goal of making every adult American able to compete in the workplace (Goal 5). Moreover, improvements in vocational education can contribute to the Nation's achievement of a high school graduation rate of at least 90 percent by the year 2000 (Goal 1). Increased integration of vocational and academic education can contribute to the National goals of producing students that demonstrate competency in challenging subject matter, including English, mathematics, science, history, and geography (Goal 3) and students who lead the world in mathematics and science achievement (Goal 4).

The Act reflects many amendments that will assist States and local recipients in improving their vocational education programs. The regulations implementing the major changes to the provisions of the State program are discussed below in greater detail. In addition to the State Vocational and Applied Technology Education Programs, the Act authorizes several new categorical programs—some to be administered at the national level, others to be administered by the States.

Regulatory Development

Section 504(a) of the Act required the Secretary to convene regional meetings to obtain public involvement in the development of proposed regulations to implement the Act. Section 504(a) also required the Secretary to prepare draft regulations implementing the Act and to submit regulations on at least two key issues to a negotiated rulemaking process.

The Department of Education (Department) has taken numerous steps in addition to those required by section 504 of the Act to involve members of the public, especially representatives of special populations, in the development

of the proposed regulations. Section 504(b) of the Act required the Secretary to select at least four key issues concerning the implementation of the Act for discussion at regional meetings. In order to determine which issues would be most appropriate for discussion, the Department held meetings with representatives of national associations interested in vocational education, to seek advice on the regulatory issues to be presented at the regional meetings. The Department carefully considered the concerns raised by these groups in selecting the issues for the regional meetings.

In order to ensure the widest, most informed participation in the regional meetings, the Department asked State and national associations, State agencies, the State directors of vocational education, and the State directors of community colleges to nominate individuals to represent them at the regional meetings. Through this process, the Department received approximately 1200 names, 200 of which were of individuals involved with special populations, and invited each of these individuals to participate in the regional meetings. In addition, the Department published a notice of the regional meetings in the **Federal Register.**

From October 29, 1990, through November 15, 1990, the Department held regional meetings in four cities, at which the total attendance exceeded 800 participants. In the course of each meeting, the Department led discussions in four areas including a total of 21 regulatory issues. A summary of the issues discussed at the regional meetings and the information received on these issues is contained in appendix B of these proposed regulations.

After the regional meetings, the Department selected negotiators to participate in the negotiated rulemaking. Section 504(b) of the Act required that the Department select at least ten negotiators from participants in the regional meetings, representing several groups, including special populations. Section 504(b) of the Act also required the Department to ensure that the ten regions were represented at the negotiated rulemaking. Using forms completed by the participants at the regional meetings, the Department selected 13 negotiators from outside of the Department who met the statutory criteria and who, on the basis of the quality of their participation at the regional meetings, the Department believed would be informed and effective negotiators.

The Federal Mediation and Conciliation Service conducted the negotiated rulemaking on December 17–18, 1990. Fourteen negotiators, including the 13 negotiators chosen from outside the Department and a negotiator representing the Department, participated in the negotiated rulemaking. Negotiations were held on eight regulatory issues in three areas: (1) Requirements for the use of funds; (2) evaluations under standards and measures; and (3) services and activities for special populations. The individual regulatory issues negotiated and the decisions reached or other recommendations made by the negotiators are summarized in appendix C to these proposed regulations.

Both participants in the regional meetings and negotiators at the negotiated rulemaking have requested that the regulations accord a State and its eligible recipients the most flexibility possible to address particular State or local needs in vocational education. In response to these requests, the Secretary has used examples to show how a State or other recipient under the Act may comply with certain statutory requirements wherever possible in the proposed regulations. The examples are contained in either the text of the proposed regulations or in appendix A to the proposed regulations. While not foreclosing a State or local recipient's flexibility to develop other reasonable interpretations of the statutory requirements, the examples provide an interpretation that the Secretary considers to be in compliance with the Act. However, the Secretary urges all States and other recipients to strive for improvements in vocational education beyond the requirements of the Act, especially with respect to the requirements for participation of special population members.

Summary of Major Provisions

(1) *General Provisions (Part 400)* (a) *"Coherent sequence of courses."* Section 235(c)(1)(B) of the Act requires recipients to use funds for vocational education programs that integrate academic and vocational education in those programs through "coherent sequences of courses" so that students attain academic and occupational competencies. The term "coherent sequence of courses" is also used in the Act in sections 201(b)(2)(B) (State programs and leadership) and 240(11)(B) and (12)(A) (local application). Section 400.4(b) defines this term in order to clarify that under vocational and applied technology education programs, competency-based education, academic education, and adult training or retraining are permissible if they directly relate to, and lead to, both educational and occupational competencies.

The Secretary submitted the draft regulation defining "coherent sequence of courses" to negotiated rulemaking, and the negotiators agreed to the revised definition contained in § 400.4(b) that more closely tracks the statutory requirements. While the definition does not specifically include a single course, the Secretary agrees with the negotiators that the definition of "coherent sequence of courses" would include sequential units encompassed within a single adult retraining course that otherwise meets the requirements of the definition.

(b) *"Economically disadvantaged family or individual."* Section 521(16) of the Act defines "economically disadvantaged family or individual" to mean those families or individuals who are determined by the Secretary to be low-income under the latest available data from the Department of Commerce. Section 400.4(b) defines this term to include any family or individual who is eligible for certain benefits or services. The qualifying benefits or services and other factors included in § 400.4(b) are those to be used by a State board in determining the number of economically disadvantaged students for purposes of allocations under § 403.114(a). Although the regulations in §§ 400.4(b) and 403.114(a) include participation under the National School Lunch Act (42 U.S.C. 1751 *et seq.*), in accordance with the requirements of that program, the Secretary wishes to emphasize that participation under this program may not be used as a basis for identifying a particular family or individual as economically disadvantaged.

(c) *"Individuals with disabilities."* The Act uses the terms "individuals with disabilities" and "individuals with handicaps" interchangeably. For sake of clarity, the proposed regulations use only the term "individuals with disabilities," and § 400.4(b) defines this term.

(d) *Requirement concerning a State committee of practitioners.* Section 115 of the Act requires the State board to convene a State Committee of Practitioners (Committee) to review, comment on, and propose revisions to the State draft proposal for a statewide system of core standards and measures of performance (§ 400.7). Section 115 also requires that the Committee be appointed as prescribed by section 512(a) of the Act after consultation with certain groups (§ 400.6). Section 512(a) of the Act requires that the membership, which is selected from nominations solicited from other specific groups,

consist of representatives of seven groups, the majority of whom are representatives of local educational agencies. Section 400.6(c)(2) clarifies that a State may count school administrators, teachers, and members of local boards of education in determining whether a majority of the Committee membership represents local educational agencies. Section 512(a) of the Act further requires that a State submit for the Committee's review any proposed or final State rule or regulation under the Act. Section 400.7(b) clarifies that a State is required to submit for the Committee's review a State policy that would be binding on eligible recipients and that would have the same effect as a formal rule or regulation even if it would not be issued as one.

(e) *Reporting requirements.* One of AMERICA 2000's major themes is that communities and schools should be accountable for improving the effectiveness of the educational programs they administer. As a corollary responsibility, the Department is increasing the accountability of projects it funds thereby ensuring that demonstration and training projects better contribute to the improvement of education. This approach is designed to increase the number of instructional approaches, materials, and techniques for providing vocational education that are submitted to and approved by the Department's Program Effectiveness Panel and subsequently made available to practitioners. To implement this strategy, § 400.10 establishes a general reporting requirement that must be met by recipients of funds under the Vocational and Applied Technology Education Programs. Appendix D contains the specific information that the Secretary intends to require any grantee to submit in order to comply with the reporting requirement in § 400.10. The information in appendix D is provided with these proposed regulations to make applicants aware of the new standards for accountability that must be taken into account while the applicant is designing a project, developing an application, identifying staff, budgeting for activities, and planning evaluation activities. The Secretary is particularly interested in receiving comments on the type of information that will be collected under appendix D.

(2) *Indian Vocational Education Program (part 401).* The Indian Vocational Education Program provides financial assistance to projects that provide vocational education for the benefit of Indians. These regulations establish eligibility requirements (§ 401.2), selection criteria for evaluating applications (§ 401.21), and evaluation requirements (§ 401.31). These regulations also establish conditions under which projects may provide stipends for students who have acute economic needs that cannot be met under work-study programs (§ 401.3 (c) and (d)).

(3) *Native Hawaiian Vocational Education Program (part 402).* The Native Hawaiian Vocational Education Program provides financial assistance to projects that provide vocational education for the benefit of native Hawaiians. These regulations establish eligibility requirements (§ 402.2), and selection criteria for evaluating applications (§ 402.21).

(4) *State Vocational and Applied Technology Education Program (part 403)* (a) *State requirements.* In developing the State plan, the State must conduct an assessment of program quality, consult with the State council, and conduct public hearings (§ 403.31).

The State plan must contain a variety of new assurances and descriptions. For example, these include an assurance that the State board will annually assess, and include in the State plan a report on, the degree to which expenditures for guidance and counseling from the State's allotments under title II of the Act are not less than expenditures for guidance and counseling in fiscal year 1986 and assurances regarding the Business-Labor-Education Partnership for Training Program (§ 403.32(a)). The new required descriptions include, for example, a description of the procedures and results of the State assessment and of how funds will be used to reflect the needs identified in the assessment, and a description of how funds expended for occupationally specific training will be used for occupations in which job openings are projected or available, based on a labor market analysis (§ 403.32(b)). With respect to § 403.32(a)(5), the Secretary encourages States and local recipients to consult with representatives from private secondary schools regarding the participation in vocational education of members of special populations enrolled in private secondary schools.

Section 114 of the Act no longer explicitly requires a State to submit its State plan for review and comment to the State Job Training Coordinating Council under section 122 of the Job Training Partnerships Act (JTPA) (29 U.S.C. 1501 *et seq.*) and to the State council on vocational education at least sixty days before submission of the State plan to the Secretary. However, the Secretary believes that other provisions in the Act support the continuation of the requirement for review. Specifically, section 113(c) of the Act continues to require that State plan amendments be submitted for review and comment by the State Job Training Coordinating Council and the State council; section 112 (d)(2)(A) and (e) of the Act authorizes the State council to make recommendations on the State plan and to submit a statement to the Secretary reviewing and commenting on the State plan; and section 113(b)(14) of the Act continues to require joint planning and coordination with programs conducted under the JTPA. Therefore, § 403.33 continues the requirement that the State plan be reviewed by both councils.

Section 111 of the Act imposes new requirements for the review of local applications by the "sex equity coordinator," the head of the State office responsible for administering part B of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*), the head of the State office or other appropriate individual responsible for coordinating services under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (Chapter 1) (20 U.S.C. 2700 *et seq.*), and the head of the State office or other appropriate individual responsible for administering programs for students of limited English proficiency (§§ 403.13 through 403.16).

(b) *Special populations.* The Act imposes many new requirements for ensuring that members of special populations are given equal access to, and allowed full participation in, vocational education. Section 506 of the Act makes clear that no provisions of the Act should be construed as inconsistent with Federal laws guaranteeing civil rights (§ 400.9(b)). Section 400.9(b) emphasizes that the Act does not in any way limit the rights of special population members accorded by other Federal laws, for example, rights of individuals with disabilities under the Individuals with Disabilities Education Act (IDEA) or section 504 the Rehabilitation Act of 1973 (section 504) (29 U.S.C. 794).

Section 118(a) of the Act requires the State board to make broad assurances in its State plan that members of special populations will be given equal access to vocational education (§ 403.32(a)(18)-(26)). These assurances provide that special population members will be afforded equal access to the full range of vocational education programs available to members of the general population, including recruitment,

enrollment, and placement activities. The assurances also require monitoring of the provision of vocational education to disabled and disadvantaged students and to students of limited English proficiency. The Secretary interprets the assurances in § 403.32(a)(18) through (26) as applying to the entire vocational education program operated by the State and its recipients. (See also § 403.190(d).) Because equal access is necessary for a student to enroll in a vocational education program as well as for a student to enroll in specific vocational education courses, the Secretary does not believe it is possible or appropriate to limit application of this requirement to students in specific projects, services, and activities that are funded under the Act. This limitation also would be inconsistent with the concept of fundamental fairness that equal access is intended to provide for special population members.

Further, the Secretary believes that the broad application of the assurances required by section 118(a) of the Act reinforces requirements imposed under other Federal statutes, including the IDEA and section 504. The Secretary also believes that the reference in section 118(a)(3)(C) of the Act to both students who are protected by the IDEA and students who are protected by section 504 is for the purpose of emphasizing that disabled students who do not have individualized education programs under the IDEA must be included in the required assurances because of protections under section 504. The Secretary does not agree with any implication that a student eligible to have an individualized education program under the IDEA would not be protected under section 504 as well.

Section 118(b) of the Act requires local educational agencies to provide information to students who are members of special populations and their parents concerning vocational education, including opportunities, eligibility, courses, special services, employment opportunities, and placement, at least one year before a student is old enough to enter vocational education (§ 403.193). Section 118(b) of the Act also requires an eligible institution receiving funds under Title II to provide the same information when requested. Section 403.193 interprets section 118(b) of the Act as applying to eligible recipients or institutions receiving funds under Title II of the Act. Section 403.193(a)(2) extends the requirement to provide information to special population members and their parents to an area vocational technical school or an intermediate educational agency that receives the entire allocation of a local educational agency. Additionally, § 403.193(e) clarifies that a local recipient is only required to provide this information to the extent possible with funds awarded under the Act.

The Secretary submitted for discussion at the negotiated rulemaking the issues of the required source of funding and of extending this requirement to area vocational technical schools and intermediate educational agencies. The negotiators reached a consensus on the language of the draft regulations insofar as it would extend the requirement to provide information to area schools and intermediate agencies. However, the negotiators did not reach agreement concerning the required source of funding for providing this information.

Section 118(c) of the Act requires each eligible recipient under Title II of the Act to make broad assurances in its local application that members of special populations will receive supplementary and other services necessary to succeed in vocational education (§ 403.190(b)). In particular, this includes an assurance that an eligible recipient under title II of the Act will assist in fulfilling the transitional services requirements of section 626 of the IDEA. In this regard, eligible recipients should note that section 614 of the IDEA has been amended so that it also requires transitional services for students aged 16 years or older as a component of their individualized education programs.

Section 403.190(b) interprets the assurances concerning the provision of supplementary and other services to apply only to members of special populations enrolled in projects, services, and activities that are funded under the Act. Further, § 403.190(b) also interprets section 118(c) of the Act as requiring an eligible recipient to provide supplementary and other services for those students only to the extent possible from funds received under the Act. The Secretary bases this interpretation on the lack of any legislative history or other indication that Congress intended to create an individual entitlement for special populations members and a corresponding financial obligation on a State or its local recipients similar to that imposed under the IDEA. However, while § 403.190 does not interpret section 118(c) as establishing an individual entitlement for members of special populations, the Secretary wishes to emphasize that neither § 403.190 nor section 118(c) of the Act in any way limits the rights and entitlement to services of special population members under other Federal laws, for example, the IDEA and section 504, nor does either § 403.190 or section 118(c) of the Act limit the financial obligation of a State or local recipient to provide these services under any other Federal law.

Both issues—the scope of the requirements imposed by section 118(c) of the Act and the source of funding to meet those requirements—were discussed in the negotiated rulemaking. However, the negotiators were not able to reach consensus on either issue. Because of the importance of providing services to special population members under the Act, and because the negotiators were unable to reach consensus on so many issues related to these services, the Secretary particularly invites further comments on these provisions. Of particular interest are: (1) Whether the obligations of a State and its local recipients to meet the requirements related to providing information and supplementary services to special population members should extend to funds other than those awarded under the Act; and (2) whether the requirements of section 118(c) of the Act should apply to projects, services, and activities funded under title II of the Act, to those funded under titles II and III of the Act, or to the local recipient's entire vocational education program (including specific projects, services, and activities not funded under the Act).

(c) *State assessment.* Section 116 of the Act requires a State to assess the quality of its vocational education program using measurable objective criteria. Section 403.203(f)(2) interprets section 116 of the Act as requiring a State assessment during each State plan cycle.

(d) *Evaluation requirements.* Section 115 of the Act requires a State to develop a statewide system of core standards and measures of performance for secondary and postsecondary vocational education programs (§ 403.201). Section 117 of the Act requires a recipient of financial assistance under title II, part C of the Act to use the standards and measures developed under section 115 of the Act to evaluate the effectiveness of the program conducted with assistance under the Act (§ 403.191). In cases where substantial progress is not made toward meeting these standards and measures, a local recipient must implement a local program improvement plan, and, if the local plan is not successful, a State and local recipient must develop a joint plan for improvement.

Section 403.201 applies the requirement under section 115 of the Act to develop a statewide system of core standards and measures of performance to a State's entire vocational education program, regardless of which particular projects, activities, and services are funded under the Act. Similarly, § 403.191, requires a recipient of funds under title II, part C of the Act to use these statewide standards and measures to evaluate annually the effectiveness of its entire vocational education program and not simply those projects, services, and activities funded under the Act. This is appropriate because funds awarded under the Act may be used jointly with State and local funds or for isolated costs such as equipment. In addition, the Act contemplates that the funds awarded under the Act will be provided for limited sites or program areas that will change from year to year. Therefore, the Secretary does not believe that it would be possible to measure annually the effectiveness of only projects, services, and activities funded under the Act.

The Secretary submitted the issue of the scope of the local evaluation required under section 117 of the Act for discussion in the negotiated rulemaking proceedings, but the negotiators were not able to reach a consensus. Therefore, the Secretary is particularly interested in receiving further comments on this provision, including whether an effective local evaluation could be performed using sampling techniques or other techniques designed to phase in the evaluation requirement, or whether other means exist to increase a local recipient's flexibility in evaluating its vocational education program.

(e) *Within-State allocation.* Section 102(a) of the Act establishes the percentage of a State's allotment that must be reserved for each program under title II of the Act (§ 403.180). Section 102(c)(1) of the Act establishes a "hold-harmless" provision for the Sex Equity Program and the Single Parents, Displaced Homemakers, and Single Pregnant Women Program to ensure that the funds reserved for each of these programs at least equal the amount the State "reserved for each such program in fiscal year 1990." Section 403.180(a)(1)(i) interprets the phrase "reserved for each such program in the fiscal year 1990" as meaning the amounts reserved for these programs under the percentage set-aside requirements of section 202 of the Carl D. Perkins Vocational Education Act (CDPVEA).

Section 102(c)(2) of the Act establishes a "hold-harmless" provision for the Program for Criminal Offenders to ensure that the funds reserved for that program equal the amount the State "expended under this Act for such program for the fiscal year 1990." (See Pub. L. 102–103, 105 Stat. 497 (1991), amending section 102(c) of the Act). While section 102(c)(2), as amended by Public Law 102–103, is not entirely clear, we believe that Congress' purpose was to increase the amount of funds to be reserved for the Program for Criminal Offenders above the one percent that a State was required to reserve under section 202(6) of CDPVEA. Therefore, § 403.180(a)(1)(ii) interprets the phrase "expended under this Act for such program for the fiscal year 1990" as meaning the amount the State reserved for projects, services, activities under section 202(6) of the CDPVEA and any other Federal funds under the CDPVEA, in excess of the one percent reserve under section 202(6), that the State and eligible recipients obligated for projects, services, or activities for criminal offenders in correctional institutions.

Section 403.180(c) requires a State first to reserve the amount necessary to satisfy the $250,000 minimum for State administration under section 102(a)(4) of the Act and the amounts for programs not meeting the "hold-harmless" requirements under section 102(c) of the Act, and then ratably reduce the funds available for the remaining programs. In no case in this process could a program subject to the "hold-harmless" requirements be reduced to less than the amount reserved for such a program in Fiscal Year 1990.

(f) *Distribution requirements for secondary, postsecondary, and adult funds.* Sections 231 and 232 of the Act impose requirements concerning the distribution of funds reserved by the State for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs, respectively. Section 231 of the Act requires that secondary funds be distributed to local educational agencies in accordance with a statutory formula, and allows those funds to be distributed to an area vocational education school or an intermediate educational agency if that entity has entered into a consortium with a local educational agency for the purpose of receiving these funds (§§ 403.112 and 403.113). Section 232 of the Act requires that postsecondary and adult funds be distributed to eligible institutions based on the relative number of Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled in programs of the eligible institution (§ 403.116).

Under §§ 403.112 and 403.116, the statutory formulas would be applied using the required funding and enrollment figures from the fiscal year or program year preceding the year in which the funds are allocated—not the year in which the funds are distributed. While the statutory formulas are ambiguous as to what fiscal or program year is to be used as a point of reference for determining the "preceding" year, this interpretation is consistent with the use of enrollment figures in the statutory formulas in section 203 of the Carl D. Perkins Vocational Education Act. Therefore, given the lack of any legislative history or other indication of Congressional intent to the contrary, the regulations continue the past practice concerning the use of enrollment figures.

Section 231(b) of the Act imposes a $15,000 minimum grant requirement under the Secondary School Vocational Education Program, but permits a State to waive the application of the minimum grant requirement under certain circumstances. Section 231(b) of the Act also permits a local educational agency to enter into a consortium with one or more local educational agencies in order to meet the minimum grant requirement. However, the Secretary does not believe that Congress intended for local educational agencies to form consortia merely for the purpose of allowing members to receive an allocation of funds in alternate years. Therefore, under § 403.112(d), a consortium formed for the purpose of meeting the minimum grant requirement would be required to serve primarily as a structure for operating joint projects that provided services to all members of the consortium. Section 403.112(d) also makes clear that a consortium would be subject to the size, scope, and quality requirements of § 403.111(c)(1).

Section 232 of the Act also imposes a $50,000 minimum grant requirement under the Postsecondary and Adult Education Vocational Education Programs. In contrast to section 231 of the Act, section 232 of the Act does not permit eligible institutions to form consortia for the purpose of meeting this requirement. Although the Department has received requests that the regulations permit the use of consortia for this purpose, § 403.116(c) would not allow eligible institutions to form consortia to meet the minimum grant requirement.

Section 232 allows the Secretary to waive the requirements of the postsecondary and adult funding formula upon a State's application for a waiver if the application demonstrates that the use of the statutory formula

would not result in the distribution of funds to institutions within the State that have the highest numbers of economically disadvantaged individuals and that an alternative formula proposed by the State in its application would achieve this result. Section 403.118 establishes the rules under which the Secretary will grant a waiver of the postsecondary and adult formula.

(g) *Use of funds.* Section 235 of the Act requires recipients of funds under title II, part C of the Act to use those funds to improve vocational education programs, with the "full participation" of individuals who are members of special populations, at a limited number of sites or with respect to a limited number of program areas (§ 403.111(a)(2)(i)). Section 235(b) of the Act requires a recipient to give "priority" for assistance to sites or programs that serve the highest concentrations of individuals who are members of special populations. Section 235(c) of the Act sets forth requirements that apply to the vocational education programs in which funds awarded under the Act are used. Specifically, section 235(c)(1) of the Act requires that funds be used in programs that are of sufficient size, scope, and quality as to be effective; that integrate academic and vocational education; and that provide "equitable participation" for special populations (§ 403.111(c)).

The Secretary submitted to negotiated rulemaking the issues of how "full participation" and "equitable participation" should be interpreted and the issue of how a recipient could give priority to a limited number of sites or program areas. The negotiators reached consensus on all these issues, and those agreements are reflected in the proposed regulations or in examples contained in appendix A to these regulations, as discussed below, and in greater detail in appendix C to these regulations. The Secretary believes that the use of examples to interpret statutory requirements maximizes a local recipient's flexibility and particularly invites suggestions for additional examples.

Section 403.111(a)(2)(i) interprets "full participation" as requiring that members of special populations be provided with supplementary and other services necessary for them to succeed in vocational education. Section 403.111(b) repeats the statutory language requiring that priority be given to a limited number of sites or program areas that serve the highest concentrations of special population members and provides three examples of ways to give priority. Under the examples, an eligible recipient would give priority by first establishing a funding cut-off point and then funding sites or programs from among those that are above the cut-off point and that are otherwise eligible for support under the Act. The third example was added by the negotiators to illustrate a way of providing new and better opportunities in vocational education for special population members. The proposed regulations also repeat the statutory language requiring "equitable participation" in § 403.111(c)(3) and provide two examples of providing "equitable participation" in appendix A. The negotiators agreed to delete the explanatory language from the draft regulation submitted to negotiated rulemaking and to place the examples in an appendix to the regulations.

(h) *Supplanting prohibition.* Section 516(a) of the Act continues the requirement from the previous act that funds available under title II be used to supplement, and to the extent practicable increase, the amount of State and local funds that would in the absence of the Federal funds be made available for the uses specified in the State plan and the local application, and in no case supplant State and local funds. However, section 516(a) of the Act provides an exception to the supplanting prohibition to allow funds under the Act to be used to pay for the costs of vocational education services required in an individualized education program developed pursuant to the IDEA, and for services necessary to meet the requirements of section 504 of the Rehabilitation Act of 1973 (section 504) with respect to ensuring equal access to vocational education. Sections 403.196 and 403.208 clarify that the limited purpose of this provision is to allow expenditures that would otherwise constitute supplanting only in instances where the expenditures at issue would be used to increase the amount of funds that would otherwise be available to pay the cost of the individualized education program or of meeting the requirements of section 504.

(i) *Comparability.* Section 113 of the Act requires a State to include in its State plan assurances that State and local funds will be used in the schools of each local educational agency that are receiving funds under the Act to provide services that, taken as a whole, are at least comparable to services being provided in schools in that agency that are not receiving funds. Section 403.194 interprets sections 113 of the Act as requiring comparability between secondary schools or sites served with Federal funds awarded under the State plan and secondary schools or sites that are not being served with Federal funds awarded under the State plan. Moreover, § 403.194 provides three examples of methods by which a local educational agency can demonstrate its compliance with the comparability requirements and requires a local educational agency to develop written procedures for complying with the comparability requirements. Section 403.200 requires a State to monitor each local educational agency's compliance with the comparability requirements and, if a local educational agency is found not to be in compliance, to withhold, or require repayment of, the amount or percentage by which the local educational agency failed to achieve comparability. The Secretary is particularly interested in receiving comments on whether, in determining comparability—

(1) State and local agencies should compare services provided in vocational education programs or services provided in secondary schools or sites; and

(2) The examples of methods by which an LEA can demonstrate its compliance with comparability requirements are appropriate for measuring comparability under the Act.

(j) *Fiscal requirements.* Under § 403.186, a State may use a necessary and reasonable amount of funds from its individual allotments for the special programs under title III of the Act, in addition to the funds reserved for State administration under title II of the Act, to administer those specific programs unless the Act provides otherwise with respect to a particular special program. Under § 403.187, a State also may use a necessary and reasonable portion of the funds reserved for each basic or special program under the State plan (other than the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs), in addition to the funds reserved for State administration under title II of the Act and for State leadership, to pay the costs of providing technical assistance necessary to enhance the quality and effectiveness of that specific program.

The Act is silent concerning an eligible recipient's use of funds awarded under the Act for local administrative costs, with two exceptions. Section 235(c)(4) of the Act limits the use of funds for local administrative costs to five percent under the Secondary Schools and Postsecondary and Adult Education Programs, and section 333(c) of the Act limits total expenditures for administrative costs of the State board and eligible partners under the Business-Labor-Education Partnership for

Training Program to not more than 10 percent of the State's allotment in the first year and five percent of that allotment in each subsequent year. Under § 403.195, an eligible recipient may use a necessary and reasonable amount of funds from its awards under the basic programs and the special programs, except for the two particular exceptions discussed above, to administer its projects.

The Secretary believes that the "necessary and reasonable" cost principle is implicit in the statute and is consistent with government-wide cost principles (see Office of Management and Budget Circular No. A–87 incorporated by reference in 34 CFR 80.22(b)) and well established Departmental practice under the Carl D. Perkins Vocational Education Act. Therefore, the Secretary has extended this principle in the proposed regulations, where it is not inconsistent with the Act, to allow for necessary and reasonable administrative costs in new programs authorized by the Act and for necessary and reasonable costs of technical assistance. In view of this, the Secretary invites comments on the use of the "necessary and reasonable" cost principle in §§ 403.186(b)(2), 403.187, 403.195, and 406.31.

(5) *National Tech-Prep Education Program (part 405).* The National Tech-Prep Education Program provides financial assistance for projects that develop and operate four-year sequences of study designed to provide a tech-prep education program leading to a two-year associate degree or a two-year certificate and that provide, in a systematic manner, strong comprehensive links between secondary schools and postsecondary educational institutions. These regulations establish eligibility requirements (§ 405.2), selection criteria for evaluating applications (§ 405.21), and evaluation requirements (§ 405.30).

(6) *State-Administered Tech-Prep Education Program (part 406).* When the annual appropriation for tech-prep education exceeds $50,000,000, the program becomes State-administered, with each State receiving a grant based on a statutory formula. The State-administered Tech-Prep Education Program provides financial assistance for planning and developing—

(a) Four-year programs designed to provide a tech-prep education program leading to a two-year associate degree or certificate; and

(b) In a systematic manner, strong comprehensive links between secondary schools and postsecondary educational institutions.

In order to be eligible for an award under this program, a State board of vocational education must include several descriptions in its State plan (§ 406.10). The Secretary strongly encourages the State board to submit to the State agency responsible for postsecondary education for review the portions of the State plan that will implement this program.

The Secretary determines the amount of each State's allotment according to the formula in section 101(a)(2) of the Act (§ 406.20). These regulations describe how a State carries out its grant, including the use of funds for State administration and technical assistance (§ 406.31), members of consortia who are eligible to apply to the State for an award (§ 406.30), the requirements for local applications (§ 406.32), and the reporting requirements (§ 406.33).

(7) *Supplementary State Grants Program (part 407).* The Supplementary State Grants Program provides financial assistance for program improvement activities, especially the improvement of facilities and acquisition or leasing of equipment to be used to carry out vocational education programs that receive assistance under the Act. To receive an award under this program, a State must include in its State plan the information in § 407.10. In addition, these regulations describe allowable activities (§ 407.3), the formula for distributing funds to State agencies (§ 407.20), and eligibility and application requirements for local educational agencies (§§ 407.30 and 407.32).

(8) *Community Education Employment Centers Program (part 408).* The Community Education Employment Centers Program provides financial assistance to establish and evaluate model high school community education employment centers to provide low-income urban and rural youth with the education, skills, support services, and enrichment necessary to ensure—

(a) Graduation from secondary school;

(b) Successful transition from secondary school to a broad range of postsecondary educational institutions; and

(c) Employment, including military service.

These regulations describe eligible applicants (§ 408.2), requirements regarding support services, parental, and community participation (§§ 408.30 through 408.32), and evaluation requirements (§ 408.34).

(9) *Vocational Education Lighthouse Schools Program (part 409).* The Vocational Education Lighthouse Schools Program provides financial assistance for the establishment and operation of vocational education lighthouse schools. These regulations describe the eligible applicants (§ 409.2), allowable activities (§ 409.3), criteria for evaluating applications (§ 409.21), and evaluation requirements (§ 409.30).

(10) *Tribally Controlled Postsecondary Vocational Institutions Program (part 410).* The Tribally Controlled Postsecondary Vocational Institutions Program provides grants for the operation and improvement of tribally controlled postsecondary vocational institutions to ensure continued and expanded educational opportunities for Indian students, and to allow for the improvement and expansion of the physical resources of those institutions (§ 410.1). For institutional support grants, the regulations describe eligible applicants (§ 410.2), allowable activities (§ 410.3), and requirements regarding the content of applications (§ 410.10). These regulations exclude tribally controlled community colleges, as defined in 34 CFR 400.4, from the definition of tribally controlled postsecondary vocational institutions (§ 410.5). In addition, the regulations do not implement the provisions in section 389(c) of the Act which provides for construction and renovation grants. The Secretary is studying the desirability and need for regulations to implement these provisions and may develop regulations for them at a later date.

(11) *Vocational Education Research Program (part 411).* The Vocational Education Research Program provides financial assistance for applied research projects. These regulations describe eligible activities (§ 411.3), selection criteria for evaluating applications (§ 411.21), and provisions governing unsolicited applications (§§ 411.23 and 411.24).

(12) *National Network for Curriculum Coordination in Vocational and Technical Education (part 412).* The National Network for Curriculum Coordination in Vocational and Technical Education is a system of six curriculum coordination centers (CCCs) that disseminate information resulting from research and development activities carried out under the Act in order to ensure broad access at the State and local levels to the information being disseminated. These regulations describe eligibility requirements (§ 412.2), selection criteria for evaluating applications (§ 412.21), and additional activities to be carried out by the CCCs (§ 412.30).

(13) *National Centers for Research in Vocational Education (part 413).* Under the authority for the National Centers

for Research in Vocational Education (National Center or Centers) awards are provided for a National Center or Centers to carry out activities in the areas of applied research and development and dissemination and training. These regulations describe eligible applicants (§ 413.2), the procedure for the selection of a National Center or Centers (§ 413.20), and selection criteria for evaluating applications (§§ 413.21 and 413.22).

The Secretary may hold two separate competitions, with the same closing date, for the National Center or Centers in order to fund the best proposal for both applied research and development activities and dissemination and training activities while giving preference to a consolidated application. A separate competition forestalls the possibility of funding a consolidated application that only adequately addresses both types of activities to be carried out by a National Center. Moreover, a separate competition will permit the Department to select panels based on particular expertise in research and development and dissemination and training.

The Secretary specifically invites ideas on how to effectively combine the two competitions and ensure that the best applications are funded for both the applied research and development activities and the dissemination and training activities.

(14) *Materials Development in Telecommunications Program (part 414).* The Materials Development in Telecommunications Program provides financial assistance for the development, production, and distribution of instructional telecommunications materials and services for use in local vocational and technical educational schools and colleges. These regulations describe eligible applicants (§ 414.2), allowable activities (§ 414.3), program priorities (§ 414.20), and selection criteria for evaluating applications (§ 414.21). Federal funds are to be used to pay 50 percent of the costs of projects (§ 414.13).

(15) *Demonstration Centers for the Training of Dislocated Workers Program (part 415).* The Demonstration Centers for the Training of Dislocated Workers Program provides financial assistance for establishing one or more demonstration centers for the retraining of dislocated workers. These regulations describe eligibility requirements (§ 415.2), selection criteria for evaluating applications (§ 415.21), and evaluation requirements (§ 415.30).

(16) *Vocational Education Training and Study Grants Program (part 416).* The National Vocational Education Training and Study Grants Program provides grants to certain agencies and institutions for vocational teacher education, graduate training in vocational education, and vocational education student internships (§ 416.1). These regulations establish eligibility requirements (§ 416.2), and selection criteria for evaluating applications (§ 416.21).

(17) *Vocational Education Leadership Development Award Program (part 417).* The Vocational Education Leadership Development Award Program provides financial assistance to meet the needs of all States for qualified vocational education leaders such as administrators, supervisors, teacher educators, researchers, career guidance and vocational counseling personnel, vocational student organization leadership personnel, and teachers in vocational education programs. These regulations describe how the Secretary makes awards to institutions (§§ 417.20 through 417.22), how individuals apply for awards (§§ 417.40 and 417.41), and conditions to be met by recipients of leadership development awards (§§ 417.50 through 417.55).

(18) *Vocational Educator Training Fellowship Program (part 418).* Under the Vocational Educator Training Fellowship Program the Secretary provides fellowships for individuals to receive training as vocational educators through approved institutions of higher education. These regulations describe who is eligible for a fellowship (§ 418.2), how the Secretary selects fellows (§§ 418.30 through 418.33), and the conditions to be met by fellows (§§ 418.40 through 418.49).

(19) *Internships for Gifted and Talented Vocational Education Students Program (part 419).* The Internships for Gifted and Talented Vocational Education Students Program provides internships to attract gifted and talented vocational education students into further study and professional development in the field of vocational education (§ 419.1). These regulations describe eligibility requirements (§ 419.2) and selection criteria for evaluating applications for internships (§ 419.22).

(20) *Business and Education Standards Program (part 421).* The Business and Education Standards Program provides financial assistance for organizing and operating business-education-labor technical committees that will develop national standards for competencies in industries and trades. These regulations describe eligible applicants (§ 421.2), allowable activities (§ 421.3), selection criteria for evaluating applications (§ 421.21), and cost-sharing requirements (§ 421.30).

(21) *Educational Programs for Federal Corrections Institutions (part 422).* The Educational Programs for Federal Correctional Institutions provides financial assistance for the education and training of criminal offenders in Federal correctional institutions. These regulations establish eligibility requirements (§ 422.2) and selection criteria for evaluating applications (§ 422.21).

(22) *Vocational Education Dropout Prevention Program (part 423).* The Vocational Education Dropout Prevention Program provides financial assistance for projects to develop, implement, and operate vocational education programs designed to prevent students from dropping out of school. These regulations describe allowable activities (§ 423.2) and selection criteria for evaluating applications (§ 423.21).

(23) *Model Centers of Regional Training for Skilled Trades Program (part 424).* The Model Centers of Regional Training for Skilled Trades Program provides financial assistance for regional model centers that provide training for skilled tradesmen and technical assistance for programs that train skilled tradesmen within a region serving several States. These regulations establish eligibility requirements (§ 424.2), criteria for evaluating applications (§ 424.21), and evaluation requirements (§ 424.30).

(24) *Demonstration Projects for the Integration of Vocational and Academic Learning Program (part 425).* The Demonstration Projects for the Integration of Vocational and Academic Learning Program provides financial assistance to projects that develop, implement, and operate programs using different models of curricula that integrate vocational and academic learning. These regulations establish eligibility requirements (§ 425.2), selection criteria for evaluating applications (§ 425.21), and evaluation requirements (§ 425.30).

(25) *Cooperative Demonstration Program (part 426).* The Cooperative Demonstration Program provides financial assistance for demonstration projects, model consumer and homemaking education projects, community-based organization projects, and agriculture action centers. These regulations establish eligibility requirements (§ 426.2), selection criteria for evaluating applications (§§ 426.21 through 426.24), cost-sharing requirements (§ 426.30), and dissemination and evaluation requirements (§§ 426.31 and 426.32).

(26) *Bilingual Vocational Training Program (part 427).* The Bilingual Vocational Training Program provides financial assistance for bilingual vocational education and training in order to prepare limited English proficient out-of-school youth and adults for jobs in recognized occupations, including new and emerging occupations. These regulations establish requirements for eligibility (§ 427.2) and the content of applications (§ 427.10). The regulations also establish selection criteria for evaluating applications (§ 427.21) and evaluation requirements (§ 427.30).

(27) *Bilingual Vocational Instructor Training Program (part 428).* The Bilingual Vocational Instructor Training Program provides financial assistance for preservice and inservice training for personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient out-of-school youth and adults. These regulations establish eligibility requirements (§ 428.2), and selection criteria for evaluating applications (§ 428.21).

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 Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Under the State Vocational and Applied Technology Education Program, the State-Administered Tech-Prep Education Program, and the Supplementary State Grants Program, grants are available only to States, and States and State agencies are not defined as "small entities" under the Regulatory Flexibility Act. The small entities that would be affected under these regulations are small LEAs, area vocational schools, intermediate educational agencies, postsecondary educational institutions, State correctional institutions, and community-based organizations receiving Federal funds. However, the regulations would not have a significant economic impact on the small entities affected because they repeat statutory requirements and do not impose excessive regulatory burdens or require unnecessary Federal supervision.

The selection criteria for applications reviewed under the Secretary's discretionary programs require the minimum amount of information necessary for a fair appraisal of the activities proposed by applicants in order to ensure the funding of high quality projects.

Paperwork Reduction Act of 1980

Sections 400.9, 400.10, 401.21, 401.23, 401.31, 402.21, 403.12, 403.13, 403.19, 403.30, 403.31, 403.32, 403.33, 403.34, 403.81, 403.100, 403.115, 403.141, 403.184, 403.190, 403.192, 403.193, 403.201 through 403.205, 405.10, 405.21, 405.30, 406.10, 406.32, 406.33, 407.10, 407.32, 408.10, 408.22, 408.34, 409.21, 409.30, 410.10, 410.21, 411.21, 412.21, 413.21, 413.22, 414.22, 415.21, 415.30, 416.21, 416.31, 417.21, 417.31, 417.41, 418.20, 419.20, 419.22, 421.21, 422.2, 422.21, 422.30, 423.2, 423.21, 423.30, 424.21, 424.30, 425.21, 425.30, 426.2, 426.21 through 426.24, 426.32, 427.10, 427.21, 427.30, 428.10, and 428.21; and appendix D contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections, including any data collection request based on any reporting requirements in Appendix D, to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

State and local governments, individuals, businesses or other for-profit, and non-profit institutions are eligible to apply for grants under these regulations. The Department needs and uses this collection of information to make grants and monitor the compliance of grantees with statutory and regulatory requirements.

In developing the selection criteria for the vocational education discretionary programs the Secretary took into consideration the particular nature of each program. This Department experience has shown that in order to select quality vocational education applications the technical review criteria must be specific to the particular program under which grants will be made. Each individual criterion is weighted in relationship to the importance of that criterion for helping to select quality applications for a specific discretionary program. In designing the selection criteria, the Secretary also considered the major differences between the purposes of different types of discretionary programs; such as, demonstration programs, education and training programs, research and development programs, capacity building programs, and national centers.

Consequently, the selection criteria reflect the different purposes of the various program types. The rationale for selecting particular selection criteria that are included in the proposed regulations for more than one discretionary program are as follows:

(a) "Program Factors" are used to ensure that projects are related to the specific legislative purposes and requirements for each program.

(b) "Need" is used in training programs and in some of the research programs to determine the local, State, regional, or national need for a project proposed by an applicant.

(c) "Program Design" is used in education and training programs to analyze the conceptual and technical design of the proposed activities and relates to assessing the quality and accessibility of the training to be provided.

(d) "Educational Significance" is used in many of the demonstration programs and programs that offer training in order to determine whether the proposed activities are likely to contribute significantly to the improvement of education.

(e) "Plan of Operation" is used to assess the quality of both management and implementation activities that an applicant proposes.

(f) "Key Personnel" is used to determine the quality and appropriateness of key personnel and whether staff have experience that will aid in accomplishing project objectives. However, there are a few programs where determining the quality of key personnel is not a critical factor, for instance, the Vocational Educator Training Fellowships Program and the Internships for Gifted and Talented Vocational Education Students Program.

(g) "Budget and Cost-effectiveness" is used to determine how well proposed costs relate to the accomplishment of project activities. However, there are a few programs where determining the budget and cost-effectiveness is not a critical factor because awards are made to individuals through fellowships or stipends; for example, the Vocational Educator Training Fellowships Program and the Internships for Gifted and Talented Vocational Education Students Program.

(h) "Evaluation Plan" is used to ensure program and project accountability in demonstration programs and education and training programs.

(i) "Third Party Evaluation" is used to determine the rigor and strategy for evaluation for certain programs ensuring project accountability.

(j) "Demonstration and Dissemination" is used to determine, mostly for demonstration and model programs, the effectiveness of the

planned demonstration and dissemination activities.

(k) "Adequacy of Resources" is used in research and demonstration programs to determine if the applicant has planned for and requested enough funds.

(l) "Institutional Commitment" is used in long-term projects to determine the past and current commitment of the applicant.

(m) "Coordination" is useful for determining the planned coordination activities with various types of organizations and entities, where the Act calls for coordination activities.

The annual public reporting burden for the collection of information is estimated to average 1000 hours per response for 53 respondents affected by the State plan requirements, 324 hours per response for 4212 respondents affected by the vocational education act reporting requirements, 90 hours per response for 552 respondents who submit an application for a discretionary program, 28 hours per response for 90 respondents that submit a performance report for a discretionary program, and 12 hours per response for 57 respondents who submit abstracts describing State-administered vocational education improvement projects.

The annual reporting and recordkeeping burden for the collection includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office building, Washington, DC 20503; Attention: Daniel Chenok.

Redesignation Table

In order to accommodate new programs authorized by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, several part numbers in chapter IV of title 34 are proposed to be redesignated. The following table lists old and new part numbers for all programs in chapter IV of title 34.

New 34 CFR part Nos.	Title	Old 34 CFR part Nos.
400	Vocational and Applied Technology Education—General Provisions.	400
401	Indian Vocational Education Education.	410
402	Native Hawaiian Vocational Education Program.	410
403	State Vocational and Applied Technology Education Program.	401
404	[RESERVED]	
405	National Tech-Prep Education Program.	NEW
406	State-Administered Tech-Prep Education Program.	NEW
407	Supplementary State Grants Program.	NEW
408	Community Education Employment Centers Program.	NEW
409	Vocational Education Lighthouse Schools Program.	NEW
410	Tribally Controlled Postsecondary Vocational Institutions Program.	NEW
411	Vocational Education Research Program.	416
412	National Network for Curriculum Coordination in Vocational and Technical Education.	NEW
413	National Center or Centers for Research in Vocational Education.	417
414	Materials Development in Telecommunications Program.	NEW
415	Demonstration Centers for the Training of Dislocated Workers Program.	411
416	Vocational Education Training and Study Grants Program.	NEW
417	Vocational Education Leadership Development Awards Program.	NEW
418	Vocational Educator Training Fellowships Program.	NEW
419	Internships for Gifted and Talented Vocational Education Students Program.	NEW
420	[RESERVED]	
421	Business and Education Standards Program.	NEW
422	Educational Programs for Federal Correctional Institutions.	NEW
423	Vocational Education Dropout Prevention Program.	NEW
424	Model Centers of Regional Training for Skilled Trades.	NEW
425	Demonstration Projects for the Integration of Vocational and Academic Learning Program.	NEW
426	Cooperative Demonstration Programs.	412
427	Bilingual Vocational Training Program.	407
428	Bilingual Vocational Instructor Training Program.	408
429	Bilingual Materials, Methods, and Techniques Program.	409
445	Technology Education Demonstration Program.	445
430–459.	[RESERVED]	
460	Adult Education Programs—General Provisions.	425
461	Adult Education State-administered Basic Grant Programs.	426
462	State-administered Workplace Literacy Program.	433
463	State-adminstered English Literacy Program.	434
464	State Literacy Resource Centers Program.	None
465–470.	[RESERVED]	
471	National Adult Education Discretionary Program.	431
472	National Workplace Literacy Program.	432
473	National Workforce Literacy Strategies Program.	None
474	National English Literacy Demonstration Program for Individuals of Limited English Proficiency.	435
475	Adult Migrant Farmworker and Immigrant Education Program.	436
476	National Adult Literacy Volunteer Training Program.	437
477	State Program Analysis Assistance and Policy Studies Program.	438
478–488.	[RESERVED]	
489	Functional Literacy for State and Local Prisoners Program.	None
490	Life Skills for State and Local Prisoners Program.	None
491	Adult Education for the Homeless Program.	441
492–499.	[RESERVED]	

Intergovernmental Review

Programs covered by 34 CFR parts 402, 403, 405, 406, 407, 408, 409, 412, 414, 415, 417, 421, 422, 423, 424, 425, 426, 427, and 428 are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

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 room 4050, 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 comments 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 proposed 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

34 CFR Part 400

Administrative practices and procedure, Education, Grant programs, and Vocational education.

34 CFR Parts 401, 410, and 425

Education, Indian education, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Parts 402, 407, 408, 409, 412, 415, and 423

Education, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Parts 403 and 407

Business and industry, Colleges and universities, Education, Education of disadvantaged, Education of handicapped, Equal education opportunity, Manpower training programs, Minority groups, Prisoners, Private schools, Reporting and recordkeeping requirements, Schools, Vocational education, and Women.

34 CFR Parts 405 and 406

Business and industry, Colleges and universities, Education, Education of disadvantaged, Education of handicapped, Labor unions, Minority groups, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Parts 411 and 413

Education, Education research, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 414

Education, Reporting and recordkeeping requirements, Telecommunications, and Vocational education.

34 CFR Parts 416, 417, 418, and 419

Education, Reporting and recordkeeping requirements, Scholarships and fellowships, and Vocational education.

34 CFR Parts 421 and 426

Education, Business and industry, Labor unions, Reporting and Recordkeeping requirements, and Vocational education.

34 CFR Part 422

Education, Prisoners, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 424

Education, Education of disadvantaged, Education of handicapped, Minority groups, Reporting and recordkeeping requirements, Vocational education, and Women.

34 CFR Parts 427 and 428

Bilingual education, Education, Reporting and recordkeeping requirements, and Vocational education.

(Catalog of Federal Domestic Assistance Numbers: 84.048 (Basic Grants to the States), 84.049 (Consumer and Homemaking Education Program), 84.051 (National Vocational Education Research Program and the National Center for Research in Vocational Education), 84.053 (State Councils for Vocational Education), 84.077 (Bilingual Vocational Training Program), 84.099 (Bilingual Vocational Instructor Training), 84.101 (Indian and Hawaiian Natives Program), 84.174 (State Assistance for Vocational Education Support Programs by Community-Based Organizations), 84.193 (Demonstration Centers for the Training of Dislocated Workers), 84.199 (Cooperative Demonstration Programs), 84.243 (State-administered Tech-Prep Education Program), 84.244 (Business and Education Standards Program), 84.245 (Tribally Controlled Postsecondary Vocational Institutions Program), and 84.248 (Demonstration Projects for the Integration of Vocational and Academic Learning Program). Catalog of Federal Domestic Assistance Numbers have not been assigned for the National Tech-Prep Education Program, Supplementary State Grants Program, Community Education Employment Centers Program, Vocational Education Lighthouse Schools Program, Materials Development in Telecommunications Program, Vocational Education Training and Study Grants Program, Vocational Education Leadership Development Awards Program, Vocational Education Training Fellowships Program, Internships for Gifted and Talented Vocational Education Students Program, Educational Programs for Federal Correctional Institutions, Vocational Education Dropout Prevention Program, and Model Centers of Regional Training for Skilled Trades.)

Dated: July 1, 1991.

Lamar Alexander,

Secretary of Education.

Chapter IV of title 34 of the Code of Federal Regulations is revised as follows:

1. The following parts are redesignated as follow:

Old parts	New parts
409	429
425	460
426	461
432	462
433	463
434	464
435	465
436	466
437	467
438	468
441	499

(Note: All internal references will be amended in the final rule according to the preceding redesignation table.

2. Part 400 is revised to read as follows:

PART 400—VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAMS—GENERAL PROVISIONS

Sec.

400.1 What is the purpose of the Vocational and Applied Technology Education Programs?
400.2 What programs are governed by these regulations?
400.3 What other regulations apply to the Vocational and Applied Technology Education Programs?
400.4 What definitions apply to the Vocational and Applied Technology Education Programs?
400.5 Under what conditions may funds under the Act be used for the joint funding of programs?
400.6 What are the requirements for establishing a State Committee of Practitioners?
400.7 What are the provisions governing the issuance of State standards and measures of performance and State rules or regulations?
400.8 What are the provisions governing student assistance?
400.9 What additional requirements govern the Vocational and Applied Technology Education Programs?
400.10 What are the reporting requirements?

Authority: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

§ 400.1 What is the purpose of the Vocational and Applied Technology Education Programs?

(a) The purpose of the Vocational and Applied Technology Education Programs is to make the United States more competitive in the world economy by developing more fully the academic and occupational skills of all segments of the population.

(b) The purpose will be achieved principally through concentrating resources on improving educational programs leading to academic and occupational skill competencies needed to work in a technologically advanced society.

(Authority: 20 U.S.C. 2301)

§ 400.2 What programs are governed by these regulations?

The regulations in this part apply to the Vocational and Applied Technology Education Programs as follows:

(a) *State-administered programs.* (1) State Vocational and Applied Technology Education Program (34 CFR part 403).

(2) State-administered Tech-Prep Education Program (34 CFR part 406).

(3) Supplementary State Grants Program (34 CFR part 407).

(b) *National discretionary programs.* (1) Indian Vocational Education Program (34 CFR part 401).

(2) Native Hawaiian Vocational Education Program (34 CFR part 402).

(3) National Tech-Prep Education Program (34 CFR part 405).

(4) Community Education Employment Centers Program (34 CFR part 408).

(5) Vocational Education Lighthouse Schools Program (34 CFR part 409).

(6) Tribally Controlled Postsecondary Vocational Institutions Program (34 CFR part 410).

(7) Vocational Education Research Program (34 CFR part 411).

(8) National Network for Curriculum Coordination in Vocational and Technical Education (34 CFR part 412).

(9) National Center or Centers for Research in Vocational Education (34 CFR part 413).

(10) Materials Development in Telecommunications Program (34 CFR part 414).

(11) Demonstration Centers for the Training of Dislocated Workers Program (34 CFR part 415).

(12) Vocational Education Training and Study Grants Program (34 CFR part 416).

(13) Vocational Education Leadership Development Awards Program (34 CFR part 417).

(14) Vocational Educator Training Fellowships Program (34 CFR part 418).

(15) Internships for Gifted and Talented Vocational Education Students Program (34 CFR part 419).

(16) Business and Education Standards Program (34 CFR part 421).

(17) Educational Programs for Federal Correctional Institutions (34 CFR part 422).

(18) Vocational Education Dropout Prevention Program (34 CFR part 423).

(19) Model Centers of Regional Training for Skilled Trades Program (34 CFR part 424).

(20) Demonstration Projects for the Integration of Vocational and Academic Learning Program (34 CFR part 425).

(21) Cooperative Demonstration Programs (34 CFR part 426).

(22) Bilingual Vocational Training Program (34 CFR part 427).

(23) Bilingual Vocational Instructor Training Program (34 CFR part 428).

(24) Bilingual Materials, Methods, and Techniques Program (34 CFR part 429).

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 400.3 What other regulations apply to the Vocational and Applied Technology Education Programs?

The following regulations apply to the Vocational and Applied Technology Education Programs:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs) (applicable to parts 401, 402, 405, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, 428, and 429 except that the performance reporting requirements in 34 CFR 75.720 do not apply to parts 401, 402, 405, 408, 409, 412, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427, and 428 and the financial reporting requirements in 34 CFR 75.720 do not apply to parts 412 and 413).

(3) 34 CFR part 76 (State-Administered Programs) (applicable to parts 403, 406, and 407).

(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) (not applicable to parts 401, 410, 411, 413, 418, and 419).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(8) 34 CFR part 82 (New Restrictions on Lobbying) (not applicable to parts 401 and 410).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR chapter 1 and the Education Department Acquisition Regulation (EDAR) in 48 CFR chapter 34 (applicable to contracts under parts 401, 402, 411, 412, 426, 427, 428, and 429).

(c) The regulations in this part 400.

(d) The regulations in 34 CFR parts 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, 428, and 429.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 400.4 What definitions apply to the Vocational and Applied Technology Education Programs?

(a) *Definitions in EDGAR.* The following terms used in regulations for the Vocational and Applied Technology Education Programs are defined in 34 CFR 77.1:

Acquisition
Applicant
Application
Award
Budget
Contract
Department
EDGAR
Elementary school
Equipment
Facilities
Federally recognized Indian tribal government
Fiscal year
Grant
Grantee
Grant period
Nonprofit
Private
Project
Public
Recipient
Secondary school
Secretary
State educational agency
Subgrant
Subgrantee
Supplies

(b) *Other definitions.* The following definitions also apply to the regulations for Vocational and Applied Technology Education Programs.

Act means the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*, as amended by Pub. L. 101–392, 104 Stat. 753 (1990)), unless otherwise indicated.

Administration means activities of a State necessary for the proper and efficient performance of its duties under the Act, including supervision, but not including curriculum development activities, personnel development, or research activities.

All aspects of an industry includes, with respect to a particular industry that a student is preparing to enter, planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, health and safety, and environmental issues related to that industry.

Apprenticeship training program means a program registered with the Department of Labor or the State apprenticeship agency in accordance with the Act of August 16, 1937, known as the National Apprenticeship Act (29 U.S.C. 50), that is conducted or

sponsored by an employer, a group of employers, or a joint apprenticeship committee representing both employers and a union, and that contains all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.

Area vocational education school means—

(1) A specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market;

(2) The department of a high school exclusively or principally used for providing vocational education in not less than five different occupational fields to individuals who are available for study in preparation for entering the labor market;

(3) A technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market; or

(4) The department or division of a junior college, community college, or university that operates under the policies of the State board and provides vocational education in not less than five different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if, in the case of a school, department, or division described in paragraph (3) of this definition or in this paragraph, it admits as regular students both individuals who have completed high school and individuals who have left high school.

Career guidance and counseling means programs that—

(1) Pertain to the body of subject matter and related techniques and methods organized for the development in individuals of career awareness, career planning, career decision-making, placement skills, and knowledge and understanding of local, State, and national occupational, educational, and labor market needs, trends, and opportunities; and

(2) Assist those individuals in making and implementing informed educational and occupational choices.

Chapter 1 means chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 *et seq.*).

Coherent sequence of courses means a series of courses in which vocational and academic education are integrated, and which directly relates to, and leads to, both academic and occupational competencies. The term includes competency-based education, academic education, and adult training or retraining that meet these requirements.

Community-based organization means a private nonprofit organization of demonstrated effectiveness that is representative of communities or significant segments of communities and that provides job training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, National Council of La Raza, 70,001, Jobs for Youth, organizations operating career intern programs, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in section 7(10) of the Rehabilitation Act of 1973 (29 U.S.C. 706(10)), agencies serving youth, agencies serving the handicapped, including disabled veterans, agencies serving displaced homemakers, union-related organizations, and employer-related nonprofit organizations), and an organization of demonstrated effectiveness serving non-reservation Indians (including the National Urban Indian Council), as well as tribal governments and Native Alaskan groups.

(Authority: 20 U.S.C. 2471(6); 41 U.S.C. 1503(5))

Construction includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and includes site grading and improvement and architect fees.

Cooperative education means a method of instruction of vocational education for individuals who, through written cooperative arrangements between the school and employers, receive instruction, including required academic courses and related vocational instruction by alternation of study in school with a job in any occupational field. The two experiences must be planned and supervised by the school and employers so that each contributes to the student's education and employability. Work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

Criminal offender means any individual who is charged with, or convicted of, any criminal offense, including a youth offender or a juvenile offender.

Correctional institution means any—

(1) Prison;

(2) Jail;

(3) Reformatory;

(4) Work farm;

(5) Detention center; or

(6) Halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders.

Curriculum materials means instructional and related or supportive material, including materials using advanced learning technology, in any occupational field which is designed to strengthen the academic foundation and prepare individuals for employment at the entry level or to upgrade occupational competencies of those previously or presently employed in any occupational field, and appropriate counseling and guidance material.

Disadvantaged refers to individuals (other than individuals with disabilities) who have economic or academic disadvantages and who require special services and assistance in order to enable these individuals to succeed in vocational education programs. This term includes individuals who are members of economically disadvantaged families, migrants, individuals of limited English proficiency and individuals who are dropouts from, or who are identified as potential dropouts from, secondary school. For the purpose of this definition, an individual who scores at or below the 25th percentile on a standardized achievement or aptitude test, whose secondary school grades are below 2.0 on a 4.0 scale (on which the grade "A" equals 4.0), or who fails to attain minimum academic competencies may be considered "academically disadvantaged." The definition does not include individuals with learning disabilities.

Displaced homemaker means an individual who—

(1) Is an adult;

(2) Has worked as an adult primarily without remuneration to care for the home and family, and for that reason has diminished marketable skills; and

(3)(i) Has been dependent on public assistance or on the income of a relative but is no longer supported by that income;

(ii) Is a parent whose youngest dependent child will become ineligible to receive assistance under part A of title IV of the Social Security Act (42 U.S.C. 601), Aid to Families with Dependent Children, within two years of the parent's application for assistance under the Carl D. Perkins Vocational and Applied Technology Education Act;

(iii) Is unemployed or underemployed and is experiencing difficulty in obtaining any employment or suitable employment, as appropriate; or

(iv) Is described in paragraphs (1) and (2) of this definition and is a criminal offender.

Economically disadvantaged family or individual means a family or individual that is—

(1) Eligible for any of the following:

(i) The program for Aid to Families with Dependent Children under part A of title IV of the Social Security Act (42 U.S.C. 601).

(ii) Benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011).

(iii) To be counted for purposes of section 1005 of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended (chapter 1) (20 U.S.C. 2701).

(iv) The free or reduced-price meals program under the National School Lunch Act (42 U.S.C. 1751).

Note to paragraph (1)(iv): The National School Lunch Act prohibits the identification of students by name. However, State and local projects may use the total number of students participating in a free- or reduced-priced meals program to determine eligibility for projects, services, and activities under the Vocational and Applied Technology Education Programs.

(2) Determined by the Secretary to be low-income according to the latest available data from the Department of Commerce.

(3) Identified as low income according to other indices of economic status, including estimates of those indices, if a grantee demonstrates to the satisfaction of the Secretary that those indices are more representative of the number of economically disadvantaged students attending vocational education programs. The Secretary determines, on a case-by-case basis, whether other indices of economic status are more representative of the number of economically disadvantaged students attending vocational education programs, taking into consideration, for example, the statistical reliability of any data submitted by a grantee as well as the general acceptance of the indices by other agencies in the State or local area.

(Authority: 20 U.S.C. 2341(d)(3)

Eligible recipient means, except as otherwise provided, a local educational agency, an area vocational education school, an intermediate educational agency, a postsecondary educational institution, a State corrections educational agency, or an eligible institution as defined in 34 CFR 403.117(a).

General occupational skills means strong experience in, and understanding of, all aspects of an industry.

High technology means state-of-the-art computer, microelectronic, hydraulic, pneumatic, laser, nuclear, chemical, telecommunication, and other technologies being used to enhance productivity in manufacturing, communication, transportation, agriculture, mining, energy, commercial, and similar economic activity, and to improve the provision of health care.

IDEA means the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), formerly entitled "Education of the Handicapped Act."

Individual with disabilities means—

(1) Any individual who—

(i) Has a physical or mental impairment that substantially limits one or more of the major life activities of that individual;

(ii) Has a record of an impairment described in paragraph (i) of this definition; or

(iii) Is regarded as having an impairment described in paragraph (i) of this definition.

(2) Any individual who has been evaluated under part B of the IDEA and determined to be an individual with a disability who is in need of special education and related services; or

(3) Any individual who is considered disabled under section 504 of the Rehabilitation Act of 1973.

(Authority: 42 U.S.C. 12102(2))

Individualized education program means a written statement for a disabled individual developed in accordance with sections 612(4) and 614(a)(5) the IDEA (20 U.S.C. 1412(4) and 1414(a)(5)).

Institution of higher education means an educational institution in any State which—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited—

(i) Is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time; or

(ii) Is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

This term also includes—

(A) Any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (1), (2), (4), and (5) of this definition; and

(B) A public or nonprofit private educational institution in any State which, in lieu of the requirement in paragraph (1) of this definition, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who meet the requirements of section 484(d) of the Higher Education Act of 1965 (20 U.S.C. 1091(d)).

(Authority: 20 U.S.C. 1141(a))

Intermediate educational agency means a combination of school districts or counties (those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties) as are recognized in a State as an administrative agency for that State's vocational or technical education schools or for vocational programs within its public elementary or secondary schools. This term includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

(Authority: 20 U.S.C. 2891(5))

JTPA means the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

Limited English proficiency, if used with reference to individuals, means individuals—

(1)(i) Who were not born in the United States or whose native language is a language other than English;

(ii) Who come from environments where a language other than English is dominant; or

(iii) Who are American Indian and Alaska Natives and who come from environments where a language other

than English has had a significant impact on their level of English language proficiency; and

(2) Who by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny those individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(Authority: 20 U.S.C. 3223(a)(1))

Local educational agency means a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program. For the purposes of sections 114, 115, 116, 117, and 240 of the Act (implemented at 34 CFR 403.31 (e) and (f), 403.32(c)(3), 403.190, 403.191, 403.192, 403.201, 403.202, and 403.204), this term includes a State corrections educational agency.

Measure means a description of an outcome.

(Authority: House Report No. 101–41, 101st Cong., 1st Sess. p. 13 (1989))

Postsecondary educational institution means an institution legally authorized to provide postsecondary education within a State, a Bureau of Indian Affairs-controlled postsecondary institution, or any postsecondary educational institution operated by, or on behalf of, any Indian tribe that is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or under the Act of April 16, 1934 (25 U.S.C. 452).

Preparatory services means services, programs, or activities designed to assist individuals who are not enrolled in vocational education programs in the selection of, or preparation for participation in, an appropriate vocational education training program. Preparatory services include, but are not limited to—

(1) Services, programs, or activities related to outreach to, or recruitment of, potential vocational education students;

(2) Career counseling and personal counseling;

(3) Vocational assessment and testing; and

(4) Other appropriate services, programs, or activities.

Private vocational training institution means a business or trade school, or technical institution or other technical or vocational school, in any State, that—

(1) Admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by the institution;

(2) Is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations;

(3) Has been in existence for two years or has been specially accredited by the Secretary as an institution meeting the other requirements of this definition; and

(4) Is accredited—

(i) By a nationally recognized accrediting agency or association listed by the Secretary;

(ii) If the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Secretary; or

(iii) If the Secretary determines that there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by the Secretary and composed of persons specially qualified to evaluate training provided by schools of that category. The committee shall prescribe the standards of content, scope, and quality that must be met by those schools and shall also determine whether particular schools meet those standards.

Program effectiveness panel means the panel of experts in the evaluation of education programs and in other areas of education, at least two-thirds of whom are not Federal employees, who are appointed by the Secretary, and who review and assign scores to programs according to the criteria in 34 CFR 786.12 or 787.12.

Program year or *academic year* mean the twelve-month period during which a State operates its vocational education program (which is most generally a period beginning on July 1 and ending on the following June 30).

(Authority: 20 U.S.C. 1225(a))

Rehabilitation Act of 1973 means the Act in 29 U.S.C. 701 *et seq.*

School facilities means classrooms and related facilities, including initial equipment, and interests in lands on which the facilities are constructed. The term does not include any facility intended primarily for events for which admission is to be charged to the general public.

Sequential course of study means an integrated series of courses that are directly related to the educational and occupational skills preparation of individuals for jobs, or preparation for postsecondary education.

Single parent means an individual who—

(1) Is unmarried or legally separated from a spouse; and

(2)(i) Has a minor child or children for which the parent has either custody or joint custody; or

(ii) Is pregnant.

Small business means a for-profit enterprise employing 500 or fewer employees.

Special populations refers to individuals with disabilities, educationally and economically disadvantaged individuals (including foster children), individuals of limited English proficiency, individuals who participate in programs designed to eliminate sex bias, and individuals in correctional institutions.

Spread means the degree to which—

(1) Project activities and results are demonstrated to others;

(2) Technical assistance is provided to others to help them replicate project activities and results;

(3) Project activities and results are replicated at other sites; or

(4) Information and material about or resulting from the project are disseminated.

Specific job training means training and education for skills required by an employer to provide the individual student with the ability to obtain employment and to adapt to the changing demands of the workplace.

Standard means the level or rate of an outcome.

(Authority: House Report No. 101–41, 101st Cong., 1st Sess. p. 13 (1989))

State means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Pub. L. 99–658 (48 U.S.C. 1681)).

State board means a State board designated or created by State law as the sole State agency responsible for the administration of vocational education or for supervision of the administration of vocational education in the State.

State corrections educational agency means the State agency or agencies responsible for carrying out corrections education programs in the State.

State council means the State council on vocational education established in accordance with 34 CFR 403.17 through 403.19.

Supplementary services means curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices.

Technology education means an applied discipline designed to promote technological literacy that provides knowledge and understanding of the impacts of technology including its organizations, techniques, tools and skills to solve practical problems and extend human capabilities in areas such as construction, manufacturing, communication, transportation, power, and energy.

Transportability means the ease by which project activities and results may be replicated at other sites, such as through the development and use of guides or manuals that provide step-by-step directions for others to follow in order to initiate similar efforts and reproduce comparable results.

Tribally controlled community college means an institution that receives assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Act (25 U.S.C. 640a).

Vocational education means organized educational programs offering a sequence of courses or instruction in a sequence or aggregation of occupational competencies that are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. These programs must include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. This term also includes applied technology education.

Vocational student organizations means those organizations for individuals enrolled in vocational education programs that engage in activities as an integral part of the instructional program. These organizations may have State and national units that aggregate the work and purposes of instruction in vocational education at the local level.

Wagner-Peyser Act means the Act in 29 U.S.C. 49 *et seq.*

(Authority: 20 U.S.C. 2471)

§ 400.5 Under what conditions may funds under the Act be used for the joint funding of programs?

(a) Funds made available under the Act may be used to provide additional funds under any of the programs in—

(1) Title II, section 123 and title III of the JTPA; or

(2) The Wagner-Peyser Act.

(b) Funds used to carry out paragraph (a) of this section may be used only if the—

(1) Program otherwise meets the requirements of the Act and the requirements of the programs in paragraph (a) (1) and (2) of this section;

(2) Program serves the same individuals that are served under the Act;

(3) Program provides services in a coordinated manner with services provided under the Act; and

(4) Funds would be used to supplement, and not supplant, funds provided from non-Federal sources.

(c) Funds that meet the conditions in paragraphs (a) and (b) of this section may be used as matching funds.

(Authority: 20 U.S.C. 2468)

§ 400.6 What are the requirements for establishing a State Committee of Practitioners?

(a) *Consultation.* A State shall appoint a State Committee of Practitioners (Committee) after consulting with—

(1) Local school officials representing eligible recipients;

(2) Representatives of—

(i) Organized labor;

(ii) Business;

(iii) Superintendents;

(iv) Community-based organization;

(v) Private industry councils established under section 102(a) of the JTPA (29 U.S.C. 1512);

(vi) State councils;

(vii) Parents;

(viii) Special populations; and

(ix) Correctional institutions;

(3) The administrator appointed under 34 CFR 403.13(a);

(4) The State administrator of programs assisted under part B of the IDEA;

(5) The State administrator of programs assisted under chapter 1;

(6) The State administrator of programs for students of limited English proficiency; and

(7) Guidance counselors.

(b) *Committee selection.* The State shall select the Committee from nominees solicited from—

(1) State organizations representing school administrators;

(2) Teachers;

(3) Parents;

(4) Members of local boards of education; and

(5) Appropriate representatives of institutions of higher education.

(c)(1) *Committee membership.* The Committee must consist of—

(i) Representatives of local educational agencies, who must constitute a majority of the members of the committee;

(ii) School administrators;

(iii) Teachers;

(iv) Parents;

(v) Members of local boards of education;

(vi) Representatives of institutions of higher education; and

(vii) Students.

(2) School administrators, teachers, and members of local boards of education may be counted as representatives of LEAs for purposes of paragraph (c)(1)(i) of this section.

(Authority: 20 U.S.C. 2325(a) and (d)(1); 2468a)

§ 400.7 What are the provisions governing the issuance of State standards and measures of performance and State rules or regulations?

(a)(1) *State standards and measures.* A State shall convene, on a regular basis, the Committee established under § 400.6 to review, comment on, and propose revisions to a draft proposal that the State board develops for a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs.

(2) The Committee shall make recommendations to the State board with respect to modifying statewide standards and measures based on information provided by the State under 34 CFR 403.201(d).

(b)(1) *State rules and regulations.* Except as provided in paragraph (b)(2) of this section, before a State publishes any proposed or final State rule or regulation for programs, services, or activities covered by the Act, the State shall convene the Committee for the purpose of reviewing the rule or regulation.

(2) In an emergency, in which a rule or regulation must be issued within a very limited time period to assist eligible recipients with the operation of a projects, services, or activities, the State—

(i) May issue a proposed rule or regulation without meeting the requirements in paragraph (b)(1) of this section; but

(ii) Shall immediately convene the Committee to review the rule or

regulation before it is issued in final form.

Cross-Reference: See § 400.8(c).

(3) If a State policy is binding on eligible recipients and has the same effect as a formal rule or regulation, although it is not issued as one, that policy is covered by this section.

(Authority: 20 U.S.C. 2325(a); 2468a)

§ 400.8 What are the provisions governing student assistance?

(a) The portion of any student financial assistance received under the Act that is made available for attendance costs described in paragraph (b) of this section may not be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds.

(b) For purposes of this section, attendance costs are—

(1) Tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchases of any equipment, materials, or supplies required of all students in the same course of study; and

(2) An allowance for books, supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending an institution on at least a half-time basis, as determined by the institution.

(Authority: 20 U.S.C. 2466d)

§ 400.9 What additional requirements govern the Vocational and Applied Technology Education Programs?

In addition to the Act, applicable Federal laws, and regulations, the following requirements apply to Vocational and Applied Technology Education Programs:

(a) A State that receives funds under the Act shall cooperate with the Secretary in supplying the information the Secretary requires, in the form the Secretary requires, and shall comply in its reports with the information system developed by the Secretary under section 421 of the Act.

(b) Nothing in the Act is to be construed to be inconsistent with applicable Federal laws guaranteeing civil rights, or is intended to, or has the effect of, limiting or diminishing any obligations imposed under the IDEA or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(c) Any State rule, regulation, or policy imposed on the administration or operation of programs funded under the Act, including any rule, regulation, or policy based on a State's interpretation of any Federal law, regulation, or guideline, must be identified as a State imposed requirement.

(d) Funds provided under the Act may not be used for the purpose of directly providing incentives or inducements to relocate a business or enterprise from one State to another State if the relocation would result in a reduction in the number of jobs available in the State where the business enterprise is located before the incentives or inducements are offered.

(e) A State may not take into consideration payments under the Act in determining for any educational agency or institution in that State the eligibility for State aid or the amount of State aid with respect to public education within the State.

(Authority: 20 U.S.C. 2421, 2424, 2466c, 2468b, 2468c, and 2468e(a)(2))

§ 400.10 What are the reporting requirements?

(a) Recipients of grants and cooperative agreements shall report information about students, projects, evaluations, dissemination, expenditures, accomplishments, and any other information, as may be required by the Secretary.

(b) Recipients of grants and cooperative agreements under—

(1) Parts 401, 402, 405, 408, 409, 413, 415, 416, 417, 422, 423, 424, 425, 426, 427, and 428 shall submit performance reports quarterly;

(2) Part 412 shall submit monthly progress and financial status reports and an annual impact report;

(3) Part 413 shall submit monthly exception reports and quarterly financial status reports; and

(4) Part 419 shall submit semi-annual performance reports.

(Authority: 20 U.S.C. 2301 *et seq.*)

3. Part 401 is revised to read as follows:

PART 401—INDIAN VOCATIONAL EDUCATION PROGRAM

Subpart A—General

Sec.

401.1 What is the Indian Vocational Education Program?
401.2 Who is eligible for an award?
401.3 What activities may the Secretary fund?
401.4 What regulations apply?
401.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

401.10 How are applications submitted?

Subpart C—How Does the Secretary Make an Award?

401.20 How does the Secretary evaluate an application?
401.21 What selection criteria does the Secretary use?
401.22 What additional factors may the Secretary consider?
401.23 Is the Secretary's decision not to make an award under the Indian Vocational Education Program subject to a hearing?

Subpart D—What Conditions Must Be Met After an Award?

401.30 How does the Indian Self-Determination Act and the Act of April 16, 1934 affect awards under the Indian Vocational Education Program?
401.31 What are the evaluation requirements?

Authority: 20 U.S.C. 2313(b), unless otherwise noted.

Subpart A—General

§ 401.1 What is the Indian Vocational Education Program?

The Indian Vocational Education Program provides financial assistance to projects that provide vocational education for the benefit of Indians.

(Authority: 20 U.S.C. 2313(b))

§ 401.2 Who is eligible for an award?

(a) The following entities are eligible for an award under this program:

(1) A tribal organization of any Indian tribe that is eligible to contract with the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

(2) A Bureau-funded school offering a secondary program.

(b) Any tribal organization or Bureau-funded school described in paragraph (a) of this section may apply individually or jointly as part of a consortium with one or more eligible tribal organizations or schools.

(c)(1) A consortium shall enter into an agreement signed by all members of the consortium, and designating one member of the consortium as the applicant and grantee.

(2) The agreement must detail the activities each member of the consortium plans to perform, and must bind each member to every statement and assurance made in the application.

(3) The applicant shall submit the agreement with its application.

Cross-Reference: See 34 CFR 75.127–75.129—Group applications.

(Authority: 20 U.S.C. 2313(b))

§ 401.3 What activities may the Secretary fund?

(a) The Secretary provides financial assistance through grants, contracts, or cooperative agreements to plan, conduct, and administer projects or portions of projects that are authorized by and consistent with the purpose of the Act. In the case of a grant to a Bureau-funded school, the Secretary provides a minimum grant of $35,000.

(b) Projects funded under this program are in addition to other programs, services, and activities made available under other provisions of the Act to—

(1) Eligible Indians in need of vocational education; and

(2) Eligible Indian tribes as community-based organizations that receive State vocational education assistance.

(c) An award under this program may be used to provide a stipend to a student who—

(1) Is enrolled in a vocational education project funded under this program; and

(2) Has an acute economic need that cannot be met through work-study programs.

(d) The amount of a stipend may be the greater of either the minimum hourly wage prescribed by State or local law, or the minimum hourly wage set under the Fair Labor Standards Act. A stipend may not be paid for time a student is not in attendance in a project.

(Authority: 20 U.S.C. 2313(b) (1) and (3))

§ 401.4 What regulations apply?

The following regulations apply to the Indian Vocational Education Program:

(a) The regulations in 34 CFR part 400 (except that 34 CFR parts 79 and 82 do not apply to this program).

(b) The regulations in this part 401.

(Authority: 20 U.S.C. 2313(b))

§ 401.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Act of April 16, 1934 means the Federal law commonly known as the "Johnson-O'Malley Act" that authorizes the Secretary of the Interior to make contracts for the education of Indians and other purposes (25 U.S.C. 455–457).

Acute economic need means an income that is at or below the national poverty level according to the latest available data from the Department of Commerce.

Bureau means the Bureau of Indian Affairs, Department of Interior.

Bureau-funded school means—

(1) A Bureau operated elementary or secondary day or boarding school or a Bureau operated dormitory for students attending a school other than a Bureau school;

(2) An elementary or secondary school or a dormitory that receives financial assistance for its operation under a contract or agreement with the Bureau under sections 102, 104(1), or 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f, 450h(1), and 458d); or

(3) A school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

(Authority: 20 U.S.C. 2313(b); 25 U.S.C. 2019(3), (4), and (5))

Indian means a person who is a member of an Indian tribe.

(Authority: 25 U.S.C. 450b(d))

Indian tribe means any Indian tribe, band, Nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Authority: 25 U.S.C. 450b(e))

Stipend means a subsistence allowance for a student that is necessary for the student to participate in a project funded under this program.

Tribal organization means the recognized governing body of any Indian tribe or any legally established organization of Indians that is controlled, sanctioned, or chartered by that governing body or that is democratically elected by the adult members of the Indian community to be served by the organization and that includes the maximum participation of Indians in all phases of its activities. Provided, that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

(Authority: 25 U.S.C. 450b(1))

(Authority: 20 U.S.C. 2313(a)(1)(A), (b))

Subpart B—How Does One Apply for an Award

§ 401.10 How are applications submitted?

(a) An application from a tribal organization must be submitted to the Secretary by the Indian tribe.

(b) An application for a project to serve more than one Indian tribe must be approved by each tribe to be served.

(c) An application from a Bureau-funded school may be submitted directly to the Secretary.

(Authority: 20 U.S.C. 2313(b)(1); 25 U.S.C. 450b)

Subpart C—How Does the Secretary Make an Award?

§ 401.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 401.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 401.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 401.21.

(e) In addition to the 100 points to be awarded based on the criteria in § 401.21, the Secretary awards—

(1) Up to 5 points to applications that propose exemplary approaches that involve, coordinate with, or encourage tribal economic development plans; and

(2) Five points to applications from tribally controlled community colleges that—

(i) Are accredited or are candidates for accreditation by a nationally recognized accreditation organization as an institution of postsecondary vocational education; or

(ii) Operate vocational education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization and issue certificates for completion of vocational education programs.

(Authority: 20 U.S.C. 2313(b))

§ 401.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which it—

(1) Proposes measurable goals for student enrollment, completion, and placement that are realistic in terms of stated needs, resources, and job opportunities in each occupation for which training is to be provided;

(2) Proposes goals that take into consideration any related goals or

standards developed for Job Opportunities and Basic Skills (JOBS) programs (42 U.S.C. 681 *et seq.*) and Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*) training programs operating in the area, and, where appropriate, any goals set by the State board for vocational education for the occupation and geographic area;

(3) Describes, for each occupation for which training is to be provided, how successful program completion will be determined in terms of academic and vocational competencies demonstrated by enrollees prior to completion and any academic or work credentials acquired by enrollees upon completion;

(4) Demonstrates the active commitment in the project's planning and operation by advisory committees, tribal planning offices, the JOBS program office, the JTPA program director, and potential employers such as tribal enterprises, private enterprises (on or off reservation), and other organizations;

(5) Is targeted to individuals with inadequate skills to assist those individuals in obtaining new employment; and

(6) Includes a thorough description of the approach to be used including some or all of the following components:

(i) Methods of participant selection.

(ii) Assessment and feedback of participant progress.

(iii) Coordination of vocational instruction, academic instruction, and support services such as counseling, transportation, and child care.

(iv) Curriculum and, if appropriate, approaches for providing on-the-job training experience.

(b) *Need.* (15 points) The Secretary reviews each application to determine the extent to which the project addresses specific needs, including—

(1) The job market and related needs (such as educational level) of the target population;

(2) Characteristics of that population, including an estimate of those to be served by the project;

(3) How the project will meet the needs of the target population; and

(4) A description of any ongoing and planned activities relative to those needs, including, if appropriate, how the State plan developed under 34 CFR 403.30–403.34 is designed to meet those needs.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The establishment of objectives that are clearly related to project goals and activities and are measurable with respect to anticipated enrollments, completions, and placements;

(2) A management plan that describes the chain of command, how staff will be managed, how coordination among staff will be accomplished, and timelines for each activity; and

(3) The way the applicant intends to use its resources and personnel to achieve each objective.

(d) *Key personnel.* (10 points). (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time that each one of the key personnel, including the project director, will commit to the project; and

(iv) Subject to the Indian preference provisions of the Indian Self-Determination Act (25 U.S.C. 450 *et seq.*) that apply to grants and contracts to tribal organizations, how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields particularly related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project and the number of participants to be served; and

(3) The budget narrative justifies the expenditures.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kind of academic and work credentials acquired by participants who complete the training;

(2) The plan identifies, at a minimum, types of data to be collected and reported with respect to the achievement of project goals for the enrollment, completion, and placement of participants. The data must be broken down by sex and by occupation for which the training was provided;

(3) The methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(4) The methods of evaluation provide periodic data that can be used by the project for ongoing program improvement.

(g) *Employment opportunities.* (10 points) The Secretary reviews each application to determine the quality of the plan for job placement of participants who complete training under this program, including—

(1) The expected employment opportunities (including any military specialties) and any additional training opportunities that are related to the participants' training;

(2) Information and documentation concerning potential employers' commitment to hire participants who complete the training; and

(3) An estimate of the percentage of trainees expected to be employed (including self-employed individuals) in the field for which they were trained following completion of the training.

(Authority: 20 U.S.C. 2313(b))

§ 401.22 What additional factors may the Secretary consider?

The Secretary may decide not to award a grant or cooperative agreement if—

(a) The proposed project duplicates an effort already being made; or

(b) Funding the project would create an inequitable distribution of funds under this part among Indian tribes.

(Authority: 20 U.S.C. 2313(b))

§ 401.23 Is the Secretary's decision not to make an award under the Indian Vocational Education Program subject to a hearing?

(a) After receiving written notice from an authorized official of the Department that the Secretary will not award a grant or cooperative agreement to an eligible applicant under § 401.2(a)(1), an Indian tribal organization has 30 calendar days to make a written request to the Secretary for a hearing to review the Secretary's decision.

(b) Within 10 business days of the Department's receipt of a hearing request, the Secretary designates a Department employee who is not assigned to the Office of Vocational and Adult Education to serve as a hearing

officer. The hearing officer conducts a hearing and issues a written decision within 75 calendar days of the Department's receipt of the hearing request. The hearing officer establishes rules for the conduct of the hearing. The hearing officer conducts the hearing solely on the basis of written submissions unless the officer determines, in accordance with standards in 34 CFR 81.6(b), that oral argument or testimony is necessary.

(c) The Secretary does not make any award under this part to an Indian tribal organization until the hearing officer issues a written decision on any appeal brought under this section.

(Authority: 20 U.S.C. 2313(b); 25 U.S.C. 450f)

Subpart D—What Conditions Must be Met After an Award?

§ 401.30 How does the Indian Self-Determination Act and the Act of April 16, 1934 affect awards under the Indian Vocational Education Program?

(a) Grants, cooperative agreements, or contracts with tribal organizations are subject to the terms and conditions of section 102 of the Indian Self-Determination Act (25 U.S.C. 450f). These awards must be conducted by the recipient or contractor in accordance with the provisions of sections 4, 5, and 6 of the Act of April 16, 1934, that are relevant to the projects administered under this part. Section 4 contains requirements pertaining to submission of an education plan by a contractor. Section 5 pertains to participation of parents of Indian children. Section 6 pertains to reimbursement for educating non-resident students.

(b) Grants to Bureau funded schools are not subject to the requirements of the Indian Self-Determination Act or the Act of April 16, 1934.

(Authority: 20 U.S.C. 2313(b)(1)(A)(ii) (I) and (II))

§ 401.31 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for either an internal or external evaluation, or both, of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired;

(2) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex and socio-economic status for each occupation for which training has been provided;

(3) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application;

(4) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(5) The effectiveness of the project in promoting key elements for participants's job readiness, including—

(i) Coordination of services;

(ii) Improved attendance rates; and

(iii) Improved basic and vocational skills competencies.

(Authority: 20 U.S.C. 2313(b))

4. A new part 402 is added to read as follows:

PART 402—NATIVE HAWAIIAN VOCATIONAL EDUCATION PROGRAM

Subpart A—General

Sec.

402.1 What is the Native Hawaiian Vocational Education Program?
402.2 Who is eligible for an award?
402.3 What activities may the Secretary fund?
402.4 What regulations apply?
402.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

402.20 How does the Secretary evaluate an application?
402.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

402.30 What are the evaluation requirements?

Authority: 20 U S.C. 2313(c), unless otherwise noted.

Subpart A—General

§ 402.1 What is the Native Hawaiian Vocational Education Program?

The Native Hawaiian Vocational Education Program provides financial assistance to projects that provide vocational training and related activities for the benefit of native Hawaiians.

(Authority: 20 U.S.C. 2313(c))

§ 402.2 Who is eligible for an award?

Any organization that primarily serves and represents native Hawaiians and that is recognized by the Governor of the State of Hawaii is eligible to apply for an award under this program.

(Authority: 20 U.S.C. 2313(c))

§ 402.3 What activities may the Secretary fund?

The Secretary provides assistance through grants, contracts, or cooperative agreements to plan, conduct, and administer programs, or portions of programs, that provide vocational training and related activities for the benefit of native Hawaiians.

(Authority: 20 U.S.C. 2313(c))

§ 402.4 What regulations apply?

The following regulations apply to the Native Hawaiian Vocational Education Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 402.

(Authority: 20 U.S.C. 2313(c))

§ 402.5 What definitions apply?

The following definitions apply to the Native Hawaiian Vocational Education Program:

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definition also applies to this part:

Native Hawaiian means any individual who has any ancestors who were natives, prior to 1778, of the area that now comprises the State of Hawaii.

(Authority: 20 U.S.C. 2313(a)(1)(B))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 402.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 402.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 402.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 402.21.

(Authority: 20 U.S.C. 2313(c))

§ 402.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria to evaluate an application:

(a) *Program design.* (35 points) The Secretary reviews each application to determine the extent to which—

(1) The application presents a complete program design, including identifying the services to be provided, who will provide them, how they will be provided, and the expected outcomes for each activity;

(2) The proposed program is designed to meet the identified vocational education needs of native Hawaiians;

(3) The application proposes an effective plan for coordination with the office of the Hawaii State director for vocational education; and

(4) If vocational training is proposed within the project—

(i) Proposes measurable goals for student enrollment, completion, and placement.

(ii) Proposes goals that take into consideration any related standards and measures developed for Job Opportunities and Basic Skills (JOBS) programs (42 U.S.C. 681 *et seq.*) and any Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*) programs in that geographic area;

(iii) Proposes goals that take into consideration any standards set by the State board for vocational education for the occupation and geographic area; and

(iv) Describes how successful program completion will be determined for each occupation for which training is to be provided, in terms of the academic and vocational competencies demonstrated by enrollees prior to successful completion and any academic or work credentials acquired upon completion.

(b) *Management plan.* (25 points) The Secretary reviews each application to determine the quality of the management plan for the project, including—

(1) The chain of command, how staff will be managed, how coordination among staff will be accomplished, and timelines for each activity;

(2) A clear description of the interrelationship among goals, objectives, and activities;

(3) The way the applicant plans to use the resources and personnel from the grant to achieve each objective; and

(4) How any contracts awarded by the grantee will be awarded, monitored, and evaluated.

(c) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time, that each one of the key personnel, including the project director, will commit to the proposed project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel for this project are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields particularly related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Third-party evaluation.* (10 points) (1) The Secretary reviews each application to determine the quality of the project's plan for an independent evaluation of the project, including if applicable, the extent to which the plan includes activities during the formative stages of the project to help guide and improve the project, as well as a final evaluation that includes summary data and recommendations.

(2) The Secretary reviews each application to determine whether, for any training programs proposed—

(i) The plan identifies, at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by completers; and

(ii) The plan identifies, at a minimum, types of data to be collected and reported with respect to enrollment, completion, and placement of participants by sex and socio-economic status for each occupation for which training is provided.

(e) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is detailed and tied to the proposed activities;

(2) The budget narrative is explanatory and justifies expenses;

(3) The budget is adequate to support the project; and

(4) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 2313(c))

Subpart D—What Conditions Must Be Met After an Award?

§ 402.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for an external evaluation of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application; and

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress when training is provided by the project, including—

(i) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(ii) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex and socio-economic status for each occupation for which training has been provided.

(Authority: 20 U.S.C. 2313(c))

5. A new part 403 is added to read as follows:

PART 403—STATE VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAM

Subpart A—General

Sec.

403.1 What is the State Vocational and Applied Technology Education Program?
403.2 Who is eligible for an award?
403.3 What regulations apply?
403.4 What definitions apply?

Subpart B—What Are the State's Organizational and Planning Responsibilities?

403.10 What is the State board?
403.11 What are the principal responsibilities of the State board?
403.12 What are the additional responsibilities of the State board?
403.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?
403.14 What are the personnel requirements regarding coordination with services for individuals with disabilities?
403.15 What are the personnel requirements regarding coordination with services under chapter 1 of title I of the Elementary and Secondary Education Act?

403.16 What are the personnel requirements regarding coordination with programs for individuals of limited English proficiency?
403.17 What are the State's responsibilities regarding a State council on vocational education?
403.18 What are the membership requirements of a State council on vocational education?
403.19 What are the responsibilities of a State council on vocational education?

Subpart C—How Does a State Apply for a Grant?

403.30 What documents must a State submit to receive a grant?
403.31 How is the State plan developed?
403.32 What must the State plan contain?
403.33 What procedures does a State use to submit its State plan?
403.34 When are amendments to the State plan required?

Subpart D—How Does the Secretary Make a Grant to a State?

403.50 How does the Secretary make allotments?
403.51 How does the Secretary make reallotments?
403.52 How does the Secretary approve State plans and amendments?

Subpart E—What Kinds of Activities Does the Secretary Assist Under the Basic Programs?

General

403.60 What are the basic programs?
403.61 What projects, services, and activities are permissible under the basic programs?
403.62 What administrative provisions apply?
403.63 How does a State carry out the State Vocational and Applied Technology Education Program?

State Programs and State Leadership Activities

403.70 How must funds be used under the State Programs and State Leadership Activities?
403.71 In what additional ways may funds be used under the State Programs and State Leadership Activities?

Single Parents, Displaced Homemakers, and Single Pregnant Women Program

403.80 Who is eligible for a subgrant or contract?
403.81 How must funds be used under the Single Parents, Displaced Homemakers, and Single Pregnant Women Program?
403.82 In what settings may the Single Parents, Displaced Homemakers, and Single Pregnant Women Program be offered?

Sex Equity Program

403.90 Who is eligible for a subgrant or contract?
403.91 How must funds be used under the Sex Equity Program?
403.92 Under what circumstances may the age limit under the Sex Equity Program be waived?

Programs for Criminal Offenders

403.100 What are the requirements for designating a State corrections educational agency to administer the Programs for Criminal Offenders?
403.101 How must funds be used under the Programs for Criminal Offenders?
403.102 What other requirements apply to the Program for Criminal Offenders?

Secondary, Postsecondary, and Adult Vocational Education Programs

403.110 Who is eligible for a subgrant or contract?
403.111 How must funds be used under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?
403.112 How does a State allocate funds under the Secondary School Vocational Education Program to local educational agencies?
403.113 How does a State allocate funds under the Secondary School Vocational Education Program to area vocational education schools and intermediate educational agencies?
403.114 How does a State determine the number of economically disadvantaged students attending vocational education programs under the Secondary School Vocational Education Program?
403.115 What appeal procedures must be established under the Secondary School Vocational Education Program?
403.116 How does a State allocate funds under the Postsecondary and Adult Vocational Education Programs?
403.117 What definitions apply to the Postsecondary and Adult Vocational Education Programs?
403.118 Under what circumstances may the Secretary waive the distribution requirements for the Postsecondary and Adult Vocational Education Programs?
403.119 Under what circumstances may the State waive the distribution requirements for Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs?
403.120 How does a State reallocate funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

Subpart F—What Kinds of Activities Does the Secretary Assist Under the Special Programs?

General

403.130 What are the Special Programs?
403.131 Who is eligible for an award under the Special Programs?

Vocational Education Support Programs by Community-Based Organizations

403.140 What activities does the Secretary support under the State Assistance for Vocational Education Support Programs by Community-Based Organizations?
403.141 What are the application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

Consumer and Homemaking Education Programs

403.150 What activities does the Secretary support under the Consumer and Homemaking Education Programs?
403.151 How must funds be used under the Consumer and Homemaking Education Programs?

Comprehensive Career Guidance and Counseling Programs

403.160 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Programs?
403.161 How must funds be used under the Comprehensive Career Guidance and Counseling Programs?

Business-Labor-Education Partnership for Training Program

403.170 What activities does the Secretary support under the Business-Labor-Education Partnership for Training Program?
403.171 Who is eligible to apply to a State board for an award?
403.172 What special considerations must the State board give in approving projects, services, and activities?
403.173 What expenses are allowable?
403.174 What additional fiscal requirements apply to the Business-Labor-Education Partnership for Training Program?

Subpart G—What Financial Conditions Must Be Met by a State?

403.180 How must a State reserve funds for the basic programs?
403.181 What are the cost-sharing requirements applicable to the basic programs?
403.182 What is the maintenance of fiscal effort requirement?
403.183 Under what circumstances may the Secretary waive the maintenance of effort requirement?
403.184 How does a State request a waiver of the maintenance of effort requirement?
403.185 How does the Secretary compute maintenance of effort in the event of a waiver?
403.186 What are the administrative cost requirements applicable to a State?
403.187 How may a State provide technical assistance?

Subpart H—What Conditions Must Be Met by Local Recipients?

403.190 What are the requirements for receiving a subgrant or contract?
403.191 What are the requirements for program evaluation?
403.192 What are the requirements for program improvement?
403.193 What are the information requirements regarding special populations?
403.194 What are the comparability requirements?
403.195 What are the administrative cost requirements applicable to local recipients?
403.196 What are the requirements regarding supplanting?

403.197 What are the requirements for the use of equipment?

Subpart I—What Are the Administrative Responsibilities of a State Under the State Vocational and Applied Technology Education Program?

403.200 What are the State's responsibilities for ensuring compliance with the comparability requirements?
403.201 What are the State's responsibilities for developing and implementing a statewide system of core standards and measures of performance?
403.202 What must each State's system of core standards and measures of performance include?
403.203 What are the State's responsibilities for a State assessment?
403.204 What are the State's responsibilities for program evaluation and improvement?
403.205 What are the State's responsibilities for members of special populations?
403.206 What are the States's responsibilities regarding a State occupational information coordinating committee?
403.207 What are the State's responsibilities to the National Center or Centers for Research in Vocational Education?
403.208 What are the requirements regarding supplanting?

Appendix A to Part 403—Examples for 34 CFR 403.111(a) and 403.111(c)(3)

Authority: 20 U.S.C. 2301 *et seq.*, as amended by Pub. L. 101–392, 104 Stat. 753 (1990), unless otherwise noted.

Subpart A—General

§ 403.1 What is the State Vocational and Applied Technology Education Program?

(a) Under the State Vocational and Applied Technology Education Program, the Secretary makes grants to States, to assist them, local educational agencies, postsecondary educational institutions, and other agencies and institutions to administer and conduct vocational education programs that are authorized by the Act.

(b) The State Vocational and Applied Technology Education Program consists of the programs under the basic programs for vocational education authorized by title II of the Act and listed in § 403.60, and the special programs authorized by title III of the Act that are covered by the State plan and listed in § 403.130.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 403.2 Who is eligible for an award?

Except as otherwise provided in § 403.131, a State is eligible for an award under the State Vocational and Applied Technology Education Program.

(Authority: 20 U.S.C. 2311 and 2311a)

§ 403.3 What regulations apply?

The following regulations apply to the State Vocational and Applied Technology Education Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 403.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 403.4 What definitions apply?

The definitions in 34 CFR 400.4 apply to the State Vocational and Applied Technology Education Program.

(Authority: 20 U.S.C. 2471)

Subpart B—What are the State's Organizational and Planning Responsibilities?

§ 403.10 What is the State board?

A State that desires to participate in the programs authorized by the Act shall, consistent with State law, designate or establish a State board of vocational education (State board). The State board must be the sole State agency responsible for the administration or the supervision of the State's vocational and applied technology education program.

(Authority: 20 U.S.C. 2321(a))

§ 403.11 What are the principal responsibilities of the State board?

The principal responsibilities of the State board must include—

(a) The coordination of the development, submission, and implementation of the State plan;

(b) The evaluation of the programs, services, and activities assisted under the Act, as required by §§ 403.32 (a)(7) and (b)(9) and 403.201 through 403.204;

(c) The development, in consultation with the State council on vocational education, of the State plan and its submission to the Secretary, as required by §§ 403.30 through 403.34;

(d) Consultation with the State council on vocational education and other appropriate agencies, groups, and individuals, including business, industry, and labor, involved in the planning, administration, evaluation, and coordination of programs funded under the Act;

(e) Convening and meeting as a State board, consistent with applicable State law and procedure, when the State board determines it is necessary to meet to carry out its functions under the Act, but not less than four times annually; and

(f) The adoption of those procedures the State board considers necessary to implement State level coordination with the State job training coordinating council in order to encourage cooperation between programs under the Act and programs under the Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*).

(Authority: 20 U.S.C. 2321(a))

§ 403.12 What are the additional responsibilities of the State board?

(a) The State board shall make available to each private industry council established within the State under section 102 of the JTPA a current listing of all programs assisted under the Act.

(b)(1) The State board, in consultation with the State council on vocational education established under § 403.17, shall establish a limited number of (but at least two) technical committees to advise the State council and the State board on the development of model curricula to address State labor market needs. The technical committees shall develop an inventory of skills that may be used by the State board to define state-of-the-art model curricula. This inventory must identify the type and level of knowledge and skills needed for entry, retention, and advancement in occupational areas taught in the State.

(2) The State board shall establish procedures that are consistent with the purposes of the Act for membership, operation, and duration of the technical committees. Their membership must be composed of representatives of—

(i) Employers from any relevant industry or occupation for which the committee is established;

(ii) Trade or professional organizations representing any relevant occupations; and

(iii) Organized labor, if appropriate.

(c) Except for the functions described in § 403.11, the State board may delegate any of its other administrative, operational, or supervisory responsibilities, in whole or in part, to one or more appropriate State agencies.

(d) The State board shall carry out the responsibilities described in §§ 403.13 through 403.18 and 403.200 through 403.208.

(Authority: 20 U.S.C. 2321 (a)(1), (f), (g))

§ 403.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?

(a) A State that desires to participate in the State Vocational and Applied Technology Education Program shall assign one individual, within the appropriate agency established or designated by the State board under § 403.12(c), to administer vocational education programs within the State, to work full-time to assist the State board to fulfill the purposes of the Act by—

(1) Administering the program of vocational education for single parents, displaced homemakers, and single pregnant women described in § 403.81, and the sex equity program described in § 403.91;

(2) Gathering, analyzing, and disseminating data on the—

(i) Adequacy and effectiveness of vocational education programs in the State in meeting the education and employment needs of women, including the preparation of women for employment in technical occupations, new and emerging occupational fields, and occupations regarded as nontraditional for women; and

(ii) Status of men and women students and employees in the programs described in paragraph (a)(2)(i) of this section;

(3) Reviewing and commenting upon, and making recommendations concerning, the plans of local educational agencies, area vocational education schools, intermediate educational agencies, and postsecondary educational institutions to ensure that the needs of women and men for training in nontraditional jobs are met;

(4) (i) Reviewing vocational educational programs, including career guidance and counseling, for sex stereotyping and sex bias, with particular attention to practices that tend to inhibit the entry of women in high technology occupations; and

(ii) Submitting recommendations, to the State board for inclusion in the State plan, for programs and policies to overcome sex bias and sex stereotyping in the programs described in paragraph (a)(4)(i) of this section;

(5) Submitting to the State board an assessment of the State's progress in meeting the purposes of the Act with regard to overcoming sex discrimination and sex stereotyping;

(6) Reviewing proposed actions on grants, contracts, and the policies of the State board to ensure that the needs of women are addressed in the administration of the Act;

(7) Developing recommendations for programs of information and outreach to women concerning vocational education and employment opportunities for women, including opportunities for careers as technicians and skilled workers in technical fields and new and emerging occupational fields;

(8) Providing technical assistance and advice to local educational agencies, postsecondary institutions, and other interested parties in the State on expanding vocational opportunities for women;

(9) Assisting administrators, instructors, and counselors in implementing programs and activities to increase access for women, including displaced homemakers and single heads of households, to vocational education and to increase male and female students' enrollment in nontraditional programs;

(10) Developing an annual plan for the use of all funds available for programs described in §§ 403.81 and 403.91;

(11) Managing the distribution of funds pursuant to §§ 403.81 and 403.91;

(12) Monitoring the use of funds distributed to recipients under §§ 403.81 and 403.91;

(13) Evaluating the effectiveness of programs and activities supported by funds under §§ 403.81 and 403.91;

(14) On a competitive basis, allocating and distributing to eligible recipients or community-based organizations subgrants or contracts to carry out the Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women and the Sex Equity Program;

(15) Ensuring that each subgrant or contract awarded under the Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women and the Sex Equity Program is of sufficient size, scope, and quality to be effective;

(16) Developing procedures for the collection from eligible recipients or community-based organizations that receive funds under §§ 403.81 and 403.91 of data appropriate to the individuals served in programs under §§ 403.81 and 403.91 in order to permit an evaluation of effectiveness of those programs as required by paragraph (a)(13) of this section; and

(17) Cooperating in the elimination of sex bias and sex stereotyping in Consumer and Homemaking Education Programs.

(b) A State shall, in accordance with § 403.180(b)(4)(i), reserve at least $60,000 to carry out the provisions of paragraph (a) of this section, including the provision of necessary and reasonable staff support.

(c) For the purposes of this section, the term "State" includes only the fifty States and the District of Columbia.

(Authority: 20 U.S.C. 2312(a)(4)(A), 2321(b), 2335b, 2362(a)(3))

§ 403.14 What are the personnel requirements regarding coordination with services for individuals with disabilities?

(a) A State desiring to participate in the State Vocational and Applied Technology Education Program shall designate or assign the head of the State office responsible for administering part B of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*) to review the implementation of the provisions of the Act as they relate to students with disabilities by reviewing all or a representative sample of plans of eligible recipients to ensure that—

(1) Individuals with disabilities are receiving vocational educational services;

(2) Plans of the eligible recipients provide assurances of compliance with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the IDEA and regulations implementing those statutes, regarding equal access to programs; and

(3) Eligible recipients have—

(i) Identified the number of students with disabilities enrolled in the eligible recipients' vocational programs;

(ii) Assessed the vocational needs of those students; and

(iii) Developed an adequate plan to provide supplementary services sufficient to meet the needs of those students.

(b) For the purposes of this section, the term "State" includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321(c))

§ 403.15 What are the personnel requirements regarding coordination with services under chapter 1 of title I of the Elementary and Secondary Education Act?

(a) A State desiring to participate in programs authorized by the Act shall designate or assign the head of the State office or other appropriate individual responsible for coordinating services under chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended (Chapter 1) (20 U.S.C. 2701 *et seq.*) to review all or a representative sample of applications from eligible recipients to ensure that—

(1) The number of economically disadvantaged students has been identified; and

(2) The needs of economically disadvantaged students are being met as outlined in the applications of eligible recipients.

(b) For the purposes of this section, the term *State* includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321(c) and (d))

§ 403.16 What are the personnel requirements regarding coordination with programs for individuals of limited English proficiency?

(a) A State desiring to participate in programs authorized by the Act shall designate or assign the head of the State

office or other appropriate individual responsible for administering programs for students of limited English proficiency to review all or a representative sample of applications from eligible recipients to ensure that—

(1) The number of students of limited English proficiency has been identified; and

(2) The needs of students of limited English proficiency for participation in vocational education programs are being met as outlined in the applications of eligible recipients.

(b) For the purposes of this section, the term "State" includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321 (c) and (e))

§ 403.17 What are the State's responsibilities regarding a State council on vocational education?

(a) A State desiring to participate in the State Vocational and Applied Technology Education Program shall establish a State council on vocational education. The State council must be appointed—

(1) By the Governor; or

(2) By the State board of education, in a State in which the members of State board of education are elected, including election by the State legislature.

(b) Each State shall certify to the Secretary the establishment and membership of the State council by June 1 prior to the beginning of each State plan period described in § 403.30.

(c) Each State shall recertify to the Secretary any new member of the State council not more than 60 days after a position on the State council is vacated.

(Authority: 20 U.S.C. 2322 (a), (b))

§ 403.18 What are the membership requirements of a State council on vocational education?

(a) Each State council must be composed of 13 individuals, and must be broadly representative of citizens and groups within the State having an interest in vocational education.

(b) Each State council must consist of—

(1) Seven individuals who are representative of the private sector in the State and who must constitute a majority of the membership—

(i) Five of whom must be representatives of business, industry, trade organizations, and agriculture including—

(A) One member who is representative of small business concerns; and

(B) One member who is a private sector member of the State job training coordinating council established pursuant to section 122 of the JTPA; and

(ii) Two of whom must be representatives of labor organizations; and

(2) Six individuals, one of whom must be representative of special education, who are representative of—

(i) Secondary and postsecondary vocational institutions (equitably distributed among those institutions);

(ii) Career guidance and counseling organizations within the State; and

(iii) Individuals who have special knowledge and qualifications with respect to the special educational and career development needs of special populations, including women, disadvantaged individuals, disabled individuals, individuals with limited English proficiency, and minorities.

(c) The State council may include members of vocational student organizations and school boards but may not include employees of the State board of vocational education.

(d) In selecting individuals to serve on the State council on vocational education, the State shall give due consideration to the appointment of individuals who serve on a private industry council under the JTPA, or on State councils established under other related Federal programs.

(Authority: 20 U.S.C. 2322(a))

§ 403.19 What are the responsibilities of a State council on vocational education?

(a)(1) The State council on vocational education shall meet as soon as practical after the Secretary accepts its certification and shall select from among its membership a chairperson who must be a representative of the private sector.

(2) The State council on vocational education shall adopt rules that govern the time, place, and manner of meeting, as well as council operating procedures and staffing. The rules must provide for at least one public meeting each year at which the public is given an opportunity to express views concerning the vocational education program of the State.

(b) Each State council on vocational education, during each State plan period described in § 403.30 unless otherwise indicated in the regulations in this section, shall—

(1) Meet with the State board or its representatives to advise on the development of the subsequent State plan, or any amendments to the current State plan, while the State plan or amendment is being developed;

(2) Make recommendations to the State board and make reports to the Governor, the business community, and general public of the State, concerning—

(i) The State plan;

(ii) Policies the State should pursue to strengthen vocational education, with particular attention to programs for the disabled; and

(iii) Initiatives and methods the private sector could undertake to assist in the modernization of vocational education programs;

(3) Analyze and report on the distribution of all vocational education funds in the State and on the availability of vocational education activities and services within the State;

(4) Consult with the State board on the establishment of evaluation criteria for vocational education programs within the State;

(5) Submit recommendations to the State board on the conduct of vocational education programs conducted in the State that emphasize the use of business concerns and labor organizations;

(6) Assess and report on the distribution of financial assistance under the Act, particularly the distribution of financial assistance between secondary vocational education programs and postsecondary vocational education programs;

(7) Recommend procedures to the State board to ensure and enhance the participation of the public in the provision of vocational education at the local level within the State, particularly the participation of local employers and local labor organizations;

(8) Report to the State board on the extent to which individuals who are members of special populations are provided with equal access to quality vocational education programs;

(9) Analyze and review corrections education programs; and

(10)(i) At least once every two years—

(A) Evaluate the extent to which vocational education, employment, and training programs in the State represent a consistent, integrated, and coordinated approach to meeting the economic needs of the State;

(B) Evaluate the vocational education program delivery system assisted under the Act, and the job training program delivery system assisted under the JTPA, in terms of the delivery systems' adequacy and effectiveness in achieving the purposes of both Acts; and

(C) Make recommendations to the State board on the adequacy and effectiveness of the coordination that takes place between vocational education and the JTPA;

(ii) Comment on the adequacy or inadequacy of State action in implementing the State plan;

(iii) Make recommendations to the State board on ways to create greater

incentives for joint planning and collaboration between the vocational education system and the job training system at the State and local levels; and

(iv) Advise, in writing, the Governor, the State board, the State job training coordinating council, the Secretary, and the Secretary of Labor of these findings and recommendations.

(c)(1) Each State council on vocational education may—

(i) Obtain the services of the professional, technical, and clerical personnel necessary to enable it to carry out its functions under the Act;

(ii) Contract for the services necessary to enable it to carry out its evaluation functions, independent of programmatic and administrative control by other State boards, agencies, and individuals; and

(iii) Submit a statement to the Secretary reviewing and commenting upon the State plan.

(2)(i) The expenditure of funds awarded to a State council on vocational education by the Secretary must be solely determined by that State council and may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual.

(ii) Each State council on vocational education shall designate an appropriate State agency, or other public agency, eligible to receive funds under the Act, to act as its fiscal agent for purposes of disbursement, accounting, and auditing.

(Authority: 20 U.S.C. 2322(c)-(e) and (f)(2); 2323(c))

Subpart C—How Does A State Apply for a Grant?

§ 403.30 What documents must a State submit to receive a grant?

(a) A State that desires to participate in the State Vocational and Applied Technology Education Program shall submit to the Secretary a State plan for a three-year period, in the case of the initial plan, and a two-year period thereafter, together with annual revisions the State board determines to be necessary.

(b) Each State shall carry out its programs under the State Vocational and Applied Technology Education Program on the basis of program years that coincide with program years under section 104(a) of the JTPA.

(c) The provisions of 34 CFR 76.103 do not apply to the State Vocational and Applied Technology Education Program.

(Authority: 20 U.S.C. 2323)

§ 403.31 How is the State plan developed?

(a) In formulating the State plan, and any amendments to the State plan, the State board shall meet with, and utilize, the State council on vocational education established under § 403.17.

(b) After providing appropriate and sufficient notice to the public, the State board shall conduct at least two public hearings in the State for the purpose of affording all segments of the public and interested organizations and groups an opportunity to present their views and make recommendations regarding the State plan.

(c) A State shall provide public notice of a hearing on the State plan at least 30 days prior to the hearing.

(d) In developing a State plan, the State shall conduct an assessment according to § 403.203.

(e) The State board shall develop the portion of each State plan relating to the amount and uses of any funds proposed to be reserved for adult education, postsecondary education, tech-prep education, and secondary education after consultation with the State agency responsible for supervision of community colleges, technical institutes, or other two-year postsecondary institutions primarily engaged in providing postsecondary vocational education and the State agency responsible for secondary education. If a State agency finds that a portion of the final State plan is objectionable, that agency shall file its objections with the State board.

(f) The State board shall, in developing the State plan, take into consideration the relative training and retraining needs of secondary, adult, and postsecondary students.

(Authority: 20 U.S.C. 2323(a)(2) and 2324(a))

§ 403.32 What must the State plan contain?

(a) *Assurances.* To participate in the programs authorized under the State Vocational and Applied Technology Program, the State shall, in its State plan, provide assurances that—

(1) The State board will comply with the applicable requirements of titles I, II, III, and V of the Act and regulations implementing those requirements (including the maintenance of fiscal effort requirement in § 403.182);

(2) Eligible recipients will comply with the requirements of titles I, II, III, and V of the Act and the regulations implementing those requirements;

(3) The State board will develop measurable goals and accountability measures for its entire vocational education program for meeting the needs of individuals who are members of special populations;

(4) The State board will conduct adequate monitoring of programs conducted by eligible recipients to ensure that the projects, services, and activities conducted with assistance under the Act are meeting the goals described in paragraph (a)(3) of this section;

(5) To the extent consistent with the number and location of individuals who are members of special populations enrolled in private secondary schools, the State will provide for the participation of those individuals in the vocational education programs assisted under §§ 403.112 and 403.113;

(6) The State will comply with the provisions of § 403.180, and will distribute all of the funds reserved for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs to eligible recipients pursuant §§ 403.112, 403.113, and 403.116;

(7) The State will develop and implement a system of standards for performance and measures of performance for vocational education programs at the State level that meets the requirements of §§ 403.201 and 403.202;

(8) In the use of funds available for programs for single parents, displaced homemakers, or single pregnant women under § 403.81, the State will—

(i) Emphasize assisting individuals with the greatest financial need; and

(ii) Give special consideration to displaced homemakers who, because of divorce, separation, or the death or disability of a spouse, must prepare for paid employment;

(9) The State will furnish relevant training and vocational education activities to men and women who desire to enter occupations that are not traditionally associated with their sex;

(10) The State will fund programs of personnel development and curriculum development to further the goals identified in the State plan;

(11) The State has thoroughly assessed the vocational education needs of identifiable segments of the population in the State that have the highest rates of unemployment, and that those needs are reflected in and addressed by the State plan;

(12) The State board will cooperate with the State council in carrying out the Board's duties under the State plan;

(13) None of the funds expended under the Act will be used to acquire equipment (including computer software) in any instance in which that acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization;

(14) State and local funds will be used in the schools of each local educational agency that are receiving funds under the Act to provide services that, taken as a whole, are at least comparable to services being provided in schools in those agencies that are not receiving funds under the Act;

Cross-Reference: See §§ 403.194 and 403.200.

(15) (i) The State board will provide leadership (qualified by experience and knowledge in guidance and counseling), supervision, and resources for comprehensive career guidance, and vocational counseling, and placement programs; and

(ii) As a component of the assurances described in paragraph (a)(15)(i) of this section, the State board will annually assess and include in the State plan a report on the degree to which expenditures aggregated within the State for career guidance and vocational counseling from allotments under title II of the Act are not less than expenditures for guidance and counseling within the State under the Carl D. Perkins Vocational Education Act in Fiscal or Program Year 1988;

(Authority: House Report No. 101–660, 101st Cong., 1st Sess. p. 111 (1990))

(16) The State will provide for such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of, and accounting for, Federal funds paid to the State, including such funds paid by the State to eligible recipients under the Act;

(17) Funds made available under title II of the Act will be used to supplement, and to the extent practicable increase the amount of State and local funds that would in the absence of those Federal funds be made available for the uses specified in the State plan and the local application, and in no case supplant those State or local funds;

Cross-Reference: See §§ 403.196 and 403.208.

(18) Individuals who are members of special populations will be provided with equal access to recruitment, enrollment, and placement activities;

(19) Individuals who are members of special populations will be provided with equal access to the full range of vocational education programs available to individuals who are not members of special populations, including occupationally specific courses of study, cooperative education, apprenticeship programs, and, to the extent practicable, comprehensive career guidance and counseling services, and will not be discriminated against on the basis of their status as members of special populations;

(20) Vocational education programs and activities for individuals with disabilities will be provided in the least restrictive environment in accordance with section 612(5)(B) of the IDEA and will, if appropriate, be included as a component of the individualized education program developed under section 614(a)(5) of that Act;

(21) Students with disabilities who have individualized education programs developed under section 614(a)(5) of the IDEA, with respect to vocational education programs, will be afforded the rights and protections guaranteed those students under sections 612, 614, and 615 of that Act;

(22) Students with disabilities who do not have individualized education programs developed under section 614(a)(5) of the IDEA or who are not eligible to have such a program, with respect to vocational education programs, will be afforded the rights and protections guaranteed those students under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and, for the purpose of the State Vocational and Applied Technology Education Programs, those rights and protection will include making vocational education programs readily accessible to eligible individuals with disabilities through the provision of services described § 403.190(b)(3);

(23) Vocational education planning for individuals with disabilities will be coordinated among appropriate representatives of vocational education, special education, and State vocational rehabilitation agencies;

(24) The provision of vocational education to each student with disabilities will be monitored to determine if that education is consistent with the individualized education program developed for the student under section 614(a)(5) of the IDEA, in any case in which an individualized education program exists;

(25) The provision of vocational education will be monitored to ensure that disadvantaged students and students of limited English proficiency have access to that education in the most integrated setting possible;

(26) (i) The requirements of the Act relating to individuals who are members of special populations—

(A) Will be carried out under the general supervision of individuals in the appropriate State educational agency or State board who are responsible for students who are members of special populations; and

(B) Will meet education standards of the State educational agency or State board;

(ii) With respect to students with disabilities, the supervision carried out under paragraph (a)(26)(i) of this section will be carried out consistent with, and in conjunction with, supervision by the State educational agency or State board carried out under section 612(6) of the IDEA;

(27) Funds received under the Business-Labor-Education Partnership for Training Program will be awarded on a competitive basis solely for vocational education programs, including programs that—

(i) Provide apprenticeships and internships in industry;

(ii) Provide new equipment;

(iii) Provide teacher internships or teacher training;

(iv) Bring representatives of business and organized labor into the classroom;

(v) Increase the access to, and quality of, programs for individuals who are members of special populations;

(vi) Strengthen coordination between vocational education programs and the labor and skill needs of business and industry;

(vii) Address the economic development needs of the area served by the partnership;

(viii) Provide training and career counseling that will enable workers to retain their jobs;

(ix) Provide training and career counseling that will enable workers to upgrade their jobs; and

(x) Address the needs of new and emerging industries, particularly industries in high-technology fields;

(28) In administering the Business-Labor-Education Partnership for Training Program, the State board will—

(i) Give preference to partnerships that coordinate with local chambers of commerce (or the equivalent), local labor organizations, or local economic development plans;

(ii) Give priority to programs offered by partnerships that provide job training in areas or skills where there are significant labor shortages; and

(iii) Ensure an equitable distribution of assistance under this part between urban and rural areas;

(29) Except as provided in paragraph (a)(30) of this section, not less than 50 percent of the aggregate cost of programs and projects assisted under the Business-Labor-Education Partnership for Training Program will be provided from non-Federal sources, and not less than 50 percent of the non-Federal share will be provided by

businesses or labor organizations participating in the partnerships; and

(30) In the event that a partnership includes a small business or labor organization, 40 percent of the aggregate cost of the programs and projects assisted under the Business-Labor-Education Partnership for Training Program will be provided from non-Federal sources and not less than 50 percent of the non-Federal share will be provided by participating business or labor organizations.

(b) *Descriptions.* To participate in programs authorized under the State Vocational and Applied Technology Education Program, the State must include the following descriptions in the State plan:

(1) The procedures and criteria for, and the results of, each of the assessments required by § 403.203, including the needs identified by the assessments.

(2) The plans for the use of the funds and how those planned uses reflect the needs described in paragraph (b)(1) of this section.

(3) The manner in which the State will comply with the requirements in the Act regarding access and services for individuals who are members of special populations and a description of the responsiveness of programs to the special needs of those students.

(4) The estimated distribution, for each institutional level, of funds to corrections educational agencies as prescribed by § 403.100, of funds to local educational agencies, area vocational education schools, or intermediate educational agencies as prescribed by §§ 403.112 and 403.113, and of funds to eligible institutions as prescribed by § 403.116.

(5) The criteria the State board will use—

(i) In approving applications of eligible recipients; and

(ii) For spending the amounts reserved for the State under § 403.180(b).

(6) How funds expended for occupationally specific training will be used for occupations in which job openings are projected or available, based on a labor market analysis that is not limited to the area in which the school is located.

(Authority: House Report No. 101–660, 101st Cong., 1st Sess. p. 109 (1990))

(7) In each State plan submitted after Fiscal Year 1991, the progress the State has made in achieving the goals described in previous State plans.

(8) The methods of administration necessary for the prompt and efficient administration of programs under the Act.

(9) How the State will implement program evaluations with eligible recipients as prescribed in §§ 403.191 and 403.192.

(10) The methods proposed for the joint planning and coordination of programs carried out under the Act with programs conducted under the JTPA, the Adult Education Act (20 U.S.C. 1201 *et seq.*), chapter 1, the IDEA, and the Rehabilitation Act of 1973, and with apprenticeship programs.

(11) Procedures by which an area vocational educational school, intermediate educational agency, or local educational agency may appeal decisions adverse to its interests with respect to programs assisted under the Act.

(12) How the State will comply with the provisions of §§ 403.32(a)(18)–(26), 403.115, and 403.205.

(13) The State's rationale for distribution of funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Program.

(14) The State corrections educational agency or agencies designated to administer vocational education programs assisted under the Act, and the plan for the use of funds provided under § 403.180(b)(5).

(15) Any delegation of functions under § 403.12(c).

(16) The manner in which the State board will comply with the applicable requirements of titles I, II, III, and V of the Act (including the maintenance of fiscal effort requirements in § 403.182).

(17) A summary of recommendations made at public hearings on the State plan and the State board's response.

(18) How the State will determine which LEAs are located in a rural sparsely-populated area for purposes of § 403.112(d)(3).

(19) Which indices of economic status the State will use to determine the number of economically disadvantaged students attending vocational educational programs for the purposes of § 403.114.

(20) What method the State will use to distribute minimal amounts for the purpose of § 403.119(a).

(c) *Consultations.* A State desiring to participate in the State Vocational and Applied Technology Education Program shall include in its State plan—

(1) A statement, if any, from the State advisory council on vocational education reviewing and commenting on the State plan;

(2) As necessary, the State's reasons for not accepting the recommendations of the State Committee of Practitioners for modifying standards and measures to be used in the statewide system of core standards and measures of performance; and

(3) As necessary, the State's response to any objections raised by State agencies consulted during the development of the State plan as required by § 403.31(e).

(d) To be eligible to participate in the Supplementary State Grants Program under sections 351–356 of the Act, a State board shall comply with the requirements in 34 CFR 407.10.

(Authority: 20 U.S.C. 2321(a)(2); 2322(e); 2323(a)(2)(B), (b); 2324(a); 2325(a), (d)(3); 2328(a); 2336(a)(1); 2341(b)(2), (d)(3); 2341b(a); 2392(b); 2463; and 2468e(a)(1))

§ 403.33 What procedures does a State use to submit its State plan?

(a)(1) The State board shall submit its State plan for review and comment to the State job training coordinating council under section 122 of the JTPA not less than sixty days before the State plan is submitted to the Secretary.

(2) If the matters raised by the comments of the State job training coordinating council are not addressed in the State plan, the State board shall submit those comments to the Secretary with the State plan.

(b) The State board shall submit its State plan for review and comment to the State council on vocational education not less than sixty days before the State plan is submitted to the Secretary.

Cross-Reference: See § 403.19(c)(1)(iii).

(c) Each State plan must be submitted to the Secretary by May 1 preceding the beginning of the first fiscal year for which the plan is to be in effect.

(d) The State plan will be considered to be the general application required by section 435 of the General Education Provisions Act (20 U.S.C. 1232d).

(Authority: 20 U.S.C. 2322(d)(1) and (2)(A), (e); 2323(a)(2)(A); and 2324(b))

§ 403.34 When are amendments to the State plan required?

The State board, in consultation with the State council, shall submit amendments to the State plan to the Secretary when required by 34 CFR 76.140 or when changes in program conditions, labor market conditions, funding, or other factors require substantial amendment of an approved State plan. All amendments must be submitted for review by the State job training coordinating council and the State council on vocational education before submittal to the Secretary.

(Authority: 20 U.S.C. 2323(c))

Subpart D—How Does the Secretary Make a Grant to a State?

§ 403.50 How does the Secretary make allotments?

(a)(1) From funds made available under section 3(c) of the Act for the basic programs listed in § 403.60, and under section 3(d) of the Act for the special programs listed in § 403.130, the Secretary allots funds each fiscal year according to the provisions of section 101 of the Act to the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the Virgin Islands.

(2) Upon approval of its State plan and any annual amendments, the Secretary makes one or more grant awards from those allotments to a State.

(b)(1) From funds made available under sections 3(b)(2) of the Act, the Secretary allots funds each fiscal year for State councils on vocational education according to the provisions of section 112(f)(1) of the Act.

(2) Upon approval of the State plan and submission of an annual budget covering the proposed expenditures of the State council on vocational education for the following program year, the Secretary makes an award to the State council.

(c) From funds made available under sections 3(b)(1)(B) of the Act for the territories, the Secretary allots funds each fiscal year according to the provisions of section 101A(a) of the Act.

(d)(1) The Secretary awards funds remaining after allotments are made under paragraph (c) of this section to the Center for the Advancement of Pacific Education (CAPE) or its successor entity, such as the Pacific Regional Educational Laboratory.

(2) CAPE or its successor entity shall make grants for vocational education and training in Guam, American Samoa, Palau, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, and the Republic of the Marshall Islands for the purpose of providing direct educational services, including—

(i) Teacher and counselor training and retraining;

(ii) Curriculum development; and

(iii) Improving vocational education and training programs in secondary schools and institutions of higher education (as defined in § 403.117(b)), or improving cooperative programs involving both secondary schools and institutions of higher education.

(3) CAPE may not use more than five percent of the funds received under paragraph (d)(1) of this section for administrative costs.

(Authority: 20 U.S.C. 2311; 2311a; and 2461)

§ 403.51 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 403.50(a) will not be required for any fiscal year for carrying out the program for which the allotment was made, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to use them promptly and effectively upon reallotment.

(2) The Secretary announces in the Federal Register the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purposes for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2311(b))

§ 403.52 When does the Secretary approve State plans and amendments?

(a)(1) The Secretary approves a State plan, or an amendment to a State plan, within sixty days of its receipt unless the plan or amendment is—

(i) Inconsistent with the requirements and purposes of the Act; or

(ii) Not of sufficient quality to meet the objectives of the Act, including the objective of developing and implementing program evaluations and improvements.

(2) Before the Secretary finally disapproves a State plan, or an amendment to a State plan, the Secretary gives reasonable notice and an opportunity for a hearing to the State board.

(b)(1) In reviewing a State plan, or an amendment to a State plan, the Secretary considers available comments from—

(i) The State council on vocational education;

(ii) The State agency responsible for supervision of community colleges, technical institutes, or other two-year postsecondary institutions primarily engaged in providing postsecondary vocational education;

(iii) The State agency responsible for secondary education; and

(iv) The State Committee of Practitioners established under 34 CFR 400.6.

(2) In reviewing an amendment to a State plan, the Secretary considers available comments from the State job training coordinating council and the State council on vocational education.

(Authority: 20 U.S.C. 2323(c), 2324, and 2325(d)(3))

Subpart E—What Kinds of Activities Does the Secretary Assist Under the Basic Programs?

General

§ 403.60 What are the basic programs?

The following basic programs are authorized by Title II of the Act:

(a) State Programs and State Leadership Activities.

(b) Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.

(c) Sex Equity Programs.

(d) Programs for Criminal Offenders.

(e) Secondary School Vocational Education Programs.

(f) Postsecondary and Adult Vocational Education Programs.

(Authority: 20 U.S.C. 2302)

§ 403.61 What projects, services, and activities are permissible under the basic programs?

Projects, services, and activities described in §§ 403.70, 403.71, 403.81, 403.91, 403.101, and 403.111 may include—

(a) Work-site programs such as cooperative vocational education, programs with community-based organizations, work-study, and apprenticeship programs;

(b) Placement services and activities for students who have successfully completed vocational education programs; and

(c) Programs that involve students in addressing the needs of the community in the production of goods or services that contribute to the community's welfare or that involve the students with other community development planning, institutions, and enterprises.

(Authority: 20 U.S.C. 2468e(c))

§ 403.62 What administrative provisions apply?

(a) Any project assisted with funds made available for the basic programs must be of sufficient size, scope, and quality to give reasonable promise of meeting the vocational education needs of the students involved in the project.

(b) Each State board receiving financial assistance for the basic programs may consider granting academic credit for vocational education courses that integrate core academic competencies.

(Authority: 20 U.S.C. 2468e(b) and (d))

§ 403.63 How does a State carry out the State Vocational and Applied Technology Education Program?

(a) Unless otherwise indicated in the regulations in this part, a State board shall carry out projects, services, and activities under the State Vocational and Applied Technology Education Program—

(1) Directly;

(2) Through a school operated by the State board;

(3) Through awards to State agencies or institutions, such as vocational schools or correctional institutions; or

(4) Through awards to eligible recipients.

(b) For the purpose of paragraph (a) of this section, a State board acts directly when it—

(1) Carries out projects, services, or activities using its own staff (except at a school operated by the State board); or

(2) Contracts for statewide projects, services, or activities such as research, curriculum development, and teacher training.

(c) The regulations in this part also authorize a State to carry out certain projects, services, and activities under the State Vocational and Applied Technology Education Program by making an award to an entity other than an eligible recipient, such as a community-based organization, employers, private vocational training institutions, private postsecondary education institutions, labor organizations, and joint labor management apprenticeship programs.

(d) For the purpose of requirements dealing with local applications (§§ 403.190 and 403.32(b)(5)) and the distribution of funds to eligible recipients (§ 403.32(a)(6)), projects, services, and activities carried out by a school operated by the State board under paragraph (a)(2) of this section, carried out by a State agency or institution under paragraph (a)(3) of this section, or carried out by an entity other than an eligible recipient under paragraph (c) of this section, are considered to be carried out by an eligible recipient.

(Authority: 20 U.S.C. 2323(b)(5), (6); 2335(a)(3); 2335b; 2342(c)(2)(N); and 2343).

State Programs and State Leadership Activities

§ 403.70 How must funds be used under the State Programs and State Leadership Activities?

A State shall use funds reserved under section 102(a)(3) of the Act for the State Programs and State Leadership Activities in accordance with § 403.180(b)(3) to conduct projects and activities that include—

(a) Professional development activities—

(1) For vocational teachers and academic teachers working with vocational education students, including corrections educators and counselors and educators and counselors in community-based organizations; and

(2) That include inservice and preservice training of teachers in programs and techniques, including integration of vocational and academic curricula, with particular emphasis on training of minority teachers;

(b) Development, dissemination, and field testing of curricula, especially curricula that—

(1) Integrate vocational and academic methodologies; and

(2) Provide a coherent sequence of courses through which academic and occupational skills may be measured; and

(c) Assessment of programs conducted with assistance under the Act including the development of—

(1) Performance standards and measures for those programs; and

(2) Program improvement and accountability with respect to those programs.

(Authority: 20 U.S.C. 2331(b))

§ 403.71 In what additional ways may funds be used under the State Programs and State Leadership Activities?

In addition to the required activities in § 403.70, a State may use funds reserved under section 102(a)(3) of the Act for the State Programs and State Leadership Activities in accordance with § 403.180(b)(3) for projects, services, and activities that include—

(a) The promotion of partnerships among business, education (including educational agencies), industry, labor, community-based organizations, or governmental agencies;

(b) The support for tech-prep education as described in 34 CFR part 406;

(c) The support of vocational student organizations that are an integral part of the vocational education instructional program, especially with respect to efforts to increase minority participation in those organizations. The support of vocational student organizations may not include—

(1) Lodging, feeding, conveying, or furnishing transportation to conventions or other forms of social assemblage;

(2) Purchase of supplies, jackets, and other effects for students' personal ownership;

(3) Cost of non-instructional activities such as athletic, social, or recreational events;

(4) Printing and disseminating non-instructional newsletters;

(5) Purchase of awards for recognition of students, advisors, and other individuals; or

(6) Payment of membership dues;

(d) Leadership and instructional programs in technology education; and

(e) Data collection.

(Authority: 20 U.S.C. 2331(c); House Report No. 101–660, 101st Cong., 1st Sess. p. 117 (1990))

Single Parents, Displaced Homemakers, and Single Pregnant Women Program

§ 403.80 Who is eligible for a subgrant or contract?

Eligible recipients and community-based organizations are eligible for an award under the Single Parents, Displaced Homemakers, and Single Pregnant Women Program.

(Authority: 20 U.S.C. 2335(a)(2), (3); 2335b(1))

§ 403.81 How must funds be used under the Single Parents, Displaced Homemakers, and Single Pregnant Women Program?

A State shall use funds reserved in accordance with § 403.180(b)(2)(i) for individuals who are single parents, displaced homemakers, or single pregnant women only to—

(a) Provide, subsidize, reimburse, or pay for preparatory services, including instruction in basic academic and occupational skills, necessary educational materials, and career guidance and counseling services in preparation for vocational education and training that will furnish single parents, displaced homemakers, and single pregnant women with marketable skills;

(b) Make grants to eligible recipients for expanding preparatory services and vocational education services if the expansion directly increases the eligible recipients' capacity for providing single parents, displaced homemakers, and single pregnant women with marketable skills;

(c) Make grants to community-based organizations for the provision of preparatory and vocational education services to single parents, displaced homemakers, and single pregnant women if the State determines that the community-based organizations have demonstrated effectiveness in providing comparable or related services to single parents, displaced homemakers, and single pregnant women, taking into account the demonstrated performance of such organizations in terms of cost, the quality of training, and the characteristics of the participants;

(d) Make preparatory services and vocational education and training more

accessible to single parents, displaced homemakers, and single pregnant women by assisting those individuals with dependent care, transportation services, or special services and supplies, books, and materials, or by organizing and scheduling the programs so that those programs are more accessible; or

(e) Provide information to single parents, displaced homemakers, and single pregnant women to inform those individuals of vocational education programs, related support services, and career counseling.

(Authority: 20 U.S.C. 2335(a))

§ 403.82 In what settings may the Single Parents, Displaced Homemakers, and Single Pregnant Women Program be offered?

The programs and services described in § 403.81 may be provided in postsecondary or secondary school settings, including area vocational education schools, and community-based organizations that meet the requirements of § 403.81(c), that serve single parents, displaced homemakers, and single pregnant women.

(Authority: 20 U.S.C. 2335(b))

Sex Equity Program

§ 403.90 Who is eligible for a subgrant or contract?

Eligible recipients and community-based organizations are eligible for an award under the Sex Equity Program.

(Authority: 20 U.S.C. 2335b(1))

§ 403.91 How must funds be used under the Sex Equity Program?

Except as provided in § 403.92, each State shall use amounts reserved for the Sex Equity Program in accordance with § 403.180(b)(2)(ii) only for—

(a) Programs, services, comprehensive career guidance and counseling, and activities to eliminate sex bias and stereotyping in secondary and postsecondary vocational education;

(b) Preparatory services and vocational education programs, services, and activities for girls and women, aged 14 through 25, designed to enable the participants to support themselves and their families; and

(c) Support services for individuals participating in vocational education programs, services, and activities described in paragraphs (a) and (b) of this section, including dependent-care services and transportation.

(Authority: 20 U.S.C. 2335a(a))

§ 403.92 Under what circumstances may the age limit under the Sex Equity Program be waived?

The individual appointed under § 403.13(a) may waive the requirement in § 403.91(b) with respect to age limitations if the individual determines (through appropriate research) that the waiver is essential to meet the objectives of § 403.91.

(Authority: 20 U.S.C. 2335a(b))

Programs for Criminal Offenders

§ 403.100 What are the requirements for designating a State corrections educational agency to administer the Programs for Criminal Offenders?

(a) The State Board shall designate one or more State corrections educational agencies to administer programs assisted under the Act for juvenile and adult criminal offenders in correctional institutions in the State including correctional institutions operated by local authorities.

(b) Each State corrections educational agency that desires to be designated under paragraph (a) of this section shall submit to the State board a plan for the use of funds.

(Authority: 20 U.S.C. 2336(a))

§ 403.101 How must funds be used under the Programs for Criminal Offenders?

In administering programs receiving funds reserved under § 403.180(b)(5) for criminal offenders, each State corrections educational agency designated under § 403.100(a) shall—

(a) Give special consideration to providing—

(1) Services to offenders who are completing their sentences and preparing for release; and

(2) Grants for the establishment of vocational education programs in correctional institutions that do not have such programs;

(b) Provide vocational education programs for women who are incarcerated;

(c) Improve equipment; and

(d) In cooperation with eligible recipients, administer and coordinate vocational education services to offenders before and after their release.

(Authority: 20 U.S.C. 2336(b))

§ 403.102 What other requirements apply to the Program for Criminal Offenders?

Each State corrections educational agency designated under § 403.100(a) shall meet the requirements in §§ 403.191 and 403.192.

(Authority: 20 U.S.C. 2471(22))

Secondary, Postsecondary, and Adult Vocational Education Programs

§ 403.110 Who is eligible for a subgrant or contract?

(a) Subject to the requirements of paragraph (c) of this section, the following entities are eligible for an award under the Secondary School Vocational Education Program:

(1) A local educational agency.

(2) An area vocational education school or intermediate educational agency that meets the requirements in § 403.113.

(b) Subject to the requirements of paragraph (c) of this section, the following entities are eligible for an award under the Postsecondary and Adult Vocational Education Programs:

(1) An institution of higher education as defined in § 403.117(b), including a nonprofit institution that satisfies the conditions set forth in § 403.111(d)(14).

(2) A local educational agency serving adults.

(3) An area vocational education school serving adults that offers or will offer a program that meets the requirements of § 403.111 and seeks to receive assistance under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs.

(c) Only an entity that provides or will provide vocational education in a program that meets the requirements of § 403.111 is eligible to receive an award under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program.

(Authority: 20 U.S.C. 2341 (a) and (d); 2341a (a) and (d)(1); and 2342(c))

§ 403.111 How must funds be used under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

(a)(1) Each eligible recipient that receives an award under §§ 403.112, 403.113, or 403.116 shall use funds under that award to improve vocational education programs.

(2) Projects assisted with funds awarded under §§ 403.112, 403.113, or 403.116 must—

(i) Provide for the full participation of individuals who are members of special populations by providing the supplementary and other services necessary for them to succeed in vocational education; and

Cross-Reference: See appendix A to part 403 and §§ 403.190(c) and 403.193(e).

(ii) Operate at a limited number of sites or with respect to a limited number of program areas.

(3) If an eligible recipient that receives an award under §§ 403.112, 403.113, or 403.116 meets the requirements in this section and §§ 403.190(b) and 403.193, it may use those Federal funds to serve students who are not members of special populations.

(b) Each eligible recipient that receives an award under §§ 403.112, 403.113, or 403.116 shall give priority for assistance under those sections to sites or program areas that serve the highest concentrations of individuals who are members of special populations.

Examples: Methods by which an eligible recipient may give priority to sites or program areas that serve the highest concentrations of individuals who are members of special populations include, but are not limited to, the following:

Example 1: Method to give priority to a limited number of sites. Based on data from the preceding fiscal year—

(a) First, a local educational agency ranks each site based on the percentage of the site's total enrollment of students who are members of special populations.

(b) Second, the local educational agency establishes a funding cut-off point for sites above the district-wide percentage of special populations enrollment. The local educational agency funds sites above the cut-off point but does not fund sites below that point.

Example 2: Method to give priority to a limited number of program areas. Based on data from the preceding fiscal year—

(a) First, a postsecondary institution ranks each program area based on the percentage of the program area's total enrollment of students who are members of special populations.

(b) Second, the postsecondary institution establishes a funding cut-off point for program areas that rank above the institution-wide average percentage of special populations enrollment. The postsecondary institution funds projects in a program area that is above the cut-off point but does not fund projects in program areas below that point.

Example 3: Method to give priority to a limited number of program areas. Based on data from the preceding fiscal year—

(a) First, an LEA or postsecondary institution identifies a site with a high concentration of special populations;

(b) Second, the LEA or postsecondary institution identifies a program area at the site (such as health occupations) in which the participation rate for members of special populations is lower than the overall rate of participation for members of special populations at the site; and

(c) Third, the LEA or postsecondary institution funds a project at the site designed to improve the participation rate of members of special populations in that program area.

(c) Funds made available from an award under §§ 403.112, 403.113, or 403.116 must be used to provide vocational education in programs that—

(1) Are of sufficient size, scope, and quality as to be effective;

(2) Integrate academic and vocational education in those programs through coherent sequences of courses so that students achieve both academic and occupational competencies; and

(3) Provide for the equitable participation of members of special populations in vocational education consistent with the assurances and requirements in §§ 403.190(b) and 403.193.

Cross-Reference: See appendix A to part 403.

(d) In carrying out the provisions of paragraph (c) of this section, an eligible recipient under §§ 403.112, 403.113, or 403.116 may use funds for activities that include, but are not limited to—

(1) Upgrading of curriculum;

(2) Purchase of equipment, including instructional aids;

(3) Inservice training of both vocational instructors and academic instructors working with vocational education students for integrating academic and vocational education;

(4) Guidance and counseling;

(5) Remedial courses;

(6) Adaptation of equipment;

(7) Tech-prep education programs;

(8) Supplementary services designed to meet the needs of special populations;

(9) Payment in whole or in part with funds under §§ 403.112, 403.113, or 403.116 for a special populations coordinator, who must be a qualified counselor or teacher, to ensure that individuals who are members of special populations are receiving adequate services and job skill training;

(10) Apprenticeship programs;

(11) Programs that are strongly tied to economic development efforts in the State;

(12) Programs that train adults and students for all aspects of an occupation in which job openings are projected or available;

(13) Comprehensive mentor programs in institutions of higher education offering comprehensive programs in teacher preparation, that seek to use fully the skills and work experience of individuals currently or formerly employed in business and industry who are interested in becoming classroom instructors and to meet the need of vocational educators who wish to upgrade their teaching competencies; or

(14) Provision of education and training through arrangements with private vocational training institutions, private postsecondary educational institutions, employers, labor organizations, and joint labor-management apprenticeship programs if those institutions, employers, labor organizations, or programs can make a significant contribution to obtaining the objectives of the State plan and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public institutions.

(Authority: 20 U.S.C. 2342)

§ 403.112 How does a State allocate funds under the Secondary School Vocational Education Program to local educational agencies?

(a) *Reservation of funds.* From the portion of its allotment under § 403.180(b)(1) for the basic programs, each fiscal year a State may reserve funds for the Secondary School Vocational Education Program.

(b) *General rule.* Except as provided in paragraphs (c) and (d) of this section and § 401.119, a State shall distribute funds reserved for the Secondary School Vocational Education Program to local educational agencies (LEAs) according to the following formula:

(1) From 70 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 70 percent as the amount the LEA was allocated under section 1005 of chapter 1 (20 U.S.C. 2711) in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the total amount received under section 1005 of chapter 1 by all LEAs in the State in that preceding year.

(2) From 20 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 20 percent as the number of students with disabilities who have individualized education programs under section 614(a)(5) of the IDEA served by the LEA in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the total number of those students served by all LEAs in the State in that preceding year.

(3) From 10 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 10 percent as the number of students enrolled in schools and adults enrolled in vocational education training programs under the jurisdiction of the LEA in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the number of students enrolled in schools in kindergarten through 12th grade and adults enrolled in vocational education training programs under the jurisdiction of all LEAs in the State in that preceding year.

Example: Assume that a State has reserved $5,000,000 of its basic programs funds under

Title II of the Act for secondary school programs.

(a)(1) All LEAs in the State were allocated a total of $80,000,000 under section 1005 of Chapter 1 in the preceding fiscal year. Of that amount, school district "A" was allocated $400,000.

(2) The allocation for school district "A" is calculated by multiplying $3,500,000 (70 percent of $5,000,000) by .005 of the State total ($400,000÷$80,000,000). The allocation for school district "A" would be $17,500 under paragraph (b)(1) of this section.

(b)(1) All LEAs in a State served a total of 100,000 students with disabilities who have individualized education programs under section 614(a)(5) of the IDEA in the preceding fiscal year. Of that total, school district "A" served 400 of those students in the preceding fiscal year.

(2) The allocation for school district "A" is calculated by multiplying $1,000,000 (20 percent of $5,000,000) by .004 of the State total (400÷100,000). The allocation for school district "A" would be $4,000 under paragraph (b)(2) of this section.

(c)(1) All LEAs in a State enrolled a total of 1,000,000 students (including adults enrolled in vocational education training programs in those LEAs) in the preceding fiscal year. Of that number school district "A" enrolled 3,500 of those students in the preceding fiscal year.

(2) The allocation for school district "A" is calculated by multiplying 500,000 (10 percent of $5,000,000) by .0035 of the State total (3,500÷1,000,000). The allocation for school district "A" would be $1,750 under paragraph (b)(3) of this section.

(c) *Exception to the general rule.* In applying the provisions in paragraph (b) of this section, a State may not distribute funds to an LEA that operates only elementary schools, but shall instead distribute funds that would have been allocated for those ineligible LEAs as follows:

(1) If an LEA that operates only elementary schools sends its graduating students to a single local or regional educational agency that provides secondary school services to secondary school students in the same attendance area, a State shall distribute to that local or regional educational agency any amounts under paragraph (b) of this section that would otherwise have been allocated to LEAs operating only elementary schools.

(2) If an LEA that operates only elementary schools sends its graduating students to two or more local or regional educational agencies that provide secondary school services to secondary students in the same attendance area, the State shall distribute to those local or regional educational agencies an amount based on the proportionate number of students each agency received in the previous year from the LEA that operates only elementary schools.

(d)(1) *Minimum grant amount.* Except as provided in paragraph (d)(3) of this section, an LEA is not eligible for a grant under the Secondary School Vocational Education Program unless the amount allocated to the LEA under paragraph (b) of this section is not less than $15,000.

(2)(i) An LEA may enter into a consortium with one or more LEAs for the purpose of providing services under the Secondary School Vocational Education Program in order to meet the minimum grant requirement in paragraph (d)(1) of this section.

(ii) A consortium arrangement under paragraph (d)(2)(i) of this section must serve primarily as a structure for operating joint projects that provide services to all participating local educational agencies.

(iii) A project operated by a consortium must meet the size, scope, and quality requirement of § 403.111(c)(1).

Example: Under the distribution formula for the Secondary School Vocational Education Program, three LEAs earn $5,000 each (which is less than the $15,000 minimum grant amount for each LEA). The LEAs form a consortium in order to receive an award. One of the LEAs is designated as the fiscal agent for the consortium and receives the $15,000 award for the consortium. The consortium may operate and fund with the $15,000 a project or projects for the benefit of all participating LEAs. The fiscal agent of the consortium may not subgrant back to the participating LEAs the amounts they contributed to the consortium.

(3) A State may waive paragraph (d)(1) of this section in any case in which the LEA—

(i) Is located in a rural, sparsely populated area; and

(ii) Demonstrates that it is unable to enter into a consortium for purposes of providing services under the Secondary School Vocational Education Program.

(4) Any amounts that are not distributed by reason of paragraph (d)(1) of this section must be redistributed in accordance with the provisions in paragraph (b) of this section.

Cross-Reference: See 34 CFR 403.113(d).

(Authority: 20 U.S.C. 2341 (a), (b), and (c))

§ 403.113 How does a State allocate funds under the Secondary School Vocational Education Program to area vocational education schools and intermediate educational agencies?

(a) A State shall distribute funds reserved under § 403.112(a) directly to the appropriate area vocational education school or intermediate educational agency in any case in which—

(1) The area vocational education school or intermediate educational agency and an LEA—

(i) Have formed or will form a consortium for the purpose of receiving funds reserved under § 403.112(a); or

(ii) Have entered into or will enter into a cooperative arrangement for the purpose of receiving funds reserved under § 403.112(a); and

(2)(i) The area vocational education school or intermediate educational agency serves a proportion of students with disabilities and students who are economically disadvantaged that is approximately equal to or greater than the proportion of those students attending the secondary schools under the jurisdiction of all of the LEAs sending students to the area vocational education school or the intermediate educational agency; or

(ii) The area vocational education school or intermediate educational agency demonstrates that it is unable to meet the criterion in paragraph (a)(2)(i) of this section due to the lack of interest by students with disabilities and students who are economically disadvantaged in attending vocational education programs in that area vocational education school or intermediate educational agency.

(b) If an area vocational education school or intermediate educational agency meets the requirements of paragraph (a) of this section, then the amount that would otherwise be allocated to the LEA may be distributed to the area vocational education school, the intermediate educational agency, and the LEA—

(1) Based on each school's or entity's relative share of students with disabilities and students who are economically disadvantaged who are attending vocational education programs that meet the requirements of § 403.111 (based, if practicable, on the average enrollment for the prior 3 years); or

(2) On the basis of an agreement between the LEA and the area vocational education school or intermediate educational agency.

(c) Notwithstanding paragraphs (a) and (b) of this section, and §§ 403.114 and 403.115, prior to distributing funds to any LEA that would receive an allocation that is not sufficient to conduct a program that meets the requirements of § 403.111(c), a State shall encourage the LEA to—

(1) Form a consortium or enter a cooperative agreement with an area vocational education school or intermediate educational agency offering programs that meet the

requirements of § 403.111(c), and that are accessible to economically disadvantaged students and students with disabilities that would be served by the LEA; and

(2) Transfer its allocation to an area vocational education school or intermediate educational agency.

(d) If an LEA's allocation under § 403.112 meets the minimum grant requirement in § 403.112(d), and the allocation is distributed in part to an area vocational education school or an intermediate educational agency pursuant to paragraphs (a) and (b) of this section, the LEA may retain the amount not distributed to the area vocational education school or an intermediate educational agency even though that amount is less than the minimum grant required by § 403.112(d).

(Authority: 20 U.S.C. 2341(d) (1), (2), and (5))

§ 403.114 How does a State determine the number of economically disadvantaged students attending vocational education programs under the Secondary School Vocational Education Program?

(a) For the purposes of § 403.113, a State may determine the number of economically disadvantaged students attending vocational education programs on any of the following bases:

(1) Eligibility for one of the following:

(i) Free or reduced-price meals under the National School Lunch Act (42 U.S.C. 1751 *et seq.*).

(ii) The program for aid to Families with Dependent Children under part A of title IV of the Social Security Act (42 U.S.C. 601).

(iii) Benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011).

(iv) To be counted for purposes of section 1005 of chapter 1.

(2) Status of an individual who is determined by the Secretary to be low-income according to the latest available data from the Department of Commerce.

(3) Other indices of economic status, including estimates of those indices, if the State demonstrates to the satisfaction of the Secretary that those indices are more representative of the number of economically disadvantaged students attending vocational education programs. The Secretary determines, on a case-by-case basis, whether other indices of economic status are more representative of the number of economically disadvantaged students attending vocational education programs, taking into consideration, for example, the statistical reliability of any data submitted by a grantee as well as the general acceptance of the indices by other agencies in the State or local area.

(b) If a State elects to use more than one factor described in paragraph (a) of this section for purposes of determining the number of economically disadvantaged students enrolled in vocational education programs, the State shall ensure that the data used are not duplicative.

(Authority: 20 U.S.C. 2341(d)(3) and 2471(15))

§ 403.115 What appeal procedures must be established under the Secondary School Vocational Education Program?

The State board shall establish an appeals procedure for resolution of any dispute arising between an LEA and an area agency with respect to the allocation procedures described in §§ 403.112 and 403.113, including the decision of an LEA to leave a consortium.

(Authority: 20 U.S.C. 2341(d)(4))

§ 403.116 How does a State allocate funds under the Postsecondary and Adult Vocational Education Programs?

(a) *Reservation of funds.* From the portion of its allotment under § 403.180(b)(1) for the basic programs, each fiscal year a State may reserve funds for the Postsecondary and Adult Vocational Education Programs.

(b) *General rule.* (1) A State shall distribute funds reserved for Postsecondary and Adult Vocational Education Programs to eligible institutions within the State.

(2) Except as provided in paragraph (c) of this section and §§ 403.118 and 403.119, each eligible institution must receive an amount that bears the same relationship to the amount of funds reserved for the Postsecondary and Adult Vocational Education Programs as the number of Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled in vocational education, as defined in 34 CFR 400.4, offered by the eligible institution in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the number of those recipients enrolled in vocational education programs within the State in that preceding year.

(c) *Minimum grant amount.* (1) A State may not provide a grant under paragraph (b) of this section to any institution for an amount that is less than $50,000.

(2) Any amounts that are not allocated by reason of paragraph (c)(1) of this section must be redistributed to eligible institutions in accordance with the provisions of paragraph (b) of this section.

(Authority: 20 U.S.C. 2341a (a) and (c))

§ 403.117 What definitions apply to the Postsecondary and Adult Vocational Education Programs?

For the purposes of §§ 403.116, 403.118, and 403.120 the following definitions apply:

(a) *Eligible institution* means an institution of higher education, an LEA serving adults, or an area vocational education school serving adults that offers or will offer a program that meets the requirements of § 403.111 and seeks to receive assistance under § 403.116.

(b)(1) *Institution of higher education* means an educational institution in any State that—

(i) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of that certificate, or who are beyond the age of compulsory school attendance;

(ii) Is legally authorized within the State to provide a program of education beyond secondary education;

(iii) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree, or in the case of a hospital or health care facility, that provides training of not less than one year for graduates of accredited health professions programs, leading to a degree or certificate upon completion of that training;

(iv) Is a public or other nonprofit institution; and

(v) Is accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose or, if not so accredited—

(A) Is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time; or

(B) Is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(2) This term also includes any school that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the

provisions of paragraphs (b)(1) (i), (ii), (iv), and (v) of this definition. If the Secretary determines that a particular category of these schools does not meet the requirements of paragraph (b)(1)(v) because there is no nationally recognized accrediting agency or association qualified to accredit schools in that category, the Secretary, pending the establishment of such an accrediting agency or association, will appoint an advisory committee, composed of persons specially qualified to evaluate training provided by schools in that category, that must—

(i) Prescribe the standards of content, scope, and quality that must be met in order to qualify schools in that category to participate in the program pursuant to this part; and

(ii) Determine whether particular schools not meeting the requirements of paragraph (b)(1)(v) of this definition meet those standards.

(Authority: 20 U.S.C. 1085)

(c) *Pell Grant recipient* means a recipient of financial aid under subpart 1 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a–l *et seq.*).

(Authority: 20 U.S.C. 2341a(d))

§ 403.118 Under what circumstances may the Secretary waive the distribution requirements for the Postsecondary and Adult Vocational Education Programs?

The Secretary may waive § 403.116(b)(2) for any fiscal or program year for which a State submits to the Secretary an application for such a waiver that—

(a) Demonstrates that the formula in § 403.116(b)(2) does not result in a distribution of funds to the institutions within the State that have the highest numbers of economically disadvantaged individuals and that an alternative formula would result in such a distribution;

(b) Includes a proposal for an alternative formula that may include criteria relating to the number of individuals attending institutions within the State who—

(1) Receive need-based postsecondary financial aid provided from public funds;

(2) Are members of families participating in the program for aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601);

(3) Are enrolled in postsecondary educational institutions that—

(i) Are funded by the State;

(ii) Do not charge tuition; and

(iii) Serve only economically disadvantaged students;

(4) Are enrolled in programs serving economically disadvantaged adults;

(5) Are participants in programs assisted under the JTPA;

(6) Are Pell Grant recipients; and

(c) Proposes an alternative formula that—

(1) Includes direct counts of students enrolled in the institutions;

(2) Directly relates to the status of students as economically disadvantaged individuals;

(3) Is to be uniformly applied to all eligible institutions;

(4) Does not include fund pools for specific types of institutions; and

(5) Does not include the direct assignment of funds to a particular institution on a non-formula basis.

(Authority: 20 U.S.C. 2341a(b))

§ 403.119 Under what circumstances may the State waive the distribution requirements for Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs?

(a) This section applies in any fiscal or program year in which a State reserves 15 percent or less under § 403.180(b)(1) for distribution under—

(1) The Secondary School Vocational Education Program; or

(2) The Postsecondary and Adult Vocational Education Programs.

(b) Notwithstanding the provisions and §§ 403.112, 403.113, or 403.116, as applicable, in order to result in a more equitable distribution of funds for programs serving the highest numbers of economically disadvantaged individuals, the State may distribute the funds described in paragraph (a) of this section—

(1) On a competitive basis; or

(2) Through any alternative method determined by the State.

(Authority: 20 U.S.C. 2341b)

§ 403.120 How does a State reallocate funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

(a) In any fiscal or program year that an LEA, area vocational school, intermediate school district, or eligible institution does not expend all of the amounts it is allocated for that year under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs, the LEA, area vocational education, intermediate school district, or eligible institution shall return any unexpended amounts to the State to be reallocated under §§ 403.112(b), 403.113, or 403.116(b), as applicable.

(b) In any fiscal or program year in which amounts allocated under §§ 403.112(b), 403.113, 403.116(b), or 403.118 are returned to the State and the State is unable to reallocate those amounts according to those sections in time for the amounts to be expended in the fiscal or program year, the State shall retain the amounts to be distributed in combination with amounts reserved under §§ 403.112(b), 403.113, 403.116(b), or 403.118 for the following fiscal or program year.

(Authority: 20 U.S.C. 2341c)

Subpart F—What Kinds of Activities Does the Secretary Assist Under the Special Programs?

General

§ 403.130 What are the Special Programs?

The following special programs are authorized by title III of the Act and are subject to the requirements of the State plan:

(a) State Assistance for Vocational Education Support Programs by Community-Based Organizations.

(b) Consumer and Homemaking Education Program.

(c) Comprehensive Career Guidance and Counseling Programs.

(d) Business-Labor-Education Partnerships for Training Program.

(e) Supplementary State Grants for Facilities and Equipment and Other Program Improvement Activities (Supplementary State Grants Program) in 34 CFR part 407.

(Authority: 20 U.S.C. 2302(d)(A)–(F))

§ 403.131 Who is eligible for an award under the Special Programs?

(a) The fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands are eligible for an award under the—

(1) State Assistance for Vocational Education Support and Programs by Community-Based Organizations;

(2) Consumer and Homemaking Education Programs; and

(3) Comprehensive Career Guidance and Counseling Programs.

(b) States, as defined in 34 CFR 400.4(b), are eligible for the Business-Labor-Education Partnerships for Training Program.

(c) The fifty States, the District of Columbia, and Puerto Rico are eligible for the Supplementary State Grants Programs in 34 CFR part 407.

(Authority: 20 U.S.C. 2302(d)(A)–(F))

Vocational Education Support Programs by Community-Based Organizations

§ 403.140 What activities does the Secretary support under the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) The State shall provide, in accordance with its State plan, and from its allotment for this program, financial assistance to joint projects of eligible recipients and community-based organizations within the State that provide the following special vocational education services and activities:

(1) Outreach programs that facilitate the entrance of youth into a program of transitional services and subsequent entrance into vocational education, employment, or other education and training.

(2) Transitional services such as attitudinal and motivational prevocational training programs.

(3) Prevocational educational preparation and basic skills development conducted in cooperation with business concerns.

(4) Special prevocational preparations programs targeted to inner-city youth, non-English speaking youth, Appalachian youth, and the youth of other urban and rural areas having a high density of poverty who need special prevocational education programs.

(5) Career intern programs.

(6) Model programs for school dropouts.

(7) The assessment of students' needs in relation to vocational education and jobs.

(8) Guidance and counseling to assist students with occupational choices and with the selection of a vocational education program.

(b) Disabled individuals who are educationally or economically disadvantaged may participate in projects under this program.

(Authority: 20 U.S.C. 2352, 2471(6))

§ 403.141 What are the application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) Each community-based organization and eligible recipient that desire to participate in this program shall jointly prepare and submit an application to the State board at the time and in the manner established by the State board.

(b) The State board also may establish requirements relating to the contents of the applications, except that each application must contain—

(1) An agreement among the community-based organization and the eligible recipients in the area to be served that includes the designation of one or more fiscal agents for the project;

(2) A description of how the funds will be used, together with evaluation criteria to be applied to the project;

(3) Assurances that the community-based organization will give special consideration to the needs of severely economically and educationally disadvantaged youth, ages sixteen through twenty-one, inclusive;

(4) Assurances that business concerns will be involved, as appropriate, in services and activities for which assistance is sought;

(5) A description of the efforts the community-based organization will make to collaborate with the eligible recipients participating in the joint project;

(6) A description of the manner in which the services and activities for which assistance is sought will serve to enhance the enrollment of severely economically and educationally disadvantaged youth into the vocational education programs; and

(7) Assurances that the projects conducted by the community-based organization will conform to the applicable standards of performance and measures of effectiveness required of vocational education programs in the State.

(Authority: 20 U.S.C. 2351)

Consumer and Homemaking Education Programs

§ 403.150 What activities does the Secretary support under the Consumer and Homemaking Education Programs?

(a) The State shall conduct, in accordance with its State plan, and from its allotment for this program, consumer and homemaking education projects that may include—

(1) Instructional projects, services, and activities that prepare youth and adults for the occupation of homemaking;

(2) Instruction in the areas of—

(i) Food and nutrition;

(ii) Individual and family health;

(iii) Consumer education;

(iv) Family living and parenthood education;

(v) Child development and guidance;

(vi) Housing and home management, including resource management; and

(vii) Clothing and textiles.

(b) The State shall use the funds for this program for projects, services, and activities—

(1) For residents of economically depressed areas;

(2) That encourage the participation of traditionally underserved populations;

(3) That encourage, in cooperation with the individual appointed under § 403.13(a), the elimination of sex bias and sex stereotyping;

(4) That improve, expand, and update Consumer and Homemaking Education Programs, especially those that specifically address needs described in paragraphs (b) (1), (2), and (3) of this section; and

(5) That address priorities and emerging concerns at the local, State, and national levels.

(c) The State may use the funds described in paragraph (a) of this section for—

(1) Program development and the improvement of instruction and curricula relating to—

(i) Managing individual and family resources;

(ii) Making consumer choices;

(iii) Balancing work and family;

(iv) Improving responses to individual and family crises (including family violence and child abuse);

(v) Strengthening parenting skills (especially among teenage parents);

(vi) Preventing teenage pregnancy;

(vii) Assisting the aged, individuals with disabilities, and members of at risk populations (including the homeless);

(viii) Improving individual, child, and family nutrition and wellness;

(ix) Conserving limited resources;

(x) Understanding the impact of new technology on life and work;

(xi) Applying consumer and homemaking education skills to jobs and careers; and

(xii) Other needs as determined by the State; and

(2) Support services and activities designed to ensure the quality and effectiveness of programs, including—

(i) The demonstration of innovative and exemplary projects;

(ii) Community outreach to underserved populations;

(iii) The application of academic skills (such as reading, writing, mathematics, and science) through consumer and homemaking education programs;

(iv) Curriculum development;

(v) Research;

(vi) Program evaluation;

(vii) The development of instructional materials;

(viii) Teacher education;

(ix) The upgrading of equipment;

(x) Teacher supervision;

(xi) State leadership, including the activities of student organizations; and

(xii) State administration, subject to § 403.151(c).

(Authority: 20 U.S.C. 2361, 2362 (a), (b))

§ 403.151 How must funds be used under the Consumer and Homemaking Education Programs?

(a) A State shall use not less than one-third of its allotment under the Consumer and Homemaking Education Program in economically depressed areas or areas with high rates of unemployment for projects, services, and activities designed to assist consumers, and to help improve the home environment and the quality of family life.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program to provide State leadership and full-time State administrator(s) qualified by experience and educational preparation in home economics education.

(3) For purposes of the Consumer and Homemaking Education Program, State leadership includes, but is not limited to, curriculum development, personnel development, research, and dissemination activities, and technical assistance.

(c) A State may use, in addition to funds reserved under § 403.180(b)(4), not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Authority: 20 U.S.C. 2362(c), 2363)

Comprehensive Career Guidance and Counseling Programs

§ 403.160 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Programs?

(a) The State shall conduct, in accordance with its State plan, from its allotment for this program, career guidance and counseling projects, services, and activities that are—

(1) Organized and administered by certified counselors; and

(2) Designed to improve, expand, and extend career guidance and counseling programs to meet the career development, vocational education, and employment needs of vocational education students and potential students.

(b) The purposes of the projects, services, and activities described in paragraph (a) of this section must be to—

(1) Assist individuals to—

(i) Acquire self-assessment, career planning, career decision-making, and employability skills;

(ii) Make the transition from education and training to work;

(iii) Maintain the marketability of their current job skills in established occupations;

(iv) Develop new skills to move away from declining occupational fields and enter new and emerging fields in high-technology areas and fields experiencing skill shortages;

(v) Develop mid-career job search skills and to clarify career goals; and

(vi) Obtain and use information on financial assistance for postsecondary and vocational education, and job training; and

(2)(i) Encourage the elimination of sex, age, disabling conditions, and race bias and stereotyping;

(ii) Provide for community outreach;

(iii) Enlist the collaboration of the family, the community, business, industry, and labor; and

(iv) Be accessible to all segments of the population, including women, minorities, disabled individuals, and economically disadvantaged individuals.

(c) The projects, services, and activities described in paragraph (a) of this section must consist of—

(1) Instructional activities and other services at all educational levels to help students develop the skills described in paragraph (b)(1) of this section;

(2) Services and activities designed to ensure the quality and effectiveness of career guidance and counseling projects such as—

(i) Counselor education, including the education of counselors working with individuals with limited English proficiency;

(ii) Training support personnel;

(iii) Curriculum development;

(iv) Research and demonstration projects;

(v) Experimental projects;

(vi) The development of instructional materials;

(vii) The acquisition of equipment;

(viii) State and local leadership;

(ix) The development of career information delivery systems; and

(x) Local administration, including supervision;

(xi) State administration, including supervision, subject to § 403.161(c);

(3) Projects that provide opportunities for counselors to obtain firsthand experience in business and industry; and

(4) Projects that provide students with an opportunity to become acquainted with business, industry, the labor market, and training opportunities, including secondary educational programs that—

(i) Have at least one characteristic of an apprenticeable occupation as recognized by the Department of Labor or the State Apprenticeship Agency, in accordance with the National Apprenticeship Act (29 U.S.C. 50);

(ii) Are conducted in concert with local business, industry, labor, and other appropriate apprenticeship training entities; and

(iii) Are designed to prepare participants for an apprenticeable occupation or provide information concerning apprenticeable occupations and their prerequisites.

(Authority: 20 U.S.C. 2382 (a), (b))

§ 403.161 How must funds be used under the Comprehensive Career Guidance and Counseling Programs?

(a) A State shall use not less than twenty percent of its allotment under the Career Guidance and Counseling Program for projects, services, and activities designed to eliminate sex, age, and race bias and stereotyping under § 403.160(b)(2) to ensure that projects, services, and activities under this program are accessible to all segments of the population, including women, disadvantaged individuals, disabled individuals, individuals with limited English proficiency, and minorities.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program to provide State leadership that is qualified by experience and knowledge in guidance and counseling.

(3) For purposes of Comprehensive Career Guidance and Counseling Programs, State leadership includes, but is not limited to curriculum development, personnel development, research, dissemination activities, and technical assistance; and

(c) A State may use, in addition to funds reserved under § 403.180(b)(4), not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Authority: 20 U.S.C. 2382(c), 2383)

Business-Labor-Education Partnership for Training Program

§ 403.170 What activities does the Secretary support under the Business-Labor-Education Partnership for Training Program?

The State board shall, in accordance with the State plan, from its allotment

for this program, support the establishment and operation of projects, services, and activities, that—

(a) Provide incentives for the coordination of the Business-Labor-Education Partnership for Training Program with related efforts under the—

(1) National Tech-Prep Education Program in 34 CFR part 405;

(2) State-administered Tech-Prep Education Program in 34 CFR part 406; and

(3) JTPA; and

(b) May only include, in addition to the activities described in § 403.32(a)(27) through (30),—

(1) Training and retraining of instructional and guidance personnel;

(2) Curriculum development and the development or acquisition of instructional and guidance equipment and materials;

(3) Acquisition and operation of communications and telecommunications equipment and other high-technology equipment for programs authorized by this part;

(4) Other activities authorized by title III of the Act as may be essential to the successful establishment and operation of projects, services, and activities under the Business-Labor-Education Partnership for Training Program, including activities and related services to ensure access of women, minorities, disabled individuals, and economically disadvantaged individuals; and

(5) Providing vocational education to individuals in order to assist their entry into, or advancement in, high technology occupations or to meet the technological need of other industries or businesses.

(Authority: 20 U.S.C. 2392(b) and 2393(a), (d)(1))

§ 403.171 Who is eligible to apply to a State board for an award?

(a) The State board awards subgrants or contracts to partnerships between—

(1) An area vocational education school, a State agency, a local educational agency, a secondary school funded by the Bureau of Indian Affairs, an institution of higher education, a State corrections educational agency, or an adult learning center; and

(2) Business, industry, labor organizations, or apprenticeship programs.

(b) A partnership receiving an award from a State board must include as partners at least one entity from paragraph (a)(1) of this section and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(Authority: 20 U.S.C. 2392(a)(1))

§ 403.172 What special considerations must the State board give in approving projects, services, and activities?

The State board, in approving projects, services, and activities assisted under the Business-Labor-Education Partnership Training Program, shall give special consideration to the following:

(a) The level and degree of business and industry participation in the development and operation of the program.

(b) The current and projected demand within the State or relevant labor market area for workers with the level and type of skills the program is designed to produce.

(c) The overall quality of the proposal, with particular emphasis on the probability of successful completion of the program by prospective trainees and the capability of the eligible recipient, with assistance from participating business or industry, to provide high quality training for skilled workers and technicians in high technology.

(d) The commitment to serve, as demonstrated by special efforts to provide outreach, information, and counseling, and by the provision of remedial instruction and other assistance, all segments of the population, including women, minorities, disabled individuals, and economically disadvantaged individuals.

(e) Projects, services, and activities to provide vocational education for individuals who have attained 55 years of age in order to assist their entry into, or advancement in, high technology occupations or to meet the technological needs of other industries or businesses.

(Authority: 20 U.S.C. 2393(b) and (d)(2))

§ 403.173 What expenses are allowable?

The State board shall use funds awarded under the Business-Labor-Education Partnership for Training Program only for—

(a) Expenses incurred in carrying out the programs, services, and activities described in § 403.170, including, for example, expenses for—

(1) The introduction of new vocational education programs, particularly in economically depressed urban and rural areas;

(2) The introduction or improvement of basic skills instruction, including English-as-a-second-language instruction, in order for an individual to be eligible for employment, to continue employment, or to be eligible for career advancement;

(3) Costs associated with coordination between vocational education programs, business, and industry, including advisory council meetings and newsletters; and

(4) Transportation and child-care services for students necessary to ensure access of women, minorities, disabled individuals, and economically disadvantaged individuals to projects, services, and activities authorized by the Business-Labor-Education Partnership for Training Program; and

(b)(1) Subject to paragraph (b)(2) of this section, expenditures for necessary and reasonable administrative costs of the State board and of eligible partners.

(2) Total expenditures for administrative costs of the State board and of eligible partners may not exceed 10 percent of the State's allotment for this program in the first year and five percent of that allotment in each subsequent year.

(Authority: 20 U.S.C. 2392(d) and 2393(a)(1))

§ 403.174 What additional fiscal requirements apply to the Business-Labor-Education Partnership for Training Program?

(a) The business and industrial share of the costs required in § 403.32(a)(29) may be in the form of either expenditures or the fair market value of in-kind contributions such as facilities, overhead, personnel, and equipment.

(b) The State board shall use equal amounts from its allotment under this program and from its allotment for basic programs to provide the Federal share of cost of projects, services, and activities under this program.

(c) If an eligible partner demonstrates to the satisfaction of the State that it is incapable of providing all or part of the non-Federal portion of the costs of projects, services, and activities, as required by § 403.32(a)(29), the State board may use funds available under parts A and C of title II of the Act or funds available from State sources in place of the non-Federal portion.

(Authority: 20 U.S.C. 2392(c))

Subpart G—What Financial Conditions Must Be Met by a State?

§ 403.180 How must a State reserve funds for the basic programs?

(a)(1) Except as provided in paragraph (a)(2) of this section, each State shall reserve from its allotment under the basic programs authorized by title II of the Act, for—

(i) The Program for Single Parents, Displaced Homemakers, and Single Pregnant Women under § 403.81, and the Sex Equity Program under § 403.91, respectively, an amount that is not less than the amount the State reserved for each of those programs under section 202 of the Carl D. Perkins Vocational Education Act (CDPVEA) from its Fiscal

Year (FY) 1991 grant from the FY 1990 appropriation; and

(ii) The Program for Criminal Offenders under § 403.101 an amount that is not less than—

(A) The amount the State reserved for projects, services, or activities under section 202(6) of the CDPVEA from its FY 1991 grant from the FY 1990 appropriation; and

(B) The amount of Federal funds under the CDPVEA, other than the one percent reserve under section 202(6) of the Act, that the State and its eligible recipients obligated for projects, services, and activities for criminal offenders in correctional institutions from its FY 1991 grant from the FY 1990 appropriation.

(2) In any year in which a State receives an amount for purposes of carrying out programs under Title II of the Act that is less than the amount the State received for those purposes in its FY 1991 grant award from the FY 1990 appropriation under the Carl D. Perkins Vocational Education Act, the State shall ratably reduce the amounts reserved under paragraph (a)(1) of this section in the same proportion that the amount for carrying out programs under title II of the Act is less than the amount the State received for those purposes from the FY 1990 appropriation.

(b) Except as provided in paragraph (a) of this section, from its allotment for the basic programs authorized by title II of the Act, a State shall reserve—

(1) At least 75 percent for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs described in § 403.111;

(2) Ten and one-half percent for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women described in § 403.81 and the Sex Equity Program described in § 403.91, as follows:

(i) Not less than seven percent for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women.

(ii) Not less than three percent for the Sex Equity Program;

(3) Not more than eight and one-half percent for State Programs and State Leadership Activities described in §§ 403.70 and 403.71;

(4) Not more than five percent or $250,000, whichever is greater, for administration of the State plan, of which—

(i) Not less than $60,000 must be available for carrying out the provisions in § 403.13, regarding the personnel requirements for eliminating sex discrimination and sex stereotyping; and

(ii) Remaining amounts may be used for the costs of—

(A) Developing the State plan;

(B) Reviewing local applications;

(C) Monitoring and evaluating program effectiveness;

(D) Providing technical assistance;

(E) Ensuring compliance with all applicable Federal laws, including required services and activities for individuals who are members of special populations; and

(F) Supporting the activities of the technical committees it establishes under § 403.12(b)(1); and

(5) One percent for Programs for Criminal Offenders described in § 403.101.

(c) The procedure for meeting the "hold-harmless" requirements in § 403.180(a) and the $250,000 minimum for State administration provision in § 403.180(b)(4) is as follows:

(1) If the five percent reserved for administration is less than the $250,000 minimum allowed by paragraph (b)(4) of this section, or if any of the amounts reserved for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women in § 403.81, the Sex Equity Program in § 403.91, or the Program for Criminal Offenders in § 403.101, respectively, is less than the amount reserved for that program in FY 1990 (funds from the FY 1990 appropriation awarded in the States FY 1991 grant), a State shall subtract any amount necessary to satisfy the $250,000 minimum for State administration or any of the "hold-harmless" amounts from the total basic programs award received by the State.

(2) The State shall reserve $250,000 for administration and shall reserve for any program not meeting the "hold-harmless" requirement an amount necessary to meet that requirement.

(3) The State shall reserve from the remainder of the basic program award an amount for each of the remaining programs that is proportionate to the amount that program would have received in the absence of a shortfall in the amounts reserved for administration or to meet the "hold-harmless" requirements in paragraph (a)(1) of this section.

Example: 1 (a) A State receives a basic programs award of $4,000,000. Five percent of the basic programs award equals $200,000, which is $50,000 less than the $250,000 minimum that may be reserved for State administration. To determine the amount of funds that will be reserved for each program under title II, parts A, B, and C of the Act, the State first subtracts $250,000 for State administration from the $4,000,000 basic programs award ($4,000,000 − $250,000 = $3,750,000).

(b) Second, the State determines the amount that would have been reserved for each of the programs under title II, parts A, B, and C of the Act in the absence of a shortfall in the set-aside amount for administration, as follows:

3.0% × $4,000,000 =	$120,000	For Sex Equity Programs.
7.5% × $4,000,000 =	300,000	For Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.
8.5% × $4,000,000 =	340,000	For State Programs and State Leadership Activities.
1.0% × $4,000,000 =	40,000	For Programs for Criminal Offenders.
75% × $4,000,000 =	3,000,000	For Part C of Title II.
	3,800,000	

(c) Third, the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts the programs would have received in the absence of a shortfall ($3,800,000) and multiplies the remaining basic programs award ($3,750,000) by these percentages to determine the amount to reserve for each program under parts A, B, and C of title II of the Act, as follows:

($120,000/ $3,800,000) × $3,750,000 =	$118,421	For Sex Equity Programs.
($300,000/ $3,800,000) × $3,750,000 =	296,053	For Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.
($340,000/ $3,800,000) × $3,750,000 =	335,526	For State Programs and State Leadership Activities.
($40,000/ $3,800,000) × $3,750,000 =	39,474	For Programs for Criminal Offenders.
($3,000,000/ $3,800,000) × $3,750,000 =	2,960,526	For Part C of Title II.
	3,750,000	

This example assumes that amounts reserved meet the "hold-harmless" requirement of section 102(c)(1) of the Act.

Example 2: A State's seven percent reserve from its FY 1992 grant for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women is $1,400,000 and the amount reserved for that program from its FY 1991 grant was $1,581,000. Therefore, the FY 1992 reserve for that program is $181,000 less than the amount reserved in FY 1991. The State received a basic programs award of

$20,000,000 in FY 1992. The other programs under title II, part B meet the "hold-harmless" requirement of § 403.189(a)(1), and the reserve for State administration exceeds $250,000. The State determines the amount of funds to be reserved for each program under title II, parts A, B, and C of the Act as follows:

(a) First, the State subtracts $1,581,000 from the $20,000,000 total basic programs award ($20,000,000 − $1,581,000 = $18,419,000).

(b) Second, the State determines the amount that would have been reserved for each of the programs under parts A, B, and C of title II of the Act in the absence of a shortfall in the set-aside amount for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women, as follows:

5.0% × $20,000,000 =	$1,000,000	For administration.
3.5% × $20,000,000 =	700,000	For Sex Equity Programs.
8.5% × $20,000,000 =	1,700,000	For State Programs and State Leadership Activities.
1.0% × $20,000,000 =	200,000	For Programs for Criminal Offenders.
75.0% × $20,000,000 =	15,000,000	For Part C of Title II.
	18,600,000	

(c) Third, the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts the programs would have earned in the absence of a shortfall ($18,600,000) and multiplies the remaining basic programs award ($18,419,000) by these percentages to determine the amount to reserve each program under parts A, B, and C of title II of the Act, as follows:

($1,000,000/ $18,600,000) × $18,419,000 =	$990,269	For administration.
($700,000/ $18,600,000) × $18,419,000 =	693,188	For Sex Equity Programs.
($1,700,000/ $18,600,000) × $18,419,000 =	1,683,457	For State Programs and State Leadership Activities.
($200,000/ $18,600,000) × $18,419,000 =	198,054	For Programs for Criminal Offenders.
($15,000,000/ $18,600,000) × $18,419,000 =	14,854,032	For Part C of Title II.
	18,419,000	

This example assumes that amounts reserved for the Sex Equity Program and Programs for Criminal Offenders meet the "hold-harmless" requirement of section 102(c)(1) and (2) of the Act.

(d) The procedure for meeting the ratable reduction provision in paragraph (a)(2) of this section is as follows:

(1) If a State's basic programs award under title II of the Act for FY 1992 or in future years is less than that State's basic grant amount in FY 1991, a State shall determine the percentage that the basic programs award is of the FY 1991 basic programs award.

(2) The State shall multiply the amounts reserved in FY 1991 for each of the three programs covered by the "hold-harmless" provisions in paragraph (a)(1) of this section by this percentage.

(3) The State shall compare the amounts that would be reserved for these programs in FY 1992 to determine if these amounts are less than the ratably reduced hold-harmless amounts, and if so, shall proceed with the calculation required by paragraph (c) of this section except using the ratably reduced "hold-harmless" amounts.

(Authority: 20 U.S.C. 2312)

§ 403.181 What are the cost-sharing requirements applicable to the basic programs?

(a) A State shall match, from non-Federal sources and on a dollar-for-dollar basis, the funds reserved for administration of the State plan under § 403.180(b)(4).

(b) The matching requirement under paragraph (a) of this section may be applied overall, rather than line-by-line, to State administrative expenditures.

(c) A State shall provide from non-Federal sources for State administration under the Act an amount that is not less than the amount provided by the State from non-Federal sources for State administrative costs for the preceding fiscal or program year.

Example for paragraph (b): From the five percent reserved for the administration of the State plan, a State must reserve $60,000 to carry out the provisions in § 403.13. The $60,000 must be matched, but the matching funds need not be used for the activities described in § 403.13.

(Authority: 20 U.S.C. 2312(b) and 2463d; House Report No. 101–660, 101st Cong., 2nd Sess. pp. 103 and 104 (1990))

§ 403.182 What is the maintenance of fiscal effort requirement?

The Secretary may not make a payment under the Act to a State for any fiscal year unless the Secretary determines that the fiscal effort per student, or the aggregate expenditures of that State, from State sources, for vocational education for the fiscal year (or program year) preceding the fiscal year (or program year) for which the determination is made, at least equaled its effort or expenditures for vocational education for the second preceding fiscal year (or program year).

(Authority: 20 U.S.C. 2463(a))

§ 403.183 Under what circumstances may the Secretary waive the maintenance of effort requirement?

(a) The Secretary may waive the maintenance of effort requirement in § 403.182 for a State for one year only if—

(1) The Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances affecting the State's ability to maintain fiscal effort; and

(2) The State has decreased its expenditures for vocational education from non-Federal sources by no more than five percent.

(b) For purposes of this section, "exceptional or uncontrollable circumstances" include, but are not limited to, the following:

(1) A natural disaster.

(2) An unforeseen and precipitous decline in financial resources.

(c) The Secretary does not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(Authority: 20 U.S.C. 2463(b))

§ 403.184 How does a State request a waiver of the maintenance of effort requirement?

A State seeking a waiver of the maintenance of effort requirement in § 403.182 shall—

(a) Submit to the Secretary a request for a waiver; and

(b) Include in the request—

(1) The reason for the request;

(2) Information that demonstrates that a waiver is justified; and

(3) Any additional information the Secretary may require.

(Authority: 20 U.S.C. 2463(b))

§ 403.185 How does the Secretary compute maintenance of effort in the event of a waiver?

If a State has been granted a waiver of the maintenance of effort requirement that allows it to receive a grant for a fiscal year, the Secretary determines whether the State has met that requirement for the grant to be awarded for the year after the year of the waiver by comparing the amount spent for

vocational education from non-Federal sources in the first preceding fiscal year (or program year) with the amount spent in the third preceding fiscal year (or program year).

Example: Because exceptional or uncontrollable circumstances prevented a State from maintaining its level of fiscal effort in a program year 1989 (July 1, 1988–June 30, 1989) at the level of its fiscal effort in program year 1988 (July 1, 1987–June 30, 1988), the Secretary granted the State a waiver of the maintenance of effort requirement that permits the State to receive its fiscal year 1990 grant (a grant that is awarded on or after July 1, 1990 from funds appropriated in the fiscal year 1990 appropriation). To be eligible to receive its fiscal year 1991 grant (the grant to be awarded for the year after the year of the waiver), the State's expenditures from the first preceding program year (July 1, 1989–June 30, 1990) must equal or exceed its expenditures from the third preceding program year (July 1, 1987 to June 30, 1988).

(Authority: 20 U.S.C. 2463(c))

§ 403.186 What are the administrative cost requirements applicable to a State?

(a) *Basic Programs.* A State may use only funds reserved under § 403.180(b)(4) to administer the programs under Title II of the Act, including Programs for Criminal Offenders.

(b) *Special Programs.* (1) A State may use the funds reserved under § 403.180(b)(4) to administer any of the special programs listed in § 403.130.

(2) In addition to the funds reserved under § 403.180(b)(4), a State may use only an amount of funds from its allotment for the State Assistance for Vocational Education Support Programs by Community-Based Organizations that is necessary and reasonable for the proper and efficient State administration of that program.

(3) In addition to the funds reserved under § 403.180(b)(4), a State may use the amounts reserved for the Consumer and Homemaking Education Program, the Comprehensive Career Guidance and Counseling Program, and the Business-Labor-Education Partnership for Training Program under §§ 403.151(c), 403.161(c), and 403.173(b), respectively, for the proper and efficient administration of each program.

(Authority: 20 U.S.C. 2302(d)(A)–(F) and 2312(a))

§ 403.187 How may a State provide technical assistance?

(a) Except as provided in paragraph (b) of this section, a State may use only an amount of the funds reserved for each of the basic programs listed in § 403.60 and the special programs listed in § 403.130 to pay the costs of providing technical assistance that is necessary and reasonable to promote or enhance the quality and effectiveness of that program.

(b) A State may not use funds reserved under § 403.180(b)(1) for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Program or funds allotted under 34 CFR part 407 for the Supplementary State Grants Program to pay the costs of providing technical assistance.

(c) In providing technical assistance under paragraph (a) of this section, a State may not use amounts to an extent that would interfere with achieving the purposes of the program for which the funds were awarded.

(Authority: 20 U.S.C. 2302(d)(A)–(F), 2312(a), and 2323(b)(5))

Subpart H—What Conditions Must Be Met by Local Recipients?

§ 403.190 What are the requirements for receiving a subgrant or contract?

(a) Each eligible recipient desiring financial assistance under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program must submit to the State board, according to requirements established by the State board, an application covering the same period as the State plan, for the use of that assistance. The State board shall determine requirements for local applications, except that each application must—

(1) Contain a description of—

(i) The vocational education program to be funded, including—

(A) The extent to which the program incorporates each of the requirements described in § 403.111 (a), (b), and (c); and

(B) How the eligible recipient will use the funds available under §§ 403.112, 403.113, or 403.116 and from other sources to improve the program with regard to each requirement and activity described in § 403.111 (c) and (d);

(ii) How the needs of individuals who are members of special populations will be assessed and the planned use of funds to meet those needs;

(iii) How access to programs of good quality will be provided to students who are economically disadvantaged (including foster children), students with disabilities, and students of limited English proficiency through affirmative outreach and recruitment efforts;

(iv) The program evaluation standards the applicant will use to measure its progress;

(v) The methods to be used to coordinate vocational education services with relevant programs conducted under the JTPA, including cooperative arrangements established with private industry councils established under section 102(a) of that Act, in order to avoid duplication and to expand the range of and accessibility to vocational education services;

(vi) The methods used to develop vocational educational programs in consultation with parents and students of special populations;

(vii) How the eligible recipient coordinates with community-based organizations;

(viii) The manner and the extent to which the eligible recipient considered the demonstrated occupational needs of the area in assisting programs funded under the Act;

(ix) How the eligible recipient will provide a vocational education program that—

(A) Integrates academic and occupational disciplines so that students participating in the program are able to achieve both academic and occupational competence; and

(B) Offers coherent sequences of courses leading to a job skill; and

(x) How the eligible recipient will monitor the provision of vocational education to individuals who are members of special populations;

(2) Provide assurances that—

(i) The programs funded under §§ 403.112, 403.113, or 403.116 will be carried out according to the requirements regarding special populations;

(ii) The eligible recipient will provide a vocational program that—

(A) Encourages students through counseling to pursue coherent sequences of courses;

(B) Assists students who are economically disadvantaged, students of limited English proficiency, and students with disabilities to succeed through supportive services such as counseling, English-language instruction, child care, and special aids;

(C) Is of a size, scope, and quality as to bring about improvement in the quality of education offered by the school; and

(D) Seeks to cooperate with the sex equity program carried out under § 403.91; and

(iii) The eligible recipient will provide sufficient information to the State to enable the State to comply with the requirements in § 403.113; and

(3) Contain a report on the number of individuals in each of the special populations.

(b) Each eligible recipient desiring financial assistance under title II of the Act must provide assurances to the

State board that, with respect to any project that is funded under title II or title III of the Act, it will—

(1) Assist students who are members of special populations to enter vocational education programs, and, with respect to students with disabilities, assist in fulfilling the transitional service requirement of section 626 of the IDEA;

(2) Assess the special needs of students participating in programs receiving assistance under titles II and III of the Act, with respect to their successful completion of the vocational education program in the most integrated setting possible;

(3) Provide supplementary services, as defined in 34 CFR 400.4(b), to students who are members of special populations;

(4) Provide guidance, counseling, and career development activities conducted by professionally trained counselors and teachers who are associated with the provision of those special services;

(5) Provide counseling and instructional services designed to facilitate the transition from school to post-school employment and career opportunities; and

(c) Each eligible recipient desiring financial assistance under title II of the Act must provide the services and activities described in paragraph (b) of this section, to the extent possible with funds awarded under the Act, and indicate in its local application whether any non-Federal funds will be used for this purpose.

Cross-Reference: See § 403.193(e)

(d) Each eligible recipient desiring financial assistance under the Act shall provide sufficient information to the State, as the State board requires, to demonstrate to the State board that the eligible recipient's projects comply with § 403.32(a)(18)–(26).

(e) Each eligible recipient desiring financial assistance under the Act shall—

(1) Provide the assurance described in § 403.14(a)(2); and

(2) Include in its application, as appropriate,—

(i) The number of disabled students, economically disadvantaged students, and students with limited English proficiency in its vocational program;

(ii) An assessment of the vocational needs of its disabled students, economically disadvantaged students, and students with limited English proficiency; and

(iii) A plan to provide supplementary services sufficient to meet the needs identified in the assessment described in paragraph (e)(2)(ii).

(Authority: 20 U.S.C. 2321(c)(1), (d), (e); 2328; and 2343)

§ 403.191 What are the requirements for program evaluation?

(a) (1) Beginning in the 1992–1993 school year, each recipient of financial assistance under §§ 403.112, 403.113, or 403.116 shall evaluate annually the effectiveness of the recipient's entire vocational education program, regardless of which particular projects are assisted with those Federal funds.

(2) The annual evaluation must be based on the standards and measures developed by the State board in accordance with §§ 403.201, 403.202, and 403.203, including any modifications made by the recipient in accordance with paragraph (b) of this section.

(b) (1) Each recipient may modify the State standards and measures based on—

(i) Economic, geographic, or demographic factors; or

(ii) The characteristics of the populations to be served.

(2) Modifications must conform to the assessment criteria contained in the State plan.

(c) Each recipient, as part of the annual evaluation required in paragraph (a) of this section, and with the full participation of representatives of special populations, shall—

(1) Identify and adopt strategies to overcome barriers that are resulting in lower rates of access to, or success in, vocational education programs for members of special populations; and

(2) Evaluate the progress of individuals who are members of special populations in the recipient's entire vocational education program.

(d) Each recipient, as a part of the annual evaluation required in paragraph (a) of this section, shall evaluate the progress of the recipient's entire vocational education program, in providing vocational education students with strong experience in and understanding of all aspects of the industries the students are preparing to enter.

(Authority: 20 U.S.C. 2325(a) and 2327(a))

§ 403.192 What are the requirements for program improvement?

(a) If, beginning not less than one year after implementing the program evaluation required in § 403.191, a recipient determines, through its annual evaluation, that it is not making substantial progress in meeting the standards and measures developed by the State under §§ 403.201 and 403.202, the recipient shall develop a plan for program improvement for the succeeding school year.

(b) The plan must be developed in consultation with teachers, parents, and students concerned with or affected by the program, and must describe how the recipient will identify and modify programs that are in need of improvement, including a description of—

(1) Vocational education and career development strategies designed to achieve progress in improving the effectiveness of the recipients entire program; and

(2) If necessary, the strategies designed to improve supplementary services provided to individuals who are members of special populations.

Cross Reference: See 34 CFR 403.204

(Authority: 20 U.S.C. 2327(b))

§ 403.193 What are the information requirements regarding special populations?

(a)(1) Each local educational agency that receives funds under Title II of the Act shall provide to students who are members of special populations and their parents information concerning—

(i) The opportunities available in vocational education;

(ii) The requirements for eligibility for enrollment in those vocational education programs;

(iii) Special courses that are available;

(iv) Special services that are available;

(v) Employment opportunities; and

(vi) Placement.

(2) Each area vocational education school or intermediate educational agency that receives funds under title II of the Act shall provide the information described in paragraph (a)(1) of this section to the students who are members of special populations and their parents in any local educational agency whose allocation was distributed in its entirety under § 403.113 to the area vocational education school or intermediate educational agency.

(b) The information described in paragraph (a)(1) of this section must be provided at least one year before the students enter, or are of an appropriate age for, the grade level in which vocational education programs are first generally available in the State, but in no case later than the beginning of the ninth grade.

(c) Each eligible institution that receives funds under title II of the Act shall—

(1) Provide the information described in paragraph (a)(1) of this section to each individual who requests information concerning, or seeks

admission to, vocational education programs offered by the institution; and

(2) If appropriate, assist in the preparation of applications relating to that admission.

(d) Information described under paragraph (a)(1) of this section must, to the extent practicable, be in a language and form that parents and students understand.

(e) An eligible recipient is not required by this part to use non-Federal funds to pay the cost of services and activities required by this section and §§ 403.111(a)(2)(i) and (c)(3) and 403.190(b) unless this requirement is imposed by other applicable laws.

(Authority: 20 U.S.C. 2328(b) and (c) and 2342(a) and (c)(1)(C))

§ 403.194 What are the comparability requirements?

(a) A local educational agency may receive an award of Federal funds under the State plan only if—

(1) The local educational agency uses State and local funds to provide services in secondary schools or sites served with Federal funds awarded under the State plan that, taken as a whole, are at least comparable to those services being provided in secondary schools or sites that are not being served with Federal funds awarded under the State plan; or

(2) In the event that the local educational agency serves all its secondary schools or sites with Federal funds awarded under the State plan, the local educational agency uses State and local funds to provide services that taken as a whole, are substantially comparable in each secondary school or site.

Examples: Methods by which a local educational agency can demonstrate its compliance with the comparability requirements in paragraph (a) of this section include the following:

Example 1: The local educational agency files with the State board a written assurance that it has established and implemented—

(a) A district-wide salary schedule;

(b) A policy to ensure equivalence among secondary schools or sites in teachers, administrators, and auxiliary personnel; and

(c) A policy to ensure equivalency among secondary schools or sites in the provision of curriculum materials and instructional supplies.

Example 2: The local educational agency establishes and implements other procedures for ensuring comparability, such as the following:

(a) Comparing the average number of students per instructional staff in each secondary school or site served with Federal funds awarded under the State plan with the average number of students per instructional staff in secondary schools or sites not served with Federal funds awarded under the State plan. A served school is considered comparable if its average does not exceed 110 percent of the average of schools or sites in the local educational agency not served with Federal funds awarded under the State plan; or

(b) Comparing the average instructional staff salary expenditures per student in each secondary school or site served with Federal funds awarded under the State plan with the average instructional staff salary expenditure per student in schools or sites in the local educational agency not served with Federal funds awarded under the State plan. A served school is considered comparable if its average is at least 90 percent of the average of schools or sites not served with Federal funds awarded under the State plan.

(b) The comparability requirements in paragraph (a) of this section do not apply to a local educational agency with only one secondary school or site.

(c)(1) A local educational agency shall develop written procedures for complying with the comparability requirements in paragraph (a) of this section, including a process for demonstrating annually that State and local funds are used to provide services in served schools and sites that are at least comparable to the services provided with State and local funds in schools or sites in the local educational agency that are not served with funds awarded under the State plan.

(2) In reaching the determination as to whether comparability requirements in paragraph (a) of this section were met, the local educational agency's written procedures—

(i) Do not have to take into account unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year; and

(ii) May not take into account any State and local funds spent in carrying out the following types of programs:

(A) Special local programs designed to meet the educational needs of educationally deprived children, including compensatory education for educationally deprived children, that were excluded in the preceding fiscal year from comparability determinations under section 1018(d)(1)(B) of chapter 1 (20 U.S.C. 2728(d)(1)(B)).

(B) Bilingual education for children of limited English proficiency.

(C) Special education for disabled children.

(D) State phase-in programs that were excluded in the preceding fiscal year from comparability determinations under section 1018(d)(2)(B) of chapter 1 (20 U.S.C. 2728(d)(2)(B)).

(Authority: 20 U.S.C. 2323(b)(19))

§ 403.195 What are the administrative cost requirements applicable to local recipients?

(a) Except as provided in paragraphs (b) and (c) of this section, each eligible recipient, including a State corrections educational agency, that receives an award under a basic program listed in § 403.60 or a special program listed in § 403.130, may use no more than the amount of funds from each award that is necessary and reasonable for the proper and efficient administration of the projects, services, and activities for which the award was made.

(b) Each eligible recipient that receives an award under §§ 403.112, 403.113, or 403.116 may use no more than five percent of those funds for administrative costs.

(c) Each eligible partner that receives an award under the Business-Labor-Education Partnership for Training Program may use no more funds under that award for administrative costs than the amounts prescribed in § 403.173(b).

(Authority: 20 U.S.C. 2342(c); 2393(a)(1) and (c))

§ 403.196 What are the requirements regarding supplanting?

(a) Funds made available under title II of the Act shall be used to supplement, and to the extent practicable increase the amount of State and local funds that would in the absence of funds under title II of the Act be made available for the purposes specified in the State plan and the local application.

(b) Notwithstanding paragraph (a) of this section and § 403.32(a)(17), funds made available under title II of the Act may be used to pay the costs of vocational education services required by an individualized education program developed pursuant to sections 612(4) and 614(a)(5) of the IDEA (20 U.S.C. 1412(4) and 1414(a)(5)), in a manner consistent with section 614(a)(1) of that Act, and services necessary to meet the requirements of section 504 of the Rehabilitation Act of 1973 with respect to ensuring access to vocational education.

(c) Any expenditures pursuant to paragraph (b) of this section must increase the amount of funds that would otherwise be available to meet the costs of an individualized education program or to comply with section 504 of the Rehabilitation Act of 1973.

(Authority: 20 U.S.C. 2468e(a)(1))

§ 403.197 What are the requirements for the use of equipment?

(a) Equipment purchased with funds under §§ 403.112, 403.113, or 403.116, when not being used to carry out the purposes of the Act for which it was

purchased, may be used for other vocational education purposes if the acquisition of the equipment was reasonable and necessary for the purpose of conducting a properly designed project or activity under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program.

(b) Equipment purchased with funds under §§ 403.112, 403.113, or 403.116, when not being used to carry out the purposes of the Act for which it was purchased or other vocational education purposes, may be used for other instructional purposes if—

(1) The acquisition of the equipment was reasonable and necessary for the purpose of conducting a properly designed project or activity under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program; and

(2) The other use of the equipment is after regular school hours or on weekends.

(c) The use of equipment under paragraphs (a) and (b) of this section must—

(1) Be incidental to the use of that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased;

(2) Not interfere with the use of that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased; and

(3) Not add to the cost of using that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased.

(Authority: 20 U.S.C. 2342(c)(3))

Subpart I—What Are the Administrative Responsibilities of a State Under the State Vocational and Applied Technology Education Program?

§ 403.200 What are the State's responsibilities for ensuring compliance with the comparability requirements?

(a) The State board shall monitor each local educational agency's compliance with the comparability requirements in § 403.194.

(b) If a local educational agency is found not to be in compliance with the comparability requirements, the State board shall withhold, or require repayment of, the amount or percentage by which the local educational agency failed to achieve comparability under the local educational agency's procedures established pursuant to § 403.194(c).

(Authority: 20 U.S.C. 2323(b)(19))

§ 403.201 What are the State's responsibilities for developing and implementing a statewide system of core standards and measures of performance?

(a)(1) Each State board receiving funds under the Act shall develop and implement a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs.

(2) This system must—

(i) Be developed by September 25, 1992; and

(ii) Apply to all programs assisted under the Act.

(3) For purposes of this section, "programs assisted under the Act" refers to a State board's entire vocational education program.

(b) To assist in the development and implementation of the Statewide system addressed in paragraph (a) of this section, the State board shall appoint a State Committee of Practitioners (Committee), as prescribed in 34 CFR 400.6.

(c) The State board shall convene the Committee on a regular basis to review, comment on, and propose revisions to the State board's draft proposal for a system of core standards and measures of performance for vocational programs assisted under the Act.

(d) To assist the Committee in formulating recommendations for modifying standards and measures of performance, the State board shall provide the Committee with information concerning differing types of standards and measures including—

(1) The advantages and disadvantages of each type of standard or measure; and

(2) Instances in which those standards and measures—

(i) Have been effective; and

(ii) Have not been effective.

(Authority: 20 U.S.C. 2325 (a) and (d))

§ 403.202 What must each State's system of core standards and measures of performance include?

(a) The statewide system of core standards and measures of performance for vocational programs must include—

(1) Measures of learning and competency gains, including student progress in the achievement of basic and more advanced academic skills;

(2) One or more measures of the following:

(i) Student competency attainment.

(ii) Job or work skill attainment or enhancement including student progress in achieving occupational skills necessary to obtain employment in the field for which the student has been prepared, including occupational skills in the industry the student is preparing to enter.

(iii) Retention in school or completion of secondary school or its equivalent.

(iv) Placement into additional training or education, military service, or employment;

(3) Incentives or adjustments that are—

(i) Designed to encourage service to targeted groups or special populations; and

(ii) Developed for each student, and, if appropriate, consistent with the student's individualized education program developed under section 614(a)(5) of the IDEA; and

(4) Procedures for using existing resources and methods developed in other programs receiving Federal assistance.

(b) In developing the standards and measures included in the system developed under paragraph (a) of this section, the State board shall take into consideration and shall provide, to the extent appropriate, for consistency with—

(1) Standards and measures developed under job opportunities and basic skills training programs established and operated under a plan approved by the Secretary of Health and Human Services that meets the requirements of section 402(a)(19) of the Social Security Act (42 U.S.C. 687); and

(2) Standards prescribed by the Secretary of Labor under section 106 of the JTPA.

Cross-Reference: see 34 CFR 400.6.

(Authority: 20 U.S.C. 2325 (b), (c))

§ 403.203 What are the State's responsibilities for a State assessment?

(a) Each State board receiving assistance under the Act shall conduct an assessment of the quality of vocational education programs throughout the State using measurable objective criteria.

(b) In developing the assessment criteria, the State board shall—

(1) Consult with representatives of the groups described in 34 CFR 400.6(c); and

(2) Use information gathered by the National Occupational Information Coordinating Committee and, if appropriate, other information.

(c) Each State board shall—

(1) Develop assessment criteria no later than the beginning of the 1991–1992 school year; and

(2) Widely disseminate those criteria.

(d) Assessment criteria must include at least the following factors, but may include others:

(1) Integration of academic and vocational education.

(2) Sequential courses of study leading to both academic and occupational competencies.

(3) Increased student work skill attainment and job placement.

(4) Increased linkages between secondary and postsecondary educational institutions.

(5) Instruction and experience, to the extent practicable, in all aspects of an industry the students are preparing to enter.

(6) The ability of the eligible recipients to meet the needs of special populations with respect to vocational education.

(7) Raising the quality of vocational education programs in schools with high concentration of poor and low-achieving students.

(8) The relevance of programs to the workplace and to the occupations for which students are to be trained, and the extent to those such programs reflect a realistic assessment of current and future labor market needs, including needs in areas of emerging technologies.

(9) The ability of the vocational curriculum, equipment, and instructional materials to meet the demands of the work force.

(10) Basic and higher order current and future workplace competencies that will reflect the hiring needs of employers.

(11) The capability of vocational education programs to meet the needs of individuals who are members of special populations.

(12) Other factors considered appropriate by the State board.

(e) The assessment must include an analysis of—

(1) The relative academic, occupational, training, and retraining needs of secondary, adult, and postsecondary students; and

(2) The capability of vocational education programs to provide vocational education students, to the extent practicable, with—

(i) Strong experience in, and understanding of, all aspects of the industry the students are preparing to enter (including planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, and health, safety, and environmental issues); and

(ii) Strong development and use of problem-solving skills and basic and advanced academic skills (including skills in the areas of mathematics, reading, writing, science, and social studies) in a technological setting.

(f)(1) Each State board shall complete the initial assessment required by paragraph (a) of this section before March 25, 1991, and, therefore, at least six months prior to the required submission of a new State plan to the Secretary.

(2) Each State board shall conduct an assessment under this section prior to the submission of each new State plan to the Secretary.

(Authority: 20 U.S.C. 2323 (a)(3), (b)(3)(B), and 2326)

§ 403.204 What are the State's responsibilities for program evaluation and improvement?

(a) If, one year after an eligible recipient has implemented its program improvement plan described in § 403.192, the State finds that the eligible recipient has not made sufficient progress in meeting the standards and measures developed as required by §§ 403.201, 403.202, and 403.203, the State shall work jointly with the recipient and with teachers, parents, and students concerned with or affected by the program, to develop a joint plan for program improvement.

(b) Each joint plan required by paragraph (a) of this section must contain—

(1) A description of the technical assistance and program activities the State will provide to enhance the performance of the eligible recipient;

(2) A reasonable timetable to improve school performance under the plan;

(3) A description of vocational education strategies designed to improve the performance of the program as measured by the local evaluation; and

(4) If necessary, a description of strategies designed to improve supplementary services provided to individuals who are members of special populations.

(c) The State, in conjunction with the eligible recipient, shall annually review and revise the joint plan developed under paragraph (a) of this section and provide appropriate assistance until the recipient sustains fulfillment of State and local standards and measures developed under §§ 403.201, 403.202, and 403.203 for more than one year.

(Authority: 20 U.S.C. 2327 (c), (d))

§ 403.205 What are the State's responsibilities for members of special populations?

The State board shall—

(a) Establish effective procedures, including an expedited appeals procedure, by which students who are members of special populations and their parents, teachers, and concerned area residents will be able to participate directly in State and local decisions that influence the character of programs under the Act affecting their interests; and

(b) Provide technical assistance and design procedures necessary to ensure that those individuals referred to in paragraph (a) of this section are given access to the information needed to use those procedures.

(Authority: 20 U.S.C. 2328(d))

§ 403.206 What are the State's responsibilities regarding a State occupational information coordinating committee?

(a) A State that receives funds under the Act shall establish a State occupational information coordinating committee composed of representatives of the State board, the State employment security agency, the State economic development agency, the State job training coordinating council, and the agency administering the vocational rehabilitation program.

(b) With funds made available to it by the National Occupational Information Coordinating Committee, the State occupational information coordinating committee shall—

(1) Implement an occupational information system in the State which will meet the common needs for the planning for, and the operation of, programs of the State board assisted under the Act and of the administering agencies under the JTPA; and

(2) Use the occupational information system to implement a career information delivery system.

(Authority: 20 U.S.C. 2422(b))

§ 403.207 What are the State's responsibilities to the National Center or Centers for Research in Vocational Education?

A State shall forward to the National Center for Research in Vocational Education a copy of an abstract for each new research, curriculum development, or personnel development project it supports, and the final report on each project.

(Authority: 20 U.S.C. 2404(c))

§ 403.208 What are the requirements regarding supplanting?

(a) The State board is subject to the prohibition against supplanting in § 403.196.

(b) The State board shall monitor each eligible recipient's compliance with the supplanting requirements in § 403.196.

(Authority: 20 U.S.C. 2468e(a)(1)).

Appendix A to Part 403—Examples for 34 CFR 403.111(a) and 403.111(c)(3)

Illustration of providing full participation under 34 CFR 403.111(a). An educationally disadvantaged student is enrolled in a course that is part of a vocational education program and is having trouble understanding a math concept (e.g., negative numbers) necessary to succeed in the course. To ensure the student's full participation in the course, a local educational agency may use funds awarded under § 403.112 as needed to provide tutoring in negative numbers to enable the student to understand the concept well enough to complete the vocational education course.

Illustrations of providing equitable participation under CFR 403.111(c)(3).

Example 1: An area vocational education school conducts an informal meeting to provide the information required in § 403.193(a) regarding the area vocational education school's vocational education programs, to parents of students who are members of special populations in a local educational agency whose allocation was distributed to the area vocational education school under § 403.113. The area vocational education school conducts the meeting at a time and in a location convenient for these parents and students. At the meeting, the area vocational education school provides a staff person to assist students or their parents to complete any forms necessary to enroll in the area vocational education school's vocational education program.

Example 2: A hearing-impaired student in a local educational agency could participate in the vocational education program only if an interpreter is provided for that student. The local educational agency cannot refuse to admit the student because of the need for an interpreter.

PART 404—[RESERVED]

6. Part 404 is reserved.

7. A new part 405 is added to read as follows:

PART 405—NATIONAL TECH-PREP EDUCATION PROGRAM

Subpart A—General

Sec.

405.1 What is the National Tech-Prep Education Program?
405.2 Who is eligible for an award?
405.3 What activities may the Secretary fund?
405.4 What regulations apply?
405.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

405.10 What must the application contain?

Subpart C—How Does the Secretary Make an Award?

405.20 How does the Secretary evaluate an application?
405.21 What selection criteria does the Secretary use?
405.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

405.30 What are the evaluation requirements?
405.31 May the Secretary restrict the use of funds for equipment?

Authority: 20 U.S.C. 2394–2394e, unless otherwise noted.

Subpart A—General

§ 405.1 What is the National Tech-Prep Education Program?

The National Tech-Prep Education Program provides financial assistance for projects that develop and operate four-year sequences of study designed to provide a tech-prep education program leading to a two-year associate degree or a two-year certificate and provides, in a systematic manner, strong comprehensive links between secondary schools and postsecondary educational institutions.

(Authority 20 U.S.C. 2394(b))

§ 405.2 Who is eligible for an award?

(a) Awards are provided to consortia described in 34 CFR 406.30(a)(1) through (3) and (b).

(b) Members of a consortium shall—

(1) Apply jointly to the Secretary for funds; and

(2) Enter into an agreement, in the form of a single document signed by all members, designating one member of the consortium as the applicant and the grantee. The agreement must also detail the role each member plans to perform, and must bind each member to every statement and assurance made in the application.

Cross-Reference: See 34 CFR 75.127–75.129—Group Applications)

(Authority: 20 U.S.C. 2394a(a))

§ 405.3 What activities may the Secretary fund?

(a) The Secretary provides grants and cooperative agreements for projects to develop and operate a four-year tech-prep education program.

(b) Each project assisted under this part must meet the requirements in 34 CFR 406.3(b) (1) through (7) and may also perform the activities described in 34 CFR 406.3(c).

(Authority: 20 U.S.C. 2394a(a) and 2394b)

§ 405.4 What regulations apply?

The following regulations apply to the National Tech-Prep Education Program:

(a) The regulations in this Part 405.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2394–2394e)

§ 405.5 What definitions apply?

The definitions in 34 CFR 406.5 apply to this part.

(Authority: 20 U.S.C. 2394e)

Subpart B—How Does One Apply for an Award?

§ 405.10 What must the application contain?

The application must contain—

(a) An articulation agreement between the participants in a consortium;

(b) A three-year plan for the development and implementation of project requirements under § 405.3;

Cross-Reference: See 34 CFR 75.117

(c) A copy of the transmittal letters the consortium sent to the State educational agency and the State agency for higher education of the State in which the consortium is located in order to notify those agencies that the consortium has submitted an application to the Secretary and to provide those agencies with a copy of the consortium's application; and

(d) Information that indicates whether the consortium is composed of either urban participants or rural participants.

(Authority: 20 U.S.C. 2394b(b)(1) and 2394c (a), (b), (e), and (f))

Subpart C—How Does the Secretary Make an Award?

§ 405.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 405.21.

(b) The Secretary may award up to 100 points, including a reserve 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 405.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 405.21.

(e) The Secretary awards up to five points to applications that—

(1) Provide for effective employment placement activities or transfer of students to four-year baccalaureate degree programs. Acceptable documentation of employment placement includes letters of commitment from employers to hire individuals who complete the program;

(2) Are developed in consultation with business, industry, and labor unions; and

(3) Address effectively the issues of dropout prevention and re-entry and the needs of minority youths, youths of limited English proficiency, youths with disabilities, and disadvantaged youths.

(Authority: 20 U.S.C. 2394–2394e)

§ 405.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which—

(1) The proposed project demonstrates the need for and the soundness of the rationale for developing a tech-prep education program between or among the consortium participants;

(2) The proposed project will provide tech-prep education that is designed to meet current and projected occupational needs;

(3) The proposed project demonstrates that course offerings will have a strong relationship between mathematics, science, and communication and technical preparation in engineering technology, applied science, mechanical, industrial or practical art or trade, agriculture, health, or business in both the secondary and postsecondary or apprenticeship programs;

(4) The articulation agreement between the participants in the consortium is appropriate to the needs and resources of the consortium participants;

(5) The in-service training for teachers is designed to train teachers to implement tech-prep education program curricula effectively;

(6) The training activities for counselors are designed to enable counselors to more effectively—

(i) Recruit students for tech-prep education programs;

(ii) Ensure that students successfully complete tech-prep education programs; and

(iii) Ensure that students are placed in appropriate employment; and

(7) Preparatory services are provided that assist all participants in tech-prep education programs.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed tech-prep education program on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from these programs in such factors as—

(i) Student performance and achievement in such subjects as mathematics, science, communication, and technologies;

(ii) High school graduation;

(iii) Placement of students in jobs, including the military; and

(iv) Successful transfer of students to a variety of postsecondary educational programs;

(2) Proposes project objectives that contribute to the improvement of education;

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(4) Will be developed, implemented, operated, and demonstrated within the grant period.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project, including whether the design will result in the project being developed, implemented, operated, and demonstrated within the grant period;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project between or among consortium participants over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Includes, at a minimum, a description of the participant data to be collected based on the project objectives; tracking and follow-up of progress by all project participants throughout the project period; and outcome measures to be used for each objective;

(6) Will lead to the demonstration of a clear link between the intended positive results and the specific treatment of project participants; and

(7) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to the project requirements, of the project director;

(ii) The qualifications, in relation to the project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without

regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities;

(2) The budget contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) The budget proposes using non-Federal resources from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire tech-prep education program equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2394–2394e)

§ 405.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 405.21, the Secretary determines whether the most highly rated applications are equitably distributed between consortia of urban participants and consortia of rural participants.

(b) The Secretary may select other applications for funding if doing so would improve the urban and rural distribution of projects funded under this program.

(Authority: 20 U.S.C. 2394c(e))

Subpart D—What Conditions Must Be Met After an Award?

§ 405.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation shall be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, placement rates, project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel shall be submitted to the Secretary during the last year of the project period.

(f) Reports documenting evaluation activities must be included as appendices to the grant recipient's annual and final performance reports.

(Authority: 20 U.S.C. 2394–2394e)

§ 405.31 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the **Federal Register** the percentage of project funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2394–2394e)

8. A new part 406 is added to read as follows:

PART 406—STATE-ADMINISTERED TECH-PREP EDUCATION PROGRAM

Subpart A—General

Sec.

406.1 What is the State-Administered Tech-Prep Education Program?
406.2 Who is eligible for an award?
406.3 What activities may the Secretary fund?
406.4 What regulations apply?
406.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

406.10 What must the State application contain?

Subpart C—How Does the Secretary Make a Grant to a State?

406.20 How does the Secretary make allotments?
406.21 How does the Secretary make reallotments?

Subpart D—What Conditions Must be Met After a State Receives an Award?

406.30 Who is eligible to apply to a State for an award?
406.31 How does a State carry out the State-administered Tech-Prep Education Program?
406.32 What are the local application requirements?
406.33 What are the reporting requirements?

Authority: 20 U.S.C. 2394–2394e, unless otherwise noted.

Subpart A—General

§ 406.1 What is the State-Administered Tech-Prep Education Program?

If the annual appropriation for tech-prep education exceeds $50,000,000, the State-administered Tech-Prep Education Program provides financial assistance for—

(a) Planning and developing four-year programs designed to provide a tech-prep education program leading to a two-year associate degree or certificate; and

(b) Planning and developing in a systematic manner, strong comprehensive links between secondary schools and postsecondary educational institutions.

(Authority: 20 U.S.C. 2394(b))

§ 406.2 Who is eligible for an award?

A State board of vocational education (State board) in the fifty States, Puerto Rico, the District of Columbia, or the Virgin Islands is eligible for an allotment under this program if the Secretary has approved the State plan submitted in accordance with 34 CFR 403.30, and the State plan meets the requirements in § 406.10.

(Authority: 20 U.S.C. 2394a(b))

§ 406.3 What activities may the Secretary fund?

(a) The Secretary makes allotments to State boards to provide funding for consortia described in § 406.30 for tech-prep education projects.

(b) A State board assists projects that must—

(1) Be carried out under an articulation agreement between the members of the consortium;

(2) Consist of the two years of secondary school preceding graduation and two years of higher education, or an apprenticeship training program of at least two years following secondary instruction, with a common core of

required proficiency in mathematics, science, communications, and technologies designed to lead to an associate degree or certificate in a specific career field;

(3) Include the development of tech-prep education program curricula appropriate to the needs of the consortium participants;

(4) Include in-service training for teachers that—

(i) Is designed to train teachers to implement tech-prep education program curricula effectively;

(ii) Provides for joint training for teachers from all participants in the consortium; and

(iii) May provide training on weekends, evenings, or during the summer in the form of sessions, institutes, or workshops;

(5) Include training activities for counselors designed to enable counselors to more effectively—

(i) Recruit students for tech-prep education programs;

(ii) Ensure that students successfully complete tech-prep education programs; and

(iii) Ensure that students are placed in appropriate employment;

(6) Provide equal access to the full range of tech-prep education programs to individuals who are members of special populations, including the development of tech-prep education program services appropriate to the needs of these individuals; and

(7) Provide preparatory services that assist all participants in tech-prep education programs, including the provision of skills in the liberal and practical arts and in basic academics, literacy instruction in the English language, in combination with intense technical preparation, as well as the preparatory services described in the definition of this term in 34 CFR 400.4.

(c) A project assisted under this part may also—

(1) Provide for the acquisition of tech-prep education program equipment; and

(2) Acquire, as part of the planning activities of the tech-prep education program, technical assistance from State or local entities that have successfully designed, established, and operated tech-prep education programs.

(Authority: 20 U.S.C. 2394a, 2394b)

§ 406.4 What regulations apply?

The following regulations apply to the State-administered Tech-Prep Education Program:

(a) The regulations in this part 406.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2394–2394e)

§ 406.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Articulation agreement means a commitment to a program designed to provide students with a non-duplicative sequence of progressive achievement leading to competencies in a tech-prep education program.

Community college—

(1) Has the meaning provided in 34 CFR 400.4 for the term "Institution of higher education" for an institution that provides not less than a two-year program that is acceptable for full credit toward a bachelor's degree; and

(2) Includes tribally controlled community colleges.

Institution of higher education includes an institution offering apprenticeship programs of at least two years beyond the completion of secondary school, and includes in addition to the institutions covered by the definition of the term *institution of higher education* in 34 CFR 400.4—

(1) Proprietary institution of higher education;

(2) Postsecondary vocational institution;

(3) Department, division, or other administrative unit in a college or university that provides primarily or exclusively an accredited program of education in professional nursing and allied subjects leading to the degree of bachelor of nursing, or to be an equivalent degree, or to a graduate degree in nursing; and

(4) Department, division, or other administrative unit in a junior college, community college, college, or university that provides primarily or exclusively an accredited two-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or an equivalent degree.

Tech-prep education program means a combined secondary and postsecondary program that—

(1) Leads to an associate degree or two-year certificate;

(2) Provides technical preparation in at least one field of engineering technology, applied science, mechanical, industrial, or practical art or trade, or agriculture, health, or business;

(3) Builds student competence in mathematics, science, and communications (including through applied academics) through a sequential course of study; and

(4) Leads to placement in employment.

(Authority: 20 U.S.C. 1088 and 2394e)

Subpart B—How Does a State Apply for a Grant?

§ 406.10 What must the State application contain?

To receive a grant under this program, a State board must include in its State application to the Secretary a description of—

(a) The requirements for State board approval of funding of a local tech-prep education project, including—

(1) Whether the State board intends to make awards on a competitive basis or on the basis of a formula; and

(2) If a formula is to be used, a description of that formula; and

(b) How the State board will perform the following:

(1) Approve applications based on their potential to create an effective tech-prep education program as described in § 406.3(b).

(2) Give special consideration to applicants that—

(i) Provide for effective employment placement activities or transfer of students to four-year baccalaureate degree programs;

(ii) Are developed in consultation with business, industry, and labor unions; and

(iii) Address effectively the issues of dropout prevention and re-entry and the needs of minority youth of limited English proficiency, youth with disabilities, and disadvantaged youth.

(3) Ensure an equitable distribution of assistance between urban and rural consortium participants.

(c) How the State board will ensure that local recipients meet the requirements of this program; and

(d) How activities under this program will be coordinated with other tech-prep education programs, services, and activities provided under the State plan.

(Authority: 20 U.S.C. 2394c(b)–(e))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 406.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's allotment according to a formula in section 101(a)(2) of the Act (20 U.S.C. 2311(a)(2)).

(Authority: 20 U.S.C. 2394a(b)(1))

§ 406.21 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 406.20 will not be required for any fiscal year for carrying out the program under this part, the Secretary reallots those funds to one or more States that

demonstrate a current need for additional funds and the ability to use them promptly and effectively upon reallotment.

(2) The Secretary announces in the **Federal Register** the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purposes for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2311(a) and (d) and 2394a(b)(1))

Subpart D—What Conditions Must be Met After a State Receives an Award?

§ 406.30 Who is eligible to apply to a State for an award?

(a) A State board shall provide subgrants or contracts to consortia between—

(1) A local educational agency, intermediate educational agency, area vocational education school serving secondary school students, or secondary school funded by the Bureau of Indian Affairs; and

(2) A nonprofit institution of higher education that—

(i) Is qualified as an institution of higher education as defined in § 406.5, including institutions receiving assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*);

(ii) Is not prohibited from receiving assistance under Part B of the Higher Education Act of 1965 pursuant to the provisions of section 435(a)(3) of that Act; and

(iii) Offers a two-year associate degree program, a two-year certificate program, or a two-year apprenticeship training program that follows secondary instruction; or

(3) A proprietary institution of higher education that—

(i) Is qualified as an institution of higher education as defined in § 406.5;

(ii) Is not subject to a default management plan required by the Secretary; and

(iii) Offers a two-year associate degree program.

(b) A consortia must include at least one entity from paragraph (a)(1) of this section and at least one entity from either paragraphs (a)(2) or (a)(3) of this section, and may include more than one entity from each group.

(Authority: 20 U.S.C. 2394a)

§ 406.31 How does a State carry out the State-administered Tech-Prep Education Program?

(a) A State board carries out the program by—

(1) Providing State administration of its grant; and

(2) Awarding subgrants or contracts to eligible consortia on a competitive basis or on the basis of a formula determined by the State board.

(b) A State board may use funds reserved under 34 CFR 403.180(b)(3) to provide support for the State-administered Tech-Prep Education Program.

(c) A State board may use no more than the amount of funds from its award under this part that is necessary and reasonable for—

(1) The proper and efficient administration of this program; and

(2) Technical assistance to promote or enhance the quality and effectiveness of the State's tech-prep education program.

(Authority: 20 U.S.C. 2331(c)(2); 2394a(b))

§ 406.32 What are the local application requirements?

(a) Each consortium that desires to receive an award shall submit an application to the State board.

(b) The application must be submitted at the time and contain the information prescribed by the State board, and must contain—

(1) An articulation agreement between the participants in the consortium; and

(2) A three-year plan for the development and implementation of activities under this part.

(Authority: 20 U.S.C. 2394c(a)–(b))

§ 406.33 What are the reporting requirements?

The State board shall, in conjunction with recipients of subgrants and contracts, with respect to assistance received under this part, submit to the Secretary reports as may be required by the Secretary to ensure that grantees are complying with the requirements of this part.

(Authority: 20 U.S.C. 2394a–2394e)

9. Part 407 is revised to read as follows:

PART 407—SUPPLEMENTARY STATE GRANTS PROGRAM

Subpart A—General

Sec.

407.1 What is the Supplementary State Grants Program?
407.2 Who is eligible for an award?
407.3 What activities may the Secretary fund?
407.4 What regulations apply?
407.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

407.10 What must the State application contain?

Subpart C—How Does the Secretary Make a Grant to a State?

407.20 How does the Secretary make allotments?
407.21 How does the Secretary make reallotments?
407.22 How does a State carry out this program?

Subpart D—How Does an Applicant Apply to a State for an Award?

407.30 Who is eligible to apply to a State for an award?
407.31 How are funds to be used by local agencies?
407.32 What are the local application requirements?
407.33 How does a State make allotments?

Authority: 20 U.S.C. 2395–2395e, unless otherwise noted.

Subpart A—General

§ 407.1 What is the Supplementary State Grants Program?

The Supplementary State Grants Program provides financial assistance for program improvement activities, especially the improvement of facilities and acquisition or leasing of equipment to be used to carry out vocational education programs that receive assistance under the Act.

(Authority: 20 U.S.C. 2395)

§ 407.2 Who is eligible for an award?

A State board for vocational education (State board) in the fifty States, the District of Columbia, or Puerto Rico is eligible for awards under this program.

(Authority: 20 U.S.C. 2395a)

§ 407.3 What activities may the Secretary fund?

Under the Supplementary State Grants Program, the Secretary makes grants or cooperative agreements to a State board to provide funding to eligible local educational agencies (LEAs) in economically depressed areas for program improvement activities described in § 407.32.

(Authority: 20 U.S.C. 2395–2395a)

§ 407.4 What regulations apply?

The following regulations apply to the Supplementary State Grants Program:

(a) The regulations in this part 407.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2395–2395e)

§ 407.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2395–2395e)

Subpart B—How does a State Apply for a Grant?

§ 407.10 What must the State application contain?

(a) To receive a grant under the Supplementary State Grants Program, a State board shall submit an application to the Secretary, as a part of the State plan developed in accordance with 34 CFR 403.32. The application must—

(1) Designate the sole State agency described in 34 CFR 403.10 as the State agency responsible for the administration and supervision of activities carried out with assistance under this program;

(2) Provide for a process of consultation with the State council established under 34 CFR 403.18;

(3) Describe how funds will be allocated in a manner consistent with § 407.33;

(4) Provide for an annual submission of data concerning the use of funds and students served with assistance under this program;

(5) Provide that the State board will keep records and provide information to the Secretary as may be required for purposes of financial audits and program evaluations; and

(6) Contain an assurance that the State board will comply with the requirements of this part.

(b) An application submitted by the State board under paragraph (a) of this section must be for a period of not more than three years and must be amended annually.

(Authority: 20 U.S.C. 2395d)

Subpart C—How Does the Secretary make a Grant to a State?

§ 407.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's grant for a given fiscal year according to the provisions in section 352 of the Act.

(Authority: 20 U.S.C. 2395a)

§ 407.21 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 407.20 will not be required for any fiscal year for carrying out the program under this part, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to utilize them promptly and effectively upon reallotment.

(2) The Secretary announces in the **Federal Register** the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purpose for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2395a and 2821)

§ 407.22 How does a State carry out this program?

(a) A State carries out the program by—

(1) Providing State administration of the grant; and

(2) Awarding 100 percent of the amounts made available under this program to eligible LEAs.

(b) A State may not use program funds for the administrative costs it incurs in carrying out its responsibilities under paragraph (a) of this section.

(c) A State may use funds reserved under 34 CFR 403.180(b)(4) to pay the administrative costs it incurs in carrying out its responsibilities under paragraph (a) of this section.

(Authority: 20 U.S.C. 2312(a) and 2395b(a))

Subpart D—How Does an Applicant Apply to a State for an Award?

§ 407.30 Who is eligible to apply to a State for an award?

(a) An LEA is eligible to apply to the State board for an allocation if the LEA received an award under section 1006 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (chapter 1) (20 U.S.C. 2712).

(b) A consortium of the LEAs described in paragraph (a) of this section is also eligible to apply to the State board for an award.

(Authority: 20 U.S.C. 2395b(b))

§ 407.31 How are funds to be used by local agencies?

Each LEA or consortium of LEAs that receives a grant under this program—

(a) Shall give first priority to using funds provided under the grant for improving facilities and acquiring or leasing equipment for carrying out vocational education programs that are in economically depressed areas in which economically and educationally disadvantaged individuals are served, and that receive assistance under the Act; and

(b) May use any funds not required to carry out the provisions of paragraph (a) of this section for other program improvement activities, such as curriculum development or teacher training.

(Authority: 20 U.S.C. 2395c)

§ 407.32 What are the local application requirements?

Each LEA or consortium of LEAs that desires to receive a grant under this program shall submit to the State board an application at the time, in the manner, and containing or accompanied by any information the State board may reasonably require, including evidence that the requirement in § 407.31(a) is being met.

(Authority: 20 U.S.C. 2395e)

§ 407.33 How does a State make allotments?

In each fiscal year for which a State board receives a grant under this part, the State board shall allot to each eligible LEA or consortium of LEAs in the State an amount under this part that bears the same relationship to the amount allotted to that LEA or those LEAs under section 1006 of Chapter 1 bears to the aggregate amount allotted to LEAs in the State under section 1006 of Chapter 1 in the fiscal year in which distribution is made.

(Authority: 20 U.S.C. 2395b(b))

10. Part 408 is revised to read as follows:

PART 408—COMMUNITY EDUCATION EMPLOYMENT CENTERS PROGRAM

Subpart A—General

Sec.

408.1 What is the Community Education Employment Centers Program?
408.2 Who is eligible for an award?
408.3 What activities may the Secretary fund?
408.4 What regulations apply?
408.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

408.10 What must an application contain?

Subpart C—How Does the Secretary Make an Award?

408.20 What awards does the Secretary make?
408.21 How does the Secretary evaluate an application?
408.22 What selection criteria does the Secretary use?
408.23 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

408.30 What are the requirements regarding support services?
408.31 What are the requirements regarding a parent/community coordinator?
408.32 What are the requirements regarding a Council of Advisors?
408.33 What are the requirements regarding other center personnel?
408.34 What are the evaluation requirements?

Authority: 20 U.S.C. 2396, unless otherwise noted.

Subpart A—General

§ 408.1 What is the Community Education Employment Centers Program?

The Community Education Employment Centers Program provides financial assistance to establish and evaluate model high school community education employment centers to provide low-income urban and rural youth with the education, skills, support services, and enrichment necessary to ensure—

(a) Graduation from secondary school;

(b) Successful transition from secondary school to a broad range of postsecondary educational institutions; and

(c) Employment, including military service.

(Authority: 20 U.S.C. 2396 and 2396a)

§ 408.2 Who is eligible for an award?

(a) A public secondary school or area vocational education school is eligible for an award under the Community Education Employment Centers Program if the school—

(1) Is located in or serves one or more local educational agencies that are eligible for assistance under section 1006 of chapter 1 of title 1 of the Elementary and Secondary Education Act of 1965, as amended (chapter 1) (20 U.S.C. 2712); and

(2) Demonstrates that it will serve a student population that is predominantly educationally and economically disadvantaged.

(b) For purposes of paragraph (a)(2) of this section, an eligible recipient is considered to be serving—

(1) A predominately educationally disadvantaged population if over 75 percent of the students to be served are individuals—

(i) Who score at or below the 25th percentile on a standardized achievement or aptitude test;

(ii) Whose secondary school grades are below 2.0 on a 4.0 scale (grade "A" equals 4.0); or

(iii) Who fail to attain minimal academic competencies;

(2) A predominately economically disadvantaged population if over 75 percent of the students to be served can be classified as economically disadvantage individuals according to the definition of that term in 34 CFR 400.4.

(Authority: 20 U.S.C. 2396f and 2396i(1))

§ 408.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements for community education employment centers.

(a) Each project assisted by the Secretary must—

(1) Operate a community education employment center on an extended year and extended day basis;

(2) Establish a collegial working environment, with substantial opportunities for staff training and development and shared decision-making;

(3) Maintain small class sizes, and to the extent possible, maintain an average class size of 15 students or fewer;

(4) Offer a broad array of secondary school course-work, including, to the extent possible—

(i) English, mathematics, history, geography, biology, chemistry, physics, and computer science;

(ii) Opportunities for student participation in a wide range of extracurricular activities, including community service and exploration, sports, fine and performing arts, and tutorial study sessions;

(iii) A comprehensive vocational-technical education program that—

(A) Was developed through regular consultation with employer-labor panels with knowledge of relevant industries; and

(B) Offers skills in planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, economic development and health, safety, and environment issues; and

(iv) Courses in health, nutrition, and parenting;

(5) Offer students on-site opportunities for assistance with career planning and decision-making, employability, entrepreneurial abilities, interpersonal communication skills, and remedial studies;

(6) Maintain an emphasis on the development of academic skills, regardless of student career objectives;

(7) Provide technical assistance and training to staff from other schools and local educational agencies within the State that wish to replicate community education employment center capabilities;

(8) Seek to use community organizations to provide support for educational activities and services to parents and students;

(9) Offer school-to-work transition services;

(10) Establish a support system to coordinate services for students as described in § 408.30;

(11) Meet the requirements regarding center personnel in §§ 408.31 and 408.33; and

(12) Meet the requirements regarding a Council of Advisors in § 408.32.

(b) Projects assisted by the Secretary under this part may organize community education employment centers into one or more programs specializing in different areas of study of particular interest and employment opportunities for the student population.

(Authority: 20 U.S.C. 2396b, 2396c, and 2396d(a))

§ 408.4 What regulations apply?

The following regulations apply to the Community Education Employment Centers Program:

(a) The regulations in this part 408.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2396a–2396m)

§ 408.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definition also applies to this part: *Parent* includes a legal guardian or other person standing in loco parentis.

(Authority: 20 U.S.C. 2396i)

Subpart B—How Does One Apply for an Award?

§ 408.10 What must an application contain?

An application must—

(a) Contain information demonstrating that the area where the center is to be located has a high concentration of children from low-income families, relative to the county and State as a whole, such as proof of eligibility for an award under section 1006 of the Elementary and Secondary Education Act;

(b) Describe the activities and services for which assistance is sought;

(c) Describe how the applicant will comply with the provisions of §§ 408 2, 408.3, and 408.30 through 403.34;

(d) Provide assurances that the State and local educational agencies in which the applicant is located or serves will, in any fiscal year, supply at least the same fiscal effort per student, with respect to the provision of free public education, to community education employment

center students as the local educational agency provides for students attending secondary schools in the local educational agency;

(e) Describe how the applicant will use funding available from appropriate employment, training, and education programs in the State in order to provide a maximum amount of resources for instructional and student services; and

(f) Provide assurances that the community education employment center will coordinate the operations of the center with local postsecondary institutions, business, industry, labor, and other appropriate public and private community agencies in order to help meet local economic needs.

(Authority: 20 U.S.C. 2396g)

Subpart C—How Does the Secretary Make an Award?

§ 408.20 What awards does the Secretary make?

The Secretary makes awards to establish and operate not more than 10 community education employment centers for up to five years.

(Authority: 20 U.S.C. 2396a)

§ 408.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 408.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 408.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 408.22.

(Authority: 20 U.S.C. 2396a–2396m)

§ 408.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which—

(1) The center will be located in an urban or rural area that has a high concentration of children from low-income families, relative to the county and State as a whole;

(2) Activities and services will be provided to low-income urban and rural youth with education, skills, and the enrichment necessary to ensure graduation from secondary school, transition from secondary school to postsecondary school, or employment;

(3) Proposed activities will be coordinated with the entities listed in § 408.10 (f) to ensure that the operations of the community education employment center will help meet current and projected occupational needs in the area;

(4) In-service training will be provided for community education employment center teachers in techniques, procedures and policies relevant to the community education employment center;

(5) Support services will be provided to meet the requirements of § 408.30; and

(6) Parental and community participation will be provided for, as required in § 408.31.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed community education employment center on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs on such factors as—

(i) Student performance, achievement, and learning gains in vocational competencies and skills;

(ii) Student performance, achievement, and learning gains in such subjects as English, mathematics, history, geography, biology, chemistry, physics, and computer science as measured by standardized tests;

(iii) High school graduation;

(iv) Placement of students in jobs, including military service; and

(v) Successful transfer of students to a wide variety of postsecondary educational programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project, including the provision for meeting and reporting on the requirements in § 408.34;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the services provided to participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application to assess the effectiveness and efficiency of the plan for demonstrating and disseminating information about the project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating

those methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project, including the parent/community coordinator and personnel who will be employed to meet the requirements in § 408.33;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project;

(3) Proposes using funds available from appropriate employment, training, and education agencies in the State to provide project services and activities, and using non-Federal resources of community organizations to provide the support services described in § 408.30; and

(4) Proposes using funds or resources available from the State or local educational agency in which the center will be located or will serve to acquire community education employment center equipment and facilities in order to provide a maximum amount of resources for instructional and student services.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to assess the adequacy of resources the applicant plans to devote to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2396e, 2396g, and 2396h)

§ 408.23 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 408.22, the Secretary may select other than the most highly rated applications for funding if doing so would improve the—

(a) Distribution between applicants serving rural and urban youth; or

(b) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2396)

Subpart D—What Conditions Must Be Met After an Award?

§ 408.30 What are the requirements regarding support services?

Each grantee shall establish in its community education employment center a support system to coordinate services for students, including the following:

(a) A comprehensive program of confidential guidance counseling that provides—

(1) Guidance for career and personal decision-making and postsecondary institution placement;

(2) Mentoring and referral to appropriate social services; and

(3) An accessible counseling service to help parents to participate in the enhancement of student education.

(b) An on-site job service office to offer students—

(1) Career guidance, career development, and employment counseling that provides information about a broad range of occupations and alternative career paths;

(2) Labor market information, job development, career testing, and occupational placement services for part-time and summer employment, internships, cooperative programs, and part-time and full-time employment opportunities upon graduation; and

(3) Assistance in arranging part-time employment, so long as that employment does not adversely affect academic performance.

(c) Assistance in arranging a summer program of work, education, or enrichment sessions.

(d) To the extent possible, transportation to and from the community education employment center and part-time job sites.

(e) Access to day-care services for children of participating students.

(Authority: 20 U.S.C. 2396c)

§ 408.31 What are the requirements regarding a parent/community coordinator?

Each grantee shall employ a parent/community coordinator to provide for the active and informed participation of parents and appropriate community representatives in its community education employment center by—

(a) Encouraging parents and students to make informed decisions in reviewing and selecting a community education employment center program;

(b) Conducting regular parent seminars to—

(1) Inform parents about community education employment center operations;

(2) Obtain parent input; and

(3) Disseminate information on how parents can encourage student performance;

(c) Providing the parents of each student with a regular opportunity to meet with counselors, teachers, and the student to discuss student progress, plans, and needs;

(d) Providing a range of roles in which parents may work with students at home or as class assistants or volunteer coordinators; and

(e) Establishing a Council of Advisors as required in § 408.32.

(Authority: 20 U.S.C. 2396d(a))

§ 408.32 What are the requirements regarding a Council of Advisors?

(a) Each grantee shall establish an advisory Council of Advisors (Council) as provided in § 408.31(e).

(b) *Membership.* The Council shall consist of one representative from each of the following entities:

(1) The local educational agency in which the center is located or serves.

(2) The State council on vocational education.

(3) The State agency responsible for secondary vocational education.

(4) The student body.

(5) The local teacher organization.

(6) Guidance counselors.

(7) Community-based organizations.

(8) Parents.

(9) The appropriate private industry council established under section 102(a) of the Job Training Partnership Act (29 U.S.C. 1512).

(c) *Functions of the council.* The Council shall provide recommendations to, and work with, the grantee to—

(1) Establish annual community education employment center priorities, programs, and procedures;

(2) Establish student selection criteria to ensure that—

(i) All students in the school district have an equal opportunity to attend the community education employment center; and

(ii) Participants will be representative of the secondary school population in the school district;

(3) Promulgate a student code of conduct that must be developed in consultation with the students and teachers;

(4) Assist in the selection of the community education employment center's principal, administrators, department chairpersons, and teachers;

(5) Assist in the selection and application of assessment tools for continuous evaluation of student learning progress;

(6) Make recommendations for the selection of curriculum, textbooks, software, and other learning resources and equipment; and

(7) Make recommendations regarding the coordination of activities assisted under this part with—

(i) Activities assisted under the Job Training Partnership Act; and

(ii) School-to-work transition activities.

(Authority: 20 U.S.C. 2396d (a)(5), (b))

§ 408.33 What are the requirements regarding other center personnel?

Each grantee shall—

(a) Employ only professional staff who demonstrate the highest of academic, teaching, guidance, or administrative standards;

(b) Ensure that teachers in the center receive inservice training at least annually in techniques, procedures, and policies relevant to the community education employment center; and

(c) Employ a sufficient number of full-time certified or licensed guidance and career counselors to assist, enhance, and monitor student progress.

(Authority: 20 U.S.C. 2396e)

§ 408.34 What are the evaluation requirements?

(a) Each grantee shall provide for an independent evaluation of grant activities and student learning progress.

(b) The evaluation must be both formative and summative in nature, and must include information regarding—

(1) Student academic and vocational competencies;

(2) Student dropout rates;

(3) Employment and earnings while the students are attending the community education employment center and upon the graduation of the students from the center;

(4) Student attendance at postsecondary institutions or student enlistment into military service upon graduation from the community education employment center;

(5) Parental, student, and community participation in the activities of the community employment education center; and

(6) Project spread and transportability.

(c) A proposed project evaluation design must be submitted to the U.S. Department of Education for review and approval prior to the end of the first six months of the project period.

(d) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2396h(a))

11. Part 409 is added to read as follows:

PART 409—VOCATIONAL EDUCATION LIGHTHOUSE SCHOOLS PROGRAM

Subpart A—General

Sec.

409.1 What is the Vocational Education Lighthouse Schools Program?

409.2 Who is eligible for an award?

409.3 What activities may the Secretary fund?

409.4 What regulations apply?

409.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

409.20 How does the Secretary evaluate an application?

409.21 What selection criteria does the Secretary use?

409.22 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

409.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2396m, unless otherwise noted.

Subpart A—General

§ 409.1 What is the Vocational Education Lighthouse Schools Program?

The Vocational Education Lighthouse Schools Program provides financial assistance for the establishment and operation of vocational education lighthouse schools.

(Authority: 20 U.S.C. 2396m(a))

§ 409.2 Who is eligible for an award?

A public secondary school or area vocational education school is eligible for an award under the Vocational Education Lighthouse Schools Program.

(Authority: 20 U.S.C. 2396m(a))

§ 409.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements for projects to establish vocational education lighthouse schools that—

(a) Serve as a model vocational education program that—

(1) Provides each student with knowledge of, and experience in, all aspects of an industry or enterprise the student is preparing to enter;

(2) Provides each student with basic and higher order skills and develops the student's problem solving abilities in a vocational setting;

(3) Offers exceptionally high quality programs for disadvantaged and minority students;

(4) Provides the special services and modifications necessary to help individual students successfully complete the program;

(5) Is planned, developed, and implemented with the participation of staff, local employers, and local community representatives; and

(6) Offers a full range of programs, including comprehensive career guidance and counseling, for students who plan to seek employment upon graduation or who will enroll in a two or four-year college;

(b) Provide information and assistance to other vocational eduction lighthouse schools funded under this part, vocational programs, vocational education personnel, parents, students, educators, community members, and community organizations throughout the State in which the project is located regarding—

(1) Curriculum materials;

(2) Curriculum development, especially the integration of vocational and academic education;

(3) Inservice and preservice staff development, training, and assistance through off-site activities and through a range of short-term and long-term opportunities to participate in activities at the demonstration site;

(4) Opportunities to systematically observe the model program; and

(5) Technical assistance and staff development, as appropriate;

(c) Use funds received under this program, together with funds from non-Federal sources, to develop and implement model programs containing the elements described in paragraph (a) of this section;

(d) Develop comprehensive linkages with other local schools, community colleges, four-year colleges, private vocational schools, community-based organizations, labor unions, employers, and other business groups, as appropriate; and

(e) Develop and disseminate model approaches—

(1) For meeting the education training needs and career counseling needs of minority students, disadvantaged students, students with disabilities, and students of limited English proficiency; and

(2) To reduce and eliminate sex bias and stereotyping.

(Authority: 20 U.S.C. 2396m(b))

§ 409.4 What regulations apply?

The following regulations apply to the National Vocational Education Lighthouse Schools Program:

(a) The regulations in this part 409.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2396m)

§ 409.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2396m)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 409.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 409.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 409.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 409.21.

(Authority: 20 U.S.C. 2396m)

§ 409.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess—

(1) The quality of the plan to—

(i) Provide each student with knowledge of, and experience in, all aspects of an industry or enterprise the student is preparing to enter;

(ii) Provide each student with basic and higher order skills and develop the student's problem solving abilities in a vocational setting;

(iii) Involve staff, local employers, and local community representatives in the planning for and development of the project;

(iv) Integrate vocational and academic education;

(v) Develop comprehensive linkages with other local schools, community colleges, four-year colleges, private vocational schools, community-based organizations, labor unions, employers, and other business groups, as appropriate; and

(vi) Offer exceptionally high quality programs for disadvantaged and minority students;

(2) The extent to which the project—

(i) Is specifically designed to meet the education training needs and career counseling needs of minority students, disadvantaged students, students with disabilities, and students of limited English proficiency;

(ii) Will contribute to the reduction and elimination of sex bias and stereotyping; and

(iii) Is designed in accordance with current and projected occupational needs; and

(3) The quality of the staff development plan.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed vocational education lighthouse school on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs on such factors as—

(i) Student achievement and learning gains in vocational education;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project's management design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the

Department's Program Effectiveness Panel as defined in 34 CFR 400.4.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Identification of target groups and provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project;

(3) Proposes using funds available from non-Federal sources such as appropriate employment, training, and education programs in the State to acquire vocational education lighthouse school equipment and facilities in order to devote a maximum amount of resources to instructional services; and

(4) Includes documentation of the availability of funds from non-Federal sources that will be used for activities described in § 409.3(a).

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment and capacity to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2396m)

§ 409.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 409.21, the Secretary may select other than the most highly rated applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2396m)

Subpart D—What Conditions Must Be Met After an Award?

§ 409.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, increases in academic and vocational competencies, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the U.S. Department of Education for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel shall be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2396m)

12. Part 410 is revised to read as follows:

PART 410—TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL INSTITUTIONS PROGRAM

Subpart A—General

Sec.

410.1 What is the Tribally Controlled Postsecondary Vocational Institutions Program?
410.2 Who is eligible for an award?
410.3 What activities may the Secretary fund?
410.4 What regulations apply?
410.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

410.10 What must an application contain?

Subpart C—How Does the Secretary Make an Award?

410.20 How does the Secretary apply the selection criteria in § 410.21?
410.21 What selection criteria does the Secretary use for institutional support grants?
410.22 What additional factors does the Secretary consider?
410.23 How does the Secretary select grantees for institutional support grants?
410.24 How does the Secretary award additional grants?

Subpart D—What Conditions Must Be Met After an Award?

410.30 What expenses are allowable under an institutional support grant?
410.31 What other provisions apply to this program?

Authority: 20 U.S.C. 2397–2397h, unless otherwise noted.

Subpart A—General

§ 410.1 What is the Tribally Controlled Postsecondary Vocational Institutions Program?

The Tribally Controlled Postsecondary Vocational Institutions Program provides grants for the operation and improvement of tribally controlled postsecondary vocational institutions to ensure continued and expanded educational opportunities for Indian students, and to allow for the improvement and expansion of the physical resources of those institutions.

(Authority: 20 U.S.C. 2397 and 2397c)

§ 410.2 Who is eligible for an award?

A tribally controlled postsecondary vocational institution is eligible for assistance under this part if it—

(a) Is governed by a board of directors or trustees, a majority of whom are Indians;

(b) Demonstrates adherence to stated goals, a philosophy or a plan of operation that fosters individual Indian economic and self-sufficiency opportunity, including programs that are appropriate to stated tribal goals of developing individual entrepreneurships and self-sustaining economic infrastructures on reservations;

(c) Has been in operation for at least three years;

(d) Holds accreditation with or is a candidate for accreditation by a nationally recognized accrediting authority for postsecondary vocational education; and

(e) Enrolls the full-time equivalency of not fewer than 100 students, of whom a majority are Indians.

(Authority: 20 U.S.C. 2397b)

§ 410.3 What activities may the Secretary fund?

The Secretary provides grants for basic support for the education and training of Indian students, including—

(a) Training costs;

(b) Educational costs;

(c) Equipment costs;

(d) Administrative costs; and

(e) Costs of operation and maintenance of the institution.

(Authority: 20 U.S.C. 2397a)

§ 410.4 What regulations apply?

The following regulations apply to the Tribally Controlled Postsecondary Vocational Institutions Program:

(a) The regulations in this part 410.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part, except for the definition of the term "Act."

(b) The following definitions also apply to this part:

Act means the Tribally Controlled Vocational Institutions Support Act of 1990.

Indian means a person who is a member of an Indian tribe.

Indian student count means a number equal to the total number of Indian students enrolled in each tribally controlled vocational institution, determined as follows:

(1) The registrations of Indian students as in effect on October 1 of each year.

(2) Credits or clock hours toward a certificate earned in classes offered during a summer term must be counted toward the computation of the Indian student count in the succeeding fall term.

(3) Credits or clock hours toward a certificate earned in classes during a summer term must be counted toward the computation of the Indian student count if the institution at which the student is in attendance has established criteria for the admission of the student on the basis of the student's ability to benefit from the education or training offered. The institution is presumed to have established those criteria if the admission procedures for those studies include counseling or testing that measures the student's aptitude to successfully complete the course in which the student has enrolled. Credit earned by the student for purposes of obtaining a high school degree or its equivalent may not be counted toward the computation of the Indian student count.

(4) Indian students earning credits in any continuing education program of a tribally controlled vocational institution must be included in determining the sum of all credit or clock hours.

(5) Credits or clock hours earned in a continuing education program must be converted to the basis that is in accordance with the institution's system for providing credit for participation in those programs.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Tribally controlled postsecondary vocational institution means an institution of higher education that is formally controlled, or has been formally sanctioned or chartered by the governing body of an Indian tribe or tribes, and that offers technical degrees or certificate granting programs. This term does not include an institution that is a tribally controlled community college as defined in 34 CFR 400.4. (See Cong. Rec. S4116 (daily ed. April 5, 1990) (Statement of Senator Bingaman); Cong. Rec. H1708 (daily ed. May 9, 1989) (Statement of Rep. Richardson)).

(Authority: 20 U.S.C. 2397h and 25 U.S.C. 1801 (1) and (2))

Subpart B—How Does One Apply for an Award?

§ 410.10 What must an application contain?

An application for a grant under the Tribally Controlled Postsecondary Vocational Institutions Program must include the following:

(a) Documentation showing that the institution is eligible according to the requirements in § 410.2.

(b) A description of the fiscal control and fund accounting procedures to be used for all funds received under this program that will allow the Secretary to monitor expenditures and the Education Department Inspector General, the U.S. Comptroller General, or an independent non-Federal auditor to audit the institution's programs.

(c) An application for an institutional support grant must also contain a comprehensive development plan addressing the following:

(1) The institutional mission statement, i.e., a broad statement of purpose, that identifies its distinguishing characteristics, including the characteristics of the students the institution serves and plans to serve and the programs of study it offers and proposes to offer.

(2) Data for the past three academic years reflecting the number and required qualifications of the teaching and administrative staff, the number of students enrolled, attendance rates, dropout rates, graduation rates, rate of job placement or college enrollment after graduation, and the most significant scholastic problems affecting the student population.

(3) A description of how the institution is responsive to the current and projected labor market needs in its geographic area, including the institution's plans for placement of students.

(4) Assumptions concerning the institutional environment, the potential number of students to be served, enrollment trends, and economic factors which could affect the institution.

(5) Major problems or deficiencies that inhibit the institution from realizing its mission.

(6) Long-range and short-range goals that will chart the growth and development of the institution and address the problems identified under paragraph (c)(5) of this section.

(7) Measurable objectives related to reaching each goal.

(8) Time-frames for achieving the goals and objectives described in paragraphs (c) (6) and (7) of this section.

(9) Priorities for implementing improvements concerning instructional and student support, capital expenditures, equipment, and other priority areas.

(10) Major resource requirements necessary to achieve its goals and objectives, including personnel, finances, equipment, and facilities. Also provide a detailed budget identifying the costs to be paid with a grant under this program and resources available from other Federal, State, and local sources that will be used to achieve the institution's goals and objectives. Budget and cost information must be sufficiently detailed to enable the Secretary to determine the amount of payments pursuant to section 386(b)(2) of the Act. The statement must include information on allowable expenses listed in § 410.30.

(11) Strategies and resources for objectively evaluating the institution's progress towards, and success in, achieving its goals and objectives.

(d) The institution's operating expenses for the preceding fiscal year, including allowable expenses listed in § 410.30.

(e) The institution's Indian student count.

(Authority: 20 U.S.C. 2397b, 2397c(a), 2397d(b)(2)(B), and 2397f)

Subpart C—How Does the Secretary Make an Award?

§ 410.20 How does the Secretary apply the selection criteria in § 410.21?

(a) The Secretary evaluates an application on the basis of the criteria in § 410.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 401.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion in § 401.21 is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 401.21.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.21 What selection criteria does the Secretary use for institutional support grants?

The Secretary uses the following criteria to evaluate an application for an institutional support grant:

(a) *Institutional goals and objectives.* (10 points) The Secretary reviews each application to determine the extent to which the applicant's current and future institutional goals and objectives are—

(1) Realistic and defined in terms of measurable results; and

(2) Directly related to the problems to be solved.

(b) *Comprehensive development plan.* (25 points) The Secretary reviews each application to determine the extent to which the plan is effectively designed to meet the applicant's current and future institutional goals and objectives, including instructional and student support needs, and equipment and capital requirements.

(c) *Implementation strategy.* (20 points) The Secretary reviews each application to determine the extent to which an applicant's implementation strategy—

(1) For each major activity funded under this program, is comprehensive and likely to be effective, taking into account the applicant's past performance and the data for the past three academic years reflecting the number and required qualifications of the teaching and administrative staff, the number of students enrolled, attendance rates, dropout rates, graduation rates, rate of job placement or college enrollment after graduation, and the most significant scholastic problems affecting the student population;

(2) Includes a realistic timetable for each such activity; and

(3) Includes a staff management plan likely to ensure effective administration of the project activities.

(d) *Budget and cost effectiveness.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the proposed activities to be funded under this program, including capital expenditures and acquisition of equipment, if applicable;

(2) Costs are necessary and reasonable in relation to similar activities the institution carried out in previous years; and

(3) The budget narrative justifies the expenditures.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan the institution plans to use to determine its progress towards, and success in, achieving its goals and objectives, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected, expected outcomes, and how those outcomes will be measured;

(2) The methods of evaluation are appropriate and, to the extent possible, are objective and produce data that are quantifiable; and

(3) The methods of evaluation provide periodic data that can be used for ongoing program improvement.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.22 What additional factors does the Secretary consider?

(a) After evaluating applications according to the criteria in § 410.21 and consulting, to the extent practicable, with boards of trustees and the tribal governments chartering the institutions being considered, the Secretary determines whether the most highly rated applications are equitably distributed among Indian tribes.

(b) The Secretary may select other applications for funding if doing so would improve the distribution of projects among Indian tribes.

(c) In addition to the criteria in § 410.21, the Secretary considers whether funding a particular applicant duplicates an effort already being made.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.23 How does the Secretary select grantees for institutional support grants?

(a) The Secretary selects at least two eligible applicants for funding.

(b) If only one or two applicants are eligible, the Secretary selects each eligible applicant, the amount of each grant to be determined by the quality of the application based on the selection criteria stated in § 410.22, and the respective needs of the applicants.

(c) If there are more than two eligible applicants, the Secretary ranks each applicant using the selection criteria in § 410.22. The Secretary funds two or more applicants, taking into account the quality of the applications and the respective needs of the applicants.

(d) For fiscal years subsequent to the first year of funding, the Secretary follows the procedure in paragraphs (a) through (c) of this section, except that if

appropriations for that fiscal year are not sufficient to pay in full the total amount that approved applicants are eligible to receive, the Secretary allocates the available grant amounts as required by section 388(a) of the Act.

(Authority: 20 U.S.C. 2397c(b))

§ 410.24 How does the Secretary award additional grants?

If funds remain after providing grants to all eligible institutions, the Secretary makes awards as follows:

(a) The Secretary allocates funds to institutions receiving their first grant under this part in an amount equal to the training equipment costs necessary to implement training programs.

(b) If funds remain after the Secretary makes awards under paragraph (a) of this section, the Secretary reviews training equipment needs at each institution receiving assistance under this part at the end of the five year period beginning on the first day of the first year for which the institution received a grant under this part, and provides allocations for other training equipment needs if it is demonstrated by the institution that its training equipment has become obsolete for its purposes, or that the development of other training programs is appropriate.

(Authority: 20 U.S.C. 2397d(d))

Subpart D—What Conditions Must Be Met After an Award?

§ 410.30 What expenses are allowable under an institutional support grant?

An institutional support grant may only be used to pay expenses associated with the following:

(a) The maintenance and operation of the program, including—

(1) Development costs;

(2) Costs of basic and special instruction, including special programs for individuals with disabilities and academic instruction;

(3) Materials;

(4) Student costs;

(5) Administrative expenses;

(6) Boarding costs;

(7) Transportation;

(8) Student services;

(9) Day care and family support programs for students and their families, including contributions to the costs of education for dependents; and

(10) Training equipment costs necessary to implement training programs.

(b) Capital expenditures, including operations and maintenance and minor improvements and repair, physical plant maintenance costs

(c) Costs associated with repair, upkeep, replacement, and upgrading of instructional equipment.

(Authority: 20 U.S.C. 2397d(a), (d))

§ 410.31 What other provisions apply to this program?

(a) Except as specifically provided in the Act, eligibility for assistance under this part may not preclude any tribally controlled postsecondary vocational institution from receiving Federal financial assistance under any program authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*) or any other applicable program for the benefit of institutions of higher education or vocational education.

(b) No tribally controlled postsecondary vocational institution for which an Indian tribe has designated a portion of the funds appropriated for the tribe from funds appropriated under the Act of November 2, 1921 (25 U.S.C. 13) may be denied a contract for that portion under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*) (except as provided in that Act), or denied appropriate contract support to administer that portion of the appropriated funds.

(Authority: 20 U.S.C. 2397e)

13. Part 411 is revised to read as follows:

PART 411—VOCATIONAL EDUCATION RESEARCH PROGRAM

Subpart A—General

Sec.

411.1 What is the Vocational Education Research Program?

411.2 Who is eligible for an award?

411.3 What activities may the Secretary fund?

411.4 What regulations apply?

411.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

411.20 How does the Secretary evaluate an application?

411.21 What selection criteria does the Secretary use?

411.22 What additional factors may the Secretary consider?

411.23 How does the Secretary evaluate unsolicited applications?

411.24 How does the Secretary select an unsolicited application for funding?

Authority: 20 U.S.C. 2401 and 2402, unless otherwise noted.

Subpart A—General

§ 411.1 What is the Vocational Education Research Program?

The Vocational Education Research Program is designed to—

(a) Improve access to vocational educational programs for disabled individuals, individuals who are disadvantaged, men and women who are entering nontraditional occupations, adults who are in need of retraining, single parents, displaced homemakers, single pregnant women, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(b) Support research and development activities that make the United States more competitive in the world economy by developing more fully the academic and occupational skills of all segments of the population by concentrating resources on improving educational programs leading to academic and occupational skill competencies needed to work in a technologically advanced society;

(c) Improve the competitive process by which research projects are awarded;

(d) Encourage the dissemination of findings of research projects assisted under the Act to all States; and

(e) Support research activities that are readily applicable to the vocational education setting and are of practical application to vocational education administrators, counselors, instructors, and others involved in vocational education.

(Authority: 20 U.S.C. 2401)

§ 411.2 Who is eligible for an award?

(a) Any individual or public or private agency, organization, or institution may apply for an award under this part.

(b) Any individual researcher, community college, State advisory council, or State or local educator may submit an unsolicited research application.

(Authority: 20 U.S.C. 2402(a), (b))

§ 411.3 What activities may the Secretary fund?

The Secretary may directly, or through grants, cooperative agreements, or contracts, conduct applied research on aspects of vocational education that are specially related to the Act, including the following:

(a) Applied research on—

(1) Effective methods for providing quality vocational education to disabled individuals, disadvantaged individuals, men and women in nontraditional fields, adults, single parents, displaced homemakers, single pregnant women, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(2) The development and implementation of performance standards and measures that fit within the needs of State boards of vocational education or eligible recipients as defined in 34 CFR 400.4 in carrying out the provisions of the Act and on the relationship of those standards and measures to the data system established under section 421 of the Act. Research may include an evaluation of existing performance standards and measures and dissemination of that information to State boards of vocational education and eligible recipients;

(3) Strategies for coordinating local, State, and Federal vocational education, employment training, and economic development programs to maximize their efficacy and for improving worker training and retraining;

(4) The constructive involvement of the private sector in public vocational education;

(5) Successful methods of reinforcing and enhancing basic and more advanced academic and problem-solving skills in vocational settings;

(6) Successful methods for providing students, to the maximum extent practicable, with experience in and understanding of all aspects of the industry those students are preparing to enter; and

(7) The development of effective methods for providing quality vocational education to individuals with limited English proficiency, including research related to bilingual vocational training.

(b) An evaluation of the use of performance standards and measures under the Act and the effect of those standards and measures on the participation of students in vocational education programs and on the outcomes of students in those programs, especially students who are members of special populations as defined in 34 CFR 400.4.

(Authority: 20 U.S.C. 2402(a))

§ 411.4 What regulations apply?

The following regulations apply to the Vocational Education Research Program:

(a) The regulations in this Part 411.

(b) The regulations in 34 CFR Part 400.

(Authority: 20 U.S.C. 2401 and 2402)

§ 411.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2401 and 2402)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

§ 411.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 411.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of the section, based on the criteria in § 411.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 411.21.

(e) The Secretary awards five points to applications submitted by public or private postsecondary institutions.

(Authority: 20 U.S.C. 2402)

§ 411.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *National need.* (20 points) The Secretary reviews each application to determine the extent to which the project would make a contribution of national significance, as measured by such factors as—

(1) The need for the project in relation to any program priority announced in the **Federal Register**; and

(2) The likelihood that the project will make an important contribution to vocational education.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (15 Points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each one of the key personnel, including the project director, will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable and necessary in relation to the objectives of the project.

(e) *Evaluation plan.* (5 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(4) If appropriate, identifies expected outcomes of the project participants and how those outcomes will be measured;

(5) If appropriate, will lead to the demonstration of a clear link between the intended positive results and the specific treatment of project participants; and

(6) To the extent possible, include a third party evaluation.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the

resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) The extent to which the project is designed to yield outcomes that can be readily disseminated;

(2) A clear description of the project outcomes; and

(3) A detailed description of how information and materials will be disseminated, including—

(i) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journals articles, newsletters, and brochures;

(ii) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques; and

(iii) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(Authority: 20 U.S.C. 2402)

§ 411.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 411.21 the Secretary may select other than the most highly rated applications for funding if doing so would—

(a) Improve the geographical distribution of projects funded under this program; or

(b) Contribute to the funding of a variety of approaches for carrying out the activities under this part.

(Authority: 20 U.S.C. 2401 and 2402)

§ 411.23 How does the Secretary evaluate unsolicited applications?

(a) At any time during a fiscal year, the Secretary may accept and consider for funding an unsolicited application that has not been submitted under a competition announced in the **Federal Register** for that fiscal year, if the project proposes activities described in § 411.3.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the **Federal Register**.

(c) The Secretary may select an unsolicited application for funding in accordance with the procedures in §§ 411.20(e) and 411.24.

(d) The Secretary assigns the 15 points reserved under § 411.20(b) as follows:

(1) Ten points to the selection criterion in § 411.21(a)—national need.

(2) Five points to the selection criterion in § 411.21(b)—plan of operation.

(Authority: 20 U.S.C. 2402)

§ 411.24 How does the Secretary select an unsolicited application for funding?

(a) After evaluating an unsolicited research application on the basis of the criteria in § 411.21, the Secretary compares that application to other unsolicited research applications the Secretary has received.

(b) The Secretary may fund an unsolicited research application at any time during the fiscal year.

(Authority: 20 U.S.C. 2402)

14. Part 412 is revised to read as follows:

PART 412—NATIONAL NETWORK FOR CURRICULUM COORDINATION IN VOCATIONAL AND TECHNICAL EDUCATION

Subpart A—General

Sec.

412.1 What is the National Network for Curriculum Coordination in Vocational and Technical Education?
412.2 Who is eligible for an award?
412.3 What activities may the Secretary fund?
412.4 What is the National Network of Directors Council?
412.5 What regulations apply?
412.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

412.20 How does the Secretary evaluate an application?
412.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

412.30 What additional activities must be carried out by Curriculum Coordination Centers?
412.31 What existing dissemination system must be used?

Authority: 20 U.S.C. 2402(c), unless otherwise noted.

Subpart A—General

§ 412.1 What is the National Network for Curriculum Coordination in Vocational and Technical Education?

The National Network for Curriculum Coordination in Vocational and Technical Education (Network) is a system of six curriculum coordination centers that disseminate information resulting from research and development activities carried out under the Act, in order to ensure broad access at the State and local levels to the information being disseminated.

(Authority: 20 U.S.C. 2402(c))

§ 412.2 Who is eligible for an award?

State and local educational agencies, postsecondary educational institutions, and other public and private agencies, organizations, and institutions are eligible for an award under this program.

(Authority: 20 U.S.C. 2402(c))

§ 412.3 What activities may the Secretary fund?

(a) The Secretary provides grants, cooperative agreements, or contracts to six regional curriculum coordination centers (CCCs).

(b) Each CCC must—

(1) Provide for national dissemination of information on effective vocational and technical education programs and materials, with particular attention to regional programs;

(2) Be accessible by electronic means;

(3) Provide leadership and technical assistance in the design, development, and dissemination of curricula for vocational education;

(4) Coordinate the sharing of information among the States with respect to vocational and technical education curricula;

(5) Reduce duplication of effort in State activities for the development of vocational and technical education curricula; and

(6) Promote the use of research findings with respect to vocational education curricula.

(c) The six regional CCCs assisted with funds under this program must serve States according to the Department of Education's regional alignment as follows:

(1) The Northeast Curriculum Coordination Center serves Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands.

(2) The Southeast Curriculum Coordination Center serves Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

(3) The East Central Curriculum Coordination Center serves Delaware, the District of Columbia, Indiana, Illinois, Maryland, Michigan, Minnesota, Ohio, Pennsylvania, Virginia, West Virginia, and Wisconsin.

(4) The Midwest Curriculum Coordination Center serves Arkansas, Iowa, Kansas, Louisiana, Missouri,

Nebraska, New Mexico, Oklahoma, and Texas.

(5) The Northwest Curriculum Coordination Center serves Alaska, Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

(6) The Western Curriculum Coordination Center serves American Samoa, Arizona, California, Guam, Hawaii, Nevada, the Northern Mariana Islands, and Palau until the Compact of Free Association with Palau takes effect.

(Authority: 20 U.S.C. 2402(c))

§ 412.4 What is the National Network of Directors Council?

(a) The National Network of Directors Council (Council) enhances the effectiveness of the Network by—

(1) Planning for inter-center coordination, dissemination, and diffusion activities;

(2) Providing leadership to ensure cohesiveness for overall Network functions;

(3) Promoting the adoption and adaptation of curriculum materials;

(4) Maintaining liaison with dissemination systems described in § 412.32;

(5) Convening at least twice a year; and

(6) Planning for and participating in an annual meeting of CCCs that includes activities such as displays of current curriculum materials from each CCC, inservice training sessions, and hands-on experience with new technologies in vocational and technical education. This meeting is to be hosted in a different region each year.

(b) The Council is composed of the six CCC directors and a liaison from the Department. One of the CCC directors serves as chair for the Council and has responsibilities for submitting minutes of Council meetings to the Secretary.

(Authority: 20 U.S.C. 2402(c))

§ 412.5 What regulations apply?

The following regulations apply to the National Network for Curriculum Coordination in Vocational and Technical Education:

(a) The regulations in this part 412.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2402(c))

§ 412.6 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2402(c))

Subpart B—[Reserved]

Subpart C—How Does the Secretary make an Award?

§ 412.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 412.21.

(b) The Secretary may award up to 100 points including 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 412.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 412.21.

(Authority: 20 U.S.C. 2402(c))

§ 412.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Regional need.* (30 points) The Secretary reviews each application to determine the applicant's understanding of and responsiveness to the needs of the region, including the extent to which the applicant—

(1) Demonstrates an understanding of the leadership responsibilities associated with serving as a resource center and facilitator for States in a region, including the region's need for inservice training, holding regional meetings, providing technical assistance, coordinating with State directors of vocational education, maintaining a lending library, and disseminating information regularly;

(2) Proposes adequate mechanisms and procedures for reporting the results of curriculum networking services and activities of the 50 States, District of Columbia, Puerto Rico, and the Outlying Areas;

(3) Demonstrates the capacity to disseminate information on effective vocational education materials, including curriculum materials;

(4) Demonstrates an understanding of the operation of the Vocational Education Curriculum Materials (VECM) and ADVOCNET Systems and the need for establishing a Tech-Prep education clearinghouse; and

(5) Demonstrates the capacity to undertake the responsibilities associated with participation as a member of the Network Directors Council described in § 412.4.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the management plan ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraph (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine the personnel qualifications under paragraph (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in the fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Institutional commitment.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Has experience with vocational education curriculum and dissemination;

(2) Will initiate and maintain liaison functions with regional States; and

(3) Will provide adequate facilities, equipment, and supplies.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities; and

(2) The budget contains costs that are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project; and

(2) Identifies expected outcomes of the services provided and how those services will be measured.

(Authority: 20 U.S.C. 2402(c))

Subpart D—What Conditions Must Be Met After An Award?

§ 412.30 What additional activities must be carried out by Curriculum Coordination Centers?

In carrying out the activities described in § 412.3, each CCC must perform the following activities:

(a) Assist States in the development, adaptation, adoption, dissemination, and use of curriculum materials and services and other information resulting from research and development activities carried out under the Act, including performing these activities during at least two regional meetings involving States served by the CCC. One of these regional meetings must be conducted jointly with the other five CCCs and their regional States at the meeting described in § 412.4(a)(6).

(b) Coordinate with other curriculum coordination centers funded under this part.

(c) Coordinate with the State salaried State liaison representative (SLR), who is appointed by the State director of vocational education. The SLR has primary responsibilities for liaison activities within the States, including—

(1) Obtaining new curriculum and research and development materials for Network sharing;

(2) Informing localities and State agencies of Network services;

(3) Disseminating CCC related materials;

(4) Arranging for intrastate and interstate development and dissemination activities;

(5) Arranging for technical assistance and inservice training workshops;

(6) Participating in regional CCC meetings; and

(7) Fostering adoption and adaptations of materials available through the CCC.

(d) Maintain a lending library with a collection of vocational education curriculum, research, and development materials for use by the States served by the CCC.

(e) Each CCC must participate in the Council activities described in § 412.4.

(Authority: 20 U.S.C. 2402(c))

§ 412.31 What existing dissemination systems must be used?

In carrying out its activities, each CCC must use existing dissemination systems, including the National Diffusion Network and the National Center or Centers for Research in Vocational Education, in order to ensure broad access at the State and local levels to the information being disseminated.

(Authority: 20 U.S.C. 2402(c))

15. A new part 413 is added to read as follows:

PART 413—NATIONAL CENTER OR CENTERS FOR RESEARCH IN VOCATIONAL EDUCATION

Subpart A—General

Sec.

413.1 What is the National Center or Centers for Research in Vocational Education?
413.2 Who is eligible to apply for the National Center or Centers?
413.3 What kinds of activities are carried out?
413.4 How does the Secretary designate a National Center or Centers?
413.5 What regulations apply?
413.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

413.20 How does the Secretary evaluate an application?
413.21 What selection criteria does the Secretary use to evaluate an application proposing research and development activities?
413.22 What selection criteria does the Secretary use to evaluate an application proposing dissemination and training activities?

Subpart D—What Conditions Must Be Met After an Award?

413.30 What are the restrictions on the use of funds?
413.31 Must a National Center have a director?
413.32 What are the requirements for coordination?
413.33 What substantive studies must the National Center or Centers conduct and submit?
413.34 What activities must be performed during the final year of an award?

Authority: 20 U.S.C. 2404, unless otherwise noted.

Subpart A—General

§ 413.1 What is the National Center or Centers for Research in Vocational Education?

The Secretary supports the establishment of one or two National Centers for Research in Vocational Education (National Center) in the areas of—

(a) Applied research and development; and

(b) Dissemination and training.

(Authority: 20 U.S.C. 2404)

§ 413.2 Who is eligible to apply for the National Center or Centers?

An institution of higher education or consortium of institutions of higher education may apply to be a National Center under this part.

Cross-Reference: See 34 CFR 75.127 through 75.129, Group Applications.

(Authority: 20 U.S.C. 2404(a)(5))

§ 413.3 What kinds of activities are carried out?

The Secretary provides a grant or cooperative agreement to a National Center or Centers that are designed to perform either one or both of the activities described in paragraphs (a) and (b) of this section.

(a) *Applied research and development activities.* (1) A major purpose of the National Center is to design and conduct research and development activities that are consistent with the purpose of the Act, including—

(i) Longitudinal studies which extend over a period of years;

(ii) Supplementary and short term activities; and

(iii) Upon negotiation with the center, and if funds are provided pursuant to section 404(d) of the Act, such other topics as the Secretary may designate.

(2) The National Center shall conduct applied research and development activities which include examination of the following:

(i) Economic changes that affect the skills which employers seek and entrepreneurs need.

(ii) Integration of academic and vocational education.

(iii) Efficient and effective practices for addressing the needs of special populations.

(iv) Efficient and effective methods for delivering vocational education.

(v) Articulation of school and college instruction with high quality work experience.

(vi) Recruitment, education, and enhancement of vocational teachers and other professionals in the field.

(vii) Accountability processes in vocational education, to include identification and evaluation of the use of appropriate performance standards for student, program, and State-level outcomes.

(viii) Effective practices that educate students in all aspects of the industry the students are preparing to enter.

(ix) Effective methods for identifying and inculcating literacy and other communication skills essential for effective job preparation and job performance.

(x) Identification of strategic, high priority occupational skills and skills formation approaches needed to maintain the competitiveness of the United States workforce, sustain high-wage, high-technology jobs and that address national priorities such as technical jobs needed to protect and restore the environment.

(xi) Identification of practices and strategies that address entrepreneurial development for minority-owned enterprises.

(xii) The applied research and development activities must include—

(A) An emphasis on the recruitment, education, and enhancement of minority and female vocational teachers and professionals; and

(B) Activities that aid in the development of minorities and women for leadership roles in vocational education.

(b) *Dissemination and training activities.* (1) A major purpose of the National Center is to design and conduct dissemination and training activities that are consistent with the purposes of the Act, including—

(i) The broad dissemination of the results of the research and development conducted by the National Center;

(ii) The development and utilization of a national level dissemination network including functions such as clearinghouses, databases, and telecommunications;

(iii) Planning, developing, and conducting training activities; and

(iv) Upon negotiation with the Center and if funds are provided pursuant to section 404(d) of the Act, such other topics as the Secretary may designate.

(2) The National Center shall conduct dissemination and training activities that include the following:

(i) Teacher and administrator training and leadership development.

(ii) Technical assistance to ensure that programs serving special populations are effective in delivering well-integrated and appropriately articulated vocational and academic offerings for secondary, postsecondary, and adult students.

(iii) Needs assessment, design, and implementation of new and revised programs with related curriculum materials to facilitate vocational-academic integration.

(iv) Evaluation and follow-through to maintain and extend quality programs.

(v) Assistance in technology transfer and articulation of program offerings from advanced technology centers to minority enterprises.

(vi) Assistance to programs and States on the use of accountability indicators, including appropriate and innovative performance standards.

(vii) Delivery of information and services using advanced technology, where appropriate, to increase the effectiveness and efficiency of knowledge transfer.

(viii) Development of processes for synthesis of research, in cooperation with a broad array of users, including vocational and non-vocational educators, employers and labor organizations.

(ix) Dissemination of exemplary curriculum and instructional materials, and development and publication of curriculum materials (in conjunction with vocational and non-vocational constituency groups, where appropriate).

(x) Technical assistance in recruiting, hiring, and advancing minorities in vocational education.

(xi) The training and leadership development activities must include an emphasis on—

(A) Training minority and female teachers; and

(B) Programs and activities that aid in the development of minorities and women for leadership roles in vocational education.

(3) Advanced technology may include audio-video cassettes, electronic networking, satellite-assisted programming, computer-based conferencing, and interactive video.

(Authority: 20 U.S.C. 2404 (b) and (c); House Report No. 101–660, 101st Cong. 2nd Sess. p. 143 (1990))

§ 413.4 How does the Secretary designate a National Center or Centers?

(a) The Secretary designates a National Center or Centers once every five years.

(b) In designating the National Center or Centers for Research in Vocational Education, the Secretary may support—

(1) One National Center that conducts both research and development activities and dissemination and training activities; or

(2) Two National Centers: One that conducts research and development activities and one that conducts dissemination and training activities.

(Authority: 20 U.S.C. 2404)

§ 413.5 What regulations apply?

The following regulations apply to the National Center or Centers:

(a) The regulations in this part 413.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2404)

§ 413.6 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part, except that the term "institution of higher education" has the same meaning as provided in 34 CFR 403.117(b).

(Authority: 20 U.S.C. 1085(b) and 2404)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 413.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 413.21 and 413.22.

(b) The Secretary may award up to 100 points to each set of criteria in §§ 413.21 and 413.22, including a reserved 15 points for each set of criteria to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d), the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in §§ 413.21 and 413.22.

(e) The Secretary may hold two separate competitions, with the same closing date, for the National Center or Centers. One competition will be held for research and development activities and the second competition will be held for dissemination and training activities. An institution of higher education or consortium of higher education institutions may submit a research and development application; a dissemination and training application; or both as separate applications under separate covers.

(f) Those institutions or consortiums that rank the highest in each competition will be funded and two awards will be given. If two separate applications from the same institution or consortium of institutions are ranked the highest in both competitions, then one award will be given to that institution or consortium of institutions.

(g) The Secretary evaluates applications for the research and development center and the dissemination and training center independently against the criteria in §§ 413.21 and 413.22 whether an institution or consortium of institutions is competing for either or both sets of activities.

(h) If an institution or consortium submits two applications and demonstrates that it can effectively carry out both the activities described in §§ 413.3 (a) and (b) either directly or through contracting with other public agencies and public and private institutions of higher education, that institution or consortium may be given up to five preference points in the competition for the research and development center and up to five preference points in the competition for the dissemination and training center.

(Authority: 20 U.S.C. 2404)

§ 413.21 What selection criteria does the Secretary use to evaluate an application proposing research and development activities?

The Secretary uses the following selection criteria in evaluating each research and development application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which each of the required research and development activities described in § 413.3(a)(2) will be of high quality and effective.

(b) *Plan of operation.* (35 points) The Secretary reviews each application to determine the quality of the plan of operation for the proposed center, including—

(1) The applicant's plan for managing the National Center;

(2) The procedures the applicant will use to implement the National Center particularly with regard to the public or private nonprofit institution of higher education with which it is associated and, in the case of a consortium, with the other member institutions of the consortium;

(3) The applicant's plan for managing the National Center's activities and personnel, including—

(i) Quality control procedures for its activities;

(ii) Procedures for assuring compliance with timelines;

(iii) Coordination procedures for communicating among staff, subcontractors, members of the consortium, if any, and the Department of Education;

(iv) Procedures for ensuring that adequate progress is being made toward achieving the goals of the grantee by subcontractors, and members of a consortium; and

(v) Procedures for ensuring that adequate budget, accounting, and recordkeeping procedures will be used.

(4) The quality of the applicant's detailed plans for year one of the National Center, including—

(i) Methodology and plan of operation;

(ii) Tasks and timelines;

(iii) Deliverables; and

(iv) Dissemination plans for each project.

(5) The quality of the applicant's general plans for developing appropriate, coherent, and effective vocational education research and development activities, or dissemination and training activities, or both, for years two through five.

(c) *Key personnel.* (10 points) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use for the National Center, including—

(1) The extent to which the Director of the National Center has—

(i) Appropriate professional qualifications, relevant project management experience, and administrative skills;

(ii) A commitment to work full time at the National Center;

(iii) A clear commitment to the goals of the project;

(iv) Sufficient authority to effectively manage the activities of the National Center; and

(v) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) The extent to which other key personnel to be used for the National Center—

(i) Have experience and training in project management and in fields related to the proposed activities they will be carrying out; and

(ii) Will commit sufficient time to the project.

(d) *Vocational education experience.* (10 points) The Secretary reviews each application to determine the extent to which the applicant understands the state of knowledge and practice related to vocational education, including—

(1) The applicant's experience in conducting applied research and development activities and/or dissemination and training activities in the field of vocational education of the type described in § 413.3;

(2) The applicant's capacity for conducting applied research and development activities and/or dissemination and training activities in the field of vocational education of the type described in § 413.3; and

(3) How the activities of the National Center will contribute to the advancement of relevant theory and practice in vocational education.

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The Center has an adequate budget that is cost effective;

(2) The budget is adequate to support the Center's activities; and

(3) Costs are reasonable in relation to the objectives of the Center.

(f) *Coordination activities.* (5 points) The Secretary reviews each application to determine the extent to which there is an effective plan for the coordination of activities described in § 413.3 (a) and (b) whether these activities are carried out between two institutions or within one institution.

(Authority: 20 U.S.C. 2404)

§ 413.22 What selection criteria does the Secretary use to evaluate an application proposing dissemination and training activities?

The Secretary uses the following selection criteria in evaluating each dissemination and training application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which each of the required dissemination and training activities, described in § 413.3(b), will be of high quality and effective.

(b) The selection criteria and points in § 413.21 (b), (c), (d), (e), and (f).

(Authority: 20 U.S.C. 2404)

Subpart D—What Conditions Must Be Met After an Award?

§ 413.30 What are the restrictions on the use of funds?

(a) A National Center that performs both research and development activities and dissemination and training activities shall use at least two thirds of its award for applied research and development.

(b) Not more than 10 percent of each year's budget for a National Center may be used to respond to field-initiated needs unanticipated prior to the annual funding period and that are in the mission of the National Center, but not part of the scope of work of the grant or cooperative agreement.

(Authority: 20 U.S.C. 2404 (a)(3) and (b))

§ 413.31 Must a National Center have a director?

A National Center must have a full time director who is appointed by the institution serving as the grantee.

(Authority: 20 U.S.C. 2404)

§ 413.32 What are the requirements for coordination?

If the Secretary designates two National Centers, the two centers must coordinate their activities.

(Authority: 20 U.S.C. 2404)

§ 413.33 What substantive studies must the National Center or Centers conduct and submit?

(a) The National Center conducting research and development activities shall annually prepare a study on the research conducted on approaches that lead to effective articulation for the education-to-work transition, including tech-prep programs, cooperative education or other work-based programs, such as innovative apprenticeship or mentoring approaches.

(b) The National Center conducting dissemination and training activities shall annually prepare a study of its dissemination and training activities.

(c) Annual studies described in paragraphs (a) and (b) of this section must be submitted to the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, the Committee on Labor and Human Resources of the Senate, and the Committee on Education and Labor of the House of Representatives.

(Authority: 20 U.S.C. 2404 (b)(2) and (c)(2))

§ 413.34 What activities must be performed during the final year of an award?

During the fifth year of the award cycle, the National Center or Centers shall develop and remain prepared to implement a contingency plan for completing all substantive work by the end of the eleventh month of that year and transferring all projects, services, and activities to a successor during the twelfth month of that year.

(Authority: 20 U.S.C. 2404)

16. Part 414 is revised to read as follows:

PART 414—MATERIALS DEVELOPMENT IN TELECOMMUNICATIONS PROGRAM

Subpart A—General

414.1 What is the Materials Development in Telecommunications Program?
414.2 Who is eligible for an award?
414.3 What activities may the Secretary fund?
414.4 What regulations apply?
414.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

414.20 What priorities may the Secretary establish?
414.21 How does the Secretary evaluate an application?
414.22 What selection criteria does the Secretary use?
414.23 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

414.30 What cost-sharing requirements must be met?

Authority: 20 U.S.C. 2412, unless otherwise noted.

Subpart A—General

§ 414.1 What is the Materials Development in Telecommunications Program?

The Materials Development in Telecommunications Program provides financial assistance for the development, production, and distribution of instructional telecommunications materials and services for use in local vocational and technical educational schools and colleges.

(Authority: 20 U.S.C. 2412)

§ 414.2 Who is eligible for an award?

A public or private nonprofit educational telecommunication entity is eligible for an award under this part.

(Authority: 20 U.S.C. 2412)

§ 414.3 What activities may the Secretary fund?

The Secretary may support, through grants or cooperative agreements, projects that develop, produce, and distribute—

(a) A sequential course of study that includes either pre-produced video courseware or direct interactive teaching delivered via satellite, accompanied by a variety of print and computer-based instructional materials;

(b) Individual videocassettes or a series of videocassettes that supplement instruction that must be distributed both via broadcast and non-broadcast means;

(c) Videodiscs that produce simulated hands-on training; or

(d) Teacher training programs for vocational educators and administrators and correctional educators.

(Authority: 20 U.S.C. 2412)

§ 414.4 What regulations apply?

The following regulations apply to the Materials Development in Telecommunication Program:

(a) The regulations in this part 414.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2412)

§ 414.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2412)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 414.20 What priorities may the Secretary establish?

(a) The Secretary may announce through one or more notices published in the **Federal Register** the priorities for this program from the list of priorities in paragraph (b) of this section.

(b) In awarding grants under this part, the Secretary may give priority to programs or projects that serve—

(1) Students in area vocational and technical schools;

(2) Teachers, administrators, and counselors in need of training or retraining;

(3) Out-of-school adults in need of basic skills improvement or a high school equivalency diploma to improve the employability of these individuals;

(4) College students, particularly those who are working toward a two-year associate degree from a technical or community college;

(5) Workers in need of basic skills, vocational instruction, or career counseling to retain for employment; or

(6) Workers who need to improve their skills to obtain jobs in high-growth industries.

(Authority: 20 U.S.C. 2412)

§ 414.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 414.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section based on the criteria in § 414.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parenthesis after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 414.22.

(Authority: 20 U.S.C. 2412)

§ 414.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Educational significance.* (20 points) The Secretary reviews each application to assess the quality of the proposed project, including the extent to which the applicant—

(1) Provides a clear description of the plan to develop, produce, and distribute quality instructional telecommunication materials and services;

(2) Proposes using innovative techniques and approaches to educational problems and needs that are of national significance;

(3) Provides a clear description of how the proposed project will contribute to the improvement of education by promoting the use of instructional telecommunications materials and services in local vocational and technical educational schools and colleges;

(4) Provides a clear description of how the proposed project will provide electronic learning opportunities for populations described in § 414.20(b)(1)–(6); and

(5) Describes a project that is likely to make a significant contribution to the use of telecommunications in vocational education.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the proposed project, including—

(1) The quality of the design of the project, especially the establishment of measurable objectives for the project that are based on the project's overall goals and relate to the purpose of this program;

(2) The extent to which the plan of management is effective, ensures proper and efficient administration of the project, and includes timelines that show starting and ending dates for all tasks, activities, and significant events;

(3) Specific procedures that clearly describe how the project's objectives will be accomplished;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(c) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications and experience of the project director;

(ii) The documentation of the project director's availability at the start of the project and a time commitment to the project;

(iii) The qualifications and experience of each of the other key personnel to be used on the project;

(iv) The appropriateness of the time that each person referred to in paragraphs (c)(1) (i) and (iii) of the section will commit to the project; and

(v) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (iii) of this section, the Secretary considers—

(i) The experience and training of key personnel in fields related to the objectives of the project;

(ii) The experience and training of key personnel in project management; and

(iii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is cost effective and adequate to support the project activities;

(2) The proposed expenditures for each budget category are justified in a budget narrative; and

(3) Costs are necessary and reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) Will determine the effectiveness of the project in meeting the purposes of this program;

(3) Will determine the effect of the project on learning gains/competencies of persons being served by the project, especially as appropriate—

(i) Students in area vocational and technical schools;

(ii) Teachers, administrators, and counselors in need of retraining;

(iii) Out-of-school adults in need of basic skills or a high school equivalency diploma;

(iv) College students in tech-programs; and

(v) Workers in need of basic skills, vocational instruction, or upgraded job skills.

(4) Will produce quantifiable data on the project objectives, including, as appropriate, information on—

(i) The demographic characteristics and numbers of individual participants being served and the schools they attend;

(ii) The services provided to participants, including information on duration, intensity, and costs; and

(iii) The effect of services on the quality of curriculum, the retention of students in programs, and the academic and vocational competencies of students in vocational education programs.

(f) *Dissemination.* (10 points) The Secretary reviews each application to determine whether the applicant has an effective and efficient plan for disseminating information about the project, including—

(1) The design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) A description of the types of materials the applicant plans to make available and the methods for making the materials available, including information about the project, the results of the project, and any specialized materials developed by the project;

(3) Provisions for assisting others to adopt and successfully implement the projects or methods and techniques developed by the project; and

(4) Provisions for publicizing the findings of the project at the local, State, and national level.

(Authority: 20 U.S.C. 2412)

§ 414.23 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 414.22, the Secretary may select other than the most highly rated applications for funding if doing so would—

(a) Improve the geographical distribution of projects funded under this program; or

(b) Contribute to the funding of a variety of approaches for carrying out the activities under this program.

(Authority: 20 U.S.C. 2412)

Subpart D—What Conditions Must Be Met After an Award?

§ 414.30 What cost-sharing requirements must be met?

(a)(1) *Federal share.* The Secretary pays no more than the Federal share of the cost of each project.

(2) The Federal share of the cost of each project assisted under this part is 50 percent.

(b) *Non-Federal share.* The non-Federal share of the cost of each project assisted under this part must be provided from non-Federal sources.

Cross-Reference: See 34 CFR part 74, subpart G—Cost Sharing or Matching.

(Authority: 20 U.S.C. 2412)

17. Part 415 is revised to read as follows:

PART 415—DEMONSTRATION CENTERS FOR THE TRAINING OF DISLOCATED WORKERS PROGRAM

Subpart A—General

Sec.

415.1 What is the Demonstration Centers for the Training of Dislocated Workers Program?
415.2 Who is eligible for an award?
415.3 What activities may the Secretary fund?
415.4 What regulations apply?
415.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

415.20 How does the Secretary evaluate an application?
415.21 What selection criteria does the Secretary use?
415.22 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

415.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2413, unless otherwise noted.

Subpart A—General

§ 415.1 What is the Demonstration Centers for the Training of Dislocated Workers Program?

The Demonstration Centers for the Training of Dislocated Workers Program provides financial assistance for establishing one or more demonstration centers for the retraining of dislocated workers.

(Authority: 20 U.S.C. 2413(a))

§ 415.2 Who is eligible for an award?

A private nonprofit organization that is eligible to receive funding under title III of the Job Training Partnership Act (JTPA) (29 U.S.C. 1651 *et seq.*) is eligible to receive an award under this program.

(Authority: 20 U.S.C. 2413(d))

§ 415.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements for one or more centers that demonstrate the retraining of dislocated workers.

(b) Each center funded by the Secretary must be designed and operated to provide for the use of appropriate existing Federal, State, and local programs and resources.

(c) Each center may use funds to provide for—

(1) The recruitment of unemployed workers;

(2) Vocational evaluation;

(3) Assessment and counseling services;

(4) Vocational and technical training;

(5) Support services; or

(6) Job placement assistance.

(Authority: 20 U.S.C. 2413(a))

§ 415.4 What regulations apply?

The following regulations apply to the Demonstration Centers for the Training of Dislocated Workers Program:

(a) The regulations in this part 415.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2413)

§ 415.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2413)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 415.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 415.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 415.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 415.21.

(Authority: 20 U.S.C. 2413)

§ 415.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the extent to which the proposed demonstration center for the training of dislocated workers will—

(1) Be located in a service area with a high concentration of dislocated workers, as supported by specific evidence of the need for the proposed demonstration center;

(2) Provide vocational education and technical training to meet current and projected occupational needs;

(3) Provide trainees with appropriate vocational evaluation, assessment, and counseling, support services, and job placement assistance;

(4) Result in trainees becoming employed in jobs related to their training upon completion of their training; and

(5) Use other appropriate Federal, State, and local programs to retrain, or provide services to, dislocated workers.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed demonstration center for the training of dislocated workers on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs, in such factors as—

(i) Student performance and achievement in vocational and technical training;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use innovative techniques to address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective including the use of appropriate existing Federal, State, and local programs; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Identification of target groups and provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities;

(2) The budget contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) The budget proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire demonstration center equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2413)

§ 415.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 415.21, the Secretary may select other than the most highly rated applications if doing so would improve the geographical distribution of projects funded under this program.

(Authority: U.S.C. 2413)

Subpart D—What Conditions Must Be Met After an Award?

§ 415.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2413)

18. Part 416 is revised to read as follows:

PART 416—VOCATIONAL EDUCATION TRAINING AND STUDY GRANTS PROGRAM

Subpart A—General

Sec.

416.1 What is the Vocational Education Training and Study Grants Program?
416.2 Who is eligible for an award?
416.3 What activities may the Secretary fund?
416.4 What regulations apply?
416.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

416.20 How does the Secretary evaluate an application?

416.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

416.30 Which individuals are eligible to participate under this program?
416.31 What are the responsibilities of the grantee?

Authority: 20 U.S.C. 2414(a), unless otherwise noted.

Subpart A—General

§ 416.1 What is the Vocational Education Training and Study Grants Program?

The Vocational Education Training and Study Grants Program provides financial assistance for vocational teacher education, undergraduate or graduate training in vocational education, and vocational education student internships.

(Authority: 20 U.S.C. 2414(a))

§ 416.2 Who is eligible for an award?

An institution of higher education, State education agency, or State correctional education agency is eligible for an award under this part.

(Authority: 20 U.S.C. 2414(a))

§ 416.3 What activities may the Secretary fund?

The Secretary supports grants or cooperative agreements for eligible agencies or institutions to provide—

(a) Undergraduate and graduate training in vocational education;

(b) Vocational teacher education; and

(c) Opportunities for further study and professional development for gifted and talented students in vocational education programs by interning with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(a))

§ 416.4 What regulations apply?

The following regulations apply to the Vocational Education Training and Study Grants Program:

(a) The regulations in this part 416.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(a))

§ 416.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Dependent means an individual's legal spouse, natural or adopted minor child, or any other person claimed as a dependent by that individual for Federal income tax purposes.

Stipend means funds used for room and board and personal living expenses, including an allowance for subsistence and other expenses for the individual and his or her dependents.

(Authority: 20 U.S.C. 2414(a))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 416.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 416.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 416.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 416.21.

(Authority: 20 U.S.C. 2414(a))

§ 416.21 What selection criteria does the Secretary use?

(a) *Project design.* (20 points) The Secretary reviews each application to determine the quality of the project design, including—

(1) The extent to which the applicant understands and has responded to any program priorities announced in the **Federal Register** for the grant competition;

(2) The geographic area to be served and of the specific training or internships to be provided, including the purposes of the training or internships;

(3) The objectives of the project;

(4) The institutional and participant selection procedures;

(5) How resources and personnel (including resources and personnel of other entities) will be used to achieve each objective;

(6) When in each budget period the applicant plans to meet each objective;

(7) The extent to which the design of the project is practical and effective to achieve the purposes and goals in § 416.3; and

(8) The extent to which the management plan provides adequately for monitoring, supervising, and evaluating all entities and individuals participating in the program.

(b) *Applicant commitment and experience.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The applicant's selection procedures, including priorities and criteria, will be effective for selecting the institutions, agencies, organizations, and Center or Centers in which trainees will be placed; and

(2) The applicant has demonstrated competence and experience in operating training or internship programs similar to that proposed, including how, if applicable, its capabilities will be extended through subgrants, contracts, or agreements with other entities. When subgrants, contracts, or agreements with other entities are proposed, the applicant must include copies of the written agreements covering the intent of all proposed entities to participate with the applicant in achieving the purposes and objectives of the proposed program.

(c) *Key personnel.* (20 points) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The names and qualifications of key personnel, including the project director. If the names of key persons are not yet known, specify the minimum qualifications that will be used to select them;

(2) The qualifications of key personnel intended to be used under subgrants, contracts, or agreements and designation of their employment affiliation. If key personnel from other entities will be used, include copies of their stated intent to participate and copies of the concurrence of the entity by which they are employed to make them available for the time specified in the proposal;

(3) The extent to which key personnel are adequate and appropriate to achieve the objectives of the proposed program;

(4) Whether the allocation of time of key personnel to the objectives of the program seems adequate to predict achievement; and

(5) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(d) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of resources the applicant plans to use, including the extent to which the applicant—

(1) Will use its resources and those of other participating entities effectively to accomplish the purposes and objectives of the proposed project;

(2) Will devote adequate financial and material resources to the program being proposed; and

(3) Will use adequate facilities and equipment for the program being proposed.

(e) *Participant recruitment and selection plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Will make information about the learning opportunities, the financial support to be provided, eligibility requirements, and the applicant's selection criteria broadly available to all individuals eligible to participate in the project;

(2) Has proposed participant selection criteria for each training or internship activity that are consistent with § 416.30; and

(3) Will ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant will conduct an annual evaluation of the accomplishment of the purposes and objectives of the project, including—

(1) An evaluation of student participation by sex, race or ethnic group, and language proficiency for each vocational education category and each target position in vocational education for which training or internships are intended to prepare recipients;

(2) Comparing the active career pursuits and career goals of program participants before and after participation in training or an internship under the project; and

(3) Analyzing the completeness and accuracy of and synthesizing grantee records on the level of participation and progress of program participants in their learning pursuits and the level and timing of disbursements and recovery of financial support in relation thereto.

(Authority: 20 U.S.C. 2414(a))

Subpart D—What Conditions Must Be Met After an Award?

§ 416.30 Which individuals are eligible to participate under this program?

(a) The following individuals are eligible for training under this program:

(1) Experienced vocational educators who want to participate in advanced study of vocational education.

(2) Certified teachers who have been trained to teach in other fields and who want to become teachers of vocational education students, including teachers with skills related to vocational fields who can be trained as vocational educators, and especially minority instructors and instructors with experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminal offenders.

(3) Individuals in industry who have skills and experience in vocational fields and who want to be trained as vocational educators.

(4) Vocational educators who want to improve or maintain technological currency in their fields.

(b) Gifted and talented vocational education secondary and postsecondary students are eligible under this program for internships with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(a))

§ 416.31 What are the responsibilities of the grantee?

(a) A grantee carrying out activities under § 416.3 (a) and (b) shall—

(1) Provide training directly, or, in the case of a State educational agency or a State correctional education agency, provide for training through a contract;

(2) Select individuals for participation in training activities; and

(3) Determine the amounts participants will receive for training, fellowships, stipends, or travel allowances.

(b) A grantee carrying out activities under § 416.3(c) shall—

(1) Select individuals for participation;

(2) Coordinate with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education that are willing to participate with the project in providing internships for further study and professional development for gifted and talented vocational education students; and

(3) Determine the amount participant's will receive for subsistence allowance and other expenses such as necessary travel expenses related to participation.

(c) All grantees shall—

(1) Monitor, supervise, maintain records on, and report on the level and type of participation, and on the conditions and progress of the institutions, agencies, associations, Centers, and individuals involved in the project; and

(2) Evaluate, either directly or through a contract, and report on the accomplishment of the purposes and objectives of the project.

(Authority: 20 U.S.C. 2414(a))

19. Part 417 is revised to read as follows:

PART 417—VOCATIONAL EDUCATION LEADERSHIP DEVELOPMENT AWARDS PROGRAM

Subpart A—General

Sec.

417.1 What is the Vocational Education Leadership Development Awards Program?
417.2 Who is eligible for an award?
417.3 What activities may the Secretary fund?
417.4 What regulations apply?
417.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

417.20 How does the Secretary evaluate an application?
417.21 What selection criteria does the Secretary use?
417.22 What additional factors does the Secretary consider?

Subpart D—What are the Administrative Responsibilities of Institutions?

417.30 What is the role of the institution in the administration of leadership development awards?
417.31 What selection criteria and procedures must an institution use in selecting students?
417.32 What are the special requirements regarding leadership development awards?
417.33 How are funds disbursed and returned?
417.34 Under what circumstances must an institution terminate a leadership development award?

Subpart E—How Does An Individual Apply for a Leadership Development Award?

417.40 Which individuals are eligible for an award?
417.41 How does an individual apply to an institution for a leadership development award?

Subpart F—What Conditions Must be Met by Recipients of Leadership Development Awards?

417.50 May a course of study be interrupted?
417.51 Under what conditions must a leadership development award be returned?
417.52 What is the repayment schedule?
417.53 What interest is charged?
417.54 Under what circumstances is repayment deferred?
417.55 What is the length of the deferment of repayment?

Authority: 20 U.S.C. 2414(b), unless otherwise noted.

Subpart A—General

§ 417.1 What is the Vocational Education Leadership Development Awards Program?

The Vocational Education Leadership Development Awards Program provides financial assistance to meet the needs of all States for qualified vocational education leaders such as administrators, supervisors, teacher educators, researchers, career guidance and vocational counseling personnel, vocational student organization leadership personnel, and teachers in vocational education programs.

(Authority: 20 U.S.C. 2414(b))

§ 417.2 Who is eligible for an award?

An institution of higher education is eligible for an award under this part if it offers a comprehensive program in vocational education with adequate supporting services and disciplines such as education administration, career guidance and vocational counseling, research, and curriculum development, and that program is—

(a) Designed to substantially advance the objective of improving vocational education in the State through providing opportunities for graduate training of teachers of vocational education students, vocational supervisors and administrators, and university-level vocational education teacher educators and researchers; and

(b) Conducted by a school of graduate study in the institution of higher education.

(Authority: 20 U.S.C. 2414(b)(4))

§ 417.3 What activities may the Secretary fund?

The Secretary provides grants to institutions for leadership development awards to individuals.

(Authority: 20 U.S.C. 2414(b))

§ 417.4 What regulations apply?

The following regulations apply to the Vocational Education Leadership Development Awards Program:

(a) The regulations in this part 417.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(b))

§ 417.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Academic year means a period of time in which a full-time student is expected to complete—

(1) The equivalent of at least two semesters, two trimesters, or three quarters at an institution that measures academic progress in credit hours and uses a semester, trimester, or quarter system;

(2) At least 24 semester hours or 36 quarter hours at an institution that measures academic progress in credit hours, but does not use a semester, trimester, or quarter system; or

(3) At least 900 clock hours at an institution that measures academic progress in clock hours.

Dependent means an individual's legal spouse, natural or adopted minor child, or any other person claimed as a dependent by that individual for Federal income tax purposes.

Full-time course of study means the number of credit hours that an institution requires of a full-time student.

Full-time student means a student who—

(1) Carries a full-time course of study; and

(2) Is not employed for more than 20 hours a week.

Satisfactory proficiency means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

(Authority: 20 U.S.C. 2414(b))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 417.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 417.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 417.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 417.21.

(Authority: 20 U.S.C. 2414(b))

§ 417.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Institutional commitment and experience.* (25 points) The Secretary reviews each application to determine the extent to which—

(1) The institution has resources and supporting services for at least five of the generally recognized fields of vocational education that are integrated into a comprehensive approach to vocational education.

(2) The institution's vocational education program has been adopted as a permanent graduate program of study;

(3) The institution demonstrates competence and experience in programs and activities similar to those authorized under the Act;

(4) The applicant provides adequate documentation that its vocational education program meets the requirements in § 417.2; and

(5) The institution's vocational education program will address the need in the State for improving the quality and quantity of vocational personnel, including those referred to in § 417.1.

(b) *Academic program.* (15 points) The Secretary reviews each application to determine the adequacy of the institution's academic program including the—

(1) Range of course offerings and level and number of academic requirements for students; and

(2) Institutions's demonstrated success in preparing individuals for professional or academic careers in the vocational education field.

(c) *Key faculty.* (15 points) The Secretary reviews each application to determine the extent to which the background, education, research interests, and relevant experience of the faculty qualify them to plan and implement a successful program of high academic quality.

(d) *Adequacy of resources.* (10 points) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the academic area, including the adequacy of—

(1) The facilities the applicant plans to use; and

(2) The equipment the applicant plans to use.

(e) *Recruitment plan.* (10 points) The Secretary considers the quality of an institution's plan for selecting graduate students, including—

(1) A description of how the institution will apply the requirements in § 417.31; and

(2) The extent to which the institution will make available to all individuals eligible to participate information about learning opportunities, the financial support available, eligibility requirements, and the institutions's criteria for selecting participants.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to

determine the extent to which the applicant will conduct an annual evaluation—

(1) Of student participation by sex and racial or ethnic groups in relation to such indicators of need as the State's vocational education enrollments and the need for additional vocational education leadership in the State;

(2) Of the extent to which selection criteria and procedures used resulted in student participants who meet the eligibility requirements in § 417.40;

(3) Of the accuracy and validity of records on the level of participation and progress of program participants in their learning pursuits, and the appropriateness of the level and timing of disbursements in relation thereto; and

(4) Comparing the active career pursuits and career goals of participants before and after participating in the program to determine the extent to which they enter for the first time, returned to, or advance in work in vocational education in a leadership position.

(Authority: 20 U.S.C. 2414(b))

§ 417.22 What additional factors does the Secretary consider?

(a) In addition to the criteria in § 417.21, the Secretary determines whether the most highly rated applicants are—

(1) Equitably distributed among the States; and

(2) Located in States that need additional vocational education personnel.

(b) The Secretary may select other applicants for funding if doing so would improve the equitable distribution of projects geographically and among the States needing additional trained personnel.

(Authority: 20 U.S.C. 2414(b)(5))

Subpart D—What are the Administrative Responsibilities of Institutions?

§ 417.30 What is the role of an institution in the administration of leadership development awards?

An institution receiving an award under this part is responsible for—

(a) Administering the grant;

(b) Accepting, screening, and selecting individual applications in accordance with its own technical and academic criteria;

(c) Disbursing and returning funds in accordance with procedures described in §§ 417.33 and 417.34, including making appropriate adjustments of any overpayment or underpayment to a recipient of a leadership development award.

(Authority: 20 U.S.C. 2414(b))

§ 417.31 What selection criteria and procedures must an institution use in selecting students?

(a) An institution of higher education shall establish competitive selection criteria and procedures that reflect the needs of the State for qualified vocational education personnel, only after consultation with the State's vocational education leaders (such as administrators, researchers, and teachers) an analysis of relevant statewide data, including the State's vocational education enrollments.

(b) The institution shall design the selection criteria and procedures to ensure that it selects individuals—

(1) On the basis of demonstrated leadership potential, promise of continued achievement, and commitment;

(2) On the basis of standards in § 417.40;

(3) Without regard to race, color, national origin, gender, age, disability, or economic background; and

(4) Without regard to financial need.

(Authority: 20 U.S.C. 2414(b))

§ 417.32 What are the special requirements regarding leadership development awards?

(a) Leadership development awards to individuals—

(1) May not exceed $9,000 per individual per academic year or its equivalent and $3,000 per individual per summer session or its equivalent;

(2) May not be paid for more than three years; and

(3) Cover expenses that are consistent with prevailing practices of the institution, including—

(i) Tuition and books;

(ii) Non-refundable fees;

(iii) A subsistence allowance for the individual and his or her dependents; and

(iv) Other expenses the institution deems necessary and reasonable and consistent with prevailing practices.

(b) In determining an individual's need for assistance and the amount of the assistance, an institution shall deduct financial assistance—other than loans—received or expected to be received by the individual for his or her educational or living expenses and for the support of his or her dependents.

(c) The total financial assistance provided to an individual from all sources, other than loans, may not exceed the individual's need for that assistance.

(d) An institution may not provide a leadership development award to an individual who is not a full-time student.

(Authority: 20 U.S.C. 2414(b) (2) and (6))

§ 417.33 How are funds disbursed and returned?

(a) The institution shall disburse a leadership development award to an individual in no fewer than two installments per academic year.

(b) An institution shall make an award only to an individual who is in good standing and is making satisfactory progress.

Cross-Reference: See § 417.34(a)

(c) Before considering a leadership development award for new individuals, the Secretary provides payment to continue support for qualified individuals who—

(1) Received an award under this program in the previous year; and

(2) Are maintaining satisfactory progress as determined by the institution.

(d) If a leadership development award is vacated or discontinued, the institution shall notify the Secretary. The Secretary—

(1) Allows the award to follow the individual to another participating institution if the remaining award time comprises at least one academic quarter, semester, trimester, or summer session; or

(2) Permits the institution to use any unexpended funds from an award to make an award to an alternate applicant at that institution for a period of study that does not exceed the terms or amount of the original award.

(e) If the individual is no longer eligible for an award, and there is no qualified alternate applicant, the institution must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program and recover funds from the individual. The amount of unexpended funds is determined by prorating the amount received for that academic term in proportion to the amount of the academic term during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(b))

§ 417.34 Under what circumstances must an institution terminate a leadership development award?

An institution shall—

(a) Terminate a leadership development award if the recipient of an award—

(1) Is not pursuing a full-time course of study in vocational education;

(2) Is not maintaining satisfactory proficiency in the course of study;

(3) Is engaged in gainful employment other than part-time employment by the institution in teaching, research, or similar activities;

(4) Is no longer enrolled, or is no longer in good standing at the institution; or

(5) Fails to follow the prescribed course of study for which he or she applied, unless a revised course of study is approved under this part.

(b) Terminate an award only after providing reasonable notice and an opportunity for the individual to rebut, in writing or in an informal meeting with the responsible official in the institution, the basis for the decision.

(c) Ensure that a recipient of a leadership development award repays all or a prorated portion of an award in accordance with the provisions in §§ 417.51 through 417.55.

(Authority: 20 U.S.C. 2414(b))

Subpart E—How Does an Individual Apply for a Leadership Development Award?

§ 417.40 Which individuals are eligible for an award?

An individual is eligible for an award if the institution participating under this part determines that the individual—

(a) Has at least three years of experience in vocational education or in industrial training, or, in the case of researchers, experience in social science research that is applicable to vocational education;

(b) Is currently employed or is reasonably assured of employment in vocational education and has successfully completed at least a baccalaureate degree program;

(c) Is recommended by his or her employer, or others, as having leadership potential in the field of vocational education and has been accepted for admission as a graduate student in an institution participating under this part; and

(d) Has made a commitment to return to the field of vocational education upon completion of education provided through the Vocational Education Leadership Development Award Program.

(Authority: 20 U.S.C. 2414(b))

§ 417.41 How does an individual apply to an institution for a leadership development award?

To apply for an award, an individual shall—

(a) Follow the application procedures established by an institution participating under this part; and

(b) Provide sufficient information concerning his or her employment experience and academic background to enable the institution to determine whether the individual is eligible to receive an award, taking into consideration the standards in § 417.40.

(Authority: 20 U.S.C. 2414(b))

Subpart F—What Conditions Must be Met by Recipients of Leadership Development Awards?

§ 417.50 May a course of study be interrupted?

The Secretary approves a leadership development award only for study in the field and at the institution specified in an individual's application. The Secretary or the institution discontinues the leadership development award if the individual changes the field of study or the institution without the Secretary's prior approval.

(Authority: 20 U.S.C. 2414(b))

§ 417.51 Under what conditions must a leadership development award be returned?

(a) An individual shall repay to the institution all, or a prorated portion, of a leadership development award, as determined by the Secretary, if the individual—

(1) Withdraws from an approved institution of higher education;

(2) Is terminated or expelled from an approved institution of higher education; or

(3) Is found by the institution or the Secretary to be in noncompliance with the requirements stated in § 417.34(a).

(b) An individual shall repay all, or a portion of, amounts received during the academic term in which the individual no longer qualifies for participation under this program.

(Authority: 20 U.S.C. 2414(b))

§ 417.52 What is the repayment schedule?

(a) A recipient of a leadership development award required to repay all, or a prorated portion, of the award shall begin repayments to the institution within one month of the date he or she ceases to be enrolled as a full-time student at an institution in the leadership development program; or

(b) A recipient of a leadership development award must repay to the institution the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(b))

§ 417.53 What interest is charged?

(a) The Secretary charges a recipient of a leadership development award interest on the unpaid balance owed by the recipient in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under § 417.54.

(Authority: 20 U.S.C. 2414(b))

§ 417.54 Under what circumstances is repayment deferred?

Upon request from the recipient of a leadership development award, the Secretary may defer repayment if the recipient—

(a) Re-enrolls as a full-time student at a participating institution;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(b))

§ 417.55 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a recipient of a leadership development award shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(b))

20. A new part 418 is added to read as follows:

PART 418—VOCATIONAL EDUCATOR TRAINING FELLOWSHIPS PROGRAM

Subpart A—General

Sec.

418.1 What is the Vocational Educator Training Fellowship Program?
418.2 Who is eligible for a fellowship?
418.3 What does a fellowship include?
418.4 What regulations apply?
418.5 What definitions apply?

Subpart B—How Does an IHE Obtain Approval of Its Application for Participation?

418.10 How does the Secretary approve IHEs for participation?

Subpart C—How Does An Individual Apply for a Fellowship?

418.20 Where does an individual apply for a fellowship?

Subpart D—How Does the Secretary Select Fellows?

418.30 How does the Secretary select fellows?

418.31 What criteria must IHEs consider in nominating fellows?
418.32 What additional factors does the Secretary consider in selecting fellows?
418.33 How are funds distributed to a fellow?

Subpart E—What Conditions Must be Met by a Fellow?

418.40 Where may fellows study?
418.41 What are the requirements for an individual to continue to receive a fellowship?
418.42 May fellowship tenure be interrupted?
418.43 May fellows make changes in institutions or fields of study?
418.44 Under what circumstances may a fellowship be discontinued?
418.45 Under what conditions must fellowship payments be repaid?
418.46 What is the repayment schedule?
418.47 What interest is charged?
418.48 Under what circumstances is repayment deferred?
418.49 What is the length of the deferment of repayment?

Authority: 20 U.S.C. 2414(c), unless otherwise noted.

Subpart A—General

§ 418.1 What is the Vocational Educator Training Fellowship Program?

Under the Vocational Educator Training Fellowship Program, the Secretary provides fellowships to individuals through approved institutions of higher education (IHEs) to—

(a) Meet the need to provide adequate numbers of teachers and related classroom instructors in vocational education who are technologically current in their fields;

(b) Take full advantage of the education that has been provided to already certified teachers who are unable to find employment in their fields of training and of individuals employed in industry who have skills and experience in vocational fields; and

(c) Encourage more instructors from minority groups and teachers with skills and experience instructing individuals of limited English proficiency to become vocational education teachers.

(Authority: 20 U.S.C. 2414(c)(1))

§ 418.2 Who is eligible for a fellowship?

Fellowships are awarded to individuals (especially minority instructors and instructors with experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminals) who—

(a)(1)(i) Are teachers of vocational education students and need an opportunity to improve or maintain technological skills;

(ii) Are certified by a State, or were so certified during the 10-year period preceding their application for a fellowship under this part, as teachers in secondary schools, area vocational education schools or institutes, or in community or junior colleges; and

(iii) Have skills and experiences in vocational fields so that those individuals can be trained to be teachers of vocational education students; or

(2) Are employed in agriculture, business, or industry (and may or may not hold a baccalaureate degree) and have skills and experience in vocational fields for which there is a need for vocational educators;

(b) Have been accepted in a program to become a vocational educator by an institution of higher education approved by the Secretary; and

(c) Have made a commitment to work in the field of vocational education upon completion of the fellowship provided under this program.

(Authority: 20 U.S.C. 2414(c)(2))

§ 418.3 What does a fellowship include?

(a) A fellowship may not be paid for more than two years.

(b) *Allowable costs.* A fellow may use fellowships under this program for—

(1) Tuition and non-refundable fees—the normal and usual costs associated with the course of study;

(2) Books;

(3) Travel to a field study site; and

(4) Subsistence and other expenses of the fellow and his or her dependents.

(c) The Secretary announces in the **Federal Register** the maximum amounts for each allowable cost under a fellowship. These maximum amounts are based on the prevailing amounts for costs during the past 12 months, plus projected inflationary increases.

(Authority: 20 U.S.C. 2414(c))

§ 418.4 What regulations apply?

The following regulations apply to the Vocational Educator Training Fellowship Program:

(a) The regulations in this part 418.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(c))

§ 418.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following terms used in this regulation are defined in 34 CFR 417.5:

Dependent
Full-time course of study
Satisfactory proficiency

(c) The following definitions also apply to this part:

Fellow means the individual recipient of a fellowship under this part.

Fellowship means an award made to an individual for vocational educator training under this part.

(Authority: 20 U.S.C. 2414(c))

Subpart B—How Does an IHE Obtain Approval of its Application for Participation?

§ 418.10 How does the Secretary approve IHEs for participation?

The Secretary considers for participation only IHEs that—

(a) Offer a comprehensive program in vocational education with adequate supporting services and disciplines such as education administration, career guidance and vocational counseling, research, and curriculum development, including resources and supporting services for at least five of the generally recognized fields of vocational education that are integrated into a comprehensive approach to vocational education; and

(b) Will enroll in its vocational education program individuals receiving fellowships under this part so that those individuals receive the same quality of education and training provided for undergraduate students at the institution who are preparing to become vocational education teachers.

(Authority: 20 U.S.C. 2424(c))

Subpart C—How Does an Individual Apply for a Fellowship?

§ 418.20 Where does an individual apply for a fellowship?

(a) An individual shall submit an application for a fellowship to a participating IHE.

(b) The applicant shall provide sufficient information in the application as required by institution concerning his or her employment and academic background and proposed course of study, to enable an institution and the Secretary to determine whether the individual—

(1) Meets the eligibility requirements indicated in § 418.2; and

(2) Should be selected for a fellowship under this part.

(Authority: 20 U.S.C. 2414(c))

Subpart D—How Does the Secretary Select Fellows?

§ 418.30 How does the Secretary select fellows?

In selecting recipients of fellowships, the Secretary—

(a) Gives preference to individuals seeking to become teachers or improve their skills in the areas identified in § 418.32(b); and

(b) Takes into consideration the rank orders prepared by participating IHEs.

(Authority: 20 U.S.C. 2414(c)(7))

§ 418.31 What criteria must IHEs consider in nominating fellows?

In rank ordering applicants for fellowships, an IHE shall consider the following criteria in addition to its admissions standards:

(a) *Eligibility.* The applicant meets the requirements in § 418.2, especially with regard to minority instructors and instructors with experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminals.

(b) *Academic ability.* The quality of the applicant's academic record, including—

(1) Transcripts of grades earned in secondary school and, where appropriate, postsecondary education;

(2) Results earned on specific skill aptitude tests; and

(3) Results of other tests, if appropriate.

(c) *Vocational skills.* Evidence of the applicant's performance in a work situation requiring vocational skills, including—

(1) Letters of recommendations from previous employers or others, as appropriate;

(2) Results of National Occupational Competency Testing Institute tests, if appropriate;

(3) Certificates or diplomas, as appropriate; and

(4) Work related experience, including teaching, if appropriate.

(d) *Community human relations skills.* Evidence of the applicant's skills in interpersonal relations, including experience with—

(1) Community groups;

(2) Volunteer groups;

(3) Work related organizations;

(4) Members of minority groups;

(5) Economically or educationally disadvantaged, or individuals with disabilities; and

(6) Adult and juvenile criminal offenders; and other groups, as appropriate.

(e) *National need.* As stated by the applicant in writing, the applicant's goals, objectives, and aspirations in vocational education, and their relationship to national needs with particular reference to—

(1) Technological skill upgrading; and

(2) Increasing the number of instructors who—

(i) Are members of minority groups; and

(ii) Possess skills and experience in teaching individuals who are economically disadvantaged, individuals with disabilities, individuals of limited English proficiency, and adult and juvenile criminals.

(Authority: 20 U.S.C. 2414(c))

§ 418.32 What additional factors does the Secretary consider in selecting fellows?

The Secretary may choose fellows out of rank order if doing so would—

(a) Improve the equitable distribution of fellowships among the States, taking into account such factors as—

(1) The State's vocational education enrollments; and

(2) The need in the State for additional instructors of vocational education students, especially minority educators and individuals with skills and experience in teaching individuals of limited English proficiency, individuals who are economically disadvantaged, individuals with disabilities, and adult and juvenile criminal offenders.

(b) Increase the number of trained persons in the areas of teaching in vocational education—

(1) In which additional personnel are needed;

(2) That will likely have need of additional personnel in the future; and

(3) In which technological upgrading may be especially critical.

(Authority: 20 U.S.C. 2414(c)(2), (4), and (6)(A))

§ 418.33 How are funds distributed to a fellow?

(a) Funds are disbursed by the participating IHE in which a fellow is enrolled.

(b) A participating institution shall award to each fellow a fellowship that covers costs described in § 418.3.

(c) An institution shall—

(1) Pay a fellow his or her subsistence and any other allowance in installments during the term of the fellowship;

(2) Make a payment only to a fellow who meets the requirements in § 418.41;

(3) Make appropriate adjustments of any overpayment or underpayment to a fellow; and

(4) Ensure that a fellow repays all or a prorated portion of an award in accordance with the provisions in §§ 418.45 through 418.49.

(d) In determining an individual's need for assistance and the amount of the assistance, an institution shall deduct financial assistance—other than loans—received or expected to be received by the individual for his or her educational or living expenses and for the support of his or her dependents.

(Authority: 20 U.S.C. 2414(c))

Subpart E—What Conditions Must Be Met by a Fellow?

§ 418.40 Where may fellows study?

Fellows may use fellowships under this part only at institutions that have been approved under this part.

(Authority: 20 U.S.C. 2414(c))

§ 418.41 What are the requirements for an individual to continue to receive a fellowship?

A participating IHE shall continue to pay fellowships only during a period in which the fellow is—

(a) Maintaining satisfactory proficiency;

(b) Engaging in full-time study in the field of vocational education in an institution of higher education; and

(c) Not engaging in gainful employment other than part-time employment with the institution.

(Authority: 20 U.S.C. 2414(c)(5))

§ 418.42 May fellowship tenure be interrupted?

(a) With prior approval of the Secretary, a fellow may interrupt periods of vocational educator study under the fellowship for a period of up to 12 months for the purpose of work, travel, or independent study away from the institution of higher education at which the fellow is enrolled only if the—

(1) Work, travel, or independent study is supportive of the fellow's academic program;

(2) Leave of absence is approved by the institution at which the fellow is enrolled; and

(3) IHE certifies, to the Secretary in advance of the leave, that the fellow is eligible to resume his or her course of study at the end of the leave of absence.

(b) An institution may not make fellowship payments under this part for a period of time during which a fellowship is interrupted.

(Authority: 20 U.S.C. 2414(c))

§ 418.43 May fellows make changes in institutions or fields of study?

The Secretary approves a fellowship only for study in the field of study and at the institution specified in the fellow's application. The Secretary or the institution discontinues the fellowship if the fellow changes the field of study or the institution without the Secretary's prior approval.

(Authority: 20 U.S.C. 2414(c))

§ 418.44 Under what circumstances may a fellowship be discontinued?

(a) An institution shall discontinue a fellowship—

(1) If a fellow fails to comply with the provisions under this part; and

(2) Only after providing reasonable notice and an opportunity for the fellow to rebut, in writing or in an informal meeting with the responsible official in the institution, the basis for the decision.

(b) If a fellowship is vacated or discontinued the institution shall notify the Secretary. The Secretary—

(1) Allows the fellowship to follow the fellow to another participating IHE if the remaining fellowship time comprises at least one full academic quarter, semester, trimester, or summer session and the fellow maintains eligibility for a fellowship; or

(2) Permits the institution to award unexpended funds from a fellowship to an alternate fellow at that institution for a period of study that does not exceed the term or amount of the original fellowship.

(c) If the individual is no longer eligible for an award, and there is no qualified alternate applicant, the institution must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program and recover funds from the individual. The amount of unexpended funds is determined by prorating the amount received for that academic term in proportion to the amount of the academic term during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(c))

§ 418.45 Under what conditions must fellowship payments be repaid?

(a) A fellow shall repay to the institution the entire fellowship, or a prorated portion, as determined by the Secretary, if the fellow—

(1) Withdraws from an institution;

(2) Is terminated or expelled from an institution; or

(3) Is found by the institution or the Secretary to be in noncompliance with the requirements in this part.

(b) A fellow shall refund all or a portion of amounts received during the academic term in which the individual no longer qualifies for participation under this program.

(Authority: 20 U.S.C. 2414(c))

§ 418.46 What is the repayment schedule?

(a) A fellow required to repay all, or a prorated portion, of a fellowship shall begin repayments within one month of the date he or she ceases to be enrolled as a full-time student at an IHE in the fellowship program.

(b) A fellow must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(c))

§ 418.47 What interest is charged?

(a) The Secretary charges a fellow interest on the unpaid balance owed by the fellow in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under § 418.48.

(Authority: 20 U.S.C. 2414(c))

§ 418.48 Under what circumstance is repayment deferred?

Upon request from a fellow, the Secretary may defer repayment if the fellow—

(a) Re-enrolls as a full-time student at a participating IHE;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(c))

§ 418.49 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a fellow shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(c))

21. A new part 419 is added to read as follows:

PART 419—INTERNSHIPS FOR GIFTED AND TALENTED VOCATIONAL EDUCATION STUDENTS PROGRAM

Subpart A—General

Sec.

419.1 What is the Internships for Gifted and Talented Vocational Education Students Program?
419.2 Who is eligible for an internship?
419.3 What activities may the Secretary fund?
419.4 What regulations apply?
419.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Select Interns?

419.20 What are the procedures for applying for an internship?
419.21 How does the Secretary evaluate an application for an internship?
419.22 What selection criteria does the Secretary use?
419.23 What other factors may the Secretary consider?
419.24 How does the Secretary assign interns?
419.25 How is the amount of a stipend determined?
419.26 How is a stipend distributed?

Subpart D—What Conditions Must be Met By an Intern?

419.30 May internships be interrupted?
419.31 Under what conditions may the Secretary discontinue an internship?
419.32 Under what conditions must internship payments be returned?
419.33 What is the repayment schedule?
419.34 What interest is charged?
419.35 Under what circumstance is repayment deferred?
419.36 What is the length of the deferment of repayment?

Authority: 20 U.S.C. 2414(d), unless otherwise noted.

Subpart A—General

§ 419.1 What is the Internships for Gifted and Talented Vocational Education Students Program?

The Internships for Gifted and Talented Vocational Education Students Program provides internships to meet the need of attracting gifted and talented vocational education students into further study and professional development in the field of vocational education.

(Authority: 20 U.S.C. 2414(d)(1))

§ 419.2 Who is eligible for an internship?

A gifted and talented student from a vocational education secondary or postsecondary program is eligible for an internship under this program if the student is recommended—

(a) As gifted and talented by a vocational educator at the secondary or postsecondary school the student attends; and

(b) By a State director of vocational education.

(Authority: 20 U.S.C. 2414(d)(2))

§ 419.3 What activities may the Secretary fund?

The Secretary provides internships, of up to nine months, for gifted and talented students from vocational education secondary and postsecondary programs to work as interns for Federal and State agencies, nationally recognized vocational education associations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(d)(2)(A))

§ 419.4 What regulations apply?

The following regulations apply to the Internships for Gifted and Talented Vocational Education Students Program:

(a) The regulations in this part 419.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(d))

§ 419.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Gifted and talented student means a student who gives evidence of high performance capability in the field of vocational education, taking into account theoretical knowledge, applied skills, and leadership potential.

Intern means a gifted and talented student who receives payments under this program.

Sponsor means a Federal or State agency, nationally recognized vocational education association, or National Center for Research in Vocational Education that has agreed to provide further study and professional development to interns under this program.

(Authority: 20 U.S.C. 2414(d))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Select Interns?

§ 419.20 What are the procedures for applying for an internship?

(a) A gifted and talented vocational education student shall apply to the Secretary for an internship in response to an application notice published by the Secretary in the **Federal Register**.

(b) A student applying for an internship shall—

(1) Obtain a recommendation as gifted and talented from a vocational educator at the secondary or postsecondary school the student attends. The recommendation must state why the student is considered gifted and talented. The recommendation must be attached to the student's application;

(2) Submit to the State director of vocational education for the State in which the student attends a vocational education program, a copy of his or her application;

(3) Indicate, in the application, a first and second choice of agencies or organizations where the student would like to be an intern; and

(4) Submit with the application, an agreement to follow the code of conduct of the agency or organization that will sponsor the intern.

(c) The Secretary considers for internships only students recommended by State directors of vocational education. The State director's recommendation must include an assurance that—

(1) The student is available to take part in this program during the specified dates;

(2) Parent or guardian of a student who has not reached the age of majority in a State has formally consented for the student to take part in this program; and

(3) The secondary or postsecondary school the student attends has provided authorization for the student to participate in this program, if the internship will interfere with school attendance.

(Authority: 20 U.S.C. 2414(d))

§ 419.21 How does the Secretary evaluate an application for an internship?

(a) The Secretary evaluates an application on the basis of the criteria in § 419.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 419.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 419.22.

(Authority: 20 U.S.C. 2414(d))

§ 419.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Goal of the internship.* (30 points) The Secretary reviews each application to determine the extent to which there—

(1) Is a clearly stated goal to be achieved during the internship. This goal must be directly related to the present area of study the student is pursuing; and

(2) Are measurable objectives to be met during the internship.

(b) *Internship plan.* (40 points) The Secretary reviews each application to determine the quality of the internship plan, including—

(1) Choice of internship site;

(2) Statement of understanding from the proposed sponsor, including a description of the—

(i) Sponsoring agency's internship work plan, including specific assignments and learning experiences; and

(ii) Supervision to be provided to the intern through the sponsoring agency; and

(3) The length and description of the internship.

(c) *Budget.* (15 points) The Secretary reviews each application to determine the extent to which the intern has identified expenses that are reasonable and adequate to support the proposed internship.

(Authority: 20 U.S.C. 2414(d))

§ 419.23 What other factors may the Secretary consider?

(a) After evaluating the applications according to the criteria in § 419.22, the Secretary determines whether the most highly rated applications are equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of internships funded under this program.

(Authority: 20 U.S.C. 2301, 2414(d))

§ 419.24 How does the Secretary assign interns?

(a) In assigning students to internships, the Secretary considers the following:

(1) The opportunities to be provided by approved agencies or organizations.

(2) The goals of potential interns.

(3) The intern's choice of agencies or organizations.

(4) The availability of interns.

(b) In consultation with approved sponsors, the Secretary assigns interns to an agency or organization that will provide the best opportunities for an intern to accomplish his or her goals.

(Authority: 20 U.S.C. 2414(d))

§ 419.25 How is the amount of a stipend determined?

An intern's stipend is based on a subsistence allowance and other expenses of the intern, such as necessary travel expenses related to the internship, consistent with 5 U.S.C. Chapter 57.

(Authority: 20 U.S.C. 2414(d))

§ 419.26 How is a stipend distributed?

The Secretary pays an intern's stipend through the agency or organization sponsoring the internship. The sponsoring agency or organization must enter into an agreement with the Secretary to establish a payment schedule.

(Authority: 20 U.S.C. 2414(d))

Subpart D—What Conditions Must be Met by an Intern?

§ 419.30 May internships be interrupted?

An intern may request a leave of absence from the Secretary for a period no longer than three months. Leave of absence is permitted at the Secretary's discretion, but only if the sponsoring agency or organization certifies that the intern is eligible to resume his or her internship at the end of the leave of absence.

(Authority: 20 U.S.C. 2414(d))

§ 419.31 Under what conditions may the Secretary discontinue an internship?

(a) The Secretary may discontinue an internship, if the intern fails to—

(1) Comply with the provisions under this part, including failure to obtain an approved leave of absence under § 419.30, or with the terms and conditions of the internship award;

(2) Disclose any information that substantially affects his or her financial need for a cost item included in the stipend; or

(3) Report any change in his or her academic status;

(b) The Secretary will discontinue an internship only after providing reasonable notice and an opportunity for the intern to rebut, in writing or in an informal meeting with the responsible official in the Department, the basis for the decision.

(Authority: 20 U.S.C. 2414(d))

§ 419.32 Under what conditions must internship payments be returned?

(a) An intern who officially or unofficially withdraws from an internship or is expelled from an agency or organization before completion of an internship shall refund to the Secretary all or a prorated portion of the internship payments that have been received, as determined by the Secretary.

(b) If the individual is no longer eligible for an internship, the intern must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program. The amount of unexpended funds is determined by prorating the amount received for the internship in proportion to the amount of the internship during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(d))

§ 419.33 What is the repayment schedule?

(a) An intern required to repay all or a portion of internship payments shall begin repayments within one month of the date he or she ceases to be an intern; or

(b) An intern must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(d))

§ 419.34 What interest is charged?

(a) The Secretary charges an intern interest on the unpaid balance owed by an intern in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the intern is required to commence repayment; or

(2) During which repayment has been deferred under § 419.35.

(Authority: 20 U.S.C. 2414(d))

§ 419.35 Under what circumstance is repayment deferred?

The Secretary may defer repayment if an intern—

(a) Resumes an internship;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(d))

§ 419.36 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, an intern shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(d))

PART 420 [RESERVED]

22. Part 420 is reserved.

23. A new part 421 is added to read as follows:

PART 421—BUSINESS AND EDUCATION STANDARDS PROGRAM

Subpart A—General

Sec.

421.1 What is the Business and Education Standards Program?
421.2 Who is eligible for an award?
421.3 What activities may the Secretary fund?
421.4 What regulations apply?
421.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

421.20 How does the Secretary evaluate an application?
421.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

421.30 What is the cost-sharing requirement?

Authority: 20 U.S.C. 2416, unless otherwise noted.

Subpart A—General

§ 421.1 What is the Business and Education Standards Program?

The Business and Education Standards Program provides financial assistance for organizing and operating business-education-labor technical committees that will develop national standards for competencies in industries and trades.

(Authority: 20 U.S.C. 2416)

§ 421.2 Who is eligible for an award?

The following entities are eligible for an award under this program:

(a) Industrial trade associations.

(b) Labor organizations.

(c) National joint apprenticeship committees.

(d) Comparable national organizations, such as educational associations, industry councils, business and industry organizations, associations of private and national research organizations.

(Authority: 20 U.S.C. 2416)

§ 421.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements for projects that organize and operate business-labor-education technical committees that propose national standards for competencies in industries and trades, including standards for—

(a) Major divisions or specialty areas identified within occupations studied;

(b) Minimum hours of study to be competent in those divisions or specialty areas;

(c) Minimum tools and equipment required in those divisions or specialty areas;

(d) Minimum qualifications for instructional staff; and

(e) Minimum tasks to be included in any course of study purporting to prepare individuals for work in those divisions or specialty areas.

(Authority: 20 U.S.C. 2416)

§ 421.4 What regulations apply?

The following regulations apply to the Business and Education Standards Program:

(a) The regulations in this part 421.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2416)

§ 421.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2416)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 421.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperation agreement on the basis of the criteria in § 421.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 421.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 421.21.

(Authority: 20 U.S.C. 2416)

§ 421.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (15 points) The Secretary reviews each application to assess the quality and effectiveness of the applicants' approach to developing national standards for competencies in industries and trades, including the extent to which the application proposes—

(1) To develop standards for—

(i) The competencies required for actual jobs, including the increased competency requirements created by the changing workplace;

(ii) Major divisions or specialty areas identified within the occupations the applicant proposes to study;

(iii) The minimum hours of study needed to be competent in those divisions or specialty areas;

(iv) Minimum tools and equipment required in those divisions or specialty areas;

(v) Minimum tasks to be included in any course of study purporting to prepare individuals for work in those divisions or specialty areas; and

(vi) Minimum qualifications for instructional staff in those divisions or specialty areas; and

(2) An adequate needs assessment of the program factors described in paragraph (a)(1) as a part of the project.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including—

(1) The extent of the need for national standards for competencies in the major division or specialty areas identified within the occupations that the applicant proposes to study;

(2) How the applicant identified and documented those needs;

(3) How the standards to be developed will meet those needs, including the need of business for competent entry-level workers in the occupations to be studied; and

(4) The benefits to business, labor, and education that will result from meeting those needs.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including the extent to which—

(1) The plan of management will be effective, will ensure proper and efficient administration of the program, and includes timelines that show starting and ending dates for all tasks;

(2) The specific procedures proposed will accomplish the project's objectives, including how the procedures for selecting the committee will ensure that the members are knowledgeable about the occupations to be studied and include representatives of business, labor, and education;

(3) The applicant plans to organize and operate business-labor-education technical committees effectively in developing national standards for competencies in industries and trades;

(4) The development of proposed competencies for major divisions or specialty areas within occupations will be coordinated with education and industrial trade associations, labor organizations, and businesses;

(5) The methods the applicant proposes to use to select project participants, if applicable, will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the plan includes specific procedures for—

(1) A formative evaluation to help assess and improve the accuracy of standards for competencies; and

(2) A summative evaluation conducted by an independent evaluator.

(e) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the extent of the applicant's experience in fields related to the objectives of the project.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (e)(2)(i) and (ii) of this section will commit to the project; and

(iv) The experience and training of the project director and key personnel in project management.

(f) *Budget and cost effectiveness.* (10 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.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) A clear description of the dissemination procedures;

(2) A description of the types of materials the applicant plans to make available; and

(3) Provisions for publicizing the proposed national standards for competencies in industries and trades.

(Authority: 20 U.S.C. 2416)

Subpart D—What Conditions Must Be Met After an Award?

§ 421.30 What is the cost-sharing requirement?

(a) The Secretary pays no more than 50 percent of the cost of a project.

(b) Each recipient of an award under this part shall provide 50 percent of the cost of the business-labor-education technical committee established under the award.

(Authority: 20 U.S.C. 2416(c))

24. A new part 422 is added to read as follows:

PART 422—EDUCATIONAL PROGRAM FOR FEDERAL CORRECTIONAL INSTITUTIONS

Subpart A—General

Sec.

422.1 What is the Educational Program for Federal Correctional Institutions?
422.2 Who is eligible for an award?
422.3 What activities may the Secretary fund?
422.4 What regulations apply?
422.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

422.20 How does the Secretary evaluate an application?
422.21 What selection criteria does the Secretary use?
422.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

422.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2417, unless otherwise noted.

Subpart A—General

§ 422.1 What is the Educational Program for Federal Correctional Institutions?

The Educational Program for Federal Correctional Institutions provides financial assistance for the education and training of criminal offenders in Federal correctional institutions.

(Authority: 20 U.S.C. 2417(a))

§ 422.2 Who is eligible for an award?

(a) Awards are provided to consortia of—

(1) A Federal correctional institution; and

(2) An educational institution, community-based organization of demonstrated effectiveness, or business and industry.

(b) A consortium must include a Federal correctional institution and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) Members of a consortium shall apply jointly to the Secretary for funds.

(2) The members of a consortium shall enter into an agreement, in the form of a single document signed by all members, designating the Federal correctional institution as the applicant and the grantee. The agreement must also detail the role each member plans to perform, and must bind each member to every statement and assurance made in the application.

(Authority: 20 U.S.C. 2417(a))

§ 422.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements that may be used for—

(a) Basic education programs with an emphasis on literacy instruction;

(b) Vocational training programs;

(c) Guidance and counseling programs; and

(d) Supportive services for criminal offenders, with special emphasis on the coordination of educational services with agencies furnishing services to criminal offenders after the offenders are released from correctional institutions.

(Authority: 20 U.S.C. 2417(b))

§ 422.4 What regulations apply?

The following regulations apply to the Educational Program for Federal Correctional Institutions:

(a) The regulations in this part 422.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2417)

§ 422.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2417)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 422.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 422.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 422.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criteria.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 422.21.

(Authority: 20 U.S.C. 2417)

§ 422.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need.* (20 points) The Secretary reviews each application to assess the need for and the soundness of the rationale for the project, including—

(1) A clear description of the need for the proposed project;

(2) Specific evidence of the need for the project;

(3) A description of any ongoing and planned activities in the Federal correctional institution relative to the need; and

(4) Evidence that demonstrates the vocational training to be provided is designed to meet current and projected occupational needs.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals, including measurable goals for learner enrollment and completion in each academic skill and occupation for which training is to be provided;

(2) Definitions of successful program completion (or a description of how successful program completion will be defined and reported to the Secretary) for each academic skill and occupation for which training is to be provided. Successful program completion should be defined in terms of the academic and vocational competencies expected of enrollees prior to successful completion, and any academic or work credentials expected to be acquired upon completion;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes a description of the respective roles of each member of the consortium in carrying out the plan;

(4) The extent to which the objectives are clearly related to project goals and activities and are measurable with respect to anticipated enrollments, completions, and pre and post release services for participants;

(5) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(6) How the applicant will ensure that project participants, who are otherwise eligible to participate, are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications and experience of the project director, if one is to be used;

(ii) The qualifications and experience of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project activities;

(2) Costs are necessary and reasonable in relation to the objectives of the project and the numbers of participants to be served; and

(3) The budget narrative justifies the proposed expenditures.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected and reported with respect to enrollment and completion of participants by sex, racial or ethnic group and, if appropriate, by level of English proficiency, for each academic skill and occupation for which training is provided;

(2) The plan identifies at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by completers;

(3) The methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(4) The methods of evaluation provide periodic data that can be used by the project for ongoing program improvement.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 20 U.S.C. 2417)

§ 422.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 422.21, the Secretary determines whether the most highly rated applications are equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2301; 2417)

Subpart D—What Conditions Must be Met After an Award?

§ 422.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for either an internal or external evaluation, or both, of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(2) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment and completion by sex, racial or ethnic group, and, if appropriate, by level of English proficiency for each academic skill and occupation for which training has been provided.

(d) The annual evaluation must also include—

(1) The grantee's progress in achieving the objectives in its approved application including any approved revisions of the application;

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(3) The effectiveness of the project in promoting key elements for participants' job enhancement, including—

(i) Coordination of services;

(ii) Improved attendance rates; and

(iii) Improved basic skills competencies.

(Authority: 20 U.S.C. 2417)

25. A new part 423 is added to read as follows:

PART 423—VOCATIONAL EDUCATION DROPOUT PREVENTION PROGRAM

Sec.

423.1 What is the Vocational Education Dropout Prevention Program?
423.2 Who is eligible for an award?
423.3 What activities may the Secretary fund?
423.4 What regulations apply?
423.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

423.20 How does the Secretary evaluate an application?
423.21 What selection criteria does the Secretary use?
423.22 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

423.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2418, unless otherwise noted.

Subpart A—General

§ 423.1 What is the Vocational Education Dropout Prevention Program?

The Vocational Education Dropout Prevention Program provides financial assistance for projects to develop, implement, and operate vocational education programs designed to prevent students from dropping out of school.

(Authority: 20 U.S.C. 2418)

§ 423.2 Who is eligible for an award?

(a) Awards are provided to partnerships between—

(1) Local educational agencies or area vocational education schools; and

(2) Institutions of higher education or public or private nonprofit organizations that have an established record of vocational education strategies that prevent students from dropping out of school.

(b) Partnerships formed for the purpose of receiving an award under this program must include as partners at least one of the types of entities in paragraph (a)(1) of this section and one of the types of entities in paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every

statement and assurance made in the application.

(Authority: 20 U.S.C. 2418(a))

§ 423.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements to projects that develop, implement, and operate a vocational education program designed to prevent students from dropping out of secondary school.

(b) Projects assisted under this part must—

(1) Serve special populations, including significant numbers of economically disadvantaged, dropout-prone youth;

(2) Provide inservice training for teachers and administrators in dropout prevention; and

(3) Disseminate information relating to successful dropout prevention strategies and programs through appropriate dissemination networks such as the National Dropout Prevention Network, the National Dropout Prevention Center, and the Center on Adult, Career and Vocational Education of the Educational Resources Information Clearinghouse.

(c) Projects assisted under this part may not include pre-vocational education, employability skill training, or career education.

(Authority: 20 U.S.C. 2418)

§ 423.4 What regulations apply?

The following regulations apply to the Vocational Education Dropout Prevention Program:

(a) The regulations in this part 423.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2418)

§ 423.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2418)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 423.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 423.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 423.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 423.21.

(e) In addition to the 100 points to be awarded based on the criteria in § 423.21, the Secretary awards up to 10 points to applications that propose particularly effective activities that—

(1) Provide the special support services necessary to help individual students successfully complete the vocational education program such as mentoring, basic skills education, and services that address barriers to learning; and

(2) Use measures to integrate basic and academic skills instruction with work experience and vocational education.

(Authority: 20 U.S.C. 2418)

§ 423.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program design.* (15 points) The Secretary reviews each application to assess the effectiveness of the project including the quality of the—

(1) Vocational program dropout prevention model to be used in carrying out the purposes of this program, including services to be provided, who will provide them, and how they will be provided;

(2) Proposed methodology, specifically, the extent to which the project will include—

(i) Training in appropriate vocational skill areas;

(ii) A thorough assessment of individual student needs;

(iii) Flexibility in the structure of the delivery system to be used (e.g., in classroom hours, use of additional staff, classroom location, and student-teacher ratios);

(iv) Active recruitment;

(v) Thorough assessment and feedback on student progress;

(vi) Individualized treatment;

(vii) Tutoring and mentoring;

(viii) Adjustments for childcare;

(ix) Coordination of vocational instruction, academic instruction, and counseling services;

(x) Coordination with other agencies providing services to dropouts or potential dropouts;

(xi) Relevant work-related experience;

(xii) Transportation from school to work;

(xiii) Parental involvement;

(xiv) Community and business involvement; or

(xv) Inservice training for teachers and administrators in dropout prevention.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed dropout prevention program on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from these programs in such factors as—

(i) Student performance and achievement in such subjects as mathematics, science, communication, and technologies;

(ii) High school graduation;

(iii) Placement of students in jobs including military service; and

(iv) Successful matriculation of students to a variety of postsecondary educational programs.

(2) Proposes project objectives that contribute to the improvement of education;

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(4) Proposes a project that will be developed, implemented, operated, and demonstrated within the grant period.

(c) *Management plan.* (15 points) The Secretary reviews each application to assess the quality of the management plan for the project that includes the following elements:

(1) A clear chain of command, including how staff will be managed and how coordination among staff will be accomplished.

(2) Timelines for each activity.

(3) A clear description of the goals, objectives, and activities, and how each builds on the others.

(4) An effective strategy for the use of the resources and personnel from the grant to achieve each objective.

(5) A detailed description of how subcontracts will be awarded, monitored, and evaluated, if subcontracts are to be used.

(d) *Key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications (as described in a job description or a resume), in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine—

(1) The quality and comprehensiveness of the independent evaluation plan for the project, including the extent to which the plan includes activities during the formative stages of the project to help to guide and improve the project, as well as a final evaluation that includes summary data and recommendations;

(2) The extent to which the plan—

(i) Is clearly explained and is appropriate to the project;

(ii) To the extent possible, is objective and will produce data that are quantifiable;

(iii) Identifies expected outcomes of the participants and how those outcomes will be measured;

(iv) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(v) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effective Panel.

(3) The qualifications (as described in a job description or a resume) of the independent evaluator to be used in the project.

(f) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is detailed and tied to the proposed activities;

(2) The budget narrative explains and justifies each budget item in detail;

(3) The budget is adequate to support the project; and

(4) Costs are reasonable in relation to the objectives of the project.

(g) *Demonstration and dissemination plan.* (10 points) The Secretary reviews each application to assess the quality of the plan for demonstrating and disseminating information about the project, including the—

(1) Quality of the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Target groups, timelines, and responsibilities for each dissemination activity, including provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available.

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project; and

(6) A description of the cost and logistical provisions to be made if there is an intent to engage in a subcontract with one or more of the national dissemination entities described in § 423.3(b)(3) for dissemination services.

(Authority: 20 U.S.C. 2418)

§ 423.22 What additional factors may the Secretary consider?

After evaluating applications according to the criteria in § 423.21, the Secretary may select other than the most highly rated applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2418)

Subpart D—What Conditions Must Be Mdt After an Award?

§ 423.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for a third-party evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2418)

26. A new part 424 is added to read as follows:

PART 424—MODEL CENTERS OF REGIONAL TRAINING FOR SKILLED TRADES PROGRAM

Subpart A—General

Sec.

424.1 What is the Model Centers of Regional Training for Skilled Trades Program?
424.2 Who is eligible for an award?
424.3 What activities may the Secretary fund?
424.4 What regulations apply?
424.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

424.20 How does the Secretary evaluate an application?
424.21 What selection criteria does the Secretary use?
424.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

424.30 What are the evaluation requirements?
424.31 May the Secretary restrict the use of funds for equipment?

Authority: 20 U.S.C. 2419, unless otherwise noted.

Subpart A—General

§ 424.1 What is the Model Centers of Regional Training for Skilled Trades Program?

The Model Centers of Regional Training for Skilled Trades Program provides financial assistance for regional model centers that provide—

(a) Training for skilled tradesmen within a region serving several States; and

(b) Technical assistance for programs that train skilled tradesmen within a region serving several States.

(Authority: 20 U.S.C. 2419)

§ 424.2 Who is eligible for an award?

Entities proposing to develop a regional model center or existing regional model centers that provide training for skilled tradesmen within a

region serving several States and technical assistance for programs that train skilled tradesmen within a region serving several States are eligible for awards under this program.

(Authority: 20 U.S.C. 2419(a))

§ 424.3 What activities may the Secretary fund?

The Secretary provides grants or cooperative agreements to model centers for regional training for skilled trades. Each project assisted by the Secretary must—

(a) Provide training and career counseling for skilled tradesmen in areas of skill shortages or projected skill shortages;

(b) Provide pre-job and apprenticeship training and career counseling in skilled trades;

(c) Upgrade specialized craft training; and

(d) Improve the access of women, minorities, economically disadvantaged individuals, individuals with handicaps and ex-criminal offenders to trade occupations and training.

(Authority: 20 U.S.C. 2419(b))

§ 424.4 What regulations apply?

The following regulations apply to the Model Centers of Regional Training for Skilled Trades Program:

(a) The regulations in this part 424.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2419)

§ 424.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The term *skilled trades* includes, among other occupations, "construction trades" and "firefighting" which are defined as follows:

(1) *Construction trades* means a summary of groups of instructional programs that prepare individuals to erect, install, maintain, and repair buildings, highways, airports, missile sites, and other structures using materials such as metal, wood, stone, brick, glass, concrete, and composition substances. The term includes instruction in cost estimating; cutting, fastening, and fitting various materials; the use of hand and power tools; and in following technical specifications and blueprints.

(2) *Firefighting* means an instructional program that prepares individuals to fight fires, and control the outbreak of fires. The term includes instruction in fire department organization; the use of water and other materials in firefighting and various kinds of equipment such as extinguishers, pumps, hoses, ropes, ladders, gas masks, hydrants, and standpipe and sprinkler systems; entry and rescue and salvage practices and equipment; and fire and arson inspection and investigation techniques.

(Authority: 20 U.S.C. 2419; H. Rep. No. 101-660, 101st Cong., 2nd Sess. 147 (1990))

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 424.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 424.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 424.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 424.21.

(e) In addition to points awarded under § 424.21, the Secretary may award up to five points to applications that propose particularly effective training in the masonry trades.

(Authority: 20 U.S.C. 2419; H. Rep. No. 101-660, 101st Cong., 2nd Sess. 147 (1990))

§ 424.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the quality of the proposed model center of regional training for skilled trades and how well the project will—

(1) Provide training and career counseling for skilled tradesmen in areas of labor or skill shortages or projected labor or skill shortages;

(2) Provide pre-job and apprenticeship training and career counseling in skilled trades;

(3) Upgrade specialized craft training; and

(4) Improve the access of women, minorities, economically disadvantaged individuals, individuals with disabilities and ex-criminal offenders to trade occupations and training.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed national model center of regional training for skilled trades on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) Placement of students in jobs, including military service; and

(iii) Successful matriculation of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of training for skilled tradesmen;

(3) Proposes to use innovative techniques that address problems and needs associated with training skilled tradesmen and that are of national significance; and

(4) Is likely to make a significant contribution to training skilled tradesmen in areas of skill shortages or projected skill shortages in the region in which the project will be located.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) Is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the skilled trades training methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire regional model center equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2419)

§ 424.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 424.21, the Secretary considers whether the most highly rated applications are equitably distributed among the skilled trades with shortages.

(b) The Secretary may select other applications for funding if doing so would improve the distribution of projects funded under this program among the skilled trades with shortages.

(Authority: 20 U.S.C. 2419(c))

Subpart D—What Conditions Must Be Met After an Award?

§ 424.30 What are the evaluation requirements?

(a) Each grant recipient shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, placement rates, and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2419)

§ 424.31 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the **Federal Register** the percentage of Federal funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2419)

27. Part 425 is added to read as follows:

PART 425—DEMONSTRATION PROJECTS FOR THE INTEGRATION OF VOCATIONAL AND ACADEMIC LEARNING PROGRAM

Subpart A—General

Sec.

425.1 What is the Demonstration Projects for the Integration of Vocational and Academic Learning Program?
425.2 Who is eligible for an award?
425.3 What activities may the Secretary fund?
425.4 What regulations apply?
425.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

425.20 How does the Secretary evaluate an application?
425.21 What selection criteria does the Secretary use?
425.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

425.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2420, unless otherwise noted.

Subpart A—General

§ 425.1 What is the Demonstration Projects for the Integration of Vocational and Academic Learning Program?

The Demonstration Projects for the Integration of Vocational and Academic Learning Program provides financial assistance to projects that develop, implement, and operate programs using different models of curricula that integrate vocational and academic learning.

(Authority: 20 U.S.C. 2420(a))

§ 425.2 Who is eligible for an award?

(a) The following entities are eligible for an award under the Demonstration Projects for the Integration of Vocational and Academic Learning Program:

(1) An institution of higher education.

(2) An area vocational education school.

(3) A secondary school funded by the Bureau of Indian Affairs.

(4) A State board of vocational education.

(5) A public or private nonprofit organization.

(6) A local educational agency.

(b) Consortia composed of the entities described in paragraph (a) of this section also are eligible for awards under this program.

(Authority: 20 U.S.C. 2420(a))

§ 425.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements to projects that develop, implement, and operate programs using different models of curricula that integrate vocational and academic learning by—

(1) Designing integrated curricula and courses;

(2) Providing inservice training for teachers of vocational education students and administrators in integrated curricula; and

(3) Disseminating information regarding effective integrative strategies to other school districts through the National Diffusion Network (NDN) under section 1562 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2962), or, in the case of projects that will be funded for less than three years, disseminating information about the design of a project necessary for effective integrative strategies to be supported, so that they may be disseminated through NDN.

(b) Each project supported under this part must serve—

(1) Individuals who are members of special populations;

(2) Vocational students in secondary schools;

(3) Vocational students at postsecondary institutions;

(4) Individuals enrolled in adult programs; or

(5) Single parents, displaced homemakers, and single pregnant women.

(Authority: 20 U.S.C. 2420(a), (b)(3) and (4))

§ 425.4 What regulations apply?

The following regulations apply to the Demonstration Projects for the Integration of Vocational and Academic Learning Program:

(a) The regulations in this part 425.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2420)

§ 425.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2420)

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 425.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 425.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 425.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 425.21.

(Authority: 20 U.S.C. 2420)

§ 425.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the quality of the proposed project, including—

(1) The extent to which the project involves creative or innovative methods for integrating vocational and academic learning; and

(2) The extent to which the project will serve—

(i) Individuals who are members of special populations;

(ii) Vocational students in secondary schools and at postsecondary institutions;

(iii) Individuals enrolled in adult programs; or

(iv) Single parents, displaced homemakers, and single pregnant women.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed project on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques that address the need to integrate vocational and academic learning, and produce benefits that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Carries out the requirements in § 425.30;

(2) Is clearly explained and is appropriate to the project;

(3) To the extent possible, is objective and will produce data that are quantifiable;

(4) Includes quality measures to assess the effectiveness of the curricular developed by the project;

(5) Identifies expected outcomes of the participants and how those outcomes will be measured;

(6) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(7) Will lead to the demonstration of a clear link between the intended positive results and the specific treatment of project participants; and

(8) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of the audience to which the project activities will be disseminated and provisions for publicizing the project at the local, State, and national levels by conducting, or delivering presentations at, conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the methods, approaches, and techniques developed by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities, to ensure that funds awarded under this part are used to provide instructional services.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2420)

§ 425.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 425.21, the Secretary determines whether the most highly rated applications—

(1) Are equitably distributed throughout the Nation;

(2) Offer significantly different approaches to integrating vocational and academic curricula; and

(3) Serve individuals described in § 425.3(b).

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of, diversity of approaches in, or the diversity of populations to be served by projects funded under this program.

(Authority: 20 U.S.C. 2420(b))

Subpart D—What Conditions Must Be Met After an Award?

§ 425.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) Each grantee shall employ adequate measures to evaluate the effectiveness of the curriculum approaches supported by the project.

(d) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(e) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(f) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2420(b)(5))

28. Part 426 is added to read as follows:

PART 426—COOPERATIVE DEMONSTRATION PROGRAM

Subpart A—General

Sec.

426.1 What is the Cooperative Demonstration Program?

Sec.

426.2 Who is eligible for an award?
426.3 What activities may the Secretary fund?
426.4 What activities does the Secretary fund under the Demonstration Projects?
426.5 What activities does the Secretary fund under the Programs for Model Consumer and Homemaking Education Projects?
426.6 What activities does the Secretary fund under the Community-based Organization Projects?
426.7 What activities does the Secretary fund under the Agriculture Action Centers?
426.8 What regulations apply?
426.9 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

426.20 How does the Secretary evaluate an application?
426.21 What selection criteria does the Secretary use for the Demonstration Projects?
426.22 What selection criteria does the Secretary use for the Program for Model Consumer and Homemaking Education Projects?
426.23 What selection criteria does the Secretary use for the Community-based Organization Projects?
426.24 What selection criteria does the Secretary use for Agriculture Action Centers?
426.25 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

426.30 What is the requirement regarding cost-sharing?
426.31 What is the requirement regarding dissemination?
426.32 What are the evaluation requirements?
426.33 May the Secretary restrict the use of funds for equipment?

Authority: 20 U.S.C. 2420a, unless otherwise noted.

Subpart A—General

§ 426.1 What is the Cooperative Demonstration Program?

The Cooperative Demonstration Program provides financial assistance for—

(a) Model projects providing improved access to quality vocational education programs for individuals who are members of special populations and for men and women seeking non-traditional occupations;

(b) Projects that are examples of successful cooperation between the private sector and public agencies in vocational education;

(c) Projects to overcome national skill shortages;

(d) Projects that develop consumer and homemaking education programs, including child growth and development centers;

(e) Projects that assist disadvantaged youths in preparing for technical and professional health careers; and

(f) Model projects providing access to vocational education programs through agriculture action centers.

(Authority: 20 U.S.C. 2420a(a))

§ 426.2 Who is eligible for an award?

(a) The following entities are eligible to apply for an award for activities described in §§ 426.4, 426.5, and 426.7:

(1) State educational agencies.

(2) Local educational agencies.

(3) Postsecondary educational institutions.

(4) Institutions of higher education.

(5) Other public and private agencies, organizations, and institutions.

(b)(1) Awards for activities described in § 426.6 are provided to partnerships between—

(i) Community-based organizations; and

(ii) Local schools, institutions of higher education, and businesses.

(2) A partnership formed for the purpose of receiving an award under § 426.6 shall include as partners at least one community-based organization and at least one entity from the groups listed in paragraph (b)(1)(ii) of this section, and may include more than one entity from each group.

(3) The partners shall apply jointly to the Secretary for an award under this part.

(4) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application.

(Authority: 20 U.S.C. 2420a(a))

§ 426.3 What activities may the Secretary fund?

(a) The Secretary supports, directly or through grants, cooperative agreements, or contracts, the following types of projects:

(1) *Demonstration Projects.* The Secretary supports model projects providing improved access to high quality vocational education for members of special populations and men and women seeking to enter non-traditional occupations, projects that are models of successful cooperation between the private sector and projects to overcome national skill shortages, as described in § 426.4.

(2) *Program for Model Consumer and Homemaking Education Projects.* The Secretary supports model projects that improve instruction and curricula related to consumer and homemaking skills, as described in § 426.5.

(3) *Community-Based Organization Projects.* The Secretary supports community-based organizations in partnerships with entities listed in § 426.2(b)(1)(ii), to operate projects that assist disadvantaged youths in preparing for technical and professional health careers, as described in § 426.6.

(4) *Agriculture Action Centers.* The Secretary supports model projects providing improved access to vocational education programs through agriculture action centers, as described in § 426.7.

(b) All projects assisted under the Cooperative Demonstration Program must be—

(1) Of direct service to the individuals enrolled; and

(2) Capable of wide replication by service providers.

(Authority: 20 U.S.C. 2420a(a))

§ 426.4 What activities does the Secretary fund under the Demonstration Projects?

The Secretary supports the following types of projects:

(a) Model projects providing improved access to quality vocational education programs for—

(1) Individuals with disabilities;

(2) Educationally and economically disadvantaged individuals (including foster children);

(3) Individuals of limited English proficiency;

(4) Individuals who participate in programs designed to eliminate sex bias;

(5) Individuals in correctional institutions; and

(6) Men and women seeking to enter nontraditional occupations.

(b)(1) Projects that are examples of successful cooperation between the private sector (including employers, consortia of employers, labor organizations, building trade councils, and private agencies, organizations, and institutions) and public agencies in vocational education (including State boards of vocational education and eligible recipients as defined in 34 CFR 400.4).

(2) The projects described in paragraph (b)(1) of this section must be designed to demonstrate ways in which vocational education and the private sector of the economy can work together effectively to assist vocational education students to attain the advanced level of skills needed to make the transition from school to productive employment, including—

(i) Work experience and apprenticeship projects;

(ii) Transitional work site job training for vocational education students that is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible recipient;

(iii) Placement services in occupations that the students are preparing to enter;

(iv) If practical, projects that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas; or

(v) Employment-based learning programs.

(3) The projects described in paragraphs (b) (1) and (2) of this section may include institutional and on-the-job training, supportive services authorized by the Act, and other assistance as the Secretary determines to be necessary for the successful completion of the project.

(c) Projects to overcome national skill shortages, as designated by the Secretary in cooperation with the Secretary of Labor, Secretary of Defense, and Secretary of Commerce.

(Authority: 20 U.S.C. 2420a (a)(1)–(3) and (b)(1))

§ 426.5 What activities does the Secretary fund under the Program for Model Consumer and Homemaking Education Projects?

The Secretary supports model projects that develop programs and improve instruction and curricula related to—

(a) Managing individual and family resources;

(b) Making consumer choices;

(c) Balancing work and family;

(d) Improving responses to individual and family crises, including family violence and child abuse;

(e) Strengthening parenting skills, especially among teenage parents;

(f) Preventing teenage pregnancy;

(g) Assisting aged individuals with disabilities, and members of at-risk populations, including the homeless;

(h) Conserving limited resources;

(i) Improving individual, child, and family nutrition and wellness;

(j) Understanding the impact of new technology on life and work;

(k) Applying consumer and homemaking education skills to jobs and careers;

(l) Other needs to be determined by the State board of vocational education; and

(m) Developing child growth and development centers.

(Authority: 20 U.S.C. 2420a(4))

§ 426.6 What activities does the Secretary fund under the Community-based Organization Projects?

(a) The Secretary supports projects that assist disadvantaged youths in preparing for technical and professional health careers.

(b) The Secretary may require partnerships described in § 426.2(b)(1) to provide in-kind contributions from such schools, institutions, and businesses and to involve health professionals serving as instructors and counselors.

(Authority: 20 U.S.C. 2420a(5))

§ 426.7 What activities does the Secretary fund under the Agriculture Action Centers?

The Secretary supports model Agriculture Action Centers that provide improved access to vocational education programs and that—

(a) Assist individuals—

(1) Who are adversely affected by farm and rural economic downturns;

(2) Who are dislocated from farming; and

(3) Who are dislocated from agriculturally related businesses and industries that are adversely affected by farm and rural economic downturns;

(b) Provide services, including—

(1) Crisis management counseling and outreach counseling that would include members of the family of the affected individual;

(2) Evaluation of vocational skills and counseling on enhancement of these skills;

(3) Assistance in obtaining training in basic, remedial, and literacy skills;

(4) Assistance in seeking employment and training in employment-seeking skills; and

(5) Assistance in obtaining training related to operating a business or enterprise;

(c) Provide for formal and on-the-job training to the extent practicable; and

(d) Are coordinated with activities and discretionary programs under title III of the Job Training Partnership Act (JTPA) (29 U.S.C. 1651 *et seq.*).

(Authority: 20 U.S.C. 2420a(6))

§ 426.8 What regulations apply?

The following regulations apply to the Cooperative Demonstration Program:

(a) The regulations in this part 426.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2420a)

§ 426.9 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2420a)

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 426.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 426.21, 426.22, 426.23, or 426.24.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §§ 426.21, 426.22, 426.23, or 426.24.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in §§ 426.21, 426.22 426.23, or 426.24.

(Authority: 20 U.S.C. 2420a)

§ 426.21 What selection criteria does the Secretary use for the Demonstration Projects?

The Secretary uses the following criteria to evaluate an application for a grant or cooperative agreement:

(a) *Program factors.* (10 points) The Secretary reviews the application to assess the quality of the proposed project, including the extent to which the project will provide—

(1) Vocational education to meet current and projected occupational needs; and

(2) For adequate and appropriate involvement and cooperation of the public and private sectors in the project, including—

(i) A clear identification of the public and private sector entities involved in the project;

(ii) A description of public and private sector involvement in the planning of the project; and

(iii) A description of public and private sector involvement in the operation of the project.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed project on successfully designed, established, and operated model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will lead to the demonstration of a clear link between the intended positive results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Disseminating the results of the project in a manner that would meet the requirement in § 426.31;

(3) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(4) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(5) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(6) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project. For the Community-based Organization Program, the Secretary determines the qualifications, in relation to project requirements, of health professionals serving as preceptors and counselors and of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project. For the Program for Model Consumer and Homemaking Education Projects, the Secretary also considers the experience and training of key personnel in consumer and homemaking education; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities. For the Community-based Organization Program, the Secretary also determines the extent to which the budget includes in-kind contributions from partnership members.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which the—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2420a)

§ 426.22 What selection criteria does the Secretary use for the Program for Model Consumer and Homemaking Education Projects?

(a) The Secretary uses the following criteria to evaluate an application for a grant or cooperative agreement:

(1) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which project activities will improve, expand, and update programs that will—

(i) Be conducted for residents of economically depressed areas or areas with high rates of unemployment;

(ii) Encourage participation of traditionally underserved populations;

(iii) Encourage the elimination of sex bias and sex stereotyping; and

(iv) Address priorities and emerging concerns at the local, State, and national levels, such as the articulation of secondary and postsecondary consumer and homemaking education programs and the integration of basic skills in consumer and homemaking education programs.

(2) *Demonstration program design.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(i) Bases the proposed consumer and homemaking education project on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(A) Student performance and achievement;

(B) Placement of students in jobs, including the preparation of students for the occupation of homemaking; and

(C) Successful transfer of students to a wide variety of postsecondary educational programs;

(ii) Proposes project objectives that contribute to the improvement of consumer and homemaking education; and

(iii) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(b) The Secretary also uses the criteria and points in § 426.21(c)–(h) to evaluate an application.

(Authority: 20 U.S.C. 2420a)

§ 426.23 What selection criteria does the Secretary use for the Community-based Organization Projects?

(a) The Secretary uses the following criterion to evaluate an application for a grant or cooperative agreement:

Program factors. (10 points) The Secretary reviews the quality of a proposed project to assess the extent to which the proposed project—

(1) Will assist disadvantaged youths in preparing for technical and professional health careers;

(2) Provides for adequate and appropriate involvement of local schools, institutions of higher education, and businesses in the project, including—

(i) Clear identification of partnership members;

(ii) Involvement of partnership members in the planning of the project; and

(iii) Involvement of partnership members in the operation of the project; and

(3) Will coordinate activities to ensure that the project will help meet current and projected occupational needs in the area.

(b) The Secretary also uses the criteria and points in § 426.21(b)–(h) to evaluate an application.

(Authority: 20 U.S.C. 2420a)

§ 426.24 What selection criteria does the Secretary use for Agriculture Action Centers?

(a) The Secretary uses the following criterion to evaluate an application for a grant or cooperative agreement:

Program factors. (10 points) The Secretary reviews each application to determine the extent to which the proposed Agriculture Action Center will—

(1) Provide vocational education to meet current and projected occupational needs; and

(2) Be located in a service area that includes a high concentration of individuals who are—

(i) Adversely affected by farm and rural economic downturns;

(ii) Dislocated from farming; and

(iii) Dislocated from agriculturally-related businesses and industries that are adversely affected by farm and rural economic downturns.

(b) The Secretary also uses the criteria and points in § 426.21(b)–(h) to evaluate an application.

(Authority: 20 U.S.C. 2420a)

§ 426.25 What additional factors may the Secretary consider?

After evaluating applications according to criteria in §§ 426.21, 426.22, 426.23, or 426.24, the Secretary may fund other than the most highly rated applications if doing so would improve the geographical distribution of projects funded under this part.

(Authority: 20 U.S.C. 2420a)

Subpart D—What Conditions Must Be Met After an Award?

§ 426.30 What is the requirement regarding cost-sharing?

(a) A recipient of an award under this part shall provide not less than 25 percent of the total cost (the sum of the Federal and non-Federal shares) of the project it conducts under this program.

(b) In accordance with subpart G of 34 CFR part 74, the non-Federal share may be in the form of cash or in-kind contributions, including the fair market value of facilities, overhead, personnel, and equipment.

(Authority: 20 U.S.C. 2420a(b)(2))

§ 426.31 What is the requirement regarding dissemination?

Recipients must disseminate the results of projects assisted under this part in a manner designed to improve the training of teachers, other instructional personnel, counselors, and administrators who are needed to carry out the purposes of the Act.

(Authority: 20 U.S.C. 2420a(d))

§ 426.32 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Authority: 20 U.S.C. 2420a)

§ 426.33 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the **Federal Register** the percentage of Federal funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2420a)

29. Part 427 is added to read as follows:

PART 427—BILINGUAL VOCATIONAL TRAINING PROGRAM

Subpart A—General

Sec.

427.1 What is the Bilingual Vocational Training Program?

Sec.
427.2 Who is eligible for an award?
427.3 What activities may the Secretary fund?
427.4 What regulations apply?
427.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

427.10 What must an application contain?

Subpart C—How does the Secretary Make an Award?

427.20 How does the Secretary evaluate an application?
427.21 What selection criteria does the Secretary use?
427.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must be Met After an Award?

427.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2441(a), unless otherwise noted.

Subpart A—General

§ 427.1 What is the Bilingual Vocational Training Program?

The Bilingual Vocational Training Program provides financial assistance for bilingual vocational education and training for limited English proficient out-of-school youth and adults, to prepare these individuals for jobs in recognized occupations and new and emerging occupations.

(Authority: 20 U.S.C. 2441(a))

§ 427.2 Who is eligible for an award?

(a) The following entities are eligible for an award under this program:

(1) State agencies.

(2) Local educational agencies (LEAs).

(3) Postsecondary educational institutions.

(4) Private nonprofit vocational training institutions.

(5) Other nonprofit organizations specially created to serve or currently serving individuals who normally use a language other than English.

(b) Private for-profit agencies and organizations are eligible only for contracts under this program.

(Authority: 20 U.S.C. 2441(a))

§ 427.3 What activities may the Secretary fund?

(a) The Secretary provides grants, cooperative agreements, or contracts for—

(1) Bilingual vocational training projects for limited English proficient out-of-school youth and adults who are available for training and employment;

(2) Bilingual vocational education and training projects for limited English proficient out-of-school youth and adults who have already entered the labor market but who desire or need English language skills and job skills training or retraining to achieve employment in a recognized occupation or new and emerging occupations, adjust to changing work force needs, expand their range of skills, or advance in employment; and

(3) Training stipends for participants in bilingual vocational training projects.

(b) Bilingual vocational training projects must include instruction in the English language to ensure that participants in that training will be equipped to pursue occupations in an English language environment.

(c) In the Commonwealth of Puerto Rico, the Bilingual Vocational Training Program may provide for the needs of students of limited Spanish proficiency.

(Authority: 20 U.S.C. 2441(a), (e)(2))

§ 427.4 What regulations apply?

The following regulations apply to the Bilingual Vocational Training Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 427.

(Authority: 20 U.S.C. 2441(a))

§ 427.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: 20 U.S.C. 2441(a))

Subpart B—How Does One Apply for an Award?

§ 427.10 What must an application contain?

(a) An application must—

(1) Provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(2) Propose a project of a size, scope, and design that will make a substantial contribution toward carrying out the purpose of the Bilingual Vocational Training Program;

(3) Contain measurable goals for the enrollment, completion, and placement of program participants;

(4) Include a comparison of how the applicant's goals take into consideration any related standards and measures in the geographic area for the Job Opportunities and Basic Skills Training (JOBS) program (42 U.S.C. 681 *et seq.*) and any Job Training Partnership Act (JTPA) programs (29 U.S.C. 1501 *et seq.*) and any standards set by the State Board for Vocational Education for the occupational and geographic area;

(5) Describe, for each occupation for which training is to be provided, how successful program completion will be determined and reported to the Secretary in terms of the academic and vocational competencies to be demonstrated by enrollees prior to successful completion and any academic or work credentials expected to be acquired upon completion; and

(6) Be submitted to the State board for vocational education (State board) established under section 111 of the Act for review and comment, including comment on the relationship of the proposed project to the State's vocational education program.

(b) An applicant shall include any comments received under paragraph (a)(6) of this section with the application.

(Authority: 20 U.S.C. 2441(a), (d)(1) and (2))

Subpart C—How Does the Secretary Make an Award?

§ 427.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 427.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 427.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 427.21.

(Authority: 20 U.S.C. 2441(a))

§ 427.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria to evaluate an application:

(a) *Need.* (15 points) (1) The Secretary reviews each application for specific information that shows the need for the proposed bilingual vocational training project in the local geographic area, including—

(i) The employment training need to be met;

(ii) The labor market need to be met; and

(iii) The relationship of the proposed project to other employment training programs in the community.

(2) The Secretary reviews each application to determine the extent to which the project proposes measurable goals for student enrollment, completion, and placement and describes how the applicant sets the

goals taking into consideration the standards and measures for JOBS programs and JTPA programs and any standards set by the State Board established under section 111 of the Act for the occupation and geographic area.

(3) The Secretary reviews each application to determine the extent to which the project defines successful program completion (or describes how successful program completion will be defined and reported to the Secretary) in a way consistent with the goals of the program for each occupation for which training is to be provided.

(4)(i) The Secretary reviews each application for specific information that, upon completion of their training, more than 65 percent of the trainees will be employed in jobs (including military specialties) related to their training, or will be enrolled for further training related to their training under this program. This information should correspond to the information described in paragraph (a)(1) of this section.

(ii) The estimated job placement rate should be supported by past records, actual employer job commitments, anticipated job openings, or other pertinent information.

(b) *Plan of operation.* (15 points) The Secretary reviews each application for an effective plan of management that ensures proper and efficient administration of the project, including—

(1) Clearly defined project objectives that relate to the purpose of the Bilingual Vocational Training Program;

(2) For each objective, the specific tasks to be performed in order to achieve the specified project objective;

(3) How the applicant plans to use its resources and personnel to achieve each objective; and

(4) If the applicant plans to use a project advisory committee, a clear plan for using a project advisory committee to assist in project development, to review curriculum materials, and to make recommendations about job placements.

(c) *Program factors.* (20 points) (1) The Secretary reviews each application to determine the quality of training to be provided, including—

(i) Provision of vocational skills instruction in English and the trainees' native languages;

(ii) Provision of job-related English-as-a-second language instruction;

(iii) Coordination of the job-related English-as-a-second language instruction with the vocational skills instruction;

(iv) Recruitment procedures that are targeted towards limited English proficient out-of-school youth and adults who have the greatest need for bilingual vocational training;

(v) Assessment procedures that evaluate the language and vocational training needs of the trainees;

(vi) Provision of counseling activities and employability skills instruction that prepare trainees for employment in an English language environment; and

(vii) Job development and job placement procedures that provide opportunities for career advancement or entrepreneurship.

(2) The Secretary reviews each application to determine the project's potential to have a lasting impact in the local geographic area, including the potential impact of the project on—

(i) Program participants;

(ii) The agency or agencies responsible for administering the bilingual vocational training program;

(iii) Other employment training services in the local area; and

(iv) The community.

(d) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project;

(ii) The appropriateness of the time that each person referred to in paragraph (d)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraph (d)(1)(i) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is sufficient to support the proposed project, and that it represents a cost effective use of Bilingual Vocational Training Program funds;

(2) Costs are necessary and reasonable in relation to the objectives of the proposed project; and

(3) The facilities, equipment, and supplies that the applicant plans to use are adequate for the proposed project.

(f) *Evaluation plan.* (10 points)

The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and appropriate for the project;

(2) Identifies at a minimum, types of data to be collected and reported with respect to the English-language competencies and academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by individuals who complete the training;

(3) Identifies at a minimum, types of data to be collected and reported with respect to enrollment, completion, and placement of participants by sex, racial or ethnic group, socio-economic status, and where appropriate, by level of English proficiency, for each occupation for which training is provided;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as, a summative evaluation that includes recommendations for replicating project activities and results; and

(5) Makes use of an external evaluator.

(g) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for making available the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(Authority: 20 U.S.C. 2441(a))

§ 427.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 427.21 and consulting with the appropriate State board established under section 111 of the Act, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the—

(1) Equitable distribution of assistance among populations of individuals with limited English proficiency within a State; or

(2) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2441(d)(5))

Subpart D—What Conditions Must Be Met After an Award?

§ 427.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for an independent evaluation of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include descriptions and analyses of the accuracy of records and validity of measures by the project to establish and report on the English-language competencies and academic and vocational competencies demonstrated and the academic and work credentials acquired.

(d) The annual evaluation must contain descriptions and analyses of the accuracy of records and validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex, racial or ethnic group, socio-economic status, and if appropriate, by level of English proficiency for each occupation for which training has been provided.

(e) The annual evaluation must also include—

(1) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application;

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(3) The effectiveness of the project in promoting key elements for participants' job readiness, including—

(i) Coordination of services; and

(ii) Improved English-language, academic, and vocational skills competencies.

(Authority: 20 U.S.C. 2441(a))

30. Part 428 is added to read as follows:

PART 428—BILINGUAL VOCATIONAL INSTRUCTOR TRAINING PROGRAM

Subpart A—General

Sec.

428.1 What is the Bilingual Vocational Instructor Training Program?
428.2 Who is eligible for an award?
428.3 What activities may the Secretary fund?
428.4 What regulations apply?
428.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

428.10 What must an application contain?

Subpart C—How Does the Secretary Make an Award?

428.20 How does the Secretary evaluate an application?
428.21 What selection criteria does the Secretary use?
428.22 What additional factors does the Secretary consider?

Authority: 20 U.S.C. 2441(b), unless otherwise noted.

Subpart A—General

§ 428.1 What is the Bilingual Vocational Instructor Training Program?

The Bilingual Vocational Instructor Training Program provides financial assistance for preservice and inservice training for personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient out-of-school youth and adults.

(Authority: 20 U.S.C. 2441(b))

§ 428.2 Who is eligible for an award?

(a) The following entities are eligible for grants, contracts, or cooperative agreements under this program:

(1) State agencies.

(2) Public and private nonprofit educational institutions.

(b) Private for-profit educational institutions are eligible only for contracts under this program.

(Authority: 20 U.S.C. 2441(b)(1))

§ 428.3 What activities may the Secretary fund?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements for—

(1) Preservice and inservice training for instructors, aides, counselors, or other ancillary personnel participating in or preparing to participate in bilingual vocational training programs for out-of-school youth and adults; and

(2) Fellowships and traineeships for individuals participating in preservice or inservice training.

(b) The Secretary does not make an award under this program unless the Secretary determines that the applicant has an ongoing vocational education program in the field in which participants will be trained, and can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual vocational training project.

(Authority: 20 U.S.C. 2441(b))

§ 428.4 What regulations apply?

The following regulations apply to the Bilingual Vocational Training Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 428.

(Authority: 20 U.S.C. 2441(b))

§ 428.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: 20 U.S.C. 2441(b))

Subpart B—How Does One Apply for an Award?

§ 428.10 What must an application contain?

An application must—

(a) Provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(b) Propose a project of a size, scope and design that will make a substantial contribution toward carrying out the purpose of the Bilingual Vocational Instructor Training Program;

(c) Describe the capabilities of the applicant, including vocational training or education courses offered by the applicant, accreditation, and any certification of courses by appropriate State agencies;

(d) Describe the qualifications of principal staff to be used in the bilingual vocational instructor training project;

(e) Describe the number of participants to be served, the minimum qualifications for project participants, and the selection process for project participants;

(f) Include the projected amount of the fellowships or traineeships, if any;

(g) Contain sufficient information for the Secretary to make the determination required by § 428.3(b); and

(h) Provide an assurance that preservice training will be provided to individuals who have indicated their intent to engage as personnel in a vocational education program that

serves limited English proficient out-of-school youth and adults.

(Authority: 20 U.S.C. 2441(d)(1), (4))

Subpart C—How Does the Secretary Make an Award?

§ 428.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 428.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) or this section, based on the criteria in § 428.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 428.21.

(Authority: 20 U.S.C. 2441(b), (d)(5))

§ 428.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points) (1) The Secretary reviews each application to determine the need for the proposed bilingual vocational instructor training project, including—

(i) The need for the project in the specific geographic area(s) to be served by the proposed project;

(ii) The training needs of program participants to be served by the proposed project;

(iii) How these needs will be met through the proposed project; and

(iv) The relationship of the proposed project to other ongoing personnel development programs in the geographic area(s) to be served by the proposed project.

(2) The Secretary reviews each application to determine the extent to which, upon completion of their training, program participants will work with programs that provide vocational education to limited English proficient out-of-school youth and adults.

(b) *Program design.* (20 points) The Secretary reviews each application to determine the quality of the program design and the potential of the project to have a lasting impact on the geographic area(s) to be served by the proposed project, including—

(1) Potential to increase the skill level of program participants, with particular regard to the following areas:

(i) Knowledge of the needs of limited English proficient out-of-school youth and adults enrolled in vocational education programs, and how those needs should influence teaching strategies and program design.

(ii) Understanding of bilingual vocational training methodologies.

(iii) Techniques for preparing limited English proficient out-of-school youth and adults for employment; and

(2) Potential to increase access to vocational education for limited English proficient out-of-school youth and adults.

(c) *Plan of operation.* (15 points) The Secretary reviews each application for an effective plan of management that ensures proper and efficient administration of the project, including—

(1) Clearly defined project objectives that relate to the purpose of the Bilingual Vocational Instructor Training Program;

(2) For each objective, the specific tasks to be performed in order to achieve the specified project objective; and

(3) How the applicant plans to use its resources and personnel to achieve each objective.

(d) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project;

(ii) The appropriateness of the time that each person referred to in paragraph (d)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraph (d)(1)(i) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is sufficient to support the proposed project, and that it represents a cost effective use of Bilingual Vocational Instructor Training Program funds;

(2) Costs are necessary and reasonable in relation to the objectives of the proposed project; and

(3) The facilities that the applicant plans to use are adequate for the proposed project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and appropriate for the bilingual vocational instructor training project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies outcomes of the project in terms of enrollment, completion and after—training work commitments of participants by sex, racial or ethnic group, and by level and kinds of language proficiency;

(4) Identifies expected learning and skills outcomes for participants and how those outcomes will be measured.

(5) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the effectiveness and efficiency of the plan to disseminate information about the project and demonstrate project activities and results, including—

(1) High quality in its design and procedures for evaluating the effectiveness of the dissemination plan; and

(2) A description of the types of materials the applicant plans to develop and make available to help others replicate project activities, and the methods to be used to make the materials available.

(Authority: 20 U.S.C. 2441(b))

§ 428.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 428.21, and consulting with the appropriate State board established under section 111 of the Act, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the—

(1) Equitable distribution of assistance among populations of individuals with

limited English proficiency within the affected State; or

(2) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2441(d)(5))

PARTS 469-498—[RESERVED]

31. Parts 469 through 498 are reserved.

Appendix B—Summary of the Results of Negotiated Rulemaking

Note: This appendix is to be published in the **Federal Register** with the proposed regulations, but it is not to be codified in the Code of Federal Regulations.

The purpose of this appendix is to provide a general summary of the results of the negotiated rulemaking conducted pursuant to section 504(b) of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Public Law No. 101-392, 104 Stat. 753 (1990)). Public Law No. 101-392 amends the Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.* (1988)), effective July 1, 1991. (The law, which becomes effective on July 1, is referred to as the "Perkins Act" or the "Perkins Act as amended" in this appendix.)

The Federal Mediation and Conciliation Service conducted the negotiated rulemaking on December 17-18, 1991. Fourteen negotiators chosen by the U.S. Department of Education, including a representative of the Department, participated in the negotiated rulemaking. In addition to the Department's representative, the negotiators included representatives of particular constituent groups listed in section 504(b) of the Act and the Department's ten regions. Prior to the negotiated rulemaking, the Department provided each negotiator with a copy of a summary of the regulatory issues to be negotiated, possible options for resolving the issues, and draft proposed regulations.

This appendix summarizes the negotiations held in each of the three areas in which regulatory issues were submitted for negotiation: (1) Requirements for the use of funds; (2) evaluations under standards and measures; and (3) services and activities for special populations. Within each area, the individual regulatory issues negotiated and the decisions reached, or other recommendations made by the negotiators, are summarized.

Requirements for the Use of Funds

Issue 1: Section 235(a) of the Act provides that recipients must use funds to improve vocational education programs with the full participation of special populations. *How Should the Department Interpret "Full Participation of Individuals who are Members of Special Populations"?*

The draft proposed regulations interpreted "full participation" as requiring a recipient to provide the supplementary services necessary for special population members to succeed in vocational education. The draft proposed regulations provided an example of a supplementary service that a recipient might offer to ensure full participation.

Under the draft proposed regulations, a recipient would be permitted to serve other populations at the same time that it is serving special populations if it meets the requirements in sections 118 and 235 (a), (b), and (c)(1)(C) of the Act.

Decision: Consensus

- All negotiators agreed to the draft proposed regulations, with § 403.74 (a)(2) and (a)(2)(i) (currently § 403.111(a)(2)(i)) of the draft proposed regulations revised to read as follows:

(2) Programs assisted with funds awarded under (section 231 (a) or (d) or section 232 of the amended Perkins Act) must—

(i) Provide for the full participation of individuals who are members of special populations by providing supplementary and other services necessary for them to succeed in vocational education; and * * *

The negotiators intended the phrase "and other" to give additional flexibility by allowing provision of services not included in the definition of "supplementary services" in section 521(38) of the Perkins Act.

- In the example following § 403.74(a)(2) of the draft proposed regulations, the negotiators also agreed to substitute, for the phrase "vocational education course," the phrase "course that is part of a vocational education program." The negotiators also agreed to place the example in a question-and-answer format in the preamble or in an appendix to the regulations rather than within the text of the regulations. (See appendix A).

- As a general matter, the negotiators agreed that the preamble to the regulations should contain a note that examples provided in the regulations or elsewhere are only illustrations of ways in which a recipient of funds can comply with a particular requirement, and are not intended to be exclusive.

Issue 2: Sections 235 (a) and (b) of the Act require recipients to use funds to give priority to a limited number of sites or programs that serve the highest concentrations of special populations. *How Can a Recipient Implement the Requirement to give Priority to a Limited Number of Sites or Programs that Serve the Highest Concentrations of Special Populations?*

The draft regulations repeated the statutory language requiring priority and gave an example of providing priority to a limited number of sites, and an example of giving priority to a limited number of program areas, by ranking sites or programs according to special population enrollment and funding only those above the district-wide average.

Decision: Consensus

The negotiators agreed to the draft regulations with the addition of a third example that will be contained in the regulations after § 403.74(b) (currently § 403.111(b)). The negotiators intended the additional example to illustrate a way of providing new and better opportunities in vocational education for special population members. The added example reads:

Example 3:

First, an LEA or postsecondary institution identifies a site with a high concentration of special populations.

Second, the LEA or postsecondary institution identifies a program area at the site (such as health occupations) in which the participation rate for members of special populations is lower than the overall rate of participation for members of special populations at the site.

Third, the LEA or postsecondary institution funds a project at the site designed to improve the participation rate of members of special populations in that program area.

Issue 3: Section 235(c)(1)(C) of the Act requires recipients to use funds to provide for the equitable participation of special populations, consistent with the assurances and requirements of section 118 of the Act. *How Should the Department Interpret the Requirement To Provide "Equitable Participation"?*

The draft proposed regulations required recipients to provide special population members with an opportunity for participation in vocational education that is equal to the opportunity provided to the general population. The draft regulations provided two examples to illustrate how the equitable participation of special populations may be provided in vocational education programs.

Decision: Consensus

- The negotiators agreed to include only the statutory language in the regulation, revising § 403.74(c)(3) (currently § 403.111(c)) to delete the explanatory language "so that these populations have an opportunity for participation that is equal to the opportunity afforded to the general student population." As revised,

§ 403.74(c)(3) (currently § 403.111(c)(3)) would read:

(3) Provide for the equitable participation of members of special populations in vocational education consistent with the assurances and requirements in (section 118 of the amended Perkins Act).

• The negotiators also agreed to place the examples that followed § 403.74(c)(3) (currently § 403.111(c)(3)) in a question-and-answer format in the preamble or in an appendix to the regulations, not within the text of the regulations. (See appendix A).

Issue 4: Section 235(c)(1)(B) of the Act requires recipients to use funds in vocational education programs that integrate academic and vocational education in those programs through "coherent sequences of courses" so that students attain academic and occupational competencies. The term "coherent sequence of courses" is also used in the Act in sections 201(b)(2)(B) (State programs and leadership) and 240 (11)(B) and (12)(A) (local application). *How Should the Department Interpret the Term "Coherent Sequence of Courses?"*

The draft proposed regulations defined *coherent sequence of courses* to mean a series of courses, or a single course, in which vocational education and academic skills are integrated, so long as the courses or course directly relates to and leads to educational and occupational competencies. The definition specifically provided that competency-based education, academic education, and adult training or retraining that meet these requirements are included in the term "coherent sequence of courses."

Decision: Consensus

• In order to more closely reflect the statutory requirement, the negotiators agreed to delete "or a single course" from the definition of "coherent sequence of courses" in § 400.4(b). As amended, § 400.4(b) would define the term as follows:

Coherent sequence of courses means a series of courses in which vocational education and academic skills are integrated, and that directly relates to, and leads to, both educational and academic competencies. The term includes competency-based education, academic education, and adult retraining that meet these requirements.

• To ensure the eligibility of adult retraining courses for funding, the negotiators agreed to include, in a question-and-answer format in the preamble or in an appendix to the regulations, a statement that the term "coherent sequence of courses" includes sequential units encompassed within a single adult retraining course that otherwise meets the requirements of the definition. (See the Preamble).

Evaluations Under Standards and Measures

Issue: Section 117 of the Act requires a recipient of title II–C funds to perform an annual evaluation using the Statewide system of standards and measures developed under section 115 of the Act. *What Must a Recipient Evaluate?*

The options for resolving this issue include requiring a title II–C recipient to evaluate:

(1) The recipient's entire vocational education program;

(2) Only those particular projects funded under title II–C; or

(3) Only those projects receiving Perkins funds under the State plan.

The draft proposed regulations reflected option (1), requiring a title II–C recipient to evaluate its entire vocational education program regardless of which specific projects were funded with Perkins Act funds.

Decision: No Consensus

The positions taken by the negotiators included the following:

• Some negotiators preferred option (1), requiring a recipient's entire vocational education program to be evaluated. These negotiators believed that a recipient should evaluate its entire vocational education program to determine if progress was made and that it was not possible to measure the effect of Perkins Act funds alone.

• Other negotiators preferred option (3), which would only require an evaluation of specific projects receiving Perkins Act funds under the State plan. Some of these negotiators agreed that it would be desirable to require recipients to evaluate their entire vocational education programs. However, they believed that recipients will not have sufficient local and State funds to do an acceptable evaluation of their entire programs.

Services and Activities for Special Populations

Issue 1: Section 118(c) of the Act requires a recipient of Title II funds to make certain assurances with respect to providing services to special population members. *To Which Particular Students Do the Assurances Apply?*

The options for resolving this issue include requiring a title II recipient to provide assurances with respect to:

(1) Students in the recipient's projects funded with title II funds;

(2) Students in any of the recipient's projects funded with title II or title III funds under the State plan; or

(3) Students in the recipient's entire vocational education program (including activities funded from non-Federal sources).

The draft proposed regulations reflected option (2), requiring a title II recipient to provide the services described in section 118(c) of the Act for all students who are members of special populations in projects funded with title II or title III funds under the State plan.

Decision: No Consensus

There was some support for each of the options discussed above. The positions taken by the negotiators included the following:

• Option (1), which would only apply the section 118(c) assurances to projects funded under title II, was supported because it takes into account that there will not be sufficient State and local funds available to fulfill a more broadly applied assurance.

• Option (2) was supported with an amendment to the draft proposed regulation to clarify that the section 118(c) assurances were triggered by receipt of title II funds, but applied to any funds received under the State plan (title II or title III of the Act). The negotiators supporting option (2) were concerned that the services and activities required by the section 118(c) assurances be provided to the extent possible with Perkins Act funds but that the limitation on the availability of State and local funds for this purpose also be taken into account.

• Option (3), which would apply the section 118(c) assurances to a recipient's entire program, was supported because it takes into account numerous other statutory requirements, such as those requiring the provision of equitable participation of special population members and requiring Federal funds to be used to improve programs, which dictate that section 118(c) of the Act be given a broad application.

Issue 2: In addition to the assurances required in section 118(c) of the Act, section 118(b) of the Act requires a local educational agency to provide certain information to special population students and their parents. *May a Recipient Spend Only Perkins Act Funds To Provide the Services and Information Required Under Sections 118 (b) and (c) of the Act?*

The options for resolving this issue include:

(1) Permitting a recipient to spend only Perkins Act funds to meet the

requirements of sections 118 (b) and (c) of the Act; or

(2) Requiring a recipient to spend State and local funds, in addition to Perkins Act funds, to meet the requirements of sections 118 (b) and (c) of the Act.

Under the draft proposed regulations, a recipient would only be required to spend Perkins funds to provide the services and activities required in sections 118 (b) and (c) of the Act.

Decision: No Consensus

There was support for both options discussed above. The positions taken by the negotiators included the following:

- Option (1), which would only require expenditures from Perkins funds, was supported by some negotiators who believed that there will not be sufficient State and local funds to support more broadly interpreted requirements under sections 118 (b) and (c) of the Act, but that the requirements should be met to the extent possible with Perkins Act funds.
- Option (2), which would require that recipients spend State or local funds, as well as Perkins Act funds, to provide the services and activities required in sections 118 (b) and (c) of the Act was supported because it met the concern that a contrary interpretation imposing a lesser requirement to provide funding for these services and activities would result in fewer supplemental services being provided to special population members in the Federally-funded projects.

Issue 3: Who Provides the Information Required by Section 118(b) of the Act to Students in a Local Educational Agency That Transferred All of Its Allocation Under Section 231(d) of the Act?

Under the draft proposed regulations, an area vocational education school or intermediate educational agency would provide the information described in section 118(b) of the Act to special population students and their parents in any local educational agency whose allocation was distributed under section 231(d) of the Act in its entirety to the area vocational education school or intermediate educational agency.

Decision: Consensus

All negotiators agreed to the draft proposed regulations.

Note: This appendix is to be published in the **Federal Register** with the proposed regulations, but it is not to be codified in the Code of Federal Regulations.

Appendix C—Synthesis of Comments from Regional Meetings

In compliance with the provisions of section 504 of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Act), the U.S. Department of Education convened regional meetings during October and November of 1990 to obtain public comment for the development of proposed regulations. The major purpose of the regional meetings was to "provide for a comprehensive discussion and exchange of information" regarding regulatory issues under the Act.

The Act specified that the Secretary of Education identify at least four key regulatory issues for discussion at the regional conferences. Beginning in late August of 1990, the U.S. Department of Education initiated a process to identify these issues by convening a series of focus group discussions with representatives from more than thirty national professional associations with an interest in the administration of the Act. From these discussions, four key regulatory issue areas were identified. The four issue areas were:

- Standards and Measures; Assessment; Evaluation; and Program Improvement.
- State Administration and Leadership.
- Use of Funds and Allocation Among Secondary-Level Eligible Recipients.
- Special Populations.

The regional meetings were held in Philadelphia, Pennsylvania, October 30–31, 1990; Atlanta, Georgia, November 5–6, 1990; San Francisco, California, October 7–8, 1990; and Kansas City, Missouri, November 14–15, 1990. A small group process was utilized at these meetings for discussing the regulatory issues and receiving recommendations from the participants. The participants indicated the issue area of their interest and were assigned to groups of approximately 25 individuals to discuss the issue area. In most cases, there were two small groups assigned to each issue area. Reports of the discussions with recommendations were prepared by each group and presented orally at the conclusion of each regional meeting. Written reports were also submitted by each small group to the U.S. Department of Education for review and comparison across the four meetings.

Summary of Consensus—Non-Consensus

The following charts represent a consensus/non-consensus matrix that summarizes the recommendations and comments from the small groups. Where there was major disagreement as to the recommendations between the small groups with the same issue areas, both perspectives are reported.

CONSENSUS—NON-CONSENSUS MATRIX

[Standards & Measures; Assessment]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Section 115(b)1 (b)2: Issue #1	No Consensus on whether to Regulate:	Regulations/Clarification Needed:	Regulatory Guidance Requested:	No Regulations; Guidance should be provided.
Consensus—Non-Consensus.	Both groups made generally the same types of recommendations.	Both groups made similar recommendations.	One group.....	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Standards & Measures; Assessment]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Should the U.S. Department of Education (hereafter the Department) define by regulation the measures of performance enumerated in section 115(b) and, if so, how should they be defined?	One group reported that the law, as written, provides sufficient information and does not require further regulation. However, it was recommended that the Department define all key terms in section 115 relating to standards and measures. The other group also reported a need for definitions of terms and recommended regulations as follows: The State, in the development of its system of core standards and measures, shall develop measures for the full range of both academic and occupational skills and knowledge for each program.	The regulations should not be more directive than the Act. However, the Department should provide technical assistance (written guidance and inservice) to further define/clarify certain aspects of this section. Some parts of performance measures described in section 115 (a) and (b) need definitions through regulation.	Performance measures need to be defined in regulatory guidelines. Occupational skills should be included with academic skills in definitions that clarify section 115(b)(1).	Each State shall define the specific measures of performance. In acknowledgment of the diversity among states, the regulations should recognize each State Committee of Practitioners and the State planning process as providing adequate guidance and direction in the development of standards and measures. Further, experimentation and innovation should be allowed and encouraged.
Section 115(a):				
Issue #2	Regulations/Clarification Needed:	No Consensus on need for Regulations:	Guidelines Requested:	Regulations Needed:
Consensus—Non-Consensus.	Both groups made somewhat different types of recommendations.	No Consensus between groups	One group	Both groups made similar recommendations.
To what extent and in what ways should eligible recipients be allowed to make local modifications to the statewide system of core standards and measures required in section 115(a). Should this be regulated, and, if so how?	One group believed that regulations should indicate that each State plan will describe a process for LEAs to utilize in order to make modifications to the State system of core standards and measures. Furthermore, the fact that the law says that LEAs "may modify" does not automatically empower/entitle the LEA to modify the system. All local modifications must be approved by the State prior to implementation. The other group reported that section 115 adequately addresses the fact that modifications of the State's system are allowable. However, it was recommended that no modifications to the *standards* be made at the local level, rather the locals may make modifications in the *progress* toward reaching the standards.	One group reported that statewide performance measures and standards should be set for program completers. These should not be modifiable locally. LEAs would have flexibility in attainment, and be able to set appropriate exit points, and to give credit for incremental gains. Statewide program performance standards for placement and retention should be set, as appropriate. These standards could be modified based on local conditions and populations served. The other group reported that the Department should not provide further definition or guidance in regulation.	Each State should establish minimum core standards and measures in the State plan as well as the procedures for allowable local modification.	The State plan shall identify the process and establish criteria for local modification of performance standards based on assessment criteria contained in the State plan. Local modification should include evidence of improvement or commitment to improvement. A minority report indicated that local modifications of standards and measures should be made primarily for the purpose of increasing access and participation of special populations and targeted groups. These modifications should be reviewed as an "incentive" to serve more special needs and targeted groups.
Section 115/Section 116:				
Issue #3	No Regulations Needed:	Guidance Requested:	Guidelines Requested:	No Regulations; Guidance should be provided.
Consensus—Non-Consensus.	Both groups made essentially the same recommendations.	Both groups made essentially the same recommendations.	One group	Both groups made similar recommendations.
How can consistency be achieved between the standards and measures as required in section 115 of the Act and those required by the JTPA and JOBS programs. Should this be regulated, and if so, how?	No regulations needed	The Perkins Act focuses on a complete integrated system of performance standards and measures, along with components aimed at attaining the standards. JTPA and JOBS focus on parts of a system. Where the two overlap, there should be consistency developed by each state.	Complete consistency between standards and measures in the Perkins Act and JTPA and JOBS cannot be achieved. Where objective measures overlap they should be consistent. A common definition of terms for data collections is needed.	Encourage development of complementary standards in JTPA, JOBS, & the Perkins Act at the State level where there are mutual interests and issues. Each State shall have the flexibility to define the measures and establish standards.
Section 115:				
Issue #4	Regulations Needed:	Guidance Requested:	Regulations Needed:	No Regulations; Guidance should be provided.
Consensus—Non-Consensus.	Both groups made generally the same types of recommendations.	Both groups made essentially the same recommendations.	One group	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Standards & Measures; Assessment]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Are separate standards and measures needed for secondary and postsecondary levels? Section 115 does not address this issue but the legislative history in the conference report says different standards *may* be established.	There may be several reasons for having separate standards and measures for secondary and postsecondary. Regulations should require that in the development of the State plan and the core system of standards and measures, the State must address whether or not separate standards and measures are needed for secondary, adult, and postsecondary vocational education. If separate standards and measures are developed, there must be articulation between the sets of standards and measures.	No additional regulations are needed beyond the law and the conference report. The standards may be the same or may be different. It is and should be a state and local decision. Wherever practicable, the same performance measures should be encouraged for secondary and postsecondary levels. Where possible, there should be proficiency levels such that secondary and postsecondary levels as seamless as possible.	Regulations should clarify governance and difference in secondary and postsecondary standards. Maximum flexibility should be given to States and incorporated into the State Plan. In states where there is more than one governing board, it is the responsibility of each to develop their own standards which should be brought together in the State Plan. A minority opinion was that separate standards should not be allowed.	Separate standards and measures for secondary/post secondary should be a state decision. Separate standards and measures may be established by the State Board for secondary and postsecondary or adult programs under the Act. If a State decides to develop two sets of standards and measures, there should be language reflecting articulation.
Section 117:				
Issue #5	No Consensus:	No Consensus:	No Consensus:	Regulations Needed:
Consensus—Non-Consensus.	No consensus within each group.	No consensus within or between groups.	One group.....	No consensus within or between groups.
Should the program evaluation and improvement requirements in section 117 be applied to the entire vocational education program of an eligible recipient or only to those particular programs receiving assistance under the Perkins Act Amendments?.	Realizing that State and local education agencies need to evaluate all vocational education programs, two dominate views were considered in each group. First, official evaluation and reporting should follow funding. That is, those programs actually receiving Federal financial assistance must be evaluated and reported for purposes of the Perkins Act. Second, if one occupational program receives federal support, then there should be reporting on the recipient's entire vocational education program. However, concern was expressed about the costs of evaluating all programs. A definition of "program" is needed.	Majority—The program evaluation and improvement requirements in section 117 should be applied to the entire vocational education program of an eligible recipient. This will be especially important if national evaluations of vocational education focus on comprehensive changes in vocational education. Minority—The evaluation and improvement requirements should be required of programs receiving Perkins Act assistance. Nonbinding guidance should encourage and describe how these evaluations/improvements would apply to all local vocational programs. Regulations should make funds eligible for use to evaluate all local vocational programs.	No Consensus: There is a great deal of confusion regarding the definition of a "program." At a minimum, a program should be those programs and activities funded under the Act as described in the State plan.	Only Perkins funded programs will be evaluated under the Perkins law and regulations. Other Perspective: Each recipient of Title II(c) financial assistance shall annually evaluate the effectiveness of programs described in the local applications.
Section 115/Section 117:				
Issue #6	No Consensus:	Regulations Needed:	Regulations Needed:	Regulations Needed:
Consensus—Non-Consensus.	Both groups made generally the same types of recommendations.	Both groups made essentially the same recommendations.	One group.....	Both groups made similar recommendations.
Should the standards and measures requirement in section 115 and the program evaluation and improvement requirements in section 117 apply to the State administered programs as well as to the Title II basic grant?	One group recommended that standards and measures should apply to both Title II and Title III programs. The other group recommended that the State develop appropriate systems for program evaluation for all State administered programs in Title III, which *may* include program appropriate standards and measures.	Section 115 should apply to programs under Title III as well as Title II (where appropriate). States should have the option of writing separate or different standards and evaluation criteria for the programs under Title II and Title III.	Standards and measures apply to state administered programs in Title III as well as to the basic grant and should be consistent in the State plan. This should be clarified through regulations.	Responsibility for regulation of Title III should be left to the States. Standards and measures shall be developed for all programs assisted under this Act. The State may establish performance standards and measures for Title III and single parent displaced homemaker and sex equity programs in accord ance with the individual program objectives which may or may not be consistent with Sec. 115(b). Program evaluation and improvement requirements in section 117 shall apply to all programs assisted under the Act.
tion 3(a)(1) and Section 116:				
Issue #7	No Consensus:	Regulations Needed:	Regulations Needed:	Regulations Needed:
Consensus—Non-Consensus.	Both groups made somewhat different types of recommendations.	Both groups made essentially the same recommendations.	One group.....	Both groups made essentially the same recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Standards & Measures; Assessment]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
How often should the State assessment be conducted?	One group recommended that regulations indicate that the statewide assessment of the quality of vocational education programs be conducted once for each State plan period. The other group did not reach consensus. However, they indicated that no further regulations were needed for the initial assessment for the State plan.	The statewide assessment should be done each time the new State plan is developed. Regulations should clarify that the assessment should be conducted each time there is a State plan required in the Act (specifically once for the 3 year plan and once for the 2 year plan). However, for the second planning cycle, the criteria in section 116 should be tied to performance standards utilized in the statewide system.	The assessment should be conducted, at a minimum, for each State planning period. This should be defined via regulation.	An assessment shall be conducted prior to the development of the initial 3 year plan and a second assessment prior to the next State plan.

CONSENSUS—NON-CONSENSUS MATRIX

[State Administration & Leadership]

Issue	Philadelpnia	Atlanta	San Francisco	Kansas City
Section 102(a)(4)(3): Issue #1	No Regulations Needed:	No Regulations Needed:	No Consensus on whether to Regulate:	Flexibility Requested:
Consensus—Non-Consensus.	Both groups made essentially the same recommendations.	Both groups made essentially the same recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.
What kind of expenditures are allowable under the 5 percent limit for State administration under section 102(a)(4) and under the 8.5% limit for State programs and leadership under section 102(a)(3)? Should the regulations define what the Department will consider to be "technical assistance"? Should allowable expenditures under each setaside be regulated and, if so, how?	Both groups agreed that no regulations are needed as the law is specific enough. One group indicated that "technical assistance" should not be defined while the other group indicated that *if* defined, parameters should be established under which technical assistance would be permissible under section 201. States should be afforded flexibility in providing technical assistance and/or in meeting the requirements of section 102(c) with any funds carried over into years affected by these amendments.	States must have flexibility to address the needs of business and industry if they are to fill a viable role in preparing a competitive workforce. Let the States define what goes under each category and do not define (regulate) technical assistance—that would limit flexibility.	No Regulations: Law is clear concerning the 5% for State administration & the 8.5% for State leadership. No need for further clarity or regulation regarding a definition for technical assistance.	Regulation Needed: Regulation is needed to make permissible or allowable expenditures for technical assistance under State leadership. Assure flexibility for States to define technical assistance but ensure that it will be an allowable expenditure for 8.5% and other setasides. Regulations should be developed which allow States to reserve a portion of the funds for equity, criminal offenders, and each part of Title III for technical assistance and to carry out the provisions of sections. Furthermore, one of the groups went "on record" in their recommendation to provide flexibility to the States through the provision of technical assistance with any funds that are "carried over" from prior years into the years affected by these amendments (July 1, 1991 thru July 1, 1992). The group stated that this was the intent of the managers on the part of the House and the Senate.
Section 118(d): Issue #2	No Regulations Needed:	No Regulations; Guidance would be helpful:	No Regulations Needed:	No Regulations Needed:
Consensus—Non-Consensus.	Both groups made essentially the same recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[State Administration & Leadership]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
What should the State Board's responsibilities be for the establishment of procedures for participation and appeals as required by section 118(d)? What kind of "expedited appeals procedure" is required?	No regulations needed as the law states that "The State Board shall establish effective procedures . . ." These procedures are to be included in the state and local plans. Any regulation should be in the form of guidance.	An appeals procedure must be a part of the State plan as required under the law. Guidance may be helpful for some States in identifying procedures to involve parents, teachers, students, and area residents i.e., public meetings or hearings, advisory councils, etc.	The law is clear. There is no need for Federal regulations. However, the requirement of establishing effective procedures for direct participation should be included in the State plan.	Additional regulations are not needed because the "procedures" and the appeal process are to be addressed in the State plan section of the Act. Clarify that appeal procedures must observe minimum due process procedures.
Section 118(d): Issue #3	No Consensus:	No Regulations Needed:	No Regulations Needed:	No Consensus:
Consensus—Non-Consensus.	Both groups made different recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.	No Consensus.
Should section 118(d) apply only to programs for special populations or to all programs assisted under the Act?	One group concluded that section 118(d) applied *only* to programs for special populations. A minority report from the other group concurred. The other group reported that regulations should state that section 118(d) applies to *all* programs assisted under the Act and assurances of equal access should be included in each State plan.	"Under the Act" is interpreted to mean participatory planning across the board and, therefore, does meet the needs of special populations. Section 118(d) should apply to all, not just special populations. States should be sure to add other groups to those being served.	The law is clear. There is no need for Federal regulations. Rationale: Section 118(a)(2) assurances refers to "the full range of programs" and section 118(d) refers to "programs under the Act". However, State plans should describe existing procedures for general as well as special populations. Expedited appeals procedures for special populations must be established in the State plan.	No Regulations Needed: The language of section 118(c) which addresses "Assurances" and section 118(d) which addresses "participatory planning" provides the necessary guidelines. No additional guidelines are recommended. Regulations Needed: Regulations should specify that section 118(d) applies to all programs funded by the Act.
Section 115: Issue #4	No Regulations Needed:	No Regulations Needed:	No Regulations Needed:	No Regulations Needed:
Consensus—Non-Consensus.	Both groups made essentially the same recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.
Section 115 requires the State board to convene a State Committee of Practitioners "on a regular basis" to review the statewide system of standards and measures. What should the consultative relationship between the State board and the Committee of Practitioners be?	No regulations needed. The relationship with the Committee of Practitioners is advisory. The State Board shall given reasons for not accepting recommendations of the Committee.	States should be given the flexibiity to determine the structure and organization for the "committee". The State must consult, but should not be required to take the Committee's advice. The Committee should have access to the State board. These provisions are allowed under the law—no regulations required.	The law is clear. No further regulations needed. The committee is already in place and relationships should be worked out at the State level as jurisdiction is at different levels in different states.	No further regulation is needed as the law says that the committee will "review" and "comment" on the proposal of core standards and measures of performance. Clarify that should any recommendation of the Committee of Practitioners not be acceptable to the State board, the State board shall provide a written explanation of why the recommendation is unacceptable. If a State does not accept the committee recommendations, the law requires a written response.

CONSENSUS—NON-CONSENSUS MATRIX

[Uses of Funds]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Section 235(b): Issue #1	No Consensus	No Consensus on Regulations:	No Regulations Needed; Guidance Requested	No Regulations; Guidance Needed:
Consensus—Non-Consensus.	The three groups made somewhat different recommendations.	The three groups made similar recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Uses of Funds]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Under Section 235(b), how does the requirement to give "priority" to sites or programs with the highest concentrations of special populations relate to the requirement that funds be used in a "limited number of sites or programs?"	Priority means to give first consideration to sites or programs with the highest concentrations of special populations and highest concentration should be calculated differently for secondary and postsecondary. The secondary criteria for highest concentration should follow Chapter 1 guidelines. Another group proposed that the definition of "highest concentration" should be based on a percentage of special populations first, then raw numbers may be used (under the exemption rule). This should be described in the State plan. The State plan must include criteria to invoke an exemption. The third group indicated that clarification was needed on the issue of distribution of funds versus usage of funds for both secondary and postsecondary disadvantaged populations.	*No regulations needed* because it would duplicate Sec. 113(b)(6). State plan must indicate how the State will define "highest concentration" and what criteria will be used to give priority to schools or programs with the highest concentration of special populations. The other perspective was that *regulations are needed.* Federal regulations should require the State to include in the State plan its definitions and expressed methodology for determining highest concentration and how to give priority to limited numbers of programs or sites.	Provide Federal guidelines and keep regulations to a minimum, just enough so State plans can meet the Federal intent. Define measurable criteria to determine "highest concentration". The more discretion given to the State to regulate definitions the better.	Each State should provide guidelines defining and applying the terms "limited numbers," "priority," and "highest concentration". LEAs should describe the process in their local applications. Priority implies preference, not exclusivity.
Section 235(c)(1)(A):				
Issue #2	No Regulations Needed;	Non-Regulatory Guidance	Regulations Needed:	No Regulations or Guidance Needed:
Consensus—Non-Consensus.	The three groups made essentially the same recommendations.	The three groups made similar recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.
Pursuant to sectior 235, under what circumstances and in what ways may vocational education students who are not members of special populations be served? What is meant by the "full participation" and "equitable participation" of members of special populations?	Meeting the "equitable participation" requirements should not mean exclusion of non-special populations. Full participation of members of special populations does not necessarily mean exclusive participation.	Guidelines are needed to assure that priority is given to special populations to ensure that they are represented and benefit from the programs under this section. However, flexibility should be maintained so that non-special population students may also be served in these programs. The State and local units must be held accountable for addressing the needs of special populations but are not precluded from serving the general population. Guidance is needed to define: "Full participation" as allowing any student to participate in a program regardless of the student's status as a regular or special needs student. "Equitable participation" refers to a program that is equally accessible for any student whether regular or special needs.	Clearly written regulations are needed to assure that special needs populations are served, but not segregated. The intent for the use of funds is to serve special populations in the most integrated vocational education setting possible in order to adequately serve special populations. Other populations shall not be excluded. Vocational students who are not members of special populations may be served if they are also users as a result of special populations users and priorities.	Vocational education students who are not members of special populations may be served in those programs on sites that receive Perkins Act funds under the "priority" of serving the "highest concentrations" of special populations. The "full participation" and "equitable participation" of special populations means the assurance that these individuals are actually represented in and benefit from the programs funded under the Act.
Section 113(b)(19):				
Issue #3	No Consensus:	Regulatory Guidance Needed.	No Regulations, but Guidelines.	No Regulations
Consensus—Non-Consensus.	There was no consensus among the groups.	The three groups made similar recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Uses of Funds]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Should the comparability requirements in section 113(b)(19) be regulated, and, if so, how?	One group recommended that secondary level comparability regulations should follow Chapter 1 requirements. Another group recommended that comparability *not* be defined as in Chapter 1. The third group recommended that the definition of comparability must reflect services to students, not the cost-per-pupil basis.	Regulations needed to ensure that recipients have the responsibility to assure that overall services are at least comparable to other schools not receiving funds before forwarding funds to such schools. If assurances are not adhered to then States should withhold funds and initiate return of funds from the eligible participant as appropriate. The regulations should include a definition of comparable services, which should include more than level of funding and address level of services to meet needs.	Comparability requirements are already addressed on P. 110, #67 of the Conference Report which indicates that funds must supplement and *not* supplant. Agencies must prove comparable spending from other sources on both funded and non-funded programs under #67 statement above.	Both groups unanimously recommended no binding regulations on comparability, but guidelines should include examples of acceptable measures of comparability. States should describe comparability requirements. LEAs should make assurances in their local applications.
Section 113(b)(19):				
Issue #4	No Regulations:	No Consensus on Regulations:	Regulations Needed:	Regulatory Guidance Requested:
Consensus—Non-Consensus.	The three groups made essentially the same recommendations.	The three groups made similar recommendations.	Both groups made essentially the same recommendations.	Both groups made similar recommendations.
What are the responsibilities of the State and eligible recipient if a school that would otherwise be eligible to receive funds is found to be non-comparable under the provisions of Section 113(b)(19)?	The State plan must address the issue of comparability and should include a remediation process to correct non-comparability. States should provide technical assistance and a grace period, perhaps a year, should be provided when non-comparability is found.	No Regulations Needed/Regulations Needed: The State plan should identify what measures the State will take if a local unit is found "non-comparable." The State plan will outline the State's method for determining comparability.	Comparability guidelines should be included in each State plan. LEAs found in non-compliance should be given a period to bring themselves into compliance. If the time deadline is not met, States should be given authority to withhold funds in the event of non-compliance.	Customary regulatory guidance requested regarding the responsibilities of the States and eligible recipients where non-comparable situations arise.
Sections 116(a)(2); 201(b(2); 235(c)(1)(B); 521(41)				
Issue #5	Regulations Needed:	Regulations or Non-regulatory Guidance:	Regulations Needed:	No Consensus Whether Regulations Are Needed:
Consensus—Non-Consensus.	The three groups made essentially the same recommendations.	The three groups made essentially the same recommendations.	Both groups made similar recommendations.	Both groups made similar recommendations.
What does the phrase "coherent sequence of courses" as used in section 116(a)(2), 201(b)(2), 235(c)(1)(B), and 521(41) mean? Should this phrase be interpreted by regulation, and if so, how?.	"Coherent sequences of courses" means a series of integrated and interrelated learning experiences, or sequence of study, leading toward development of job skills or advanced study. This would not preclude single courses of study for adult training or competency-based programs.	Define "coherent sequences of courses" and/or its relationship to "sequential course of study". A coherent sequence of courses must be in place but not every student must take every offering. Competency-based instruction is allowable. Do not eliminate single course offerings including those for adult retraining.	Regulations should indicate that "coherent sequence of courses" shall include funds for competency-based programs and single courses where those programs or courses directly lead to marketable skills. The regulations should include a broad definition of "coherent sequence" to include modular structures, units of instruction and upgrading of vocational skills. The regulations should also be flexible for content areas, levels of instruction and needs of students. Vocational programs should be integrated with academic instruction, articulation should be emphasized.	*No Regulation Needed:* A definition is requested/suggested. "Coherent sequence of courses" could apply to competency-based programs, single-course programs, and adult retraining when such programs meet the requirements for integration of academic and vocational curricula and learning. *Regulation Needed:* Regulation is proposed to specify that "vocational students who are enrolled in applied academic courses should be in a *sequential course of study,* as defined in Section 521(29) of the Act, which includes occupational specific courses. Further, these students' applied academics should relate *directly* to their occupational goals. Thus, use of funds for instructional purposes must include occupational specific courses.
Section 231(d)(2)(A)				
Issue #6	Regulations Needed:	No Regulations Needed	No Regulations Needed:	No consensus Whether Regulations Are Needed:
Consensus—Non-Consensus.	The three groups made essentially the same recommendations.	The three groups made essentially the same recommendations.	Both groups made similar recommendations.	No Consensus:

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Uses of Funds]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Section 231(d) establishes provisions for direct allocations of basic grant funds to area vocational education schools or intermediate educational agencies. Under what circumstances and conditions should these allocations be made?	Funds should be allocated to the area vocational education schools or to intermediate educational agencies to the extent that the area/intermediate school serves the populations intended to be served. Existing consortia should be considered eligible to receive direct allocations of Perkins funds from the State if they were previously authorized for that purpose.	No regulations needed as long as provisions in section 231(d) are met.	Allocation of grants to area vocational schools or intermediate agencies should be determined by individual states under the Act without additional regulations. The State and local plans should provide necessary evidence of compliance with the law. Allocations are spelled out very specifically in the law as passed. No further restrictions in addition to what is now in the law are necessary.	The "relative share of students" calculation may be computed on a full time equivalency (FTE) basis. Each State may determine an appropriate definition of FTE for funding purposes. No regulation or non-binding guidance is needed. There was some discussion in favor of nationwide standardization, at a minimum level.

CONSENSUS—NON-CONSENSUS MATRIX

[Special Populations]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Section 118				
Issue #1	Regulations Needed:	Guidance Needed:	Regulations: Majority-No, Minority-yes	Regulations Needed:
Consensus—Non-Consensus.	One group	One group	One group	Both groups made similar recommendations.
Does section 118 (Criteria for Services and Activities for Individuals Who Are Members of Special Populations) apply only to the Basic Grant or to all programs under the State plan?	Section 118 applies to all programs and at all sites or institutions at the secondary and postsecondary levels, under all titles of the Act. The State must be clear about this and must address this as policy in the State plan. Any State receiving Title II funds must comply with section 118 assurances in the "full range of programs" (section 113 & 118). Also, a program means "total program" (total vocational technical program in that state).	Section 118 sets forth the criteria for services and activities for individuals who are members of special populations and it applies to *all* parts of the Act. Guidance needs to be provided to insure all special population groups are included, i.e., rural-urban disadvantaged, single parents, displaced homemakers, etc..	Consensus—Section 118's criteria for services/activities for individuals who are members of Special Populations applies to all programs under the State plan.	Section 118 (a), (c), and (d) shall apply to all programs and services covered under the Act. Section 118 should have regulations which clarify that provisions in this section apply to all titles of the Perkins Act and are not limited to the Basic Grant programs. *Minority View*—section 118 provisions should be limited to the Basic Grant programs as set down in the State plan. No regulations or guidance is needed.
Section 118, 204				
Issue #2	Regulations Needed:	Regulations and Guidance Needed:	Regulations: Majority-No, Minority-yes	No Regulations, Guidance is Needed.
Consensus—Non-Consensus.	One group	One group	One group	Both groups made similar recommendations.
Under the provisions of section 118, what is the fiscal responsibility, if any, of a State or an eligible recipient to provide equal access from non-Federal funds?	Equal access does not merely mean access to what there are funds for, nor does it mean only at "selected sites." Receipt of Federal funds carries with it the provisions for compliance with Title IX, EHA, Section 504 of the Rehabilitation Act, and Chapter I. This should be included in regulations.	Equal access must be applied to all funds supporting the amendments regardless if they are Federal, State or local. This provision must be included in the regulations.	Consensus—Requirements of Section 118 must be met without regard to source of funds.	The State or eligible participant will provide equal access to all programs regardless of the funding source. *Minority*—Section 118 does not impose a financial obligation on States or local education agencies beyond the use of their federally allocated funds. Leave as stated.
Section 118(a)(5)A(i)				
Issue #3	Regulations Needed:	Regulations and Guidance Needed:	Regulations: Majority-Yes, Minority No	Regulations Needed.
Consensus—Non-Consensus.	One group	One group	One group	Both groups made similar recommendations.

CONSENSUS—NON-CONSENSUS MATRIX—Continued

[Special Populations]

Issue	Philadelphia	Atlanta	San Francisco	Kansas City
Section 118(a)(5)A(i) specifies that requirements relating to special populations are to be carried out under the general supervision of individuals "who are responsible for students who are members of special populations." How does this provision affect, if at all, the administrative authority of the State Director of vocational education over special population programs?	Every State must have a coordinator of special populations programs with the "sole" responsibility of providing leadership, technical assistance, program coordination and monitoring of the assurances of section 118. The State Director of vocational education has the overall authority for all vocational education programs and services in terms of "general supervision." However, the State Director of vocational education must not work in isolation, but in concert with the vocational special needs coordinator and others to ensure coordination and that assurances for special populations are met.	The Act requires that the requirements, relating to special populations are to be carried out under the general supervision of individuals who are responsible for students who are members of special populations. This does not affect the administrative authority of the State director of vocational education over special populations programs, but does require review of local plans and consultation with the State director of handicapped programs on their appropriateness.	Consensus—State plans must cover the assignment of responsibility of overall supervision as required by Section 118(a)(5)(A)(i) addressing *each* category of special populations as defined in the Act.	It is the responsibility of the State Board and State Director of vocational education to administer the funds and programs under the Carl Perkins Act. Regulations should clarify that section 118(a)(5)(A)(i) refers to the official within, or designated by, the sole State agency which is responsible for vocational education services and not the State official responsible for individuals from each of the special populations.
Section 516(a)(1)(B) Issue #4	Regulations Needed:	Regulations and Guidance Needed:	No Regulations:	Guidance Recommended.
Consensus—Non-Consensus.	One group	One group	One group	Both groups made similar recommendations.
What expenditures should be exempt from the supplanting requirement in accordance with section 516(a)(1)(B)?	Supplanting can take place to ensure "quality" services only when documentation can be provided and it can clearly be shown as an integral part of the student's IEP and IVTEP.	It is the consensus of the group that as written, this provision may bring about less services to special populations rather than more services. However, to ensure that a reduction of funds to offset the "cost" does not occur, States shall be allowed to regulate programmatic maintenance of effort.	Consensus—There should be *no* specific exemptions and no regulations.	Supplanting may take place to ensure "quality" services only when documentation can be provided and it can be clearly shown to be an integral part of the student's vocational education program. There should be specific language in the State plan to set procedure to allow for supplanting exceptions as needed at the State and local levels.

Appendix D—Reporting Requirements

Note: This appendix is to be published in the **Federal Register** with the proposed regulations, but it is not to be codified in the Code of Federal Regulations.

Recipients of grants and cooperative agreements will be required to provide the following information in accordance with 34 CFR 400.10:

(a) Each recipient of an award under the National Tech-Prep Education Program (34 CFR part 405), Community Education Employment Centers Program (34 CFR part 408), Vocational Education Lighthouse Schools Program (34 CFR part 409), Demonstration Centers for the Training of Dislocated Workers Program (34 CFR part 415), Vocational Education Dropout Prevention Program (34 CFR part 423), Model Centers of Regional Training for Skilled Trades Program (34 CFR part 424), Demonstration Projects for the Integration of Vocational and Academic Learning Program (34 CFR part 425), and Cooperative Demonstration Programs (34 CFR part 426) shall—

(1) Submit to the Secretary quarterly performance reports summarizing project activities for the reporting period; and

(2) Include as appendices to the annual performance report, as appropriate—

(i) Quantitative analyses of data and information regarding student achievement, completion, and placement rates;

(ii) Quantitative analyses of data and information regarding project and product spread and transportability as defined in 34 CFR 400.4(b);

(iii) Copies of "awareness" level materials being distributed about the project;

(iv) Copies of materials related to training used to help others replicate project activities;

(v) Copies of instructional, classroom, or curriculum materials that can be submitted to appropriate dissemination networks such as the National Network for Curriculum Coordination in Vocational and Technical Education and the Clearinghouse on Adult, Career, and Vocational Education of the Educational Resources Information Center;

(vi) A directory of individuals to whom training or technical assistance has been provided to replicate project activities; and

(vii) Demographic and evaluation data from sites where project activities have been replicated.

(b) Each recipient of an award under the Community Education Employment Centers Program (34 CFR part 408) shall also include as an appendix to the annual and final performance reports information documenting activities required in 34 CFR 408.34.

(c) Each recipient of an award under the Indian Vocational Education Program (34 CFR part 401), Native Hawaiian Vocational Education Program (34 CFR part 402), Educational Program for Federal Correctional Institutions (34 CFR part 422), and Bilingual Vocational Training Program (34 CFR part 427) shall—

(1) Submit to the Secretary quarterly performance reports summarizing significant project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate those barriers; and

(2) Submit to the Secretary a semi-annual statistical report covering quantitative analyses of the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by individuals who complete the program.

(d) Each recipient of an award under the Indian Vocational Education Program (34 CFR part 401) shall include in the semi-annual statistical report described in paragraph (c)(2) of this appendix, quantitative analyses of data and information regarding—

(1) Student enrollment, completion, and placement rates for the most recently completed training cycle(s), by sex and by occupations for which training is being provided; and

(2) Project referrals to social services and related services for participant employment readiness.

(e) Each recipient of an award under the Native Hawaiian Vocational Education Program (34 CFR part 402) shall—

(1) Include in the semi-annual statistical report described in paragraph (c)(2) of this appendix quantitative analyses of student enrollment, completion, and placement for the most recently completed training cycle(s), by sex and socio-economic status for each occupation for which training is being provided; and

(2) Submit to the Secretary an annual evaluation report that must include descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on—

(i) The academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(ii) Participant enrollment, completion, and placement by sex, and socio-economic status for each occupation for which training has been provided.

(f) Each recipient of an award under the Educational Program for Federal Correctional Institutions (34 CFR part 422) shall include in the quarterly performance report described in paragraph (c)(1) of this appendix quantitative analyses of data and information regarding—

(1) Student enrollment and completion rates by sex, ethnic or racial group, and where appropriate, by level of English proficiency for each occupation for which training is being provided; and

(2) Project referrals to pre and post release services for employment enhancement.

(g) Each recipient of an award under the Bilingual Vocational Training Program (34 CFR part 427) shall include in the semi-annual statistical report described in paragraph (c)(2) of this appendix quantitative analyses of—

(1) Student enrollments, completions, and placements for the most recently completed training cycle by sex, ethnic or racial group, socioeconomic status, and where appropriate, by level of English proficiency for each occupation for which training is being provided; and

(2) Data and information regarding activities to enhance project operations such as coordination activities, training or upgrading of personnel, and the provision of support services.

(h) Each recipient of an award under the Tribally Controlled Postsecondary Vocational Institutions Program (34 CFR part 410) shall—

(1) Submit the following to the Secretary:

(i) On an annual basis, an accurate and detailed accounting of its operating and maintenance expenses, and other information concerning costs as the Secretary may require.

(ii) Information in the detail as the Secretary may require to prepare a budget needs estimate to support each institution's subsequent year of operation including updated information on employment needs, economic development needs, and population training needs.

(iii) Any information the Secretary may require to determine the feasibility of awarding additional grants to pay training equipment costs necessary for implementing training programs.

(2) Participate in the study of training and housing needs authorized by section 389(a) of the Act, and the long-term study of facilities authorized by section 389(b) of the Act, including providing information on—

(i) Training equipment needs;

(ii) Housing needs of families whose heads of household are students and whose dependents have no alternative source of support while those heads of household are students; and

(iii) A five year projection of training facilities, equipment, and housing needs, projected service population, and employment and economic development projections.

(i) Each recipient of an award under the National Network for Curriculum Coordination in Vocational and Technical Education (34 CFR part 412) shall submit to the Secretary—

(1) Monthly progress reports summarizing project activities for the reporting period;

(2) Monthly financial reports summarizing project spending for the reporting period; and

(3) An annual impact report of the curriculum coordination center's activities. The report must highlight the CCC's services and the program improvement practices resulting from these services. This report is due on December 31 of each year of the award

(j) Each recipient of an award under the National Center or Centers for Research in Vocational Education (34 CFR part 413) shall submit to the Secretary the following:

(1) Monthly exception reports that describe—

(i) Any problems, delays, or adverse conditions that materially impair the ability of the National Center to accomplish its purposes, along with an explanation of any action taken or contemplated to resolve the difficulties; and

(ii) Any favorable developments that will permit the National Center to accomplish its purposes sooner, at less cost, or more effectively than projected.

(2) Quarterly performance reports that describe the progress, problems, and future plans for each significant activity of the National Center within 30 days of the end of each quarter.

(3) Quarterly financial status reports within 30 days of the end of each quarter. The annual financial status report may be submitted in place of the quarterly financial status report for the fourth quarter of each year.

(4) Ten copies of all substantive reports and products produced.

(k) Each recipient of an award under the Vocational Education Training and Study Grants Program (34 CFR part 416) shall—

(1) Submit to the Secretary quarterly performance reports summarizing project activities for the reporting period and, if applicable, actions taken by the grantee to address any significant barriers impeding progress; and

(2) Append to the annual performance report an evaluation report that includes both statistical tables and narrative responding to the key evaluation questions in 34 CFR 416.21(f).

(l) Each institution receiving an award under the Vocational Education Leadership Development Awards Program (34 CFR part 417) shall—

(1) Provide to the Secretary, prior to disbursing awards, a certification from an appropriate official at the institution stating whether each proposed recipient of a leadership development award

qualifies for the award based on the requirements in 34 CFR 417.34(a);

(2) Keep such records as are necessary to establish the timing and amount of all disbursements of awards;

(3) Keep records verifying that recipients of leadership development awards—

(i) Meet the requirements in 34 CFR 417.40; and

(ii) Receive an award for no more than three years;

(4) Submit to the Secretary quarterly performance reports summarizing significant project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate them; and

(5) Submit to the Secretary a semi-annual statistical report covering quantitative analyses, by sex and racial or ethnic groups, of—

(i) Level and duration of learner participation and degree of progress;

(ii) Level of graduate study;

(iii) Institution and program in which enrolled;

(iv) The categories of personnel named in 34 CFR 417.1; and

(v) State from which the participant was selected.

(m) Each institution of higher education participating under the Vocational Educator Training Fellowship Program (34 CFR part 418) shall—

(1) Provide to the Secretary, prior to disbursing funds to a fellow, a certification from an appropriate official at the institution stating whether each proposed recipient of a fellowship meets the requirements in 34 CFR 418.41;

(2) Keep such records as are necessary to establish the timing and amount of all disbursements of fellowship payments; and

(3) Keep records verifying that each fellow—

(i) Meets the requirements in 34 CFR 418.2; and

(ii) Receives a fellowship for no more than two years.

(n) Each agency or organization sponsoring an intern under the Internships for Gifted and Talented Vocational Education Student Program (34 CFR part 419) shall submit to the Secretary two copies of a mid-term and final report summarizing the intern's activities and progress achieved in meeting the goals of the internship.

(o) Each recipient of an award under the Bilingual Vocational Instructor Training Program (34 CFR part 428) shall submit to the Secretary—

(1) A quarterly performance report summarizing significant and project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate them;

(2) A semi-annual statistical report of learner participation in instructor training in terms of enrollment, completion, and after-training work commitments of participants by sex and racial or ethnic group and, where appropriate, by level and kinds of language proficiency; and

(3) An annual report on the results of the evaluation to answer the key questions raised in 34 CFR 428.21(f).

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Part 966

Public Housing Lease and Grievance Procedures; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 966

[Docket Number R-91-1020; FR-1164-09]

RIN 2577-AA18

Public Housing Lease and Grievance Procedures

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: HUD amends regulations on tenancy and administrative hearings in public housing.

The amendments provide: (1) A housing authority can evict for drug-related or other criminal activity by public housing residents; (2) a PHA may adopt reasonable policies concerning residence by a foster child or live-in aide; (3) a housing authority can serve a State-law notice to vacate at the same time as the lease termination notice required by Federal law; (4) a tenant may ask the housing authority to explain a rent change or unit transfer, and has the right to ask for a hearing; (5) a housing authority must notify a tenant of the reasons for a proposed adverse action; (6) before changing the grievance procedures, the housing authority must give tenants and resident organizations an opportunity to comment; (7) the housing authority must give a copy of its grievance procedure to the tenant and to resident organizations; (8) in deciding to evict for criminal activity, the housing authority may consider all the circumstances, including the seriousness of the offense and participation by family members; (9) a public housing tenancy does not terminate until any right to a grievance hearing has expired; (10) before evicting, the housing authority must allow the tenant to examine documents which are directly relevant to the eviction; (11) if HUD determines State law requires a pre-eviction due process hearing in court (known as a "due process determination"), the tenant is not entitled to a hearing by the housing authority before eviction for drug-related and other criminal activity; (12) a housing authority may use an expedited administrative grievance procedure for these evictions; (13) a State-law right to examine housing authority documents is deleted from the definition of "due process" elements (and does not affect HUD's due process determination); (14) a housing authority must notify the tenant if the tenant is not entitled to an administrative hearing on an eviction; (15) a housing authority must notify the local post office if a tenant is evicted for criminal activity; (16) after consulting resident organizations, the housing authority may appoint an impartial hearing officer by a method approved by the majority of affected tenants or by appointing a person (who may be an officer or employee of the housing authority) selected in accordance with the housing authority's hearing procedure; (17) if a housing authority consents, members of the family may use the unit for legal profitmaking activities incidental to primary use as a residence; (18) a person with disabilities must be given an equal opportunity to use and occupy the unit.

EFFECTIVE DATE: This final rule is effective on November 12, 1991.

FOR FURTHER INFORMATION CONTACT: Casimir Bonkowski, Acting Director, Policy Division, Office of Management and Policy, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC. 20410, telephone (202) 708-0713. A telecommunications device for deaf persons (TDD) is available at (202) 708-9300. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980, and have been approved under OMB control number 2577-0006. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided below under the heading "Information Collection" at 6.6.

Abbreviations Used In Preamble

NAHA. The National Affordable Housing Act of 1990, Public Law 101-625, approved 11/28/90.

PHA. A Public Housing Agency (housing authority). The governmental agency which administers a public housing program.

U.S.H. Act. The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*). The statutory charter for the public housing program.

Discussion Of Final Rule

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1. Introduction

This rulemaking revises lease and grievance regulations for the public housing program. The regulations describe provisions which must be included in public housing leases (24 CFR part 966, subpart A). The regulations also state requirements on hearings for public housing tenants (24 CFR part 966, subpart B). The rule includes changes to reflect statutes enacted in 1983, 1988 and 1990 (U.S.H. Act, sections (k) and (l); 42 U.S.C. 1437d (k) and (l)).

A proposed rule was published on February 14, 1991 (56 FR 6248). The main purposes of the rulemaking are described in the proposed rule. This Preamble describes public comments on the proposed rule, and revisions by HUD after consideration of the comments.

Forty-two comments were received, from public housing agencies ("PHAs") and PHA organizations, from legal aid and resident organizations, and from other commenters. PHA comments generally support the proposed rule, but point out significant practical concerns. PHA comments recognize that HUD must implement the laws as passed by

the Congress, and that some of the most serious PHA concerns are actually criticisms of the underlying statute. Comments from legal aid and resident organizations recommend substantial changes in the proposed rule.

2. Lease Requirements

2.1 When PHA Charges Are Due

A PHA may charge the tenant for costs of maintenance and repair of damage beyond normal wear and tear, for excess utility consumption, or for late payment of rent. The proposed rule provided that the PHA must give at least two weeks notice of such charges. The charge would be due on the first day of the month which occurs after such notice has been given. The rule previously provided that the charge is not due until the second month after the charge is "incurred".

PHA comment generally approves the proposed change. The PHAs state that two weeks notice is sufficient, and avoids undue delay in collection of charges. However, a PHA states that it will continue to collect the amounts at the second month after the tenant is notified, since this practice fits the PHA billing cycle.

Comment from legal aid and resident organizations objects to shortening the time for payment of charges, noting that low-income families need extra time to budget for special charges.

Under the proposed provision, the maximum required notice depends both on the minimum two week notice, and when the notice is given during the month. For example, if notice is given 14 days before the first of the next month, the notice would be effective on the first. On the other hand, if two weeks notice is given 13 days before the first of the next month, the notice would not be effective until the first of the second month after the month when notice is given. A comment from the National Housing Law Project points out that while the new provision would cut the minimum warning to tenant roughly in half (from 30 days under the old rule to 14 days as proposed), the maximum required notice period would be much less drastically cut (by about a quarter).

To avoid case by case variations in the length of the maximum notice period required to satisfy the minimum required notice, the rule is revised to establish a simple rule that the charges are due two weeks after the PHA gives written notice to the tenant (§ 966.4(b)(4)). This change eliminates the somewhat confusing link between the length of required notice, and when the first of the following month falls in relation to when the two week notice is given. With this revision, the rule is easier to explain and understand. In practice, most PHAs will probably collect special charges with the rent, on the first of the month after completion of the two week notice.

HUD agrees with PHAs that two weeks is a reasonable national standard for the minimum PHA notice to tenant of such additional charges. The unit damage or the late payment for which a charge is imposed are normally known to the tenant as soon as these circumstances occur. However, the two week Federal minimum notice runs from the subsequent point at which the PHA becomes aware of these circumstances, and then gives notice to the tenant. For example, a notice of late payment is ordinarily given after a grace period or interval established by the PHA, and whatever administrative processing is required to determine payment was not received and then send the required notice to the tenant.

Charges for damage or late payment are primarily a stimulus for avoidance of such behavior in the future—so that the tenant does not damage the unit, and pays the rent on time. Charges for excess utility consumption (i.e., utility use in excess of the PHA allowance for reasonable utility consumption) may induce the tenant to conserve utility use, and minimize the drain on family resources. On the other hand, delay in collectibility of charges may tend to encourage damage to the unit, late payment of rent, or excess use of utilities.

While the rule establishes a Federal minimum notice of PHA charges, individual PHAs have the discretion to establish longer notice periods or modify billing schedules. Each individual PHA can adopt a notice scheme and billing schedule suited to local conditions and local management judgment.

In determining when a charge is due, HUD is also concerned with the aggregate delay in those cases where the PHA finds it must proceed with the eviction process. If the charge is not paid on the due date, and the PHA proceeds with eviction on this ground, the PHA must ordinarily give 30 days additional notice of lease termination. In requiring at least two week minimum notice of PHA charges, HUD bears in mind that the cumulative delay in evicting a tenant for unpaid charges is comprised, at a minimum, of the period between the event that gives rise to the charge and giving of the two week notice, expiration of the notice period, and expiration of additional periods leading to the termination of tenancy and subsequent judicial eviction action.

Technical comment noted that the provisions on when special charges are collectible should not apply to security deposits. HUD agrees, and has moved the security deposit provision (substantively unaltered) to a separate paragraph (§ 966.4(b)(5)], not referenced in the provision (§ 966.4(b)(4)] requiring two weeks notice of special charges.

2.2 Notice of Rent Change

HUD regulations do not now specify the length of PHA notice to tenant of a rent increase or rent determination. Comment by a tenant organization recommends that HUD require thirty days notice.

HUD has not revised the rule in response to this comment. The proposed rule did not contemplate any change concerning this subject, and HUD finds no compelling reason to promulgate at this time a uniform Federally-prescribed minimum notice period. In practice, most PHAs probably provide more than thirty days notice to the tenant to permit practical administration of rental redetermination requirements.

2.3 Occupancy And Use Of Leased Unit

2.3.1 Occupancy By Foster-children Or Live-in Aide

The proposed rule would have provided that a PHA may not "unreasonably withhold" consent to occupancy of a tenant's dwelling unit by a foster child or "live-in aide."

A live-in aide is not a member of the assisted family, but lives in the unit to provide essential care services for an elderly or disabled person. (See new definition at § 966.4(d)(3)(ii).) Income of the live-in aide is not counted as family income.

Legal aid comment concurs that the PHA should not unreasonably withhold consent when a tenant wants to take in a foster child, or to secure a live-in aide for a disabled or elderly family member. The comment objects nevertheless to the requirement for PHA consent. Comment claims the decision to add a foster child or live-in aide should be made by the assisted family, not by the PHA. Comment claims that a requirement for PHA consent intrudes into the privacy of the family, and requires a medical and social services judgment which PHA officials are ill-equipped to make. If foster children cause overcrowding, the PHA may require the family to move to another available unit, or may require the family to choose between moving out or giving up the foster parent role.

PHA comment remarks that the addition of new unit residents may

overcrowd the unit, and may force the PHA to transfer a family to another unit. Comment also asks what determines when PHA denial of consent is considered reasonable or unreasonable.

An association of real estate managers states that the number of foster children in a single household should be limited. The comment states that some residents make a "business" out of accepting foster children, and expresses concern that the authority for incidental use of a public housing unit for profitmaking purposes will encourage proliferation of this problem.

It is HUD's view that the addition of a new unit occupant is not simply a private decision of the tenant. The PHA has a primary statutory function and legitimate management interest in deciding who is admitted to a public housing unit and project, both at initial admission of the family and when new unit residents are added. New unit occupants may have significant effects on other residents, on management of the project, and on living conditions in the unit.

A public housing lease lists the persons who may live in the unit (§ 966.4(a)(2)). The tenant only has the right to use the unit for occupancy by the household members whom the PHA has authorized to reside in the unit in accordance with the lease (§ 966.4(d)(1)). The requirement for PHA consent to occupancy does not apply uniquely to new residence by a foster child or live-in aide, but is the normal rule for any additions to the assisted household. There is no reason to insulate the addition of foster children or live-in aides from this normal rule.

A live-in aide is not a member of the assisted low-income family, but occupies space in the public housing project to provide support for an elderly or disabled family member. The PHA has therefore a particular interest in determining whether an additional occupant qualifies as a bona fide live-in aide, and should be allowed to reside in the project. In addition, the PHA needs to determine if a person proposed as a live-in aide is a person who should instead be counted as a member of the assisted family, and whose income should be included in calculation of the family's statutory income-based rent. As for other prospective unit occupants, the requirement for PHA consent also gives the PHA an opportunity for inquiry to determine if the proposed live-in aide meets the PHA's criteria for residency.

For any new occupant, including a foster child or live-in aide, the PHA should have the ability to refuse consent if an addition of another occupant would overcrowd the unit. The PHA may transfer a family if the household size exceeds unit capacity. However, such transfers affect allocation of the PHA's available housing stock for residents and families on the waiting list.

As noted in public comment, the PHA may not discriminate against a person with disabilities, and must make reasonable accommodation for a disabled person. The PHA policy on when to allow a live-in aide for care of a disabled person should be developed with regard to the PHA's obligation to make reasonable accommodation. With respect to admission of foster children, as in other aspects of PHA occupancy policy, the PHA may not discriminate on the basis of family status.

The final rule provides, as did the proposed rule, that a foster child or a live-in aide may reside in the unit only with the consent of the PHA. However, the final rule is revised to clarify the PHA's authority to determine the circumstances in which the PHA may refuse consent. The rule provides (§ 966.4(d)(3)(i)) that:

"With the consent of the PHA, a foster child or a live-in aide may reside in the unit. The PHA may adopt reasonable policies concerning residence by a foster child or a live-in aide, and defining the circumstances in which PHA consent will be given or denied. In adopting such policies, the factors considered by the PHA may include:

(A) Whether the addition of a new occupant may necessitate a transfer of the family to another unit, and whether such units are available.

(B) The PHA's obligation to make reasonable accommodation for handicapped persons."

2.3.2 Guests

2.3.2.1 *Definition.* The tenant's right to use and occupy the unit includes "reasonable accommodation" of guests (§ 966.4(d)(1)). "Guest" means a person in the unit "with the consent" of a household member (*Id.*).

Comment suggests there should be further clarification of who should be treated as a "guest" under the lease, and of what constitutes "reasonable" accommodation, including specification of the allowable length of stay. Comment notes various potential issues on who is a guest of the family, for whose activity the tenant is responsible under the lease: Questions concerning actions of a former guest; actions in the project after a guest leaves the unit; actions by a person originally in the unit with consent of a household member, but who thereafter does something objectionable to or unanticipated by the unit resident.

In some cases it may be difficult for a PHA or a court to determine if a person is or should be regarded as a "guest" of the household. In part, these difficulties will occur because there are problems of ascertaining or proving the facts. Such factual problems are real and practically important, but cannot be relieved by a redefinition of terms. In other cases, there may be issues concerning the legal principle or rule to be applied in deciding whether the facts amount to a showing that a person was in the unit with consent of the family at the time of the activity in question. HUD believes, however, that the Department should not attempt a more precise and elaborate Federal specification of when someone is to be deemed a "guest".

First, there should be room for local determination by the PHA, in the light of local experience and practice, of how to determine whether a person is to be considered a family guest in different circumstances. Within the scope of the federally-required lease provisions, a PHA has authority to develop local rules or lease provisions governing a tenant's right to reasonable accommodation of guests, including such concrete questions as limitations on the length of stay by non-residents.

Second, appropriate principles can be developed in response to case-by-case experience by the PHA, PHA hearing officers, and local landlord-tenant courts. Courts are familiar with issues of tenant responsibility for acts of guests, and can resolve these questions as applied to public housing tenants.

2.3.2.2 *Criminal Activity By Guests.* The rule (§ 966.4(l)(2)(ii)) implements statutory provisions confirming that certain criminal activity by "any guest or other person under the tenant's control" is grounds for eviction (U.S.H. Act, section 6(l)(5), 42 U.S.C. 1437d(l)(5)).

Legal aid and tenant organization comment objects to holding the tenant responsible for criminal activity where the guest is not under control of the tenant, such as the case of a former guest or household member. HUD agrees that the responsibility for criminal activity by a "guest", does not apply to the criminal activity by a former guest. The question under the HUD rule is whether the person in question was in the premises with consent of a household member at the time of the criminal activity in question, not whether the person was a guest at some time in the past.

Legal aid comments argue that tenant should not be responsible for criminal activity of a guest if the tenant did not know of the criminal activity, or the activity was not reasonably foreseeable, or if the tenant has taken all reasonable

or possible steps to avoid the criminal activity.

The law provides specifically that a public housing tenancy may be terminated for drug-related and other serious criminal activity by a "guest" of the household. Such criminal activities by drug dealers and other persons who enter at the invitation of household members are a threat to the welfare of project residents and PHA employees. Tenants must have the strongest incentive to assure that family members do not consent to entry of the unit by persons who will then engage in drug-dealing and other dangerous criminal activity. Such incentive is provided by the statutory sanction: Termination of tenancy for criminal activity by a household guest. The "guest" definition in this rule provides an appropriate standard and nexus between the contractual obligation of the tenant, and the potential sanction: that the criminal was in the unit by consent of a family member, and that the tenant did not prevent the invitation or the crime. Whether the invitation is given by the tenant (the family member or members who hold the rights of tenancy under the lease), or by some other family member, the prevention of criminal activity by family guests is a statutory obligation of the tenancy under a public housing lease.

2.3.3 Profitmaking Activities In Dwelling Unit

The rule clarifies that with PHA consent, family members may use the unit for legal profitmaking activities "incidental to primary use of the leased unit for residence by members of the household" (§ 966.4(d)(2)). This provision does not create a new right of the tenant to engage in such activities, or a new authority for the PHA to permit such activities. Rather, the provision essentially codifies HUD's construction of when public housing residents may conduct business or profitmaking activities under the lease.

Some comment applauds the new regulatory provisions on this subject, stating that this revision will promote day care and other profitmaking activities, and will encourage employment of residents.

Some comment by PHAs and housing managers objects to the new provision on profitmaking activities by members of a public housing family. Comment notes that such activities pose serious management problems for the PHA, and that it is difficult for the PHA to determine what activities are "incidental" to primary use of the unit for family residence. Congressional comment states that the new provisions are not necessary or appropriate, and not required to implement the public housing statute. The comment states that there is no reason to "alter the balance" of the landlord-tenant relationship, and that tenants are already able to carry out activities such as home based child care if permitted by law and PHA practice.

HUD agrees that any profitmaking activities in a tenant's unit must be consistent with the basic statutory purpose of the public housing program—to provide housing for low-income families. The Preamble to the Proposed Rule states (56 FR 6249, col. 3):

> "The regulation does not * * * authorize the conversion of a public housing dwelling unit to a business use, e.g., by changing an apartment to a store or office. The business activity must not prevent the family from living in the unit. The unit must remain as the actual residence of the family members, and the profitmaking activity must be 'incidental' to the primary residential use."

PHA comment rightly observes that the decision whether or when to allow profitmaking activities in the assisted unit may present significant management issues concerning:

—Building and health codes, and requirements for license or governmental approval.
—PHA insurance coverage.
—Utility consumption.
—Damage to the unit.
—Project traffic and parking.
—Disturbance of other residents.
—Attraction of non-residents to the project.
—Use of tenant business as a cover for drug-dealing.

There are important operational issues for public housing management in deciding whether to consent to proposed profitmaking activities in the unit, and in establishing rules governing these activities. HUD recognizes, moreover, that it may be difficult for the PHA to establish and apply criteria on what types of activity should be allowed.

However, the Federal rule merely establishes a regulatory framework for the local decision. A PHA may or may not allow incidental profitmaking activities by residents of its projects, and individual PHAs may establish very different limitations on such activities. The authority for incidental profitmaking activities by resident families can be an important tool in promoting economic independence and self-sufficiency of assisted families. The regulation amendment does not disturb the existing balance of regulatory authority concerning profitmaking activities in the assisted unit, but serves to inform PHAs and residents of the HUD position on this question.

2.4 Damage To Unit: Offer Of Alternative Accommodations

The PHA must offer alternative accommodation if the occupants are endangered because of damage to the unit (§ 966.4(h)(3)). Provisions on this subject were reprinted in the proposed rule text only because of other unrelated revisions in § 966.4. HUD has not proposed or made any substantive change in these provisions.

PHA comment states that the PHA should not be required to provide a new unit if the damage was caused by the family. On the other hand, legal aid comment asks clarification that the PHA must provide a replacement unit until there is a grievance or judicial determination that the family is responsible for the damage.

The PHA must move the family out of a damaged and dangerous unit. The lease provides the PHA must offer alternative accommodations. There is no stated exception for cases where the damage was caused by the tenant, household or guests (or the PHA believes this is the case). In this situation, the PHA may seek to terminate the lease and tenancy as quickly as possible. If occupancy by the household is a threat to health or safety of tenants or PHA employees, the shortness of the lease termination notice may reflect the exigencies of the case. The PHA must give notice for a "reasonable time considering the seriousness of the situation" (§ 966.4(l)(3)(i)(B)). If HUD issued a due process determination, and if the PHA is evicting for criminal activity (e.g., arson) by a household member that endangers PHA residents or employees, the PHA may begin a judicial eviction action without allowing the tenant a prior administrative hearing.

At this time, HUD does not find sufficient reason to amend the old rule provisions on when the PHA must offer "alternative accommodation" after a casualty. The present rulemaking is not intended as a global reexamination and revision of the lease and grievance rule.

2.5 Tenant Maintenance

The old rule provides that a lease may contain a tenant's agreement to perform certain seasonal or other maintenance tasks in accordance with local custom (§ 966.4(g)). The rule provides that such tenant maintenance requirements may not be used to evade obligations of the PHA. Provisions on this subject were reprinted in the proposed rule text only because of other unrelated revisions in

§ 966.4. However, HUD proposed no change in these provisions.

Tenant organization comment claims that the old tenant maintenance provisions violate a statutory provision, enacted in 1983, that leases must:

"obligate the public housing agency to maintain the project in decent, safe and sanitary conditions * * *." (U.S.H. Act, section 6d(1)(2), 42 U.S.C. 1437d(1)(2); Pub. L. 98–181, section 204)

The comment states that there is no room for the PHA to shift "any maintenance obligations" to the tenant. In the alternative, the comment states the rule should explicitly prohibit any requirement for tenant maintenance of common areas.

As required by law, all public housing leases—including leases with tenant maintenance provisions—must provide that the PHA is obligated "to maintain the dwelling unit and the project in decent, safe and sanitary condition" (§ 966.4(e)(1); cf. also §§ 966.4(e) (2) to (5), which bear on the PHA's duty to provide maintenance under the lease).

The tenant maintenance provisions permitted by the old rule are designed to support the basic PHA maintenance responsibility under the lease. Tenant maintenance helps the PHA keep the project and unit in decent, safe and sanitary condition. The 1983 statutory amendment essentially codifies the basic PHA maintenance obligation under the HUD lease and grievance regulation, and was not intended to uproot the tenant maintenance provisions also contained in the HUD regulation (cf., House Committee Report on the 1983 legislation, H. Rpt. 98–123, May 13, 1983, pp. 35–36).

The old rule provides (§ 966.4(g)) that the PHA must exempt from tenant maintenance requirements "tenants" who are not able to perform such tasks because of age or "physical disability". PHA comment advises that the tenant maintenance exemption should only be available if no one in a household (i.e., not just the "tenant") is capable of performing the maintenance because of age or physical disability. Although this argument has some force, HUD has not adopted the recommended change in the current limited revisions of the lease and grievance rule.

However, HUD has amended to the rule to provide that the PHA must exempt tenants unable to perform the maintenance tasks because of "disability", not just "*physical* disability" as provided in the old rule.

2.6 Accommodation Of Person With Disabilities

The proposed and final rule contain several provisions designed to assist persons with disabilities:

—If a tenant is visually impaired, notices must be in an "accessible format" (§ 966.4(k)(2) and § 966.56(h)(2)).

—The PHA administrative grievance procedure must provide "reasonable accommodation" for persons with disabilities (§ 966.56(h)(1)).

These provisions are commended in public comment, and are retained in the final rule.

In the final rule, HUD has added a new section (§ 966.7) to express the PHA's obligations for reasonable accommodation of persons with disabilities in connection with all aspects of the lease and grievance procedures. § 966.7 provides that:

"(a) For all aspects of the lease and grievance procedures, a handicapped person shall be provided reasonable accommodation to the extent necessary to provide the handicapped person with an opportunity to use and occupy the dwelling unit equal to a non-handicapped person.

"(b) The PHA shall provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a handicap of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy."

See section 2.5 above concerning the expanded exemption from tenant maintenance requirements.

3 Eviction

3.1 Lease Termination Notice

3.1.1 Relation of State and Federal Notices

Federal law specifies the minimum notice required to terminate a tenant's lease (U.S.H. Act, section 6(1)(3), 42 U.S.C. 1437d(1)(3)). State eviction laws usually require a landlord to serve a notice to vacate (sometimes called a "notice to quit") before commencing a court action to evict the tenant. The proposed rule contained provisions which were intended to clarify the relationship between the State and Federal notices.

In substance, the proposed rule would have:

(1) Required the PHA to give any notice to vacate required under State or local law (as well as the notice required pursuant to the Federal statute).

(2) Provided that the Federal notice may run "concurrently" with the State law notice (rather than consecutively, as held by a Federal case construing the old rule).

(3) Provided that the PHA may not issue a notice to vacate under State and local law until the tenant's grievance right has been satisfied.

(4) Eliminated a provision specifying what must be included in a notice to vacate issued by the PHA after decision in the tenant's grievance hearing.

Comment indicated there was considerable public confusion about the meaning of the proposed revisions, particularly concerning the relation between the authority for concurrent State and federal notices and the prohibition against issuance of a State notice until satisfaction of the tenant's right to grieve. Some comment incorrectly understood the proposed rule to require the consecutive running of the Federal and State notices.

Comment from a legal aid office asks HUD to clarify that Federal notice requirements do not preempt notice requirement under State law, and that the PHA must give the notice required by State law.

Legal aid comment endorses the proposed provision that a State notice to vacate may not be given until the time to request an administrative hearing has expired. Legal aid comment contends that Federal law prohibits issuance of a State notice to vacate until expiration of the time to grieve. PHAs vehemently object to the proposed bar against issuance of a State notice to vacate until expiration of the Federal grievance right. PHA comment urges that a PHA should be allowed to serve the State notice to vacate at the same time as the Federal notice of lease termination, or in a combined notice that satisfies both the State and Federal notice requirements.

By Federal law, the PHA must give a public housing tenant the opportunity to grieve on any proposed eviction not excluded from the PHA grievance process pursuant to a HUD due process determination. Since enactment of the 1990 NAHA, the PHA may only exclude from its grievance hearing process cases involving evictions for drug-related criminal activity or for a criminal threat to health or safety of PHA residents or employees (where HUD has issued a due process determination) (Pub. L. 101–625, section 503(a), amending 42 U.S.C. 1437d(k)). PHAs correctly point out that the bulk of eviction cases, such as evictions for non-payment, are not eligible for exclusion. Therefore in all such non-excluded cases, the PHA would be precluded—under the rule as proposed by HUD—from issuing a single notice to satisfy the State and Federal notice requirements. The PHA can only

issue a single combined notice for the limited class of evictions for criminal activity and where HUD has issued a due process determination.

PHAs note that a requirement for separate issuance of the Federal and State notices presents a new and serious administrative burden and expense for PHAs. They assert that PHAs currently issue a single combined Federal and State notice to a public housing tenant (notwithstanding some Federal caselaw holding that these notices must be issued consecutively under the old rule). Further, the PHAs indicate that later issuance of a State notice will delay the eviction (in cases where the subsequently served State notice terminates after the end of the Federal lease termination period).

PHAs observe that a tenant doesn't need two notices of the same default. Further they remark that successive service of Federal and State termination notices, and with different termination dates, will tend to produce confusion in the minds of the tenant.

PHAs argue that delaying service of the State notice to vacate is not necessary to protect the tenant's right to grieve. PHAs should be allowed to serve the Federal and State termination notices simultaneously, so long as the PHA can't file a complaint until the grievance hearing or opportunity is completed, and the Federal notice period has ended.

Contrary to assertion in legal aid comment, Federal law does not mention the State law notice. Federal law does not affect the time when the State notice may be given, provided the State law notice procedure does not interfere with the Federally required notice of lease termination, or abridge the tenant's Federal right to a grievance hearing. The right to grieve on an eviction is not abridged by issuance of a State law notice to vacate if the tenancy continues until tenant's grievance opportunity has been satisfied (by expiration of the time to request a hearing, or by completion of a hearing when requested by the tenant).

HUD is persuaded that a mandate to hold the State law notice pending completion of the Federal grievance right is unnecessary to protect any tenant right or interest under Federal law or policy, that such double notice may be confusing to the tenant and the courts, and that requiring PHAs to give double notice requirement is an unnecessary burden and expense for PHAs. HUD has therefore eliminated this double-notice requirement contained in the proposed rule.

A tenant is entitled to the full notice of lease termination required by Federal law and this regulation. Therefore, the tenant's lease does not terminate until the end of the Federally required notice, even if the State notice procedure would otherwise permit or provide for an earlier lease termination.

To assure tenant's opportunity to exercise the Federal grievance right, the final rule provides (§ 966.4(l)(3)(iii)) that:

"A notice to vacate which is required by State or local law may be combined with, or run concurrently with, a (Federally-required) notice of lease termination * * *." The final rule further provides (§ 966.4(l)(3)(iv)) that:

"When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning the lease termination * * *, the tenancy shall not terminate (even if any notice to vacate under State or local law has expired) until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed."

This provision protects the integrity of tenant's grievance hearing right under Federal law and regulation. The opportunity for a PHA grievance hearing is wholly unaffected by the issuance of any State notice to vacate.

The tenancy rights of a public housing tenant are governed by elements of both Federal and State law. The tenant has the set of rights vouchsafed by Federal law. The tenant may have additional rights afforded by State law which do not interfere with or contradict Federal law. The Federal law defines minimum protections for the Federally assisted public housing tenant, but does not preempt additional tenant protections or rights provided by the State which do not violate the Federal law.

Consistent with the Federal scheme and interest, the final rule deletes a proposed provision (proposed § 966.4(l)(1)(iii)(B)) which would require the PHA to give any notice to vacate required under State law. Further, the final rule deletes a section of the old rule (old § 966.58) which required the PHA to issue a notice to vacate after a grievance hearing decision upholding the PHA action to terminate the tenancy, and which specified the content of the notice to vacate. A State requirement for issuance of a notice to vacate is binding on the PHA by force of State law, and need not be enforced by authority of a Federal regulation. Further, there is no need to prescribe the incidents of the State eviction process after the PHA has completed the termination notice and administrative hearing process required by Federal law.

In this rule, we concern ourselves with a State notice requirement only to the extent needed to define the relation of any State notice to the notice mandated by Federal law and regulation. The rule makes clear that the State notice may be combined with the Federal notice, or run at the same time as the Federal notice (§ 966.4(l)(3)(iii)), and also assures that the expiration of the State notice does not affect the Federally required grievance right (§ 966.4(l)(3)(iv)).

3.2 Tenant Right To Examine PHA Documents

3.2.1 Statute and Rule

Section 503(a) of the 1990 NAHA (amending section 6(k) of the U.S.H. Act, 42 U.S.C. 1437d(k)) grants the tenant a right to pre-grievance hearing and pre-trial discovery of PHA documents directly related to an eviction or termination of tenancy. The rule would be amended to establish, the PHA's contractual duty to make PHA documents available for the tenant's inspection (§ 966.4(m)). The tenant has the right to examine PHA documents directly relevant to an eviction before a grievance hearing or court trial concerning eviction.

Section 503(b)(2) of NAHA (adding section 6(1)(6) of the U.S.H. Act, 42 U.S.C. 1437d(1)(6)) provides that a public housing lease must:

"specify that with respect to any notice of eviction or termination, notwithstanding any State law, a public housing tenant shall be informed of the opportunity, prior to any hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination."

Thus, in a notice of lease termination, the tenant must be notified of the right to examine relevant PHA documents. To implement this requirement, the rule would provide (§ 966.4(m)) that a notice of lease termination:

"shall inform the tenant of the tenant's right to examine PHA documents concerning the termination of tenancy or eviction".

As a sanction for violation of the tenant's right to pre-hearing or pre-trial discovery of documents in the tenant's file, the rule provides (§ 966.4(m)) that the PHA may not proceed with eviction:

"if the PHA does not make documents available for examination upon request by the tenant (in accordance with the regulatory requirements)".

3.2.2 Scope of Discovery

The PHA must allow a tenant to examine PHA documents "directly related" to an eviction. Legal aid comment asks for more direction on what a tenant can see, including direction that the PHA must produce documents not contained in the tenant file. Another legal aid comment objects that the rule does not in terms require

production of documents "relevant" to the subject matter of a case, as required by the law.

Under the law, the PHA must produce for tenant's inspection documents which are "relevant" and "directly related" to an eviction (U.S.H. Act, section 6(k), 42 U.S.C. 1437d(k)). The target of discovery has two basic elements: That the documents must be "relevant", and that the documents must have a "direct" relation to the eviction. The discovery standard in the proposed rule was intended to include both elements, not to allow the PHA to withhold "relevant" documents which are "directly" related to the termination. The proposed rule provided that the PHA's lease termination notice must inform the tenant of the right to examine "relevant" PHA documents in the tenant's file.

In response to comment, § 966.4(m) of the final rule is revised to require production of documents "directly relevant" to the eviction. In addition, HUD has made a conforming revision of § 966.4(l)(3)(ii) (providing that a notice of lease termination must inform the tenant of the opportunity to examine "directly relevant" PHA documents in the tenant's file).

HUD has not revised the rule, as proposed by comment, to specify that the PHA must produce documents not contained in the tenant file, or to otherwise amplify the PHA's obligation to permit inspection of directly relevant documents. (See Conference Report on the 1990 NAHA, H. Rpt. 101–943, October 25, 1990, p. 418.) HUD concludes that the rule adequately expresses the requirement to produce documents directly relevant to defense of the eviction, and that this principle provides an adequate regulatory standard for application to individual cases by the PHA, by grievance hearing officers and by the courts.

Comment from a real estate management organization urges that the PHA should be able to withhold information which would reveal the identity of other residents who provide information on drugs and criminal activities to the PHA. Residents will withhold complaints for fear of retribution.

The comment expresses a real and legitimate concern. The statutory discovery requirement gives a tenant access to PHA documents, so that the tenant can prepare a defense against eviction from the unit. The statute and rule do not purport to establish a Federal privilege against discovery of directly relevant PHA documents, because revelation of documents may expose informants, or because of any other privilege, such as an attorney-client privilege. However, the statute and rule also do not override other independently recognized privileges.

3.2.3 Copying Documents

The rule provides that a tenant must be allowed to copy PHA documents directly relevant to the eviction, and that such copying is "at the tenant's expense" (§ 966.4(m)). Legal aid comment recommends that the PHA should be required to provide free copies of PHA documents. This comment is not adopted.

HUD lacks sufficient justification to impose on PHAs the obligation to provide free copies of documents furnished by the PHA for inspection by the tenant. The tenant's file may be large (for example, where there is a long history of issues concerning nonpayment or criminal activity by family members). The financial burden on the PHA of providing free copies may be substantial in an individual case, or if such files are demanded in many cases. A right to obtain free copies of PHA documents may be abused by the tenant or by tenant counsel. The PHA should have the power to decide whether the PHA should provide the tenant free copies of documents.

3.3 Eviction For Criminal Activity

3.3.1 Crime By Household Member

Federal law provides that certain categories of criminal activity by a public housing household member are grounds for eviction. A PHA must:

"utilize leases which—* * * provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near such premises, *engaged in by * * * any member of the tenant's household* * * * shall be cause for termination of tenancy * * *." (U.S.H. Act, sec. 6(1)(5), 42 U.S.C. 1437d(1)(5)) (emphasis supplied).

The U.S.H. Act statutory prohibition of criminal activity by a public housing household member was originally enacted in the Anti-Drug Abuse Act of 1988 (section 5101, Pub. L. 100–690, November 18, 1988), and was retained in the 1990 NAHA amendments which redefined the classes of criminal activity to which this prohibition applies (Pub. L. 101–625, section 504, amending section 6(1)(5) of the U.S.H. Act). The proposed and final rule provide that the tenant must assure that members of the household (or guests, or other persons under the tenant's control) do not engage in proscribed criminal activity (§ 966.4(f)(12)(i)).

Comment by legal aid and by tenant organizations asserts that the tenant should not be required to "assure" the non-criminal conduct of household members, or should have only a limited responsibility to prevent criminal behavior by members of the household Comment proposes various possible standards to determine whether the tenant can be evicted for criminal behavior by household members. Comment alleges that the tenant should not be responsible if the criminal activity is beyond the tenant's control, if the tenant did not know or have reason to foresee the criminal conduct, if the tenant did not participate, give consent or approve the criminal activity, or if the tenant has done everything "reasonable" to control the criminal activity. Comment states that under the Constitution a tenant can only be held responsible for activity of a household member within the tenant's control.

PHA comment states that the PHA must be given discretion to evict an entire family for actions of a family member if eviction is in the best interest of other residents. If a PHA lacks clear authority to evict, the PHA may not be able to convince the family to oust a person who engages in criminal activity from the unit.

As in a conventional tenancy, a public housing tenant holds tenure of the unit subject to the requirements of the lease, including obligations concerning the conduct of household members affecting the unit, the management of the housing or the welfare of other residents. By signing the lease, a tenant agrees to comply with leasehold requirements pertaining to the behavior of family members. The ability of a PHA or other landlord to enforce covenants relating to acts of unit residents (e.g., damage to a unit, disturbance of other residents) is a normal and ordinary incident of tenancy, and is important for management of the housing. The power of a landlord to evict for the tenant's breach of lease requirements concerning behavior of any member of the household gives the tenant and other occupants a strong motive to avoid behavior which can lead to eviction. If the tenant does not control criminal, or other harmful or disruptive behavior, by unit occupants, the landlord can evict—removing the occupants from the housing. If the landlord does not or cannot evict for such behavior, the continued presence of the tenant and household may result in harm to the housing and other residents, and the spread of such behavior.

The Congress has determined that drug crime and criminal threats by public housing household members are a special danger to the security and

general benefit of public housing residents, warranting special mention in the law. (U.S.H. Act, section 6(l)(5), 42 U.S.C. 1437d(l)(5).) For this reason, the Congress specified that these types of criminal activity by household members are grounds for termination of tenancy (without the need for a separate inquiry as to whether such criminal activity constitutes serious or repeated lease violation or other good cause for eviction). The legislative determination by the Congress rests on a reasonable judgment that the potential for a PHA to exercise eviction as a contractual sanction against criminal behavior by unit occupants will promote the welfare of public housing residents in general, and will support the effective management of the housing. Since this judgment is reasonable, and promotes a legitimate public purpose, the legislation is Constitutional under the normal equal protection standard.

There is no reason of Constitutional necessity or public policy for HUD to impose—as proposed by comment—any additional restriction on when the tenancy may be terminated for criminal activity by a household member.

First, as we have already remarked, contractual responsibility of the tenant for acts of unit occupants is a conventional incident of tenant responsibility under normal landlord-tenant law and practice, and is a valuable tool for management of the housing. The tenant should not be excused from contractual responsibility by arguing that tenant did not know, could not foresee, or could not control behavior by other occupants of the unit.

Second, if household member criminal activity is ground for termination, then the tenant has reason to try to control or prevent the activity to protect the tenant's right to continued occupancy by the family. The standards proposed by some of the public comment would allow a variety of excuses for a tenant's failure to prevent criminal activity by household members. The proposed changes would thereby undercut the tenant's motivation to prevent criminal activity by household members.

Third, in practice it will be extremely difficult for the PHA to show that the tenant knew, could have foreseen, could have prevented, or failed to take all reasonable measures to prevent, crime by a household member. In practice, the tenant may have encouraged or profited from the criminal activity or may have ignored or turned a blind eye. The statute and regulation are based on a different, simpler and more practical test, whether a household member has in fact committed the criminal activity. In terminating tenancy for this reason, the PHA enforces the tenant's contractual duty, expreased in the lease, to prevent such activity by any family member. (If a tenant cannot control criminal activity by a household member, the tenant can request that the PHA remove the person from the lease as an authorized unit occupant, and may seek to bar access by that person to the unit.)

Finally, a family which does not or cannot control drug crime, or other criminal activities by a household member which threaten health or safety of other residents, is a threat to other residents and the project.

3.3.2 Criminal Activities—Ground For Termination: Threats To PHA Employees

The statute provides that criminal activity which threatens "other tenants" is grounds for eviction (42 U.S.C. 1437d(l)(5)), but does not mention activities which are a threat to PHA employees (though the provisions on when the PHA may use an expedited grievance process or bypass the grievance process (42 U.S.C. 1437d(k)) cover threats to both residents and employees). The proposed rule also refers only to criminal activity which threatens PHA residents, but not to activity which threatens PHA employees.

PHA comment states concern that the regulatory language may not permit the PHA to terminate leases if PHA employee health or safety are threatened. HUD shares this concern. The rule is revised to state that a criminal activity which threatens health or safety of PHA employees is a lease violation, and is therefore grounds for termination of tenancy (§ 966.4(f)(12)(i)(A)). The lease provision on threats to PHA employees is not mandated by statute. The PHA may terminate tenancy for criminal threats to PHA employees which are either a serious or repeated violation of the lease, or which constitute "other good cause" for termination.

Grounds for Termination

Section 966.4(l)(2) states the statutory grounds for termination of tenancy (as provided in section 6(l) (4) and (5) of the U.S.H. Act, 42 U.S.C. 1437d(l) (4) and (5)). This provision of the proposed rule covered termination for violation of the lease or other good cause, but did not mention the separate statutory provisions allowing termination of tenancy for criminal activity (U.S.H. Act, section 6(l)(5), added by the Anti-Drug Abuse Act of 1988, and amended by the 1990 NAHA).

In the final rule, § 966.4(l)(2)(ii) is added to state the authority for termination of tenancy for criminal activity by a household member or guest. The rule now provides a unified statement of the statutory grounds for termination of tenancy, including a termination of the lease, or refusal to renew the lease.

3.3.3 Factors Considered By PHA

Where there are proper grounds for eviction—for criminal activity by household members or for some other ground—the decision when and whether to evict is a discretionary management judgment by the individual PHA. The decision is and should be made by the PHA in the light of the particular case and PHA management policy. The Department has stated (54 FR 15998, April 20, 1989) that:

"The decision whether to initiate proceedings to terminate tenancy in a particular case remains a matter for good judgment by the PHA or the RMC (= resident management corporation), based on the factual situation. The statutory policy (authorizing eviction for criminal activity by members of the public housing household or their guests) does not restrict the PHA's or RMCs exercise of wise and humane judgment, weighing the interests of all concerned. On the other hand, the statute makes it clear that PHAs and RMCs have full authority to initiate eviction for violation of the prohibition on criminal activity when they consider such action to be justified."

In this rulemaking, PHA and resident organization comment advises that the rule should include provision clarifying that the PHA may or must consider the whole spectrum of relevant circumstances in deciding how to handle an eviction. Comment notes that the HUD regulations for the certificate and voucher programs make clear that in deciding whether to terminate housing assistance, the PHA may consider all relevant circumstances.

The final rule is amended to indicate that a decision to evict for criminal activity is not automatic, but rests in the discretion of the PHA, upon consideration of the circumstances of each case (§ 966.4(1)(5)(i)). The rule provides that:

"In deciding to evict for criminal activity, the PHA shall have discretion to consider all of the circumstances of the case, including the seriousness of the offense, the extent of participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity. In appropriate cases, the PHA may permit continued occupancy by remaining family members and may impose a condition that family members who engaged in the proscribed activity will not reside in the unit. A PHA may require a family member who

has engaged in the illegal use of drugs to present evidence of successful completion of a treatment program as a condition to being allowed to reside in the unit."

3.3.4 Notice to Post Office

The 1990 NAHA provides that the PHA must notify the local post office if an individual or family is evicted for criminal activity, including drug-related criminal activity (NAHA, section 505, U.S.H. Act, section 6(n)). To implement this provision, the rule provides that the PHA must notify the local post office serving the dwelling unit that the evicted individual or family is no longer residing in the dwelling unit (§ 966.4(l)(5)(ii)).

PHA and other comment expresses bafflement at the purpose of the statutory and regulatory requirement for notice to the post office. The law imposes a new burden on PHAs without apparent reason. Comment suggests that the notification requirement should only apply to eviction for criminal activities involving use of the mails. Commenters doubt that notice by the landlord would be accepted by the post office as a basis for ceasing delivery of mail for the tenant.

The purpose of the statutory post office notice requirement is not expressed in the formal legislative history. However, HUD understands that this provision was intended to halt delivery of mail on behalf of the former occupants who were evicted for criminal activity, so that these persons will not have reason to return to the project to pick up the mail.

HUD must of course follow the statutory requirement. To clarify the purpose of the provision, the rule is amended to add a parenthetical provision describing the purpose of the post office notification provision:

"So that the post office will terminate delivery of mail for such (evicted) persons at the unit, and that such persons not return to the project for pickup of the mail." (§ 966.4(l)(5)(ii))

3.3.5 Relation Between Civil Eviction Action and Criminal Proceeding

The PHA may evict for drug-related criminal activity or for criminal activity that threatens tenants or PHA employees. The PHA may exclude such evictions from the PHA grievance procedure if HUD determines that State law requires a fair pre-eviction hearing. Legal aid comment recommends that the PHA should only be allowed to evict for criminal activity after a criminal conviction. Legal aid comment states that the grievance exclusion for criminal activity should not be allowed until conviction of the crime. Comment also recommends that when the PHA is seeking to evict a tenant for criminal activity, by a civil eviction action in the State landlord-tenant court, the PHA should be required to prove criminal activity beyond a reasonable doubt. Other comment suggests there is a need to clarify the relation between the civil eviction process and the progress of a criminal prosecution.

Under this rule, the PHA may proceed with a civil eviction for criminal activity by family members or guests regardless of whether a criminal prosecution has commenced or completed, and regardless of the stage of any criminal proceeding. In the civil eviction proceeding, the tenant is entitled to a fair judicial hearing on the existence of legal and factual grounds for eviction.

In a criminal prosecution, the court decision may lead to imprisonment or other criminal penalty against the accused individual, and the elements of the crime must be shown by a criminal standard of proof (usually, by proving guilt beyond a reasonable doubt). However, eviction of a public housing tenant is a civil remedy. In an action for termination of tenancy—whether for the specific criminal activities enumerated in the Federal statute, or for other serious or repeated lease violation or other good cause—the decision of the court in the civil possessory action leads to a common remedy: eviction from the unit. If the PHA claims in the civil eviction action that "crime" by a household member is ground for eviction, then the PHA must prove the elements of crime by the civil standard of proof (generally by a preponderance of the evidence). As in any other eviction, the PHA must prove by an ordinary civil standard the facts alleged as the basis for eviction. There is no injustice or denial of proper process in allowing the PHA to proceed with civil eviction before conviction of a crime. There is also no reason to import the criminal standard of proof into a civil possessory action.

3.4 Representation

An American Civil Liberties Union comment states that counsel should be assigned to public housing tenants defending against eviction in State court or administrative grievance proceedings. The comment claims that provision of such publicly paid counsel for indigent tenants is required by due process, and is necessary so tenants can present viable defenses and enforce their rights.

A tenant has a right to be represented in a PHA grievance hearing and in a State court eviction action. In the administrative grievance proceeding, the tenant is entitled to be represented by a person of the tenant's choice. This right is established by Federal law (U.S.H. Act, section 6(k)(4), 42 U.S.C. 1437d(k)(4)) and by HUD regulation (§ 966.56(b)(2)). In a State court eviction proceeding, the tenant may also be represented by counsel in accordance with due process and requirements of State law.

However, there is no Federal Constitutional or statutory right, in the PHA administrative grievance process or in a civil proceeding for eviction of a public housing tenant, to provision of counsel assigned by or paid for by the PHA. HUD will not require PHAs to pay for assigned counsel in eviction proceedings. Such a requirement would be a new administrative burden and expense, and would be a drain on limited PHA financial resources for administration of public housing.

3.5 Grounds For Eviction

3.5.1 Other Good Cause

By law, a PHA may terminate a public housing lease for "other good cause" (in addition to the other statutory grounds for termination of tenancy) (42 U.S.C. 1437d(1)(4)). The rule tracks the statute (§ 966.4(1)(2)(i)).

Comment suggests a revision to provide that the landlord may not evict for "other good cause" until expiration of the lease term. HUD has not accepted this recommendation. Although terminations for "other good cause" are probably much less common than terminations for violation of specific lease requirements, HUD has no basis to suppose that good cause circumstances can only occur at the end of a pre-defined term. The rule should leave flexibility for other good cause terminations whenever the PHA can show such cause exists in the judicial eviction action. The tenant may of course challenge the existence of good cause in fact or in law. The issue is determined by the judge in the State court eviction proceeding.

4 Grievance Procedures

4.1 Hearing Procedure

4.1.1 Changes In Procedure: Opportunity For Tenant Comment

Since 1975, the rule has required that a PHA give tenants 30 days notice and opportunity to comment on proposed changes to the PHA lease form (old § 966.3). The rule also provided that the grievance procedure must be incorporated in dwelling leases (old § 966.50), and that the PHA grievance regulations must be made a part of each tenant lease (old § 966.52). Since the

grievance procedure is incorporated in the lease, changes in the grievance procedure were subject to the requirement for tenant notice and opportunity to comment on proposed changes to the lease.

To emphasize the obligation for a PHA to seek tenant comment on a change in the grievance procedure, the final rule is revised to add a separate and explicit provision on this subject. The final rule provides (§ 966.52(c)) that the PHA must provide at least 30 days notice to the tenants and resident organizations setting forth proposed changes to the PHA grievance procedure, and providing an opportunity to present written comments. As under the earlier regulation provision governing comment on changes to the PHA lease form (substantially retained in this rule; § 966.3), comments submitted must be considered by the PHA. However, the PHA retains the ultimate authority to decide the incidents of a grievance procedure adopted in accordance with the regulation. However, comments submitted by the tenants and tenant organizations must be considered by the PHA before adoption of any changes in the grievance procedure.

4.1.2 Grievance Procedure: Copy For Tenant

Legal aid comment recommends that the PHA should be required to provide a copy of the grievance procedure to the tenant.

HUD agrees. The rule is revised to provide that the PHA must furnish a copy of the grievance procedure to each tenant and to resident organizations (§ 966.52(d)).

4.1.3 Adverse Action

4.1.3.1 *Notice Of Proposed Adverse Action.* By law, the PHA is required to give the tenant notice of a proposed "adverse action" (U.S.H. Act, section 6(k)(1), 42 U.S.C. 1437d(k)(1)). The rule provides, in accordance with the statute, that the PHA must notify the tenant of a proposed adverse action (§ 966.4(e)(8)). The rule lists certain PHA activities which are treated as adverse action, but does not attempt to set out a complete list of such actions.

PHA comment recommends that the regulation should give a more comprehensive list of possible "adverse actions" for which notice is required, or that the regulation should not include any list of adverse actions. PHA comment urges that a transfer from the unit, or the imposition of penalties for late payment or other charges, should not be considered an adverse action.

In public housing, tenant rent is based on family income, and is redetermined at least annually. Comment from a legal aid office states that rent changes should be added to the list of specified adverse actions. In addition, the comment suggests that a notice of the redetermined rent should provide, as in the certificate and voucher program, that the tenant may ask for an explanation of the basis of the rent determination and may ask for a hearing if the tenant does not agree with the determination.

The rule enumerates common types of "proposed adverse action" by a PHA affecting a tenant (§ 966.4(e)(8)). However, HUD is unable to state in advance all possible types of proposed adverse action by a PHA affecting the tenant. Any proposed adverse action by the PHA is subject to the statutory notice requirement. In any case, under the existing regulatory definition of grievable subjects (not revised by this rule) the public housing tenant has a broad right to grieve on PHA action or non-action which may adversely affect the individual interest of the tenant (§ 966.53(a)). Whether or not a type of proposed adverse action is explicitly listed in the rule, the tenant has the right to grieve on any such subject.

The final rule retains the provision that a proposed transfer from the unit will be considered as a proposed adverse action, for which the PHA must give notice of adverse action. The PHA must provide a tenant the opportunity to grieve. A proposed transfer individually and adversely affects the tenant. The PHA may have a clear right to transfer the tenant from the unit. However, if the tenant elects to grieve, the correctness of the PHA's proposed action is presented for decision by the hearing officer.

The list of proposed adverse actions (§ 966.4(e)(8)(i)) is revised to specify that imposition of charges for maintenance and repair, or for excess consumption of utilities, is to be treated as a proposed adverse action. Such charges are over-and-above the ordinary rental charge, and directly affect the pocketbook of the tenant.

HUD finds, however, that there is no need to specifically mention in the rule that the PHA's imposition of penalties for late payment is an adverse action (and have therefore eliminated the explicit reference to late payment penalties in § 966.4(e)(8)). In general, the levy of a late payment charge is a ministerial action by the PHA where the tenant fails to make timely payment of the rent in accordance with the lease and PHA rules. As indicated above, the tenant may grieve on a proposed adverse action by the PHA, but HUD has not attempted a comprehensive listing of grievable adverse actions.

HUD has not adopted the suggestion that a notice of rent change (i.e., notice of the new rent as redetermined by the PHA at an annual or interim reexamination) must be treated as a notice of adverse action. Of course, there may be issues as to whether income or rent was correctly determined, and the tenant has a right to grieve on such issues. However, in itself, the regular rent determination is a normal incident of the assisted tenancy, not a penalty or special adverse action against the tenant. All tenants must pay an income-based rent computed in accordance with Federal law.

HUD has, however, amended the rule to provide (§ 966.4(c)(4)) that when the PHA redetermines the rent payable by the tenant, or requires the tenant to transfer to another unit suitable for the family size:

"* * * the PHA shall notify the tenant that the tenant may ask for an explanation stating the specific grounds of the PHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under the PHA grievance procedure."

4.1.3.2 *Postponement of Adverse Action.* The statute provides that a PHA must give opportunity for hearing on a "proposed" adverse action (42 U.S.C. 1437d(k)(1)). Resident organization comment states that the PHA should be prohibited from taking any adverse action until the tenant's grievance rights has been satisfied.

The final rule contains two provisions which define the relation between the grievance hearing and a proposed adverse action:

—For a proposed lease termination where the PHA is required to afford the opportunity for an administrative grievance hearing, the rule provides that "the tenancy shall not terminate * * *" until the grievance process is completed (either by expiration of the time to request a hearing, or by completion of the grievance process) (§ 966.4(l)(3)(iv)).

—For other proposed adverse actions, the rule provides that the PHA shall not take any proposed adverse action until the grievance process is completed (§ 966.4(e)(8)(ii)(B)).

4.1.4 Hearing Officer

Under the old grievance procedure, in effect since 1975, the hearing officer must be an "impartial, disinterested" person selected jointly by the PHA and the tenant seeking to grieve. If the PHA and the complainant cannot agree on a hearing officer, the PHA and

complainant each appoint members of the hearing panel, who then select a third panel member. If the PHA and complainant appointed members cannot agree on a third panel member, the third member is appointed by an independent arbitration organization. Alternatively, a hearing officer or panel member may be appointed by a method approved by the majority of tenants in affected projects.

In this rulemaking, HUD proposed to replace the cumbersome old rule process for designation of a hearing officer by giving the PHA broader authority to decide how a hearing officer or panel is selected. The PHA could use a method approved by tenants in affected projects (the alternative method allowed under the old rule), or could appoint a person (who may be an officer or employee of the PHA) selected in a manner specified in the PHA grievance procedure. In either instance, the hearing would be conducted by an "impartial person or persons appointed by the PHA" (§ 966.55(b)(1)).

PHAs and PHA organizations strongly support the change in procedures for designating a hearing officer. PHAs state that tenants have used the old requirements to delay the grievance hearing, and to postpone eviction. PHAs state that the old rule requirements for appointment of a hearing officer cause substantial delays in the hearing process. Tenants can hold up the hearing process by refusing to agree to appointment of a hearing officer. A PHA organization states that some PHAs report delays of up to six months. PHA comment indicates delay of as much as a year where the tenant rejects the hearing officer. A PHA states that not having to go outside the agency for a hearing officer will expedite the hearing process. A PHA remarks that the change will help the PHAs negotiate with resident organizations a new procedure for appointment of hearing officers.

Comment from legal aid and resident organizations objects to the changes giving the PHA more discretion on how to designate a hearing officer. Comment claims that a PHA officer or employee cannot serve as an impartial hearing officer. Comment states that HUD should impose guidelines for impartiality.

Comment asserts that changing the procedures for PHA appointment of a hearing officer will undermine tenant confidence in the grievance procedure. Comment states that tenants should have a voice in appointment of a hearing officer, and that the method for appointment of a hearing officer should be approved by the tenant organization. Comment claims that the proposed change disempowers tenants, and is contrary to HUD's emphasis on increasing tenant responsibility and power.

On review of public comment, HUD has decided that the impractical old regulation procedure for appointment of a hearing officer will be modified, as proposed by HUD, to allow PHA appointment of a hearing officer or panel. On its face, the old procedure requiring PHA-complainant agreement on appointment of a hearing officer or hearing panel member delays the hearing by the time necessary to satisfy these procedures. Experience over the years also suggests that the old procedures have been abused by tenant counsel as a deliberate dilatory technique for delay of the hearing process. For some PHAs, the requirements for PHA-complainant agreement on appointment of a hearing officer have apparently resulted in very substantial hearing delays—including delays of six months to a year. Complication and delay of the administrative hearing process results in a diversion of PHA administrative resources and energies. Equally important, such delays defeat the basic objective of the administrative hearing process—to provide a fair, simple and expeditious administrative hearing on individual tenant grievances. Where the grievance concerns a proposed termination of the lease (for example, a termination for family damage to the unit or for nonpayment of rent), the total eviction period is the cumulative sum of the grievance period and the period required for the subsequent judicial eviction process (where the tenant may receive a second *de novo* hearing). In the meantime, the PHA is unable to evict the tenant. During this period, the family may continue the practices for which eviction was originally sought, such as disturbing peaceful occupancy by other residents, or may engage in other harmful behavior.

The rule provides, as required by law, that the administrative grievance hearing must by conducted by an "impartial" person or persons appointed by the PHA (§ 966.55(b)(1); U.S.H. Act, section 6(k)(2), 42 U.S.C. 1437d(k)(2)). HUD does not agree with commenters who contend that a PHA-appointed hearing officer, or a hearing officer who is an officer or employee of the PHA, cannot be impartial or that the regulatory requirement to designate an impartial hearing officer is a mere sham. Such comments proceed from a distrust of the PHA's ability to provide an impartial hearing. This bias is inconsistent with the basic structure and purpose of the statutory administrative grievance mechanism: to provide for decision on the tenant's grievance "by the public housing agency" (42 U.S.C. 1437d(k)(6)) through an impartial party designated under the administrative grievance procedure established by the PHA. There is no reason of policy or statute to prohibit PHA appointment of the hearing officer who will render the PHA decision.

A PHA has the obligation to appoint hearing officers who can provide fair and impartial review of questions at issue in the grievance hearing. By designation as an "impartial" hearing officer, the appointed hearing officer, whether or not connected with the PHA, is responsible to render a disinterested decision.

In operation of governmental programs, it is common that hearing procedures for appeal of agency action provide for designation of a hearing officer by the administrative agency, and for hearing by an official of the same agency. The revised procedure for appointment of a public housing hearing officer under this rule is essentially the same as a procedure used successfully for some years in the section 8 rent certificate and rental voucher programs, which are usually administered by the same PHA as the local public housing program, and which serve a similar class of eligible low-income families under the U.S.H. Act.

Comment by PHAs, and by legal aid and tenant organizations, propose that the rule provide that the PHA-designated hearing officer may not be a person who made the original decision which is the subject of the grievance, and may not be a subordinate of the original decision-maker. This limitation is a requirement of the PHA hearing rules for the certificate and voucher programs. HUD has accepted this recommendation. However, HUD has not adopted a proposal that the rule should prohibit the appointment of a hearing officer who is a superior of the original decision-maker. A superior of the person who rendered the original decision can provide a fair and impartial new look at a challenged decision.

The final rule provides (§ 966.55(b)(1)) that:

> "A grievance hearing shall be conducted by an impartial person or persons appointed by the PHA, other than a person who made or approved the PHA action under review or a subordinate of such person."

To clarify that the grievance may be heard either by a single hearing officer or by a grievance panel, the final rule specifies that the hearing may be heard by a "person or persons" appointed by the PHA.

The rule still permits the prior procedure for appointment of a hearing officer through a method approved by a majority of affected tenants in an election held for that purpose. The principal revisions of the appointment mechanism under the new rule pertain to the case where a hearing officer is not designated through a method determined in a tenant election.

The rule provides that the selected method of hearing officer appointment "shall be stated in the PHA grievance procedure" (§ 966.55(b)(2)). Under this rule, the PHA is now required to provide opportunity for comment by tenants and resident organizations before adopting changes in the procedure for hearing officer appointment, or in any other aspect of the PHA grievance procedure (§ 966.52(c)).

In addition to providing for tenant input before a change in the method for designating a hearing officer, the final rule also provides (§ 966.55(b)(3)) that the PHA:

> "The PHA shall consult the resident organizations before PHA appointment of each hearing officer or panel member. Any comments or recommendations submitted by the tenant organizations shall be considered by the PHA before the appointment."

HUD expects that PHAs will generally conduct this consultation and appoint hearing officers in advance, with authority to hear future grievances filed by tenants, rather than in response to an individual grievance.

The purpose of the revisions in the regulatory procedures for hearing officer designation is to improve management of public housing projects for the benefit of all residents. Problems in operation of the grievance procedure, and the inability of the PHA to apply sanctions against a tenant and household which abuse the disciplines of community living, affects chiefly the other families who reside in the housing, and who will experience directly the deterioration of community living and common security.

HUD encourages the assumption of greater management responsibilities by residents of public housing. As tenants and tenant organizations assume responsibility for management functions, including operation of the grievance process, they will inherit any defects and difficulties of the grievance procedure.

The grievance procedure changes do not (as asserted by some comment) preclude or limit the use of a tenant as a single hearing officer or as a member of a hearing panel.

4.2 Expedited Grievance Procedure

When the PHA evicts a tenant for drug crime or criminal activity which threatens other residents or PHA employees, the PHA has a choice of bypassing the administrative grievance process or establishing an "expedited grievance procedure" (42 U.S.C. 1437d(k); § 966.55(g)). The law provides that the expedited grievance procedure may be used for the same two classes of dangerous criminal activity as the authority to bypass the grievance process after a HUD due process determination:

—Criminal activity that threatens tenant or PHA employee health, safety or right to peaceful enjoyment of the premises.

—Drug-related criminal activity.

However, the PHA may use an expedited grievance procedure even if HUD has not issued a due process determination, or if HUD has issued a determination, but the PHA elects to make the grievance machinery available to the tenant.

For most grievances, the rule provides that the PHA must give opportunity for informal settlement at the start of the grievance process (§ 966.54; not amended in this rulemaking). However, the rule provides that when the PHA is operating under the expedited grievance procedure for criminal evictions, the PHA may proceed directly into the full grievance hearing process, and may omit the informal settlement stage of the grievance procedure (§ 966.55(g)(2)).

In all other respects, the PHA must comply with all regulatory administrative grievance requirements. The PHA may design the expedited grievance procedure to allow expeditious hearing of the grievance (§ 966.55(g)(3)). The expedited grievance process could include provision for expedited notice or scheduling, or for expedited decision by the hearing officer.

A PHA states that the expedited procedure will greatly benenfit PHAs. Other PHA comment accurately notes that the regulation provides little direction to the PHA beyond allowing omission of the informal settlement stage. The comment states that more specific guidelines are desirable, and would result in less discrepancy among PHAs.

HUD appreciates the concern expressed in this comment. However, HUD lacks at this time an adequate basis for more precise guidance to PHAs on how to set up an expedited grievance procedure. The attempt at this time to lay out more detailed Federally prescribed procedures for conduct of an expedited grievance hearing would reduce the operational flexibility of the PHAs, and could produce significant problems without corresponding benenfit. If actual experience under the rule indicates the desirability of a more prescriptive or precise treatment of this subject, HUD may reconsider this question.

4.3 Who May Grieve?

Section 966.53(f) defines the term "tenant" for purposes of the grievance hearing requirements (part 966, subpart B). A "tenant" has the right to invoke the grievance hearing procedures. (There is no "tenant" definition for the dwelling lease retirements at subpart A of the grievance procedure.)

In this rule, a technical amendment clarifies that a "tenant" must be an "adult". The revision also makes clear that a "live-in aide" has no right to a grievance hearing. The live-in aide is not a member of the assisted "family" and only resides in the public housing unit to care for a disabled family member.

PHA comment endorses the revised "tenant" definition.

Comment states that the regulation does not define who is an "adult". Comment asserts that in some States an "emancipated minor" can assume responsibility for a tenancy, and that an emancipated minor should not be barred from taking over the lease because of an arbitrary age limitation.

In this rule, HUD does not impose any arbitrary age limitation, or any Federal imposed definition of adulthood or contractual capacity. In stipulating that the tenant must be an "adult", HUD accepts the definition of contractual capacity as determined by State or local law, but does not seek to impose a uniform Federal definition. If an "emancipated minor" is vested with capacity, as determined by State and local law, to assume the leasehold, then the minor would be deemed an "adult" for purpose of HUD's "tenant" definition. If the remaining head of household is an emancipated minor, who has legal capacity to assume the obligations of the lease, then the remaining household head would qualify as a "tenant" under the definition—i.e., as a person who may exercise the right to grieve.

The right of a remaining family member to grieve does not signify that a remaining family member has the right to succeed to the leasehold interest of the original tenant who entered into a lease with the PHA. The tenancy right rests with the lessee who signed a lease with the PHA as tenant of the unit. When the original lessee dies or departs the unit, then the remaining family members constitute a "family" and are eligible for continued assistance.

However, there is no automatic right of leasehold succession. The decision on whether to renew the tenancy, by executing a new lease with a remaining family member who possesses legal capacity, is a discretionary management determination by the PHA.

Legal aid and tenant organization comment states that a minor child (who remains in the unit after departure of the lessee), should have the right to grieve. A relative or guardian of the minor child can move into the unit, or can take over the responsibilities of the original lessee. Comment states that a minor should have the right to exercise the grievance right through a relative or guardian.

HUD is not persuaded that the grievance right should be extended to a minor, or to a non-resident relative or guardian acting on the family's behalf. Rather, the grievance right should be restricted to a remaining family member with legal capacity to assume the tenancy. Occupancy of public housing is regulated by the set of tenant and PHA rights and duties contained in the lease. The practical and legal structure of the program requires a lease between the PHA and a member of the resident family, who must therefore be a person with legal capacity—who may be bound by and enforce the covenants of the lease. Where there is no longer any adult in the unit, the PHA may decide to admit a relative or guardian to live in the unit and head the reconstituted family, and to assume the obligations of a public housing lease. However, this decision is an exercise of discretionary management judgment by the PHA, not a matter to be determined by a grievance hearing.

Comment also claims that "live-in aides" should have the right to grieve. HUD finds no merit to this contention. A live-in aide is only allowed to reside in a public housing unit for support of a disabled or elderly member of the assisted family.

4.4 Retention of Old Eviction Procedures

Comment by a tenant organization proposes that the PHA should be required to retain prior grievance procedures (under a pre-1975 HUD circular or under the 1975 grievance rule) unless a majority of the tenants vote to revise the old grievance procedure. This comment is not adopted.

Federal grievance requirements should be uniform for all PHAs, and should not depend on the historical accident of whether a PHA has a different grievance procedure which was adopted under the old circular or rule. All PHAs must adopt grievance procedures within the requirements of the new rule. Some changes will generally be required to assure that the PHA grievance procedures comply with statutory requirements—such as the requirement for a notice of proposed adverse action under the 1983 law, or the requirement for a Hub due process determination if the PHA wants to exclude evictions from the grievance process, and the definition of excludable categories. In general, compliance with the new rule will not require extensive revision of the old grievance procedures.

Under this rule, tenants must be given an opportunity to comment before the PHA revises its grievance procedure.

5 Eviction: Exclusion From Grievance Procedure

5.1 Termination Notice

Legal aid comment recommends that where an eviction is excluded from the PHA grievance process the tenant should be notified that the tenant is not entitled to a grievance hearing, and the basis of this exclusion. This recommendation is adopted.

The final rule provides (§ 966.4(l)(3)(v)) that when the PHA is not required to afford tenant the opportunity for a grievance hearing on a lease termination, and has decided to exclude the grievance from the PHA grievance procedure, the notice of lease termination shall:

"(A) State that the tenant is not entitled to a grievance hearing on the termination.

(B) Specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that HUD has determined that this eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations.

(C) State whether the eviction is for a criminal activity (which threatens health or safety, of PHA residents or employees) * * * or for a drug-related criminal activity * * *."

5.2 What Evictions May Be Excluded From Grievance Procedure?

Before passage of the 1990 NAHA amendments, the PHA could bypass the grievance process for any eviction once HUD issued a due process determination for the judicial eviction procedure used by the PHA. However, NAHA narrows the grievance exclusion to cover only two cases:

—An eviction for "any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other tenants or employees of the public housing agency."

—An eviction for "any drug-related criminal activity on or near such premises."

(U.S.H. Act, section 6(k), 42 U.S.C. 1437d(k))

The rule states the scope of the potential grievance exclusion in accordance with the law (§ 966.51(a)(2)(i)).

PHA comment criticizes the narrowing of the grievance exclusion under the 1990 legislation. A PHA states that this change forces the PHA to go through a time-consuming and ineffective grievance procedure, and the necessity for dual administrative and judicial hearings for eviction of a tenant. Since the statute defines the scope of the grievance exclusion, HUD has no power to broaden the exclusion.

Legal aid comment suggests that the term "premises", as used in the statutory provisions allowing a PHA to bypass the grievance process for eviction of a public housing tenant, should be read to apply to public housing premises of the same public housing agency, not to illegal activity on or near public housing premises of another PHA. HUD concurs that these provisions are intended to refer to criminal activity which endangers residents or employees of the same PHA, or to drug related criminal activity on or near premises of the same PHA. The rule is revised to make clear that the grievance exclusion concerns "the PHA's public housing premises", that is to say public housing premises operated by the PHA which avails itself of the grievance exclusion. (Similar technical revisions are made in the provisions authorizing use of an "expedited" hearing process for the same types of criminal activity (§ 966.55(g)(1)(i)), and in the provisions authorizing termination of tenancy for such criminal activity (§ 966.4(f)(12)(i)(A) and § 966.4(l)(2)(ii)(A)).

Under the 1990 amendments, the grievance exclusion applies only to specific types of serious criminal activity. Comment by legal aid and by a tenant organization recommend that the grievance exclusion should be further constricted: That the exclusion should only apply to criminal activity that is a "serious" threat to tenants or employees, or only to "violent" or "felonious" criminal activity.

Comment also claims that application of the statutory and regulatory standards leaves too much room for subjective judgment by the PHA, such as in determining when drug activity takes place "on or near" public housing. PHA comment states that the "on or near" standard is vague, and constitutes an invitation to protracted litigation. The comment suggests a specific regulatory definition such as two "standard city blocks".

There is no present need for HUD to amplify the statutory standard defining

what cases may be excluded from the grievance process. The law plainly expresses the Congressional judgment that drug crimes and threats to health or safety of tenants or PHA employees are so serious that the PHA should have immediate access to local landlord-tenant courts, without the delay and other difficulties of the administrative hearing process. The Conference Report on the 1990 law states that the statutory language "is intended to reach criminal activity that seriously endangers other tenants or PHA employees, while preserving the grievance process for all other categories of evictions" (H. Rpt. 101–943, October 25, 1990, p. 417). The Congressional standard should not be overlaid by HUD restrictions further constricting the scope of the statutory grievance exclusion.

The statutory standard, as incorporated in the rule, affords an adequate objective standard to guide determination in individual cases. This standard will be initially applied by the PHA in deciding what evictions will be brought directly in the local courts. The PHA may moreover adopt local rules or practices concerning what types of cases will be deemed to present a threat to health, safety or peaceful enjoyment, or on determining when drug activities occur "near" the public housing premises. PHAs may articulate reasonable principles in response to local experience. Such locally developed principles are more likely to constitute a reasonable application of the statutory standard to local reality than a HUD attempt at this time to articulate universal rules for this purpose.

Any application of a statutory standard to concrete cases may be subject to dispute at the margins. Ultimately, the question of whether the PHA has correctly excluded an eviction from the hearing process will be subject to review by the landlord-tenant court in the judicial process for eviction of the tenant.

We do not agree with the assertion in certain legal aid comment that the definition of restrictions on the public housing grievance exclusion should be made parallel to recent regulations allowing a PHA to terminate assistance in the certificate or voucher programs. In the certificate and voucher programs, the assisted landlord may always go directly to court for eviction of the tenant.

5.3 HUD Due Process Determination: Must Be Based On Analysis of Legal Requirements For Eviction Under State or Local Law

Legal aid and tenant organization comment argues that HUD has responsibility to determine whether actual practice in the State courts provides the elements of a due process hearing. We disagree. To make a due process determination, HUD examines whether law of the jurisdiction "requires" a due process preeviction judicial hearing (U.S.H. Act of 1937, section 6(k); 42 U.S.C. 1437d(k)). It is not HUD's statutory function to examine the actual practice of local courts in implementing the legal requirements. The attempt to base HUD's due process determination on a factual examination of State court practices would be both impractical and uncertain. (See discussion at 53 FR 33294, August 30, 1988.)

5.4 Definition of Due Process

By statute, HUD is authorized to issue a rule which establishes the "basic elements of due process", and to determine whether eviction procedures under law of a jurisdiction meet HUD's due process definition (42 U.S.C. 1437d(k)). The definition of due process elements may not include a requirement that the tenant be provided an opportunity for discovery of relevant PHA documents.

The old lease and grievance rule contained a definition of due process elements, including opportunity for discovery of PHA documents. As required by the NAHA, the new regulation removes the discovery element from the due process definition. Except for the discovery element, the new rule (§ 966.53(c)) retains verbatim the list of due process elements from the old rule. These elements amply express the core of procedural due process—namely notice and opportunity to be heard.

5.4.1 Nature of the Court Decision

HUD's due process definition requires a "decision on the merits" (§ 966.53(c)(4)). The preamble to the proposed rule states that this element means:

> "that the tenant must have a right, pursuant to law of the jurisdiction, to a decision based on the evidence and the law. It does not signify that there must be a right to a written decision, or to a statement by the court of the legal basis of decision." (56 FR 6252, February 14, 1991)

Legal aid comment states that Constitutional due process requires a written decision and an explanation of the reason for decision. In a judicial eviction action, procedural due process requires a decision based on the facts and the law, but does not comport a requirement for written decision and explanation of the basis of decision. (For the present purpose, we need not consider whether a written decision and explanation are Constitutionally necessary in an administrative hearing proceeding, in order to facilitate a subsequent judicial review of the administrative action.) Written decision or explanation is not required in order to produce a decision on the merits, with full opportunity for the tenant to defend the eviction.

For most States, laws governing judicial eviction procedures apparently do not require the landlord-tenant court to give a written decision or statement of the basis of decision, although most or all courts probably maintain docket records that would show the disposition of the eviction. We are not aware of any substantial general challenge to the constitutional validity of State eviction process on this basis, and the Supreme Court has upheld the validity of summary State process for eviction of a tenant (*Lindsay* v. *Normet*, 405 U.S. 56, 92 S.Ct. 862 (1972)).

The position recommended by the comment essentially challenges the Constitutionality of ordinary eviction process in use by most States, not just the validity of HUD's due process definition as a basis for issuance of a HUD due process determination. Furthermore, the position urged by commenter would essentially eviscerate the statutory authority to bypass the grievance process for drug crimes and threats to health or safety of tenants or PHA employees. Commenter's position would preclude issuance of a due process determination for typical State eviction processes, which afford fair notice and opportunity for a hearing, but which do not require written decision or a written articulation of the basis of decision.

Comment claims that NAHA legislative history (i.e., the Conference Report on the 1990 NAHA) requires HUD to literally incorporate in its due process definition (as applied to State court eviction actions) all of the procedural protections for the administrative grievance procedure, including the requirement for a "written decision" by the PHA.

We note first that the actual statutory language (42 U.S.C. 1437d(k)) plainly distinguishes between treatment of the administrative grievance procedure and the analysis of judicial eviction procedure under the HUD-prescribed due process definition. For the PHA's administrative grievance procedure, there is an explicit statutory listing of six required procedural elements. For purposes of the grievance exclusion, HUD has statutory responsibility to determine the "basic elements of due

process". However, there is no statutory listing of these due process elements, and no requirement to use the administrative hearing elements to define due process in the court proceeding. HUD is of course bound and authorized to follow the law actually enacted by the Congress.

HUD also does not think that the Conference language should or can be read, as suggested by comment, to literally impose the administrative grievance elements on HUD's due process determination. For example, the elements of the administrative grievance process as defined by the statute mandate a "written decision by the public housing agency" (42 U.S.C. 1437d(k)(6)). In a judicial eviction action, the court's decision is of course issued by a State judge, and is not literally issued "by the public housing agency". In the court eviction action, the PHA is the plaintiff, not the judicial decision-maker. The NAHA Conference language merely means that the judicial eviction action should include the essential due process elements also contained in the administrative grievance action: namely, fair notice and the opportunity to be heard before a decision on the merits. These essential procedural protections are the heart of HUD's due process definition, as of the statutory requirements for an administrative grievance hearing.

5.4.2 Due Process Definition: Right To Counsel

HUD's definition of due process elements includes the "right of the tenant to be represented by counsel" in the judicial eviction proceeding (§ 966.53(c)(2)). Comments by ACLU, and by legal aid and tenant organizations, claim that where an indigent tenant is evicted for criminal activity, the tenant has a due process entitlement to appointment of publicly paid counsel (or that counsel should be provided to protect against the danger of self-incrimination). No revision is made in response to these comments.

HUD's due process determination and due process definition pertain only to the civil eviction process under State law, and do not affect the conduct of any criminal proceeding. In a civil eviction proceeding, the landlord-PHA only seeks to repossess the property from the tenant. In such a proceeding there is no due process or other Federal Constitutional right to representation by publicly paid counsel.

5.5 Due Process Determination: Comments

Comment by a Congressional office, and from legal aid and tenant organizations state that when a PHA seeks approval of an "individual state waiver" (due process determination), HUD should give affected tenants advance notice and opportunity to comment before a due process determination is made. Comment asserts that such notice is required by the NAHA Conference report, and due process, and is also desirable as a matter of policy.

The Conference Report on the 1990 amendments states the "conferees intend that when an individual state waiver is sought, the Secretary should notify tenants in advance and provide them with an opportunity to comment" (H. Rpt. 101–943, October 25, 1990). The actual statutory language empowering HUD to issue a due process determination was originally enacted in 1983 (section 204 of Pub. L. 98–181, November 30, 1983, the Housing and Urban-Rural Recovery Act of 1983), and does not include a requirement to solicit tenant comment before issuance of an individual due process determination. The pertinent statutory language was reenacted verbatim in the 1990 NAHA amendments. (The 1983 law and the 1990 amendments both provide that an agency may exclude a grievance "in any jurisdiction which requires that * * * a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process.") The 1990 Conference statement does not alter the actual statutory language enacted in the 1983 law, and the 1990 law does not add a requirement to provide the tenants notice and opportunity to comment before HUD issues an individual State due process determination.

The 1990 statute provides that HUD must issue a new definition of the basic elements of due process through a notice and comment rulemaking. HUD's new due process definition under the 1990 NAHA has been established by a full notice and comment rulemaking, which is completed by promulgation of this final rule. However, HUD is not required to use any particular procedures for issuance of an individual State due process determination, or to provide tenant notice and opportunity to comment (42 U.S.C. 1437d(k)).

HUD due process determinations are not issued in response to request from an individual State or individual PHA. Rather, HUD's objective is to conduct, so far as possible, a systematic and comprehensive analysis of available eviction procedures in all States, and to issue due process determinations for all eviction procedures which meet the HUD due process definition. Once a due process determination is issued for a State eviction process, the due process determination may be invoked by any PHA in the State which wants to bypass the grievance process for an eviction through the covered process.

HUD welcomes and invites public comments at any time bearing on the due process determination for any State or eviction procedure.

Opportunity for advance public notice and comment on a due process determination is not Constitutionally required. The issuance of a due process determination does not terminate or affect the tenant's property right to occupancy of the unit. Even after issuance of a determination, the PHA may only evict the tenant by bringing a judicial action for eviction of the tenant (through the judicial eviction process covered by a HUD determination). The judicial eviction action must satisfy procedural due process under the fourteenth amendment. The issuance or non-issuance of a due process determination determines whether the tenant has the statutory right to an administrative grievance hearing process prior to, and in addition to, a court hearing in the judicial eviction action.

5.6 Status of Prior Due Process Determinations

Comment asks HUD to clarify the effect of the new rule on existing HUD due process determinations. Since 1989, and before enactment of the NAHA, HUD issued due process determinations for eviction procedures in many jurisdictions. Under transition provisions of the NAHA, these prior determinations all temporarily lapsed 180 days after enactment of the NAHA (May 27, 1990), since HUD had not then issued final rules implementing the NAHA amendments (NAHA, section 503(d)).

Following final promulgation of this rule, a PHA may exclude an eviction from the PHA grievance procedure pursuant to a previously issued due process determination "to the extent that the exclusion complies with (the 1990 NAHA amendments)" (NAHA, section 503(d)). A U.S. district court has stated that:

"under the Cranston-Gonzalez Act (i.e., the NAHA), once the new regulations are promulgated, any prior due process determination, and any exclusion pursuant thereto, will be valid to the extent it is consistent with the new regulatory definition of due process, as well as the other amendments to the Act (pursuant to the NAHA)." (*Housing Authority of the City of Jersey City* v. *Jackson,* U.S.D.C., D. N.J, Civil No. 90–1410, December 13, 1990)

HUD's new regulatory due process definition under this rule eliminated the prior discovery element. All remaining elements of the definition are identical to the due process elements as defined in the old rule (and no new elements have been added). Thus any eviction procedure found to meet the prior regulatory definition will also, necessarily satisfy the new definition. Prior due process determinations are therefore consistent with the new regulation, and are valid and operative after promulgation of the new rule. However, the breadth of the grievance exclusion pursuant to these prior determinations is subject to the limitation in the new law, which permits exclusion only of evictions for drug-related criminal activity and criminal activity which threatens health or safety of residents or PHA employees.

6.0 Findings and Certifications

6.1 Impact on the Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

6.2 Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect 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.

6.3 Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule does not affect the size of a PHA program, or the amount of funds available for administration of the program. Major provisions of this regulation substantially restate requirements already binding on a PHA as a matter of Federal law: the requirement for lease provisions which prohibit drug-related or other criminal activity by public housing residents, the requirement to give a tenant notice of a proposed adverse action by the PHA, the provision that a PHA may exclude a grievance concerning an eviction from the PHA administrative grievance process if HUD has issued a due process determination. Certain provisions are expected to increase the discretion of the PHA, and reduce the PHA's administrative burden: removing from HUD's regulatory due process definition the existence of a State-law right to examination of PHA documents, revising the procedure for appointment of a hearing officer. No procedure of this rule is expected to add significantly to a PHA's administrative burden in administration of its public housing program.

6.4 Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The requirements of this rule are directed to public housing agencies and do not impinge upon the existing relationship between the Federal government and the PHAs as established by the United States Housing Act of 1937. The PHA retains full responsibility for management of the relationship with its tenants in accordance with Federal law and regulation. The rule will also enhance the discretion of the PHA for administration of its public housing program.

6.5 Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. Any effect on the family would likely be indirect and insignificant.

6.6 Information Collections

The Department has identified information collections contained in Part 966, including §§ 966.4(a)(2), 966.4(i), 966.54, 966.55, and 966.57. The public reporting burden of these collections is estimated as follows:

TABULATION OF ANNUAL REPORTING BURDEN

[Lease and Grievance Requirements, 24 CFR Part 966]

Description of information collection and section of CFR affected	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total annual hours
24 CFR 966—Development of new form of dwelling lease	3,115	1	1,038	17.38	18,045
24 CFR 966—Promulgation of new lease and obtaining tenant signatures	3,115	396	411,180	.27	111,691
24 CFR 966.4(a)(2)—Tenant provides the names of family members who will reside in the unit	1,326,308	1	1,326,308	.01	14,411
24 CFR 966.4(i)—PHA retains copy of the report on the move-in inspection	3,115	59	183,785	.09	15,975
24 CFR 966.54—Tenant presents grievance informally to PHA orally or in writing	61,689	1	61,689	.54	33,514
24 CFR 966.55—Tenant submits a written request to the PHA for a hearing specifying the reasons for the grievance	12,388	1	12,388	.54	6,730
24 CFR 966.57—PHA retains a copy of the hearing officer's decision	3,115	4	12,460	.09	1,083
Total annual burden					201,449

6.7 Regulatory Agenda

This rule was listed as Item No. 1281 in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530, 44567) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

6.8 Catalog

The Catalog of Federal Domestic Assistance program number is 14.146, Low Income Housing Assistance Program (public housing).

List of Subjects in 24 CFR Part 966

Public housing, Grant programs—housing and community development.

PART 966—LEASE AND GRIEVANCE PROCEDURES

Accordingly, 24 CFR part 966 is amended as follows:

1. The authority citation for part 966 is revised to read as follows:

Authority: Secs. 3, 6, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 5101, Anti-Drug Abuse Act of 1988 (42 U.S.C. 1437d(1)); secs. 503, 504, 505, Cranston-Gonzalez National Affordable Housing Act (Pub. L. 100–625) (42 U.S.C. 1437d (k), (l) and (n); 42 U.S.C. 1437d note).

§ 966.2 [Removed]

2. Section 966.2 is removed.

3. Section 966.3 is revised to read as follows:

§ 966.3 Tenants' opportunity for comment.

Each PHA shall provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the lease form used by the PHA, and providing an opportunity to present written comments. Subject to requirements of this rule, comments submitted shall be considered by the PHA before formal adoption of any new lease form.

4. Section 966.4 is revised to read as follows:

§ 966.4 Lease requirements.

A lease shall be entered into between the PHA and each tenant of a dwelling unit which shall contain the provisions described hereinafter.

(a) *Identification of parties and dwelling unit.* The names of the parties to the lease and the identification of the dwelling unit leased shall be set forth, including:

(1) The term of the lease and provisions for renewal, if any;

(2) The members of the household who will reside in the unit.

(b) *Payments due under the lease.* (1) The lease shall state the amount fixed as rent, specifying the utilities and quantities thereof and the services and equipment furnished by the PHA without additional cost.

(2) The lease shall provide for charges to the tenant for maintenance and repair beyond normal wear and tear and for consumption of excess utilities. The lease shall state the basis for the determination of such charges (e.g., by a posted schedule of charges for repair, amounts charged for utility consumption in excess of the allowance stated in the lease, etc.). The imposition of charges for consumption of excess utilities is permissible only if such charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances.

(3) At the option of the PHA, the lease may provide for payment of penalties for late payment.

(4) The lease shall provide that charges assessed under paragraph (b)(2) and (3) of this section shall not be due and collectible until two weeks after the PHA gives written notice of the charges. Such notice constitutes a notice of adverse action, and must meet the requirements governing a notice of adverse action (see § 966.4(e)(8)).

(5) At the option of the PHA, the lease may provide for security deposits which shall not exceed one month's rent or such reasonable fixed amount as may be required by the PHA. Provision may be made for gradual accumulation of the security deposit by the tenant. Subject to applicable laws, interest earned on security deposits may be refunded to the tenant on vacation of the dwelling unit or used for tenant services or activities.

(c) *Redetermination of rent and family composition.* The lease shall provide for redetermination of rent and family composition which shall include:

(1) The frequency of regular rental redetermination and the basis for interim redetermination.

(2) An agreement by the tenant to furnish such information and certifications regarding family composition and income as may be necessary for the PHA to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size.

(3) An agreement by the tenant to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the PHA that such a dwelling unit is available.

(4) When the PHA redetermines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of the PHA's schedule of Utility Allowances for families in the PHA's Public Housing Program, or determines that the tenant must transfer to another unit based on family composition, the PHA shall notify the tenant that the tenant may ask for an explanation stating the specific grounds of the PHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under the PHA grievance procedure.

(d) *Tenant's right to use and occupancy.* (1) The lease shall provide that the tenant shall have the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests. For purposes of this Subpart, the term "guest" means a person in the leased unit with the consent of a household member.

(2) With the consent of the PHA, members of the household may engage in legal profitmaking activities in the dwelling unit, where the PHA determines that such activities are incidental to primary use of the leased unit for residence by members of the household.

(3)(i) With the consent of the PHA, a foster child or a live-in aide may reside in the unit. The PHA may adopt reasonable policies concerning residence by a foster child or a live-in-aide, and defining the circumstances in which PHA consent will be given or denied. Under such policies, the factors considered by the PHA may include:

(A) Whether the addition of a new occupant may necessitate a transfer of the family to another unit, and whether such units are available.

(B) The PHA's obligation to make reasonable accommodation for handicapped persons.

(ii) *Live-in aide* means a person who resides with an elderly, disabled or handicapped person and who:

(A) Is determined to be essential to the care and well-being of the person;

(B) Is not obligated for the support of the person; and

(C) Would not be living in the unit except to provide the necessary supportive services.

(e) *The PHA's obligations.* The lease shall set forth the PHA's obligations under the lease which shall include the following:

(1) To maintain the dwelling unit and the project in decent, safe and sanitary condition;

(2) To comply with requirements of applicable building codes, housing codes, and HUD regulations materially affecting health and safety;

(3) To make necessary repairs to the dwelling unit;

(4) To keep project buildings, facilities and common areas, not otherwise assigned to the tenant for maintenance and upkeep, in a clean and safe condition;

(5) To maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities and appliances, including elevators, supplied or required to be supplied by the PHA;

(6) To provide and maintain appropriate receptacles and facilities (except containers for the exclusive use of an individual tenant family) for the deposit of ashes, garbage, rubbish and other waste removed from the dwelling unit by the tenant in accordance with paragraph (f)(7) of this section;

(7) To supply running water and reasonable amounts of hot water and reasonable amounts of heat at appropriate times of the year (according to local custom and usage) except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or where heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct utility connection; and

(8)(i) To notify the tenant of the specific grounds for any proposed adverse action by the PHA. (Such adverse action includes, but is not limited to, a proposed lease termination, transfer of the tenant to another unit, or imposition of charges for maintenance and repair, or for excess consumption of utilities.)

(ii) When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning a proposed adverse action:

(A) The notice of proposed adverse action shall inform the tenant of the right to request such hearing. In the case of a lease termination, a notice of lease termination in accordance with § 966.4(1)(3) shall constitute adequate notice of proposed adverse action.

(B) In the case of a proposed adverse action other than a proposed lease termination, the PHA shall not take the proposed action until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed.

(f) *Tenant's obligations.* The lease shall provide that the tenant shall be obligated:

(1) Not to assign the lease or to sublease the dwelling unit;

(2) Not to provide accommodations for boarders or lodgers;

(3) To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose;

(4) To abide by necessary and reasonable regulations promulgated by the PHA for the benefit and well-being of the housing project and the tenants which shall be posted in the project office and incorporated by reference in the lease;

(5) To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(6) To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition;

(7) To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner;

(8) To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators;

(9) To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project;

(10) To pay reasonable charges (other than for wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest.

(11) To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition;

(12)(i) To assure that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in:

(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or

(B) Any drug-related criminal activity on or near such premises.

Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the unit.

(ii) For purposes of subparts A and B of this part 966, the term *drug-related criminal activity* means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(g) *Tenant maintenance.* The lease may provide that the tenant shall perform seasonal maintenance or other maintenance tasks, as specified in the lease, where performance of such tasks by tenants of dwellings units of a similar design and construction is customary: *Provided,* That such provision is included in the lease in good faith and not for the purpose of evading the obligations of the PHA. The PHA shall exempt tenants who are unable to perform such tasks because of age or disability.

(h) *Defects hazardous to life, health, or safety.* The lease shall set forth the rights and obligations of the tenant and the PHA if the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants and shall provide that:

(1) The tenant shall immediately notify project management of the damage;

(2) The PHA shall be responsible for repair of the unit within a reasonable time: *Provided,* That if the damage was caused by the tenant, tenant's household or guests, the reasonable cost of the repairs shall be charged to the tenant;

(3) The PHA shall offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time; and

(4) Provisions shall be made for abatement of rent in proportion to the seriousness of the damage and loss in value as a dwelling if repairs are not made in accordance with paragraph (h)(2) of this section or alternative accommodations not provided in accordance with paragraph (h)(3) of this section, except that no abatement of rent shall occur if the tenant rejects the alternative accommodation or if the damage was caused by the tenant, tenant's household or guests.

(i) *Pre-occupancy and pre-termination inspections.* The lease shall provide that the PHA and the tenant or representative shall be obligated to inspect the dwelling unit prior to commencement of occupancy by the tenant. The PHA will furnish the tenant with a written statement of the condition of the dwelling unit, and the equipment provided with the unit. The statement shall be signed by the PHA and the tenant, and a copy of the statement shall be retained by the PHA in the tenant's folder. The PHA shall be further obligated to inspect the unit at

the time the tenant vacates the unit and to furnish the tenant a statement of any charges to be made in accordance with paragraph (b)(2) of this section. Provision shall be made for the tenant's participation in the latter inspection, unless the tenant vacates without notice to the PHA.

(j) *Entry of dwelling unit during tenancy.* The lease shall set forth the circumstances under which the PHA may enter the dwelling unit during the tenant's possession thereof, which shall include provision that:

(1) The PHA shall, upon reasonable advance notification to the tenant, be permitted to enter the dwelling unit during reasonable hours for the purpose of performing routine inspections and maintenance, for making improvement or repairs, or to show the dwelling unit for re-leasing. A written statement specifying the purpose of the PHA entry delivered to the dwelling unit at least two days before such entry shall be considered reasonable advance notification;

(2) The PHA may enter the dwelling unit at any time without advance notification when there is reasonable cause to believe that an emergency exists; and

(3) If the tenant and all adult members of the household are absent from the dwelling unit at the time of entry, the PHA shall leave in the dwelling unit a written statement specifying the date, time and purpose of entry prior to leaving the dwelling unit.

(k) *Notice procedures.* (1) The lease shall provide procedures to be followed by the PHA and the tenant in giving notice one to the other which shall require that:

(i) Except as provided in paragraph (j) of this section, notice to a tenant shall be in writing and delivered to the tenant or to an adult member of the tenant's household residing in the dwelling or sent by prepaid first-class mail properly addressed to the tenant; and

(ii) Notice to the PHA shall be in writing, delivered to the project office or the PHA central office or sent by prepaid first-class mail properly addressed.

(2) If the tenant is visually impaired, all notices must be in an accessible format.

(l) *Termination of tenancy and eviction.*—(1) *Procedures.* The lease shall set forth the procedures to be followed by the PHA and by the tenant in terminating the lease.

(2) *Grounds for termination.* (i) The PHA shall not terminate or refuse to renew the lease other than for serious or repeated violation of material terms of the lease such as failure to make payments due under the lease or to fulfill the tenant obligations set forth in § 966.4(f) or for other good cause.

(ii) Either of the following types of criminal activity by the tenant, any member of the household, a guest, or another person under the tenant's control, shall be cause for termination of tenancy:

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the PHA's public housing premises by other residents.

(B) Any drug-related criminal activity on or near such premises.

(3) *Lease termination notice.* (i) The PHA shall give written notice of lease termination of:

(A) 14 days in the case of failure to pay rent;

(B) A reasonable time considering the seriousness of the situation (but not to exceed 30 days) when the health or safety of other residents or PHA employees is threatened; and

(C) 30 days in any other case.

(ii) The notice of lease termination to the tenant shall state specific grounds for termination, and shall inform the tenant of the tenant's right to make such reply as the tenant may wish. The notice shall also inform the tenant of the right (pursuant to § 944.4(m)) to examine PHA documents directly relevant to the termination or eviction. When the PHA is required to afford the tenant the opportunity for a grievance hearing, the notice shall also inform the tenant of the tenant's right to request a hearing in accordance with the PHA's grievance procedure.

(iii) A notice to vacate which is required by State or local law may be combined with, or run concurrently with, a notice of lease termination under paragraph (l)(3)(i) of this section.

(iv) When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning the lease termination (see § 966.51(a)(1)), the tenancy shall not terminate (even if any notice to vacate under State or local law has expired) until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed.

(v) When the PHA is not required to afford the tenant the opportunity for a hearing under the PHA administrative grievance procedure for a grievance concerning the lease termination (see § 966.51(a)(2)), and the PHA has decided to exclude such grievance from the PHA grievance procedure, the notice of lease termination under paragraph (l)(3)(i) of this section shall:

(A) State that the tenant is not entitled to a grievance hearing on the termination.

(B) Specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that HUD has determined that this eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations.

(C) State whether the eviction is for a criminal activity as described in § 966.51(a)(2)(i)(A) or for a drug-related criminal activity as described in § 966.51(a)(2)(i)(B).

(4) *Eviction only by court action.* The PHA may evict the tenant from the unit only by bringing a court action.

(5) *Eviction for criminal activity.*—(i) *PHA discretion to consider circumstances.* In deciding to evict for criminal activity, the PHA shall have discretion to consider all of the circumstances of the case, including the seriousness of the offense, the extent of participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity. In appropriate cases, the PHA may permit continued occupancy by remaining family members and may impose a condition that family members who engaged in the proscribed activity will not reside in the unit. A PHA may require a family member who has engaged in the illegal use of drugs to present evidence of successful completion of a treatment program as a condition to being allowed to reside in the unit.

(ii) *Notice to Post Office.* When a PHA evicts an individual or family from a dwelling unit for engaging in criminal activity, including drug-related criminal activity, the PHA shall notify the local post office serving that dwelling unit that such individual or family is no longer residing in the dwelling unit. (So that the post office will terminate delivery of mail for such persons at the unit, and that such persons not return to the project for pickup of the mail.)

(m) *Eviction: Right to examine PHA documents before hearing or trial.* The PHA shall provide the tenant a reasonable opportunity to examine, at the tenant's request, before a PHA grievance hearing or court trial concerning a termination of tenancy or eviction, any documents, including records and regulations, which are in the possession of the PHA, and which are directly relevant to the termination of tenancy or eviction. The tenant shall be allowed to copy any such document at the tenant's expense. A notice of lease termination pursuant to § 966.4(l)

(3) shall inform the tenant of the tenant's right to examine PHA documents concerning the termination of tenancy or eviction. If the PHA does not make documents available for examination upon request by the tenant (in accordance with this § 966.4(m)), the PHA may not proceed with the eviction.

(n) *Grievance procedures.* The lease shall provide that all disputes concerning the obligations of the tenant or the PHA shall (except as provided in § 966.51(a)(2)) be resolved in accordance with the PHA grievance procedures. The grievance procedures shall comply with Subpart B of this part.

(o) *Provision for modifications.* The lease shall provide that modification of the lease must be accomplished by a written rider to the lease executed by both parties, except for paragraph (c) of this section and § 966.5.

(p) *Signature clause.* The lease shall provide a signature clause attesting that the lease has been executed by the parties.

5. A new § 966.7 is added to read as follows:

§ 966.7 Accommodation of persons with disabilities.

(a) For all aspects of the lease and grievance procedures, a handicapped person shall be provided reasonable accommodation to the extent necessary to provide the handicapped person with an opportunity to use and occupy the dwelling unit equal to a non-handicapped person.

(b) The PHA shall provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a handicap of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy.

6. Section 966.50 is revised to read as follows:

§ 966.50 Purpose and scope.

The purpose of this subpart is to set forth the requirements, standards and criteria for a grievance procedure to be established and implemented by public housing agencies (PHAs) to assure that a PHA tenant is afforded an opportunity for a hearing if the tenant disputes within a reasonable time any PHA action or failure to act involving the tenant's lease with the PHA or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

7. In § 966.51, paragraph (a) is revised to read as follows:

§ 966.51 Applicablity.

(a)(1) The PHA grievance procedure shall be applicable (except as provided in paragraph (a)(2) of this section) to all individual grievances as defined in § 966.53 of this subpart between the tenant and the PHA.

(2)(i) The term *due process determination* means a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in § 966.53(c)) before eviction from the dwelling unit. If HUD has issued a due process determination, a PHA may exclude from the PHA administrative grievance procedure under this subpart any grievance concerning a termination of tenancy or eviction that involves:

(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, or

(B) Any drug-related criminal activity on or near such premises.

(ii) If HUD has issued a due process determination, the PHA may evict the occupants of the dwelling unit through the judicial eviction procedures which are the subject of the determination. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's administrative grievance procedure.

* * * * *

8. Section 966.52 is revised to read as follows:

§ 966.52 Requirements.

(a) Each PHA shall adopt a grievance procedure affording each tenant an opportunity for a hearing on a grievance as defined in § 966.53 in accordance with the requirements, standards, and criteria contained in this subpart.

(b) The PHA grievance procedure shall be included in, or incorporated by reference in, all tenant dwelling leases pursuant to subpart A of this part.

(c) The PHA shall provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the PHA grievance procedure, and providing an opportunity to present written comments. Subject to requirements of this Subpart, comments submitted shall be considered by the PHA before adoption of any grievance procedure changes by the PHA.

(d) The PHA shall furnish a copy of the grievance procedure to each tenant and to resident organizations.

9. Section 966.53 is amended by removing paragraph (c)(2), by redesignating paragraphs (c)(3), (c)(4) and (c)(5) as paragraphs (c)(2), (c)(3) and (c)(4), respectively, by revising paragraph (f), and by adding a new paragraph (g), to read as follows:

§ 966.53 Definitions.

* * * * *

(f) *Tenant* shall mean the adult person (or persons) (other than a live-in aide):

(1) Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit,

(2) Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit.

(g) *Resident organization* includes a resident management corporation.

10. In § 966.55, paragraph (a) introductory text and paragraph (b) are revised and a new paragraph (g) is added to read as follows:

§ 966.55 Procedures to obtain a hearing.

(a) *Request for hearing.* The complainant shall submit a written request for a hearing to the PHA or the project office within a reasonable time after receipt of the summary of discussion pursuant to § 966.54. For a grievance under the expedited grievance procedure pursuant to § 966.55(g) (for which § 966.54 is not applicable), the complainant shall submit such request at such time as is specified by the PHA for a grievance under the expedited grievance procedure. The written request shall specify:

* * * * *

(b) *Selection of Hearing Officer or Hearing Panel.* (1) A grievance hearing shall be conducted by an impartial person or persons appointed by the PHA, other than a person who made or approved the PHA action under review or a subordinate of such person.

(2) The method or methods for PHA appointment of a hearing officer or hearing panel shall be stated in the PHA grievance procedure. The PHA may use either of the following methods to appoint a hearing officer or panel:

(i) A method approved by the majority of tenants (in any building, group of buildings or project, or group of projects to which the method is applicable) voting in an election or meeting of tenants held for the purpose.

(ii) Appointment of a person or persons (who may be an officer or employee of the PHA) selected in the manner required under the PHA grievance procedure.

(3) The PHA shall consult the resident organizations before PHA appointment of each hearing officer or panel member. Any comments or recommendations submitted by the tenant organizations

shall be considered by the PHA before the appointment.

* * * * *

(g) *Expedited grievance procedure.* (1) The PHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

(i) any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or

(ii) any drug-related criminal activity on or near such premises.

(2) In the case of a grievance under the expedited grievance procedure, § 966.54 (informal settlement of grievances) is not applicable.

(3) Subject to the requirements of this subpart, the PHA may adopt special procedures concerning a hearing under the expedited grievance procedure, including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

11. In § 966.56, paragraph (b) is revised and a new paragraph (h) is added to read as follows:

§ 966.56 Procedures governing the hearing.

* * * * *

(b) The complainant shall be afforded a fair hearing, which shall include:

(1) The opportunity to examine before the grievance hearing any PHA documents, including records and regulations, that are directly relevant to the hearing. (For a grievance hearing concerning a termination of tenancy or eviction, see also § 966.4(m).) The tenant shall be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

(2) The right to be represented by counsel or other person chosen as the tenant's representative, and to have such person make statements on the tenant's behalf;

(3) The right to a private hearing unless the complainant requests a public hearing;

(4) The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies; and

(5) A decision based solely and exclusively upon the facts presented at the hearing.

* * * * *

(h) *Accommodation of persons with disabilities.* (1) The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing.

Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

(2) If the tenant is visually impaired, any notice to the tenant which is required under this subpart must be in an accessible format.

§ 966.58 [Removed]

12. Section 966.58 is removed.

§ 966.59 [Removed]

13. Section 966.59 is removed.

Dated: August 28, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

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Friday
October 11, 1991

Part IV

Department of Education

34 CFR Part 307

Services for Children With Deaf-Blindness Program; Final Regulations and Notice inviting Applications for New Awards for FY 1992

DEPARTMENT OF EDUCATION

34 CFR Part 307

RIN 1820–AA96

Services for Children With Deaf-Blindness Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Services for Children with Deaf-Blindness Program to incorporate changes to section 622 of the Individuals with Disabilities Education Act (IDEA), as amended by Public Law 101–476. These regulations add LEAs and part H lead agencies to SEAs as beneficiaries of assistance provided by recipients; add references to infants and toddlers and early intervention services to the scope of the program; expand the age of youth with deaf-blindness whose transition from educational to other service options is facilitated by the program; provide a definition of children with deaf-blindness; add authority for pilot supplementary activities by single and multi-State projects; authorize establishment of a national clearinghouse; add authority to support pilot, research, demonstration, replication, preservice and inservice training, and family involvement activities; and provide selection criteria for evaluation of newly authorized activities.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Charles Freeman, Severely Handicapped Branch, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 4617), Washington, DC 20202–2734. Telephone: (202) 732–1165. Deaf and hearing impaired individuals may call (202) 732–1169 for TDD services.

SUPPLEMENTARY INFORMATION: These regulations implement changes in section 622 of part C of the Individuals with Disabilities Education Act (IDEA), as amended by Public Law 101–476. This program can help improve learning opportunities and outcomes for all Americans, which is an important principle in the President's America 2000 strategy for reaching the National Education Goals. These changes do not alter principal objectives of the program but clarify and expand upon the types of activities the program supports.

On May 21, 1991, the Secretary published a notice of proposed rulemaking for this program in the **Federal Register** at 56 FR 23344–23349. The most significant changes proposed in that notice were:

- Specific inclusion of infants and toddlers and early intervention services in the scope of the program;
- Addition of more flexibility in the provision of services to facilitate transition from educational to other services of adolescents and young adults;
- Addition of LEAs and part H lead agencies as recipients of technical assistance;
- Addition of a definition of children with deaf-blindness and inclusion within that definition of infants and toddlers who have been identified as having deaf-blindness;
- Addition of authority to support pilot supplementary services for children with deaf-blindness and their families by single and multi-State projects; a national clearinghouse for children with deaf-blindness; pilot; research; development, improvement, or demonstration; replication; preservice and inservice training; and parental involvement activities;
- Addition of language to ensure that all parts of the country have an opportunity to receive assistance under the program, and language promoting appropriate dissemination of information concerning activities of funded projects; and
- Addition of selection criteria language for evaluating applications proposing to conduct activities, with varied weights on certain criteria that reflect their relative importance in differing types of competitions.

In addition to minor editorial and technical revisions, these final regulations provide further clarification to the definition of "children with deaf-blindness"; and clarify, in § 307.36(b)(2)(vi)(D), that the term "practicum training sites" includes not only school settings, but also group homes, supported living, and other settings where children are found.

These regulations constitute a step in implementing the AMERICA 2000 strategy for achieving the National Education Goals agreed to by the President and the Governors. One aspect of the President's strategy is to foster better and more accountable schools. Under these regulations, the Secretary will seek to identify innovative approaches that will improve today's schools by enhancing services to children with deaf-blindness.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, eight parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject. Other substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Eligible Applicants for Awards

Comment: One commenter expressed concern that with local educational agencies and lead agencies for part H of IDEA becoming eligible to receive an award under this program, more than one award could be made to serve a given State through a State or multi-State project authorized at § 307.11, thus undermining Statewide coordination.

Discussion: The regulations at § 307.2 establish public or nonprofit private agencies, institutions, or organizations, including an Indian tribe and the Bureau of Indian Affairs of the Department of the Interior, as eligible applicants for State and multi-State projects. However, in order to avoid possible fracturing of the Statewide efforts of those projects, the regulations at § 307.34 clarify that if more than one eligible application is received on behalf of any State the Secretary applies the secretion criteria in § 307.33 and selects only the highest ranked application for funding.

Changes: None.

Definition of Deaf-Blindness

Comment: Four commenters offered recommendations for a change in the definition of "children with deaf-blindness". Two commenters indicated that use in the definition of the term "special education programs" focused the definition on places rather than on services and was therefore inconsistent with other Federal definitions regarding children with disabilities, special education, and related services. One commenter suggested using the term "students with dual sensory impairments." Another commenter suggested that the definition include more precise measures of vision and hearing, including a more specific definition of "at risk" as related to infants and toddlers.

Discussion: The Secretary concurs with the commenters that the definition should be clarified to focus on the need for special education and related services. The Secretary, however, has not incorporated in the definition more precise measures of visual or hearing acuity, since, by legislative intent, this program focuses on the provision of educational services based on the child's learning and functional needs, rather than upon provision of medical or corrective health services based on sensory acuity measurements. Further, the Secretary believes that the definition of "at risk" should be consistent with the part H, IDEA regulations.

Changes: The definition of "children with deaf-blindness" at § 307.4(c) has been changed to incorporate the recommendations of the first comment.

Technical Assistance

Comment: One commenter questioned if technical assistance addressed at § 307.10(a) included funding for the purchase of hearing aids, glasses, and other special equipment for use at home and school.

Discussion: Technical assistance supported at § 307.10(a) does not include payment for these special equipment needs for children. Technical assistance as referenced in these regulations is described at § 307.11(a)(2) as being assistance provided to agencies to assure that they may more effectively provide direct services to children with deaf-blindness.

Changes: None.

Parent and Family

Comment: Two commenters suggested expanding the term "parent" as used in these regulations, to the more inclusive term "family," in keeping with the living and educational environments most often faced by children with deaf-blindness.

Discussion: The importance of family involvement in the provision of services to children with deaf-blindness is addressed at § 307.11(a)(1)(iii) by making available to them consultative, counseling, and training services. The use of the term "parent" in other provisions of the regulations is taken directly from the statute.

Changes: None.

Research

Comment: Two commenters discussed the support of research projects under this program. One stressed the urgent need for those projects in the area of deaf-blindness. The other commenter expressing concern that those activities not be given such a large share of the funding that consequently there is inadequate money for direct services and technical assistance.

Discussion: The critical need for support of research in this field is recognized. However, the level of funding for various authorized activities is not addressed in regulations. The Secretary determines the level of funding for various activities annually.

Changes: None.

Types of Services Provided Under the Program

Comment: One commenter expressed concern that the provision at § 307.11(a)(1)(i) to provide diagnosis and an educational evaluation of children who are likely to be diagnosed as having deaf-blindness is a duplication of services supported under other Federal programs. The commenter further suggested that definitions of adjustment, education, and orientation for children with deaf-blindness, and consultative services for families of children with deaf-blindness, authorized at § 307.11(a)(ii) and (iii), respectively, are unclear.

Discussion: Services supported in paragraphs § 307.11(a)(1) (i), (ii), and (iii), incorporate the language of the statute in promoting flexibility in provision of these services. Duplication in providing those services is addressed at § 307.11(a)(1), which limits provision of these services to children with deaf-blindness to whom States are not obligated to make available a free appropriate public education under part B, IDEA.

Changes: None.

Transition

Comment: Three commenters recommended that the regulations give greater emphasis to provision of transition services to children with deaf-blindness.

Discussion: The importance of providing transition service to this population has been recognized in the regulations. The direct service to be made available by a State or multi-State project authorized at § 307.11(a)(1) may include transition services. Technical assistance to public and private agencies providing transitional services is also authorized at § 307.11(a)(2). Further, a major requirement of a grantee under § 307.13 is the provision of technical assistance to State educational agencies in making available to adolescents and young adults with deaf-blindness programs and services to facilitate their transition from education to employment and other service options. In addition, the significance of transition services has been recognized by the Congress in the types of transition services supported under the Secondary Education and Transitional Services for Youth with Disabilities Program, authorized at 34 CFR part 326, a program under which service providers to children with deaf-blindness may compete for financial support. In consideration of these provisions the Secretary has determined that adequate emphasis on transition services for children with deaf-blindness has been made in the regulations.

Changes: None.

National Clearinghouse for Children With Deaf-Blindness

Comment: Three commenters expressed support for the provision of clearinghouse services. One commenter additionally recommended that expertise in the field be combined to form a consortium of appropriate entities to fulfill the clearinghouse functions. Another commenter suggested that certain responsibilities for the clearinghouse addressed at § 307.15 could be fulfilled with greater cost-effectiveness by providing this new clearinghouse with access to existing federally funded databases and clearinghouse activities.

Discussion: The Secretary acknowledges the importance of clearinghouse activities and the necessity of accomplishing these activities in a cost-effective manner. The value of a consortium arrangement in carrying out these responsibilities is also recognized. However, the regulations at § 307.15 already allow applications proposing to perform the responsibilities through a consortium arrangement or proposing to access existing database and clearinghouse activities to facilitate accomplishment of these responsibilities. The Secretary considers the criteria at § 307.36 appropriate for determining the merits of competing applications, including applications proposing use of a consortium effort or other efficient and effective approaches.

Changes: None.

Funding Level for State and Multi-State Projects

Comment: One commenter expressed concern that with the proposed regulations, it may be difficult to determine the level of an award under § 307.11 for a State or multi-State project.

Discussion: Current regulations at § 307.31 provide the factors which the Secretary considers in determining the funding level for these awards. The revised regulations have not changed these provisions.

Change: None.

Evaluation Criteria

Comment: One commenter, directing attention to provisions in the application evaluation criteria at § 307.36:

(a) Recommended that the word "integration" at § 307.36(b)(2) (iv)(C) and (v)(B) be preceded by the word "meaningful";

(b) Recommended that preservice and inservice training addressed at § 307.36(b)(2)(vi) be required to be provided in collaboration with the national clearinghouse authorized at § 320.10(c);

(c) Recommended that practicum training sites, addressed at § 307.36(b)(2)(vi)(D), be clarified to include not only school settings, but also group homes and other settings where children are found;

(d) Questioned the need for including the words "as appropriate" in § 307.36(c)(1)(v);

(e) Suggested that key personnel referenced at § 307.36(d) be clarified to include technology professionals as well as educators or other education specialists;

(f) Noted that assessment of educational impact is vital to the beneficial use of funds under this program; and

(g) Suggested placing more emphasis in many sections on outreach efforts.

Discussion: The Secretary, in considering these comments:

(a) Considers the evaluation criteria at § 307.36 adequate to determine if an applicant proposes to provide integration that is meaningful to children participating in proposed projects;

(b) Recognizes the importance of collaboration with the clearinghouse and other relevant projects in the provision of preservice and inservice training, by addressing coordination in the application selection criteria at § 307.36(c)(1)(v);

(c) Considers as appropriate the clarification that "practicum training sites" include group homes and other settings where children are found;

(d) Maintains that the words "as appropriate," used at § 307.36(c)(1)(v), are needed in order to provide maximum flexibility in the design of projects;

(e) Believes that the term "key personnel" is generally accepted in the field as referring to all personnel having a significant and leading role in carrying out the activities of a project, and therefore is understood to include personnel who are technology professionals;

(f) Recognizes that educational impact is an essential measure of the quality of an application by addressing it at § 307.36(a);

(g) Points out that the regulations at §§ 307.10(c), 307.11(a)(2)(iii), 307.12 (b)(3), and 307.13(b)(3) address the need for outreach activities in State and multi-State projects and technical assistance projects through providing for the replication of successful approaches for serving children with deaf-blindness. The importance of outreach procedures is addressed at § 307.36(b)(2)(ii)(C) for clearinghouse projects and specifically covered under § 307.36(b)(2)(v) for replication, outreach, or utilization projects.

Changes: The regulations at § 307.36(b)(2)(vi)(D) have been changed to indicate that in addition to including school settings, "practicum training sites" include group home, supported living, and other settings where children with deaf-blindness are found. No additional changes have been made to the evaluation criteria at § 307.36.

Financial Assistance

Comment: One commenter noted that the regulations make no mention of financial assistance for families, especially for purchasing equipment such as hearing aids and glasses.

Discussion: The program is restricted by statute to making awards to public or nonprofit private agencies, institutions, or organizations. The clearinghouse authorized at § 307.15, however, has authority to provide information on available programs and services.

Changes: None.

Prevention

Comment: One commenter observed that the regulations make no mention of prevention but does mention "at risk" and suggested that some sections could also address prevention techniques.

Discussion: Prevention techniques are already included in the regulations to the extent that providing early intervention services may prevent an infant or toddler from becoming deaf and blind or decrease the effects resulting from these dual sensory impairments. Extension of prevention techniques beyond early intervention services is not authorized by IDEA.

Changes: None.

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.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed 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.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require 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 307

Education, Education of individuals with disabilities, Education—research, Grants program—education, Reporting and recordkeeping requirements, Teachers.

(Catalog of Federal Domestic Assistance Number 84.025, Services for Children with Deaf-Blindness Program)

Dated: September 9, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 307 of title 34 of the Code of Federal Regulations as follows:

PART 307—SERVICES FOR CHILDREN WITH DEAF-BLINDNESS

1. The title of part 307 is revised to read as set forth above.

2. The authority citation for part 307 continues to read as follows:

Authority: 20 U.S.C. 1422, unless otherwise noted.

§§ 307.1, 307.2, 307.3, 307.4, 307.11, 307.12, 307.31, 307.33, 307.41 [Amended]

3. In 34 CFR part 307 remove the words "deaf-blind children and youth" and add, in their place, the words "children with deaf-blindness" in the following places:

(a) Section 307.1 heading and twice in text;
(b) Section 307.2 heading;
(c) Section 307.3 heading;
(d) Section 307.4 heading;
(e) Section 307.11(a)(1) introductory text, (2) introductory text, (2) (i), (iii), (iv), (v), and (vi); (3); (c) (1), (2), and (3);
(f) Section 307.12(b) introductory text;
(g) Section 307.31 (b) and (c);
(h) Section 307.33(a) (1), (2), (3), and (4); (b) (2), (3), (4), (8), (9); (c) introductory text; (c)(3); (f)(2); and (g);
(i) Section 307.41 introductory text.

§ 307.11 [Amended]

4. In 34 CFR part 307 remove the words "part B of the Education of the Handicapped Act" and add, in their place, the words "part B of the Individuals with Disabilities Education Act" in §§ 307.11 (a)(1), (a)(2)(i), and (a)(3).

§ 307.1 [Amended]

5. Section 307.1 is amended by adding after the words "State educational agencies" a comma and the words "local educational agencies, designated lead agencies under Part H" and a comma, and by adding after the words "involved in the" the words "early intervention or".

§ 307.2 [Amended]

6. Section 307.2 is amended by adding after the words "or organizations" the words ", including an Indian tribe and the Bureau of Indian Affairs of the Department of the Interior (if acting on behalf of schools operated by the Bureau for children and students on Indian reservations) and tribally controlled schools funded by the Department of the Interior,".

7. Section 307.4 is amended by revising the heading and the introductory paragraph (b); removing the definitions "Deaf-blind (§ 300.5(b)(2))", "Handicapped children (§ 300.5)", and "Severely handicapped children and youth (§ 315.4(d))"; and adding a new paragraph (c) before the authority citation at the end of the section to read as follows:

§ 307.4 What definitions apply to the Services for Children with Deaf-Blindness program?

* * * * *

(b) *Definitions in 34 CFR part 300.* The following terms used in this part are defined in 34 CFR part 300.

* * * * *

(c) *Other definitions.*

Children with deaf-blindness. For the purposes of this part, the term, "children with deaf-blindness," means children and youth having auditory and visual impairments, the combination of which creates such severe communication and other developmental and learning needs that they cannot be appropriately educated without special education and related services, beyond those that would be provided solely for children with hearing impairments, visual impairments, or severe disabilities, to address their educational needs due to these concurrent disabilities. This term also means infants and toddlers with deaf-blindness.

Children with disabilities. For the purposes of this part, the term "children with disabilities" means children with mental retardation; hearing impairments, including deafness; speech or language impairments; visual impairments, including blindness; serious emotional disturbance; orthopedic impairments; autism; traumatic brain injury; other health impairments; or specific learning disabilities; who, by reason thereof, need special education and related services.

Infants and toddlers with deaf-blindness. For the purposes of this part, the term "infants and toddlers with deaf-blindness" means individuals from birth through age 2 who are experiencing developmental delays in hearing and vision, have a diagnosed physical or mental condition that has a high probability of resulting in developmental delays in hearing and vision, or are at risk of having substantial developmental delays in hearing and vision if early intervention services are not provided.

* * * * *

8. Section 307.10 is revised to read as follows:

§ 307.10 What types of activities are considered for support under this part?

The Secretary may provide financial assistance under this part to support the following activities:

(a) Technical assistance to agencies, institutions, or organizations providing educational or early intervention services to children with deaf-blindness;

(b) Preservice or inservice training to paraprofessionals, professionals, or related services personnel preparing to serve, or serving, children with deaf-blindness;

(c) Replication of successful innovative approaches to providing educational, early intervention, or related services to children with deaf-blindness;

(d) Pilot projects that are designed to—

(1) Expand local educational agency capabilities by providing services to children with deaf-blindness that supplement services already provided to children and youth through State and local resources; and

(2) Encourage eventual assumption of funding responsibility by State and local authorities;

(e) Development, improvement, or demonstration of new or existing methods, approaches, or techniques that contribute to the adjustment, early intervention, and education of children with deaf-blindness;

(f) Facilitation of parent involvement in the education of their children with deaf-blindness;

(g) Research to identify and meet the full range of special needs of those children;

(h) Technical assistance for transitional services, as described in § 307.13; and

(i) A national clearinghouse for children with deaf-blindness as described in § 307.15.

(Authority: 20 U.S.C. 1422)

9. Section 307.11 is amended by revising the heading and paragraph (a) introductory text; amending paragraph (a)(1) introductory text by adding after the words "Special education" a comma and the words "early intervention" and a comma; and by revising paragraphs (a)(1) (i), (ii), and (iii) to read as follows:

§ 307.11 What types of services and technical assistance by State and multi-State projects are considered for support under this part?

(a) The Secretary may provide financial assistance under this part to State and multi-State projects to support the following activities—

(1) * * *

(i) The diagnosis and educational evaluation of children who are likely to be diagnosed as having deaf-blindness;

(ii) Programs of adjustment, education, and orientation for children with deaf-blindness; and

(iii) Consultative, counseling, and training services for the families of children with deaf-blindness.

* * * * *

§ 307.11 [Amended]

10. Section 307.11(a)(1)(iv) is amended by removing the words "child and youth" and adding, in their place, the words "child with deaf-blindness".

11. Section 307.11(a)(2) introductory text is amended by adding after the word "providing" the words "early intervention" and a comma.

12. Section 307.11(a)(2)(i) is amended by adding after the words "some other authority" the words "and provide early intervention services under part H of IDEA".

13. Section 307.11(a)(2)(ii) is amended by removing the words "deaf-blind children or youth" and adding, in their place, the words "children with deaf-blindness".

14. Section 307.11(a)(2)(iii) is amended by adding after the word "providing" the words "early intervention" and a comma.

15. Section 307.11(a)(2)(v) is amended by removing twice the words "and youth" following the words "those children".

16. Section 307.11(a)(2)(vi) is amended by removing the words "other handicapped and nonhandicapped children and youth" and adding, in their place, the words "children with other disabilities and without disabilities".

17. Section 307.11(b)(2) is amended by removing the words "the services described in paragraph (a)(3) of this section" and adding, in their place, the words "pilot projects".

18. Section 307.11(c)(3) is amended by removing the words "part H of the EHA" and adding, in their place, the words "part H of the IDEA".

§ 307.12 [Amended]

19. Section 307.12(b) is amended by adding after the words "grantee under § 307.11" a comma and the words "the lead agency under part H" and a comma; adding after the words "§ 307.11 grantee" a comma and the words "the lead agency under part H" and a comma; adding after the words "educational agency to" the words "local educational agencies and designated lead agencies under part H of IDEA, and".

20. Section 307.12(b)(1) is amended by adding after the word "education" the words "and early intervention"; and removing the words "deaf-blind and severely handicapped children and youth" and adding, in their place, the words "children with deaf-blindness".

21. Section 307.12(b)(2) is amended by adding after the word "educational" the words "and early intervention".

22. Section 307.12(b)(3) is amended by removing the words "deaf-blind children and youth" and adding, in their place, the words "children with deaf-blindness, and in providing early intervention services to children with deaf-blindness".

23. Section 307.12(c) is amended by adding after the words "§ 307.11 grantee" a comma and the words "the lead agency under Part H" and a comma.

§ 307.13 [Amended]

24. Section 307.13(a) is amended by removing the words "deaf-blind youth upon attaining the age of 22" and adding, in their place, the words "adolescents and young adults with deaf-blindness".

25. Section 307.23(b)(1) is amended by removing the words "organizations (in addition to State educational agencies providing, or proposing to provide transitional services to deaf-blind youth who have attained the age of 22)" and adding, in their place, the words "organizations that are preparing adolescents and young adults with deaf-blindness for adult placement, or that are preparing to receive adolescents or young adults with deaf-blindness into adult living and work environments, or that serve, or propose to serve adolescents and young adults with deaf-blindness".

26. Section 307.13(b)(2) is amended by removing the word "youth" and adding, in its place, the words "adolescents and young adults".

27. Sections 307.13(b)(3) and 307.13(c)(2) are amended by adding, after the comma following the word "rehabilitative", the word "supervised" and a comma.

28. Section 307.13(c) (1), (2), and (3) are amended by removing the words "deaf-blind youth" and adding, in their place, the words "adolescents and young adults with deaf-blindness".

29. Section 307.13(d) is amended by removing the words "providing services to deaf-blind youth 22 years of age and older" and adding, in their place, a comma and the words "institutions, and organizations that are preparing adolescents and young adults with deaf-blindness for adult placements, or that are preparing to receive adolescents or young adults with deaf-blindness into adult living and work environments, or that serve, or propose to serve adolescents or young adults with deaf-blindness".

30. Section 307.13(e) is amended by removing the words "deaf-blind children and youth" and adding, in their place, the words "adolescents and young adults with deaf-blindness".

31. A new § 307.14 is added to read as follows:

§ 307.14 What types of pilot projects are considered for support to successful § 307.11 applicants under this part?

The Secretary may provide financial assistance under this part to successful applicants under § 307.11, to support pilot projects described at § 307.10(d).

(Authority: 20 U.S.C. 1422)

32. A new § 307.15 is added to read as follows:

§ 307.15 What types of activities are supported in a national clearinghouse for children with deaf-blindness?

The Secretary may provide financial assistance under this part to support the following activities:

(a) Identification, coordination, and dissemination of information on deaf-blindness, emphasizing information concerning practices developed through research, development or demonstration activities that have produced statistical or narrative data establishing their effectiveness in working with children with deaf-blindness, including—

(1) Special educational and early intervention programs, services, and resources;

(2) Related medical, health, social, and recreational services;

(3) The nature of deaf-blindness and its early intervention, educational, and employment implications;

(4) Legal issues affecting persons with disabilities; and

(5) Information on available services and programs in postsecondary education for adolescents and young adults with deaf-blindness.

(b) Interaction with educators, professional groups, and parents to identify areas for programming, materials development, training, and expansion of specific services.

(c) Maintenance of a computerized data base on local, regional, and national resources.

(d) Responding to information requests from professionals, parents, and members of the public.

(Authority: 20 U.S.C. 1422)

§ 307.31 [Amended]

33. Section 307.31 introductory text is amended by removing the words "deaf-blind services project" and adding, in their place, the words "project for children with deaf-blindness".

34. Section 307.31(a) is amended by removing the words "and youth".

35. Section 307.33 is amended by revising the heading to read as follows:

§ 307.33 What criteria does the Secretary use to evaluate a State or multi-State application under § 307.11?

36. Section 307.33(a)(1) is amended by removing the words "part B of the EHA" and adding, in their place, the words "part B of the IDEA".

37. Section 307.33(a)(2) is amended by removing the word "Specific" and, adding in its place, the word "specific"; removing the words "parts B and H" and adding, in their place, the words "parts B and H of the IDEA"; adding after the words "provision of" the words "early

intervention" and a comma; and adding a comma after the word "educational".

38. Section 307.33(a)(4) is amended by adding after the words "providing the" the words "early intervention" and a comma; and adding a comma after the word "educational".

39. Section 307.33(b)(1) is amended by adding after the words "each of the" the words "early intervention" and a comma; and adding a comma after the word "educational".

40. Section 307.33(b)(4) is amended by adding after the words "provision of" the words "early intervention" and a comma; adding a comma after the word "educational"; and adding a comma after the word "related services".

41. Sections 307.33(b) (6) and (10) and (f) (1) and (2) are amended by removing the acronym "EHA" and adding, in its place, "IDEA".

42. Sections 307.33 (b)(7) and (c)(5) are amended by removing the word "handicapping" and adding, in its place, the word "disabling".

43. Section 307.33(b)(8) is amended by adding after the word "providing" the words "early intervention" and a comma; and adding a comma after the word "consultative".

§ 307.35 [Removed]

44. Section 307.35 is removed.

§ 307.36 [Redesignated as § 307.35 and Amended]

45. Section 307.36 is redesignated as § 307.35 and in paragraphs (a) introductory text, (a) (2) and (3) remove the words "deaf-blind children and youth" and add in their place, the word "children with deaf-blindness".

46. Newly redesignated § 307.35 is amended by revising the heading and introductory paragraph to read as follows:

§ 307.35 What criteria are used to evaluate a technical assistance application under § 307.10, § 307.12, or § 307.13?

The Secretary uses the following criteria to evaluate an application for the provision of technical assistance under § 307.10, § 307.12, and § 307.13. Each application may receive up to a total of 100 points:

* * * * *

§ 307.35 [Amended]

47. In newly redesignated § 307.35(b)(5) and (c)(1)(iv) the word "handicapping" is removed and adding in its place, the word "disabling".

48. A new § 307.36 is added to read as follows:

§ 307.36 What criteria are used to evaluate an application for other than technical assistance under § 307.10, or for an application under § 307.14 or § 307.15?

The Secretary uses the following criteria to evaluate the quality of an application submitted under § 307.10 (except for technical assistance projects), and under § 307.14 and § 307.15. Each applicant may receive up to a total of 100 points.

(a) *Importance and impact.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part, including—

(i) The significance of the problem or issues to be addressed;

(ii) The extent to which the project is based on previous results, research and evaluation findings, or other information related to the problem or issue;

(iii) The contribution that project findings or products will make to current knowledge and practice; and

(iv) The extent to which findings, information, or products of the project will be designed to promote their adaptation by and usefulness to others in conducting related projects.

(2) In determining the extent of the importance and impact of the application, the Secretary also considers the relevance of proposed activities in addressing the unique needs of children targeted by the project.

(3) In determining the importance and impact of the application the Secretary considers the extent to which the project addresses the unique needs of children with disabilities from minority backgrounds.

(b) *Technical soundness.* (1) The Secretary reviews each application to determine the technical soundness of the project, including—

(i) The quality of the design of the project;

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, or disabling conditions; and

(iii) The anticipated outcomes.

(2) In determining the technical soundness of an application, the Secretary also considers—

(i) For pilot projects under § 307.14—

(A) The correlation with and relevance to the activities under § 307.11 for a State or multi-State project; and

(B) The extent to which practices of the pilot project can be adopted in other settings within the State;

(ii) For the clearinghouse project under § 307.15—

(A) The extent to which the applicant evidences awareness of the magnitude and importance of effective public awareness, the existence of already existing materials and resources available to meet general and specific educator and consumer needs, and gaps in the bank of resources and materials to meet those needs;

(B) The quality of the information retrieval, assimilation, revision and dissemination systems that the applicant will utilize in meeting general requests of the public as well as the specific needs of educators, administrators, and consumers; and

(C) The adequacy of project procedures for addressing, through products and outreach procedures, the unique needs of users from traditionally underrepresented groups;

(iii) For research projects—

(A) The comprehensiveness of the review of research to the problem or issues to be addressed by the project and to the nature of the population to be included in the project;

(B) The theoretical soundness of the conceptual framework and research hypotheses upon which the research is to be conducted;

(C) The appropriateness of the data analysis, procedures, and instrumentation;

(D) The effectiveness of the research design in testing the research hypotheses; and

(E) How the anticipated research results can be utilized in subsequent research or demonstration projects, if applicable;

(iv) For model development, improvement, or demonstration projects—

(A) The extent to which the project is focused on the development or adaptation of innovative educational practices;

(B) The nature and extent to which the proposed practices to be included in the model demonstration have been identified and validated through prior research or related model developmental efforts with the same or similar target populations;

(C) The extent to which the practices to be demonstrated promote the integration of children with deaf-blindness with peers who are not disabled in least-restrictive environments; and

(D) The extent to which the project will develop materials and procedures that can be used by others to implement the model;

(v) For replication, outreach, or utilization projects—

(A) The nature and extent to which the practices to be disseminated through outreach strategies have been validated for effectiveness;

(B) The extent to which the practices to be replicated or utilized promote the integration of children with deaf-blindness with peers who are not disabled in least-restrictive environments; and

(C) The extent to which the practices to be replicated or utilized are economically feasible for other nonfederally supported replications, and lend themselves for adaptations with other relevant populations.

(vi) For preservice or inservice training projects—

(A) If appropriate, the degree to which the proposed activities relate to and are coordinated with specific training needs identified by the State educational agency under part B and State lead agency under part H in its Comprehensive System of Personnel Development plan;

(B) The extent to which the training will result in certification, recertification or licensure for participants completing the training;

(C) The extent to which the curriculum is theoretically sound, incorporates validated effective practices, is appropriate in scope and sequence, incorporates appropriate practicum experiences, and can be used by others to train personnel with similar training needs;

(D) The quality of the practicum training sites—school, group home, supported living, and other settings where children with deaf-blindness are found—including evidence that they are sufficiently available, apply state-of-the-art services and model teaching practices, materials and technology, provide adequate supervision to trainees, and offer opportunities for trainees to teach and foster interactions between children with disabilities and their peers who are not disabled; and

(E) The extent to which training addresses the needs of a range of children including children with disabilities from minority backgrounds; and

(vii) For parent involvement projects—

(A) The extent to which the project will address specific needs and interests of parents of children with deaf-blindness upon which the project is focused,

(B) The extent to which the project promotes the active involvement of parents of children with deaf-blindness in the design, implementation, and on-going review of the educational and related services to be provided to their children with deaf-blindness for which the project is to provide benefit; and

(C) The extent to which the project is designed to meet the unique needs of parents of children with deaf-blindness from minority backgrounds.

(3) The maximum possible score awarded under this criterion is indicated in parentheses by the type of project proposed, as follows:

(i) For pilot projects (15 points).

(ii) For the clearinghouse project under § 307.15 (10 points).

(iii) For research projects (30 points).

(iv) For development, improvement, demonstration, or other projects (20 points).

(v) For replication, outreach, or utilization projects (15 points).

(vi) For preservice or inservice training projects (15 points).

(vii) For parent involvement projects (15 points).

(c) *Plan of operation.* (1) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The extent to which the plan of management is effective for the type of project proposed and ensures proper and efficient administration of the project;

(ii) The adequacy of the applicant's resources and plan for use of resources and personnel to achieve project objectives;

(iii) How the budget proposed by the applicant is adequate to support the activities and that the costs are reasonable in relation to the objectives of the project;

(iv) The adequacy of the applicant's procedures for initiating and maintaining coordination with relevant State, local and professional organizations and agencies, for the purpose of furthering achievement of the project objectives;

(v) The adequacy of the applicant's plan to involve project participants with disabilities and, as appropriate, their family members in the development, implementation, and on-going review of project outcomes; and

(vi) The adequacy of the applicant's plan to determine the effectiveness and timeliness in completion of the managerial procedures and objectives of the project's plan of operation.

(2) The maximum possible score awarded under this criterion is indicated in parentheses by the type of project proposed, as follows:

(i) For pilot projects (30 points).

(ii) For the clearinghouse project under § 307.15 (35 points).

(iii) For research projects (15 points).

(iv) For development, improvement, demonstration, or other projects (25 points).

(v) For replication, outreach, or utilization projects (30 points).

(vi) For preservice or inservice training projects (30 points).

(vii) For parent involvement projects (30 points).

(d) *Key personnel.* (20 points) (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) Strategies of the applicant to identify and recruit personnel with disabilities or from traditionally underrepresented groups.

(2) In determining the qualifications of each person referred to in paragraphs (d)(1) (i) and (ii) the Secretary also considers—

(i) Experience and training in conducting, documenting, and applying the types of activities to be conducted; and

(ii) Knowledge of the results and findings of relevant projects and potential for application of this information in addressing the unique needs of the children with deaf-blindness to be included in the project.

(e) *Evaluation.* (15 points) (1) The Secretary reviews each application to determine the quality of the plan for evaluating the project, including—

(i) The adequacy of the applicant's plan to determine, to the extent relevant, the effectiveness of the project in achieving measurable change and positive outcomes for children with deaf-blindness who were served by the project and others for whom the project was designed to benefit;

(ii) The adequacy of the applicant's plan to determine the effectiveness and timeliness in completion of the managerial procedures and objectives of the project's plan of operation; and

(iii) The procedures for recording, reviewing, analyzing, and interpreting for relevant audiences, data generated through conducting project activities.

(Approved by the Office of Management and Budget under Control Number 1820-0028)

(Authority: 20 U.S.C. 1422)

49. A new § 307.37 is added to read as follows:

§ 307.37 What additional consideration will be given by the Secretary in carrying out this part?

In carrying out this part, the Secretary takes into consideration the availability and quality of existing services for children with deaf-blindness in the country, and, to the extent practicable, ensures that all parts of the country have an opportunity to receive assistance under this part.

(Authority: 20 U.S.C. 1422)

§ 307.41 [Amended]

50. In § 307.41 the introductory paragraph is amended by removing the words "deaf-blind child or youth" and adding, in their place, the words "child or youth with deaf-blindness".

51. A new § 307.42 is added to read as follows:

§ 307.42 What other conditions must be met by a grantee under this program?

(a) The Secretary, if appropriate, requires grantees to prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of those procedures, findings, and information.

(b) The Secretary requires delivery of those reports, as appropriate, to—

(1) The regional and Federal resource centers, the clearinghouses, and the technical assistance to parents assisted under parts C and D of the Act;

(2) The National Diffusion Network;

(3) The ERIC Clearinghouse on the Handicapped and Gifted;

(4) The Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health;

(5) Appropriate parent and professional organizations;

(6) Organizations representing individuals with disabilities; and

(7) Such other networks as the Secretary may determine to be appropriate.

(Approved by the Office of Management and Budget under Control Number 1820-0028)

(Authority: 20 U.S.C. 1410(g))

[FR Doc. 91-24390 Filed 10-10-91; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.025]

Services for Children With Deaf-Blindness Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: The purpose of this program is to assist State educational agencies, local educational agencies, and designated lead agencies under part H to (A) assure deaf-blind infants, toddlers, children and youth provision of special education, early intervention, and related services as well as vocational and transitional services; and (B) make available to deaf-blind youth (who are in the process of transitioning into adult services) programs, services, and supports to facilitate such transition, including assistance related to independent living and competitive employment.

Eligible Applicants: Public or nonprofit private agencies, institutions, or organizations, including Indian tribes, the Bureau of Indian Affairs of the Department of Interior (if the Bureau is acting on behalf of schools operated by the Bureau for children and students on Indian reservations), and tribally controlled schools funded by the Department of Interior, may apply for an award under these competitions.

Applications Available: October 21, 1991.

Applicable Regulations: (a) The Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; and (b) the regulations for this program in 34 CFR part 307, as amended and published in this issue of the **Federal Register.**

SERVICES FOR CHILDREN WITH DEAF-BLINDNESS

[Application Notices for Fiscal Year 1992]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovern-mental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated No. of awards	Project period in months
Technical Assistance for Transitional Services (CFDA No. 84.025E).	1-17-92	3-15-92	640,000	640,000	640,000	1	up to 36.
National Clearinghouse for Children With Deaf-Blindness (CFDA No. 84.025U).	1-17-92	3-15-92	240,000	240,000	240,000	1	up to 48.

Priorities: The priorities in the notice of final regulations for this program, as published elsewhere in this issue of the **Federal Register**, apply to this competition.

Priority 1: Technical Assistance for Transitional Services

This priority supports one national project that will provide transitional services as described in the newly revised program regulations at 34 CFR 307.13 published in this issue of the **Federal Register.**

The Secretary anticipates awarding one cooperative agreement to meet the requirements of this priority.

The Secretary particularly invites applications for technical assistance on a national basis that:

(a) Coordinate and collaborate with State and multi-State projects for children with deaf-blindness and Statewide Systems for Transition Services for Youth With Disabilities projects;

(b) Increases the capacity of service providers to deliver effective transition services that:

(1) Coordinate with appropriate schools, businesses, adult services, funding agencies, family members, and consumers in the transition process;

(2) Focus on education which occurs in community-based settings in the areas of employment and community living;

(3) Assist States in increasing local capacity for the development of Individual Transition Plans;

(4) Include peers without disabilities in education and training activities;

(5) Use job training and employment support procedures that originate and exist in typical community businesses; and

(6) Facilitate the development of community living options and independent living skills.

However, in accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(1) an application that meets this invitational priority will not be given a competitive or absolute preference over other applications.

Priority 2: National Clearinghouse for Children With Deaf-Blindness

This priority supports a national clearinghouse for children with deaf-blindness as described in the newly revised program regulations at 34 CFR 307.15 as published in this issue of the **Federal Register**.

The Secretary anticipates awarding one cooperative agreement to meet the requirements of this priority.

The Secretary particularly invites applications that:

(a) Utilize a consortia approach building on the capacity of existing technical assistance and dissemination centers and networks;

(b) Establish clear linkages with other clearinghouses, technical assistance, and dissemination centers; and

(c) Have experience and expertise specific to deaf-blindness.

However, in accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(1) an application that meets this invitational priority will not be given a competitive or absolute preference over other applications.

Selection Criteria: Applications submitted in response to these priorities will be evaluated using criteria in 34 CFR 307.36 as amended and published in this issue of the **Federal Register.**

For Applications or Information Contact: Charles Freeman, Division of Educational Services, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 4617), Washington, DC 20202-2734. Telephone: (202) 732-1165 (voice or TDD) (202) 732-1169.

Program Authority: 20 U.S.C. 1422.

Dated: October 4, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

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Friday
October 11, 1991

Part V

Environmental Protection Agency

40 CFR Parts 261, 271, and 302

Hazardous Waste Management System: Identification and Listing of Hazardous Waste and CERCLA Hazardous Substance Designation; Reportable Quantity Adjustment Chlorinated Toluenes Production Wastes; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 271, and 302

[EPA/OSW-FR-90-017; FRL-3976-5]

RIN 2050-AC84

Hazardous Waste Management System: Identification and Listing of Hazardous Waste and CERCLA Hazardous Substance Designation; Reportable Quantity Adjustment Chlorinated Toluenes Production Wastes; Proposed Rule

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) today is proposing to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous three wastes generated during the production of the alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups collectively referred to in this document as "chlorinated toluenes." The effect of this proposed regulation, if promulgated, is that these three wastes will be subject to regulation as hazardous wastes under 40 CFR parts 124, 262–266, 268, 270, and 271.

Also, EPA is making a decision not to list wastewaters, spent carbon wastes, and certain wastewater treatment wastes generated during the manufacture of chlorinated toluenes because they do not meet the Agency's criteria for listing under 40 CFR part 261.

In addition, EPA is proposing amendments to regulations promulgated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in 40 CFR part 302 that are related to today's proposed waste listings. In particular, EPA is proposing to designate the wastes proposed for listing as CERCLA hazardous substances and would establish the reportable quantities applicable to these wastes.

Today's rule is proposed pursuant to that part of section 3001(e)(2) of the Hazardous and Solid Waste Amendments of 1984 that mandates EPA to make a decision whether to list as hazardous additional wastes from the chlorinated aromatics industry.

DATES: EPA will accept public comments on this proposed rule until December 10, 1991. Comments postmarked after this date will be marked "late" and may not be considered. Any person may request a hearing on this amendment by filing a request with EPA, to be received no later than October 28, 1991.

ADDRESSES: The public must send an original and two copies of their comments to: EPA RCRA Docket Clerk, room 2427 (OS–332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Place "Docket number F–91–LCTP–FFFFF" on your comments. Copies of materials relevant to this proposed rulemaking are located in the docket at the address listed above. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page. Copies of the nonconfidential portions of the listing background document and not readily available references are available for viewing and copying only in the Office of Solid Waste (OSW) docket.

Requests for a hearing should be addressed to Mr. David Bussard at: Characterization and Assessment Division, Office of Solid Waste (OS–330), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Comments on the CERCLA proposal should be sent in triplicate to: Emergency Response Division, Docket Clerk (OS–245), ATTN: Docket No. RQ, room 2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Copies of materials relevant to the CERCLA portions of this rulemaking also are located in room 2427 at the above address.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, toll-free, at (800) 424–9346 or at (703) 920–9810. For technical information on the RCRA hazardous waste listings contact Dr. Ambika Bathija, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, (202) 260–4770.

For technical information on the CERCLA proposal, contact: Ms. Ivette O. Vega, Response Standards and Criteria Branch, Emergency Response Division (OS–210), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–2190.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
  A. Introduction
  B. Previous Listings
  C. Toxicity Characteristic Rule
  D. Today's Proposal
II. Summary of the Regulation
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  1. Summary of Basis for Listing
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I. Background

A. Introduction

As part of its regulations implementing section 3001 of Subtitle C of RCRA, EPA published a list of hazardous wastes that includes hazardous wastes generated from specific sources. This list has been amended several times, and is published in 40 CFR 261.32. In today's action, EPA is proposing to amend this section to add three wastes generated during the production of chlorinated toluenes. The following discussion briefly summarizes prior regulatory actions affecting wastes from the chlorinated toluenes industry, as well as the Agency's basis for listing as hazardous the wastes covered by this proposed rule.

B. Previous Listings

On May 19, 1980, EPA promulgated an interim final rule that listed as hazardous numerous wastes from specific and nonspecific sources (see 45 FR 33084). Among others, EPA listed as hazardous one waste that is generated by the production of chlorinated

toluenes: EPA Hazardous Waste Number K015—still bottoms from the distillation of benzyl chloride (promulgated as final on November 12, 1980, see 45 FR 74884). The Agency notes that the scope of K015 is not affected in any way by today's proposal. EPA is not soliciting comments concerning the K015 listing and will not respond to any such comments received.

C. Toxicity Characteristic Rule

On March 29, 1990, as part of its regulations implementing HSWA, the Agency finalized the amendment to the Extraction Procedure (EP) Toxicity Characteristic (40 CFR 261.24) by adding 25 additional organic compounds and introducing a new leaching procedure called the Toxicity Characteristic Leaching Procedure (51 FR 21648). Among these 25 organics are carbon tetrachloride, chlorobenzene, chloroform, 1,4-dichlorobenzene, hexachlorobenzene, and tetrachloroethylene which are typically present in the wastes proposed for listing in today's notice.

D. Today's Proposal

Today, EPA is proposing to amend part 261.32 by adding three waste streams generated from the production of the alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups, collectively referred to this proposed rule as "chlorinated toluenes," to the list of hazardous wastes from specific sources. Specifically, the Agency is proposing to list as hazardous distillation or fractionation bottoms generated from the production of chlorinated toluenes (K149); the organic residuals generated in the recovery of by-product hydrochloric acid (HCl) (K150); and wastewater treatment sludges, excluding neutralization sludges and biological sludges, generated during the treatment of wastewaters from the manufacture of chlorinated toluenes (K151).

The basis for this proposed regulation is a determination by the Agency that these wastes frequently contain significant concentrations of benzene, benzotrichloride, benzyl chloride, carbon tetrachloride, chlorobenzene, chloroform, chloromethane, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, 1,1,2,2-tetrachloroethane, tetrachloroethylene, toluene, and/or 1,2,4-trichlorobenzene. These compounds in chlorinated toluene wastes present a threat to human health and the environment when mismanaged due to their toxicity, mobility, and persistence. These constituents may be carcinogenic, mutagenic, and/or exhibit other chronic systemic effects at certain concentrations. Most of these constituents are highly persistent and are mobile in the environment based on their physical properties and evidence from damage incidents. The Agency is proposing that these wastes from chlorinated toluenes production be listed as hazardous and subject to the requirements of 40 CFR parts 124, 262–266, 268, 270, and 271 since they are capable of posing a threat to human health and the environment when improperly treated, stored, transported, disposed of, or otherwise handled.

On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted. These amendments had far-reaching ramifications for EPA's hazardous waste regulatory program. Section 3001(e)(2), which was one of the many provisions added by HSWA, directed EPA to decide whether to list under section 3001(b)(1) several wastes, including wastes generated from the production of chlorinated aromatics. Today's regulation completes the investigation of the efforts that were underway to study wastes from chlorinated aromatics when HSWA was enacted.

II. Summary of the Regulation

A. Overview of the proposal and HSWA

This notice proposes to list as hazardous three wastes generated during the production of chlorinated toluenes:

K149 Distillation or fractionation bottoms from the production of alpha- (or methyl) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. [This waste does not include still bottoms from the distillation of benzyl chloride.]

K150 Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.

K151 Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.

Pursuant to HSWA, the Agency has collected additional information that supports the addition of these three wastes to 40 CFR 261.32. The Agency proposes to add K149, Kl50, and K151 to 40 CFR 261.32 because the wastes satisfy the criteria in 40 CFR 261.11(a)(1–3) for identifying hazardous wastes. Based on the similarity of wastes from the production of alpha-chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and mixtures of these functional groups, the Agency is proposing to identify wastes from these processes as a group. Each of the three wastes meets the definition of hazardous wastes by typically and frequently exhibiting toxicity, persistence, and mobility. This listing does not affect the existing K015 listing.

Upon promulgation of these proposed listings, all wastes meeting the listing descriptions would become hazardous wastes. These wastes and wastes derived from the treatment of these wastes would require treatment and disposal at permitted facilities regardless of waste characteristics, reducing the possibility of releases that would threaten human health and the environment.

Residuals from the treatment, storage, or disposal of the wastes included in today's proposed listing also would be classified as hazardous wastes by the "derived from" rule [40 CFR 261.3(c)(2)(i)]. These "derived-from" wastes include any treatment residuals. For example, ash or other residuals from treatment of K149, K150, and/or K151 would be subject to the hazardous waste regulations.

However, when these wastes are recycled as described in 40 CFR 261.2 (e)(1)(iii) or 261.4(a)(8), they are not solid wastes and are not subject to hazardous waste regulations. For example, if K150 is collected and returned in a closed-loop fashion to the same chlorinated toluene process, the waste would not be regulated. To meet the exemption, the waste must meet the three key requirements outlined in the rules and in 50 FR 639 (January 4, 1985): (1) The material must be returned to the original process from which it was generated without first being reclaimed, (2) the production process to which the materials are returned must use raw materials as principal feedstocks, and (3) the material must be returned as a substitute for raw material feedstock in the original production process. (The regulations contain other recycling exclusions as well, but the provisions referenced above are the principal ones applicable to the wastes at issue in this proposal.)

Under provisions enacted by HSWA in 1984, EPA was directed to make listing determinations on wastes generated by specific industries, including the chlorinated aromatics

industry. The chlorinated aromatics industry can be divided into three major segments that include chlorinated benzenes, chlorinated phenols, and chlorinated toluenes.

Chlorinated benzene production wastes are currently regulated under F002, F022, F026, F028, K085, and K105 listed hazardous wastes. Chlorinated phenol production wastes are currently regulated under F020, F021, F023, F027, and F028 listed hazardous wastes. In addition to K015, today's proposed rule to list wastes from chlorinated toluenes production would regulate the remaining segment of the chlorinated aromatics industry. This rule, when finalized, represents the completion of the investigations that were underway to study wastes from the chlorinated aromatics industry when HSWA was enacted.

B. Description of the Industry

The chlorinated toluenes industry is composed of 10 chemical products produced by 4 manufacturers at 4 facilities. The total domestic production of chlorinated toluenes (including benzyl chloride) in 1987 was 80,000 metric tons (MT). Chlorinated toluenes are manufactured primarily for use as intermediates and raw materials in the production of chemical products such as pesticides, herbicides, dyes and dye carriers, pharmaceuticals, solvents, and polymer initiators and plasticizers.

Chlorinated toluenes are composed of the alpha-chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. The manufacture of chlorinated toluenes currently includes four chemical processes: (1) Thermal chain (alpha) chlorination, (2) ultraviolet light-catalyzed chain chlorination, (3) Lewis acid-catalyzed ring chlorination, and (4) catalytic steam hydrolysis. The primary raw materials used in the production of these products are toluene and chlorine. These reactions primarily yield chlorinated toluene products and hydrochloric acid. The Chlorinated Toluene Background Documents[1] (available in the RCRA Docket at EPA Headquarters—see ADDRESSES section) and the sources cited therein describe these production processes more thoroughly.

Most facility operations are organized into a chlorination process, a purification process, and hydrochloric acid recovery. Facilities also operate a common wastewater treatment system for the entire plant. Typically, toluene or chlorotoluene are chlorinated to produce a raw chlorinated toluene product. This raw product is distilled to recover toluene and purify the raw product. The off-gases from the reaction and the purification process are processed to recover HCl and remove organics.

Chain chlorination involves the replacement of a hydrogen with a chlorine on the methyl group of the toluene molecule under thermal or ultraviolet stimulation. Benzyl chloride, benzal chloride, and benzotrichloride are the products of subsequent chlorinations of the methyl group. Ring chlorination is the replacement of a hydrogen with a chlorine on the aromatic ring, generally accomplished in the presence of a Lewis acid catalyst; o-chlorotoluene, p-chlorotoluene, and dichlorotoluene are produced from Lewis acid-catalyzed ring chlorinations.

Benzoyl chlorides are produced from the two-step catalytic steam hydrolysis of benzotrichloride. This mechanism uses water to hydrolyze benzotrichloride to benzoic acid followed by reaction of benzoic acid with additional benzotrichloride to form two benzoyl chloride molecules. Other chlorinated toluene products are grouped as "mixed functional group compounds" because they involve chlorinations on two or more functional groups and are produced using two or more of the processing steps described above.

The off-gases from the chlorination reactions and purification process are processed to collect and refine HCl byproduct. Organics entrained in these gases are knocked out at various points in the HCl recovery process.

Toluene chlorination wastes that satisfy today's proposed listing descriptions are not limited to the processes described above. Wastes from any process that produces methyl-chlorinated toluenes, ring-chlorinated toluenes, the acid chloride, or any combination of these functional groups, would be subject to hazardous waste regulations. The toluene chlorination processes presented today are those known to be currently used by industry. The Agency acknowledges that there may be other processes that are used to manufacture chlorinated toluenes. The Agency believes that those processes, if they exist, are likely to generate wastes similar in nature to those identified in today's proposal. The Agency therefore is proposing to list K149, K150, and K151 residuals from the manufacture of chlorinated toluenes, regardless of manufacturing processes and the character of the wastes generated by those processes.

Today's proposed listings is intended to encompass the wastes generated from any chlorinated toluene manufacturing, including the wastes generated when chlorinated toluenes are produced as intermediates or as captive products supporting a secondary production process. For example, a facility may produce a chlorinated toluene intermediate to be used directly as a raw material in another process.

C. Description of the Wastes

While the Agency has observed that chlorinated toluene manufacturing processes differ according to product and raw material, many similarities in the wastes generated exist. Five waste streams are generated during the manufacture of chlorinated toluenes: distillation bottoms, organics from HCl recovery, wastewaters, spent carbon, and wastewater treatment sludges.

Today's proposal to list K149, K150, and K151 and not to list wastewaters and spent carbon is based on the similarity of production processes used by chlorinated toluene manufacturers and the similarity of wastes generated by these facilities.

Waste K149 is the distillation (still) or fractionation bottoms generated by purification or recovery of chlorinated toluenes. From the chlorination reactors, the crude chlorinated product is sent to a series of continuous vacuum distillation columns and/or vacuum batch stills to separate the product from unreacted feed, by-products, catalysts, and organic contaminants. This activity generates distillation bottom wastes that are disposed of. This proposed listing does not include or modify the definition of K015 still bottoms from the distillation of benzyl chloride.

Waste K150 is the organic waste streams generated during the collection of spent chlorine gas and manufacture of HCl from spent chlorine gas. Overhead gases from the chlorination reactors contain HCl, unreacted chlorine and toluene, over- and under-chlorinated by-products, product isomers, and water and organic contaminants or impurities from the raw materials. These gases are processed to remove these contaminants

[1] The Background Documents consist of an Engineering Analysis and a Health Assessment Document. Because of the confidential nature of the information in the Engineering Analysis, it has been classified as Confidential Business Information (CBI), and is not available to the public. A concise summary of this document has been assembled for the public docket. EPA will accept petitions submitted in accordance with 40 CFR part 2 for declassifying CBI information. The Health Assessment Document is not CBI and is available in the RCRA Docket.

before and during the formation and purification of HCl.

The overhead gases leave the reactor and are sent through multi-stage condensers where the condensables are collected. This condensed phase contains a mixture of water, toluene, and other condensable organics that are allowed to separate into an organic and an aqueous phase. A decanter typically is used to collect the organic phase. These organic and aqueous wastes contain products, product isomers, and under- and over-chlorinated by-products. These constituents are present at higher concentrations in the organic phase (K150) than in the aqueous phase.

After passing the condensers, the overhead gases primarily contain chlorine, HCl gas, inert materials, and some trace organic contaminants. This gas stream then is contacted with water to produce crude HCl by-product. As the chlorine gas is processed to make crude HCl and as that crude HCl is collected, purified, and stored, additional organic constituents are likely to separate into a distinct organic phase. This organic phase typically is a small volume collected over a period of time in a sight glass, coalescing tank, or in the bottom of a storage tank. These organic materials are drained periodically from these collection points and disposed of with other organic liquid wastes. These organic residues also are considered K150.

Spent carbon is generated during the recovery and purification of HCl by-product. Crude HCl is passed through carbon beds to remove any remaining organics and to meet color specifications for saleable material. Carbon beds are used and regenerated in place until the carbon must be replaced. Spent carbons that are replaced typically are returned to the supplier for regeneration; however, these wastes have been reported to be disposed of in a Subtitle D landfill. Based on analysis of these spent carbons and the Agency's evaluation of the fate and transport of the constituents found in these wastes, spent carbon wastes are not proposed for listing.

Wastewaters are generated throughout the chlorinated toluene manufacturing process. Typically, a facility's wastewaters include steam jet condensate, overhead decanter waters, and scrubber waters. All facilities treat wastewaters onsite before discharge to a publicly owned treatment works (POTW) or under a National Pollutant Discharge Elimination System (NPDES) permit. The Agency has analyzed these wastewaters and found them to contain low concentrations of the constituents of concern. Also, these wastes are all treated onsite before discharge under the Clean Water Act (CWA) and therefore are not proposed for listing.

K151 wastes are the wastewater treatment sludges, excluding neutralization and biological sludges, generated from the treatment of process wastewaters from chlorinated toluenes manufacturing processes. These wastes include sludges and skimmings from aqueous/organic separator units and other residuals resulting from physical separation of wastewater components that are generated before wastewater neutralization or aggressive biological treatment of wastewaters. Typical process wastewater treatment residuals generated in the chlorinated toluenes industry are organic/aqueous separator sludges and skimmings, neutralization sludge, and biological sludges. The Agency has found that organic/aqueous separator sludges are concentrated organic residuals containing significant levels of the constituents of concern. In contrast, residuals from wastewater neutralization and biological treatment are much more dilute in nature and contain the constituents of concern at levels that do not present a threat to human health or the environment and are often below detection limits. Thus, the Agency has determined that only skimmings and sludges from aqueous/organic separation meet the criteria for hazardous wastes and are proposed to be added to the list of hazardous wastes (see section II.D).

Based on data collected from industry, engineering site visits, and sampling and analysis, the Agency believes that the wastes proposed for listing today typically contain significant concentrations of the following hazardous constituents: benzene, benzotrichloride, benzyl chloride, carbon tetrachloride, chlorobenzene, chloroform, chloromethane, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, 1,1,2,2-tetrachloroethane, tetrachloroethylene, toluene, and 1,2,4-trichlorobenzene. Table 1 identifies the constituents of concern found in the chlorinated toluene waste streams studied. The Agency conducted extensive sampling and analysis of each of these wastes to support this listing. However, in the interest of preserving the confidentiality of the information collected as requested by industry, the Agency has presented the concentrations found as "greater than" (>) a specific value. (See Table 1, Footnote 1.)

TABLE 1.—WASTE STREAM CONSTITUENTS

Constituent	Median Concentration (mg/kg)
Distillation or fractionation bottoms from the production of chlorinated toluenes (K149):	
Benzotrichloride	70,000
Benzyl chloride	> [1] 750
Chloroform	50
Chloromethane	7,000
Chlorobenzene	> 350
1,4-Dichlorobenzene	> 700
Hexachlorobenzene	3,500
Pentachlorobenzene	1,500
1,2,4,5-Tetrachlorobenzene	250
Toluene	3,000
Organic residuals from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of chlorinated toluenes (K150):	
Hexachlorobenzene	2,000
Pentachlorobenzene	2,100
1,2,4,5-Tetrachlorobenzene	7,000
1,4-Dichlorobenzene	3,200
Chloroform	45
Chloromethane	13,500
Carbon tetrachloride	550
Tetrachloroethylene	150
1,2,4-Trichlorobenzene	12,000
1,1,2,2-Tetrachloroethane	> 125
Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of chlorinated toluenes (K151):	
Toluene	34,000
Hexachlorobenzene	> 500
Tetrachloroethylene	> 250
Carbon tetrachloride	75
Chloroform	190
1,2,4,5-Tetrachlorobenzene	> 150
Pentachlorobenzene	> 200
Benzene	> 100

[1] Agency collected data indicates concentrations in excess of the presented values. However, those exact values have not been presented to preserve confidentiality.

According to data collected, the total reported generation rate of waste K149 in 1987 was approximately 2,200 MT/yr (excluding benzyl chloride still bottoms), 400 MT/yr for K150, and 600 MT/yr for K151. These quantities are based on information collected by EPA during engineering site visits and 1988 RCRA 3007 Questionnaires.

Current management practices for K149, K150, and K151 are summarized in Table 2. Three facilities reported generating K149 wastes and incinerating these wastes in subtitle C incinerators. All four facilities reported managing K150 waste, either by incineration or recycling the streams back to the production system. Two facilities reported generating K151 wastes: Approximately 95 percent of the wastes are incinerated under Subtitle C and 5 percent are landfilled offsite as nonhazardous.

TABLE 2.—WASTE MANAGEMENT BY WASTE TYPE AND VOLUME (MT/YR)

	K149 still bottoms	K150 other organics	K151 wastewater treatment sludges
Recycle	Quantity unavailable.	Quantity unavailable.	0
Incineration	2,200	400	570
Offsite Subtitle D landfill.	0	0	30
Totals	2,200	400	600

D. Basis for Listing

The Agency, in conducting its investigation before proposing the listing of a specific waste under CFR 40 261.32, characterizes the waste based on survey information, engineering analysis, and sampling and analysis. The constituents of concern in today's proposal were identified by these methods and are proposed as the basis for listing and for addition to appendix VII of 40 CFR part 261 (see Table 1).

1. Summary of Basis for Listing

K149, K150, and K151 wastes meet the criteria for listing as hazardous presented in 40 CFR 261.11(a). Consequently, EPA is proposing to add these three wastes to the list of hazardous wastes from specific sources presented in 40 CFR 261.32. K149, K150, and K151 are liquid wastes that typically and frequently contain mobile, persistent, and toxic hazardous constituents at levels such that concentrations of these constituents at the receptors may exceed health-based levels (HBLs) if the wastes are improperly managed.

Based on sampling and analysis of the wastes, the Agency has identified the following constituents of concern for chlorinated toluene wastes: Benzene, benzotrichloride, benzyl chloride, carbon tetrachloride, chlorobenzene, chloroform, chloromethane, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, 1,1,2,2-tetrachloroethane, tetrachloroethylene, toluene, and 1,2,4-trichlorobenzene. All of the constituents may be carcinogens and/or systemic toxicants and appear on the list of hazardous constituents in 40 CFR part 261, appendix VIII. Benzene, benzotrichloride, benzyl chloride, chloromethane, 1,4-dichlorobenzene, and 1,1,2,2-tetrachloroethane are carcinogens. Chlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, toluene, and 1,2,4-trichlorobenzene are systemic toxicants. Carbon tetrachloride, chloroform, hexachlorobenzene, and tetrachloroethylene may be both carcinogens and systemic toxicants at certain concentrations.

Other constituents were detected in these wastes, but were not selected as constituents of concern at this time because their levels of toxicity are not well-established or because they typically are not present in concentrations of regulatory concern. Table 3 presents the constituents of concern and their concentrations in the wastes and compares these levels with well-established oral HBLs of concern. (See section II.D.4 for a discussion of the HBLs of concern.)

TABLE 3.—BASIS FOR LISTING: HAZARDOUS CONSTITUENTS AND LEVELS OF CONCERN (ORAL ROUTE)

	Median waste concentration (mg/kg)	Health-based levels (HBL) (mg/L)	Waste level to HBL ratio	100×HBL (mg/L)	Waste level to 100×HBL ratio
Distillation or fractionation bottoms from the production of chlorinated toluenes (K149):					
Benzotrichloride	70,000	3×10^{-6}	2×10^{10}	3×10^{-4}	2×10^{8}
Benzyl Chloride	>750	2×10^{-4}	4×10^{6}	2×10^{-2}	4×10^{4}
Chlorobenzene	>300	1×10^{-1}	3×10^{3}	1×10^{1}	3×10^{1}
Chloroform	50	6×10^{-3}	8×10^{3}	6×10^{-1}	8×10^{1}
Chloromethane	7,000	3×10^{-3}	2×10^{6}	3×10^{-1}	2×10^{4}
1,4-Dichlorobenzene	>700	7.5×10^{-2}	9×10^{3}	7.5	9×10^{1}
Hexachlorobenzene	3500	1×10^{-3}	4×10^{6}	1×10^{-1}	4×10^{4}
Pentachlorobenzene	1,500	3×10^{-2}	5×10^{4}	3	5×10^{2}
1,2,4,5-Tetrachlorobenzene	250	1×10^{-2}	3×10^{4}	1	3×10^{2}
Toluene	3,000	1	3×10^{3}	1×10^{2}	3×10^{1}
Organic residuals from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of chlorinated toluenes (K150):					
Carbon Tetrachloride	550	5×10^{-3}	1×10^{5}	5×10^{-1}	1×10^{3}
Chloroform	45	6×10^{-3}	8×10^{3}	6×10^{-1}	8×10^{1}
Chloromethane	13,500	3×10^{-3}	5×10^{6}	3×10^{-1}	5×10^{4}
1,4-Dichlorobenzene	3,200	7.5×10^{-2}	4×10^{4}	7.5	4×10^{2}
Hexachlorobenzene	2,000	1×10^{-3}	2×10^{6}	1×10^{-1}	2×10^{4}
Pentachlorobenzene	2,100	3×10^{-2}	7×10^{4}	3	7×10^{2}
1,2,4,5-Tetrachlorobenzene	7,000	1×10^{-2}	7×10^{5}	1	7×10^{3}
1,1,2,2-Tetrachloroethane	>125	2×10^{-4}	6×10^{5}	2×10^{-2}	6×10^{3}
Tetrachloroethylene	150	5×10^{-3}	3×10^{4}	5×10^{-1}	3×10^{2}
1,2,4-Trichlorobenzene	12,000	9×10^{-3}	1×10^{6}	9×10^{-1}	1×10^{4}
Wastewater treatment sludges, excluding neutralization biological sludges (K151):					
Benzene	>100	5×10^{-3}	2×10^{4}	5×10^{-1}	2×10^{2}
Carbon tetrachloride	75	5×10^{-3}	2×10^{4}	5×10^{-1}	2×10^{2}
Chloroform	190	6×10^{-3}	3×10^{4}	6×10^{-1}	3×10^{2}
Hexachlorobenzene	>500	1×10^{-3}	5×10^{5}	1×10^{-1}	5×10^{3}
Pentachlorobenzene	>200	3×10^{-2}	7×10^{3}	3	7×10^{1}
1,2,4,5-Tetrachlorobenzene	>150	1×10^{-2}	2×10^{4}	1	2×10^{2}
Tetrachloroethylene	>250	5×10^{-3}	5×10^{4}	5×10^{-1}	5×10^{2}
Toluene	34,000	1	3×10^{4}	1×10^{2}	3×10^{2}

The Agency has found these constituents to be mobile and persistent based on projections from their physical properties and damage incidents. All of the constituents of concern are mobile in ground water, and all of the constituents

of concern are considered persistent in ground water except for benzotrichloride and benzyl chloride. In addition to the groundwater pathway, the following constituents of concern are considered a threat via the air pathway: benzene, benzotrichloride, carbon tetrachloride, chloroform, chloromethane, hexachlorobenzene, and 1,1,2,2-tetrachloroethane. (See section II.D.5 for a detailed discussion on mobility and persistence.)

To assess the potential hazard posed by the constituents of concern in the proposed wastes (K149, K150, and K151), the Agency compared their HBLs of concern to their concentrations found in the wastes. The Agency also compared these HBLs of concern to concentrations that may reach potential human and environmental receptors, taking into account possible dilution and attenuation that may occur due to leaching from the waste and subsequent dilution or release to the air as a result of reasonable worstcase mismanagement of the waste.

To evaluate the dilution and attenuation associated with leaching from the waste, the Agency considers the physical state of the waste. If the physical state of the waste is solid, the Agency first estimates the leaching rates for the constituents from the waste, then applies a dilution/attenuation factor to account for dispersion in the subsurface from the disposal site into ground water and subsequently to a drinking water source. This dilution and attenuation may occur because of various phenomena, such as hydrolysis, solubility, soil conditions, adsorption onto soil particles, dilution with ground water, and biodegradation to the extent those processes are likely to occur in a reasonable worst-case management or disposal scenario.

The Agency believes that liquid wastes are mobile if improperly disposed of and may reach environmental receptors directly. The chlorinated toluene wastes proposed for listing today are liquids at ambient temperature; therefore, only dilution and attenuation associated with subsurface transport of hazardous constituents from these wastes were considered.

Ground-water fate and transport have been evaluated by EPA in recent years. Recent evaluations of ground-water transport have been conducted in support for the recently promulgated Toxicity Characteristic (TC) (55 FR 11798). In the final TC rule promulgated on March 29, 1990, EPA determined that a D/A factor of 100 was appropriate for a reasonable worst-case evaluation of nonspecific wastes that may be disposed of in municipal landfills. The Agency is confident that a D/A factor of 100 will predict the reasonable worst-case scenario for the chlorinated toluene wastes.

Therefore, in assessing the risks associated with chlorinated toluene wastes, the Agency has compared concentrations of constituents found in the wastes to 100 times their HBLs. Table 3 shows that these wastes contain sufficient levels of the constituents of concern to threaten human health when a D/A factor of 100 is used for transport. In other words, if only 1 percent of the average constituent concentration reached human or environmental receptors after dilution and attenuation, the concentrations at the receptors would be several orders of magnitude higher than the HBL for each constituent. Given the high concentrations of the constituents of concern expected at the receptors in cases of mismanagement in comparison to HBLs, there is the potential for exposure to harmful concentrations of the constituents of concern.

In summary, the concentrated nature of these wastes, the mobility and persistence of the constituents of concern, and the demonstrated or suspected risks associated with those constituents that satisfy the criteria set forth in 40 CFR part 261.11(a)(3) for listing a waste as hazardous provide the basis for listing these wastes as hazardous.

2. Summary of Basis for a No-Listing Decision on Wastewaters, Certain Wastewater Treatment Residuals, and Spent Carbon Wastes

EPA is proposing a no-list decision for wastewaters, spent carbon wastes, and certain wastewater treatment wastes generated during the manufacture of chlorinated toluenes. Based on the information collected, including sampling and analysis, these wastes do not meet the criteria for listing as hazardous.

Wastewaters contain low levels of the constituents of concern. These levels are typically less than 100 times the HBL, and for the most part, the constituents of concern were not detected in the samples. In addition, all wastewaters are collected and treated in the facility's wastewater treatment plant. The effluent from the wastewater treatment plant is subject to effluent guidelines and pretreatment standards promulgated for the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) industries (52 FR 42522, November 5, 1987). The statutory deadline to comply with these new effluent guidelines standards was November 5, 1990, and as a result, the facilities have modified their wastewater treatment systems to meet these OCPSF standards since these wastes were sampled. Since effluent contaminant levels are likely to drop as a result of these new standards, hazardous waste regulation of wastewaters is not believed to be necessary. The residuals from the wastewater treatment plant were subject to the specific evaluations summarized below.

The treatment of wastewaters generates sludges from organic/aqueous separation, neutralization, and biological treatment. The Agency has found that organic/aqueous separator sludges are concentrated organic residuals containing significant levels of the constituents of concern. In contrast, most of the constituents of concern were not detected in wastewater neutralization and biological sludges. Constituents present in these wastes, when detected, were typically present at levels below 100 times the HBL. Thus, the Agency is proposing a no-list decision for these wastes at this time.

Spent carbon wastes contain organics removed from crude HCl during by-product purification. Typically, carbon beds are used and regenerated in place until they must be replaced. Spent carbons are then returned to the supplier for regeneration; however, facilities have reported disposing of these wastes in subtitle D landfills. Therefore, this is an appropriate reasonable mismanagement scenario.

Since spent carbon wastes are solid, the Agency considered the dilution and attenuation associated with leaching as well as that due to transport processes in ground water. The constituents are expected to adhere strongly to the carbon matrix to which they are adsorbed. The Agency's data show that most organics are present in the waste at levels less than 100 times the HBLs, with many of the constituents below the analytical detection levels. When leaching and transport processes are considered, the estimated receptor concentration levels are not expected to exceed HBLs. Thus, the hazardous constituents of concern present in these spent carbon wastes are not expected to be sufficiently mobile or be present at sufficiently high concentrations to pose a significant risk to human and environmental receptors.

Wastewaters, certain wastewater treatment residuals, and spent carbon contain constituents that are included in the TC (55 FR 11798, March 29, 1990) and may be designated as characteristically hazardous if the constituent levels in the leachate from wastes exceed the TC levels. However, based on the Agency's

analytical results of the wastes sampled, this occurrence will be rare. In each of the above wastes, constituents of concern were detected at levels below 100 times the HBLs. For the TC, the levels are developed using 100 times the HBLs in waste leachate; therefore, it is expected that constituent levels in the leachate will not exceed TC levels.

3. Waste Characterization and Constituents of Concern

This section summarizes the information concerning waste characterization and constituents of concern that EPA has gathered to support this proposed listing. As described above, other compounds also have been identified in these wastes but are not presented as constituents of concern because they are either not sufficiently toxic, are present at low concentrations, or do not migrate through the environment under reasonable conditions.

Specific information regarding the identity and concentration of the compounds found in chlorinated toluene wastes is presented in summary form in the Public Docket. Greater detail can be found in the Chlorinated Toluene Engineering Analysis; however, this document is not available to the public due to the confidential nature of the information.

The constituents of concern are found at varying levels in each of the chlorinated toluene waste streams proposed for listing. While the specific constituents and the levels found in the wastes are dependent on individual manufacturing processes, the Agency has found no significant difference between the wastes from alpha, ring, and acid chloride toluenes processes. The Agency therefore is proposing to regulate wastes from each of these processes together under the K149, K150, and K151 listings.

The following wastes from the chlorinated toluenes industry have been characterized for listing:

a. *Distillation or fractionation bottoms from the production of chlorinated toluenes (K149).* Tables 1 and 3 list the constituents of concern and the concentrations found in distillation bottom wastes from the purification of chlorinated toluenes. These constituents include benzotrichloride, benzyl chloride, chlorobenzene, chloromethane, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, and toluene.

b. *Organic residuals from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of chlorinated toluenes (K150).* The constituents of concern and levels identified through analysis of organic residuals generated from HCl recovery are listed in Tables 1 and 3. The constituents of concern are carbon tetrachloride, chloroform, chloromethane, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, tetrachloroethylene, 1,2,4-trichlorobenzene, and 1,1,2,2-tetrachloroethane.

c. *Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of chlorinated toluenes.* Wastewater treatment processes in the chlorinated toluene industry generate a number of residuals including, but not limited to, organic/aqueous separator skimmings or float, organic/aqueous separator bottoms sludge, neutralization sludges, and biological treatment sludges. This listing does not apply to residuals generated from neutralization and biological treatment because these wastes typically either do not contain constituents of concern or contain constituents of concern at levels below 100 times the HBLs. This listing does apply to organic/aqueous separation residuals that are generally the first step in the wastewater treatment process; these wastes have been found to contain elevated levels of the constituents of concern as presented in Tables 1 and 3. The constituents of concern are benzene, carbon tetrachloride, chloroform, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, tetrachloroethylene, and toluene.

4. Health Effects

The constituents of concern for each waste have established health-based levels (HBLs) that have been verified by the Agency or are currently under review. It has been demonstrated in laboratory and/or human studies that exposure to these constituents causes deleterious effects. The Agency has obtained data demonstrating that the constituents found in the wastes generated by the production of chlorinated toluenes are carcinogens and/or systemic toxicants. The HBLs are levels of concern which the Agency establishes after evaluating existing toxicity information. For these toxicants, the data were evaluated by the Agency's Carcinogen Assessment Group (CAG) and Environmental Criteria Assessment Office (ECAO-Cincinnati) and verified by the Carcinogen Risk Assessment Verification Endeavor (CRAVE) Workgroup and the Reference Dose (RfD) Workgroup. This approach is consistent with the approach used by other RCRA programs, such as the Toxicity Characteristic (TC), delisting petition evaluations, clean closure, and corrective action. The Health Assessment Background Document for this proposal provides details on the development of HBLs for each constituent and is available in the Public Docket.

To evaluate the hazard presented by specific constituents, the Agency routinely uses three basic methods to indicate measures of toxicity: (1) Maximum Contaminant Levels (MCLs) developed by the Office of Drinking Water, (2) Risk-Specific Doses (RSDs) for carcinogens, and (3) Reference Doses (RfDs) and Reference Concentrations (RfCs) for systemic toxicants. Where available, the Agency uses MCLs as the HBLs. Where MCLs are not available, HBLs are calculated from RSDs or RfDs. When both RSDs and RfDs are available for a given constituent, the Agency uses the more stringent of the two. In most cases, the RSDs for carcinogenic constituents are more stringent than RfDs.

MCLs are Drinking Water Standards promulgated under section 1412 of the Safe Drinking Water Act of 1974 (SDWA), as amended in 1984 for both carcinogenic and noncarcinogenic compounds. In setting MCLs, EPA considers a range of pertinent factors (for example, see 52 FR 25697–98, July 8, 1987).

Where available, the Agency uses MCLs for both carcinogens and noncarcinogens as the HBLs for exposure to surface water, ground water, or leachates. In general, MCLs for noncarcinogens are derived from RfDs, while MCLs for most carcinogens are set as close to zero as feasible. This normally corresponds to risk levels that range from 10^{-4} to 10^{-6} (i.e., one in ten thousand to one in a million additional cancers due to lifetime exposure). (Note that although the derivation of MCLs considers other factors in addition to health effects, it also considers other routes of exposure.) For those constituents that do not yet have MCLs, the Agency is proposing to use RfDs for noncarcinogens and RSDs for carcinogens.

For many carcinogenic constituents for which MCLs are not promulgated, the Agency has developed oral RSDs. The RSD is a dose that corresponds to a specified level of risk for an individual contracting cancer over a 70-year lifetime exposure to the toxicant in drinking water. To develop an RSD, a risk level from 10^{-4} to 10^{-6} is specified. Given the specific information known

about chlorinated toluene wastes, EPA assumes a lower bound 10^{-6} risk level.

Oral RfDs are established for noncarcinogenic constituents. The RFD is an estimate of a daily exposure to a substance for the adult human population (including sensitive subgroups) that appears to be without an appreciable risk of deleterious effects during a lifetime exposure. If frequent exposures that exceed the RfD occur, there is a higher probability that adverse effects will be observed. The method for estimating the RfD for noncarcinogenic endpoints was described in the proposed rule for the TC (51 FR 21648, June 13, 1986).

The hazardous constituents of concern have carcinogenic or other chronic systemic effects on laboratory amimals or humans and have been determined to be present in chlorinated toluene wastes in sufficient concentrations to pose a substantial threat to human health and the environment. Tables 4 and 5 summarize the established RfCs, RfDs, RSDs, or MCLs for all of the constituents of concern in chlorinated toluene wastes. The remainder of this section summarizes the toxicity of these constituents. A more detailed discussion is included in the Health Assessment section of the Background Document to today's proposal.

TABLE 4.—ORAL HBL TOXICITY SOURCES

Constituent	Class	Slope factor (mg/kg/day) [1]	Carcin HBL (mg/L)	RfD (mg/kg/day)	Toxicity HBL (mg/L)	MCL (mg/L)	HBL leachate (mg/L)	Interim HBL
Benzene	A	2.9×10^{-2}	1×10^{-3}			5×10^{-3}	5×10^{-3}	
Benzotrichloride	B2	1.3×10^{1}	3×10^{-6}				3×10^{-6}	
Benzyl Chloride	B2	1.7×10^{-1}	2×10^{-4}				2×10^{-4}	
Carbon Tetrachloride	B2/S	1.3×10^{-1}	3×10^{-4}	7×10^{-4}	2×10^{-2}	5×10^{-3}	5×10^{-3}	
Chlorobenzene	D/S			2×10^{-2}	7×10^{-1}	1×10^{-1}	1×10^{-1}	
Chloroform	B2/S	6.1×10^{-3}	6×10^{-3}	1×10^{-2}	4×10^{-1}		6×10^{-3}	
Chloromethane	B2	[2] 1.3×10^{-2}	3×10^{-3}				3×10^{-3}	X
1,4-Dichlorobenzene	B2	[2] 2.4×10^{-2}	1×10^{-3}			7.5×10^{-2}	7.5×10^{-2}	
Hexachlorobenzene	B2/S	1.6	2×10^{-6}	8×10^{-4}	3×10^{-2}	[1] 1×10^{-3}	1×10^{-3}	X
Pentachlorobenzene	S			8×10^{-4}	3×10^{-2}		3×10^{-2}	
1,2,4,5-Tetrachlorobenzene	S			3×10^{-4}	1×10^{-2}		1×10^{-2}	
1,1,2,2-Tetrachloroethane	C	2×10^{-1}	2×10^{-4}				2×10^{-4}	
Tetrachloroethylene [3]	B2/S	[2] 5.1×10^{-2}	7×10^{-4}	1×10^{-2}	4×10^{-1}	5×10^{-2}	5×10^{-3}	
Toluene	D/S			[2] 2×10^{-1}	7	1	1	
1,2,4-Trichlorobenzene	D/S			[2] 1.3×10^{-3}	5×10^{-2}	[1] 9×10^{-3}	9×10^{-3}	X

A, B, C, and D refer to carcinogenic classes, S refers to systemic toxicants.
[1] Proposed MCL.
[2] Compound is currently under review, and RfD or CSF values are not considered verified.
[3] The B2 classification currently is being reevaluated by the Office of Health and Environmental Assessment.
RfDs and CSFs obtained from: Integrated Risk Information System, 1991; Health Effects Assessment Summary Tables, FY 1991, OERR 9200.6-303-(91-1), January 1991.

TABLE 5.—INHALATION HBL TOXICITY SOURCES

Constituent	Class	Slope factor (mg/kg/day) [1]	Carcin HBL ($\mu g/m^3$)	RfC (mg/kg/day)	Toxicity HBL ($\mu g/m^3$)	Status
Benzene	A	2.9×10^{-2}	0.1			a
Benzotrichloride	B2	[1] 3×10^{3}	1×10^{-4}			b
Benzyl chloride	B2	ND				
Carbon Tetrachloride	B2	5.3×10^{-2}	0.07			a, b,c
Chlorobenzene	D/S			5×10^{-3}	20	d
Chloroform	B2	8.1×10^{-2}	0.04			a
Chloromethane	C	[2] 1.3×10^{-2}	0.3			d
1,4-Dichlorobenzene	B2/S	ND		0.2	700	d
Hexachlorobenzene	B2	1.6	0.002			a, c
Pentachlorobenzene				ND		
1,2,4,5-Tetrachlorobenzene				ND		
1,1,2,2,-Tetrachloroethane	C	2×10^{-1}	0.02			a
Tetrachloroethylene	B2	[2] 2×10^{-3}	2	ND		
Toluene	D/S			0.57	2,000	d
1,2,4-Trichlorobenzene	S			3×10^{-3}	10	

a—Verified
b—Under CRAVE review
c—Based upon route-to-route extrapolation
d—Interim
ND—Values not derived in the source document
[1] CSF for benzotrichloride obtained from: U.S. EPA. Health Effects Assessment Summary Tables, FY 1989, OERR 9200.6-303-(89-1), January 1989.
[2] CSF obtained from: 1991 Carcinogen Assessment Group estimate.
CSF for other compounds obtained from: Integrated Risk Information System, 1991.
RfCs obtained from: U.S. EPA. Health Effects Assessment Summary Tables, FY 1991, OERR 9200.6-303-(91-1), January 1991.

Benzene is a Class A carcinogen with a verified oral potency (slope) factor of 2.9×10^{-2} (mg/kg/day)$^{-1}$ based on route-to-route extrapolation from inhalation studies, a verified inhalation potency factor of 2.9×10^{-2} mg/kg/day)$^{-1}$, and an MCL of 5×10^{-3} mg/L. The inhalation slope factor is based on occupational exposure to humans resulting in leukemia. Studies have shown an increased incidence of nonlymphocytic myeloid leukemia from occupational exposure and increased incidence of neoplasia of the oral cavity, lung, liver, and zymbal gland in rats and

mice exposed by inhalation and by gavage.

Benzotrichloride is a Class B2 carcinogen with an oral potency factor of 13 $(mg/kg/day)^{-1}$ and an interim inhalation potency factor of 3×10^{-3} $(mg/kg/day)^{-1}$. The oral factor is based on a 25-week study on mice gavaged with benzotrichloride that resulted in lung tumors. The inhalation factor was derived from a 1-year study on mice that resulted in lung tumors. A dose dependent increase in the incidence of carcinoma of the stomach, lungs, and thymus was observed in female mice treated by gavage with doses of 0 to 25.7 mg/kg/day benzotrichloride for 25 weeks. Also, a high incidence of lung tumors was observed in mice following inhalation exposure to 1.6 parts per million (ppm) benzotrichloride for 2 days/week for 12 months. An increased incidence of gastric and respiratory cancers also has been reported in workers exposed to mixtures of benzotrichloride, benzyl chloride, and toluene in the manufacture of benzoyl chloride and other chlorinated toluenes.

Benzyl chloride has been classified as a B2 carcinogen with a verified oral potency factor of 1.7×10^{-1} $(mg/kg/day)^{-1}$ based on a 2-year study on rats that resulted in thyroid tumors. A National Cancer Institute bioassay study exposing mice to benzyl chloride (50 to 100 mg/kg/day by gavage) for 2 years resulted in a dose-dependent increased incidence of forestomach carcinoma, and an increased incidence of liver, circulatory system, and pulmonary tumors. Female rats treated with 15 or 30 mg/kg/day had dose-related increased incidence of C-cell adenoma/carcinoma of the thyroid.

Carbon tetrachloride is a class B2 carcinogen and a systemic toxicant with an MCL of 5×10^{-3} mg/L and a verified oral slope factor of 1.3×10^{-1} $(mg/kg/day)^{-1}$ based on several gavage studies that resulted in liver tumors in various species, and a verified oral RfD of 7×10^{-4} mg/kg/day based on a 12-week study on rats that resulted in liver lesions. Using route-to-route extrapolation from the oral studies, the verified inhalation slope factor is 5.3×10^{-2} $(mg/kg/day)^{-1}$. Several studies of occupational exposure have suggested that workers exposed to carbon tetrachloride may have an excess cancer risk. Oral doses have resulted in fatty infiltration, release of liver enzymes, inhibition of cellular enzyme activities, inflammation, and cellular necrosis observed in rats and mice. Inhalation exposure also produced hepatotoxicity in guinea pigs, rats, monkeys, rabbits, and dogs.

Chlorobenzene is a systemic toxicant with a verified oral RfD of 2×10^{-2} mg/kg/day based on a 90-day study that resulted in liver and kidney effects in dogs, and an MCL of 0.1 mg/L. In humans, exposure to chlorobenzene by inhalation causes central nervous system depression and irritation of the eye and respiratory tract. Effects such as mortality, retarded growth, increased liver and kidney weights, polyuria and porphyria, histopathologic changes in the liver, kidneys, and lymphoid tissue, neurotoxic effects, and blood chemistry changes have been observed in rats, mice, and dogs.

Chloroform is a Class B2 carcinogen with a verified oral potency factor of 6.1×10^{-3} $(mg/kg/day)^{-1}$ based on a 2-year study that resulted in kidney tumors in rats. It is also a systemic toxicant by the oral route with a verified oral RfD of 1×10^{-2} mg/kg/day based on a 7.5-year study that resulted in liver lesions in dogs. The verified inhalation potency factor is 8.1×10^{-2} $(mg/kg/day)^{-2}$ based on studies on mice that resulted in liver tumors. There were increases in the incidence of renal epithelial tumors, thyroid tumors, and hepatocellular carcinomas in mice dosed orally with chloroform. Workers exposed to chloroform by inhalation at levels from about 10 to 1,000 mg/m^3 for 1 to 4 years was reported to be associated with an increased incidence of viral hepatitis and enlarged liver.

Chloromethane (methyl chloride) is a Class C carcinogen with an interim inhalation potency factor of 1.3×10^{-2} $(mg/kg/day)^{-1}$ based on a 24-month study that resulted in kidney tumors in mice.

Using route-to-route extrapolation, the interim oral potency factor is 1.3×10^{-2} $(mg/kg/day)^{-1}$. This compound is under review by CRAVE and the results of that review will be presented by the Agency at a later date. Repeated and prolonged human exposure to concentrations greater than 1 mg/m^3 can result in central nervous system effects including blurred vision, headache, nausea, loss of coordination, and personality changes. Hematological effects were reported in mice as spleen enlargement and hemoglobinuria upon chloromethane inhalation exposure.

1,4-Dichlorobenzene is a Class B2 carcinogen with an interim oral potency factor of 2.4×10^{-2} $(mg/kg/day)^{-1}$ based on a 103-week study on mice that resulted in liver tumors, and has an MCL of 0.075 mg/L. 1,4-Dichlorobenzene is also a systemic toxicant by the air route. The interim inhalation RfC is 0.2 mg/kg/day based on a 56-week study on rats that resulted in liver and kidney effects. In a bioassay on 1,4-dichlorobenzene in rats and mice, treatment-related neoplastic effects included renal adenocarcinomas in male rats and carcinomas and adenomas in the liver of male and female mice.

Hexachlorobenzene is a Class B2 carcinogen and a systemic toxicant with a proposed MCL of 1×10^{-3} mg/L and a verified oral potency factor of 1.6 $(mg/kg/day)^{-1}$ based on a dietary study on hamsters that resulted in liver tumors, and has a verified oral RfD of 8×10^{-4} mg/kg/day based on a 130 week study on rats that resulted in liver and hemato-logic effects. Based on route-to-route extrapolation, the verified inhalation slope factor is 1.6 $(mg/kg/day)^{-1}$. Two-year feeding studies with Syrian Golden hamsters have shown tumors in the thyroid, liver, and adrenal. Acute toxicity of hexachloro-benzene in rats, rabbits, and cats is low, but subchronic and chronic exposure in laboratory animals and humans results in severe porphyria. Feeding hexachlorobenzene to rats produces neurologic symptoms, increased liver to body weight ratios, and suppression of the immune system.

Pentachlorobenzene is a systemic toxicant with a verified oral RfD of 8×10^{-4} mg/kg/day based on liver and kidney toxicity studies. Characteristic toxic effects in rats from oral doses include decreased activity, hypersensitivity to touch, and tremors. In subchronic exposure of pentachlorobenzene in rats for reproductive studies, liver porphyrins were slightly elevated in females and hepatocellular enlargement was noted in pups.

1,2,4,5-Tetrachlorobenzene is a systemic toxicant with a verified oral RfD of 3×10^{-4} mg/kg/day. Oral dose-dependent effects of 3.4 to 32 mg/kg/day of 1,2,4,5-tetrachlorobenzene in rats (28 days) included liver and kidney lesions. Chronic exposure in dogs (5 mg/kg/day in diet for 2 years) altered levels of serum alkaline phosphatase and total bilirubin content.

1,1,2,2-Tetrachloroethane has been classified as a Class C carcinogen with a verified oral potency factor of 2×10^{-1} $(mg/kg/day)^{-1}$ based on the increased incidence of hepatocellular carcinoma in mice observed in a National Cancer Institute study. Based on route-to-route extrapolation, the verified inhalation slope factor is 2×10^{-1} $(mg/kg/day)^{-1}$. Mice and rats exposed to 1,1,2,2-tetrachloroethane by inhalation had fatty degeneration and hyperplasia of the liver, and oral exposure produced kidney inflammation. Humans exposed to 1,1,2,2-tetrachloroethane by

inhalation show central nervous system effects characterized by dizziness, tremors, numbness, drowsiness, and headache.

Tetrachloroethylene (perchloroethylene, PCE) is a Class B2 [2] carcinogen with an MCL of 5×10^{-3} mg/L. The interim oral potency factor of 5.1×10^{-2} (mg/kg/day)$^{-1}$ was based on evidence of liver tumors observed in rats that were fed PCE by gavage. PCE is also a systemic toxicant with a verified oral RfD of 1×10^{-2} mg/kg/day based on hepatotoxicity in mice that were fed PCE by gavage for 6 weeks. The study concluded that PCE containing stabilizers was a liver carcinogen in male and female mice that were administered orally for 78 weeks. In a separate study, male mice exposed to 200 ppm PCE exhibited a significantly increased incidence of mononuclear cell leukemia and an increased incidence of renal tubular adenomas/carcinomas. Occupational exposure by humans to PCE have resulted in liver, kidney, and central nervous system effects. Gavage studies for 78 weeks of exposure to rats and mice showed a very high incidence of nephrotoxicity.

Toluene is a systemic toxicant with an MCL of 1 mg/L. The interim oral RfD of 2×0^{-1} mg/kg/day is based on route-to-route extrapolation of chronic inhalation studies in rats that resulted in central nervous system effects. The interim inhalation RfC is 0.57 mg/kg/day based on central nervous system effects and eye and nose irritation in humans. The primary effect due to toluene exposure via inhalation is depression of the central nervous system. Exposure of humans to toluene in the range of 100 to 500 ppm have elicited central nervous system effects such as fatigue, confusion, and impaired coordination as well as impairment in reaction time, perception, and motor control and motor function.

1,2,4-Trichlorobenzene is a systemic toxicant with a proposed MCL of 9×10^{-3} mg/L and an interim oral RfD of 1.3×10^{-3} mg/kg/day based on a 90-day study on rats that resulted in increased liver to body weight ratio. The interim inhalation RfC is 3×10^{-3} mg/kg/day based on a 3-month inhalation study that resulted in increased uroporphyrin levels in rats. Dermal applications of 1,2,4-trichlorobenzene on rabbits produce slight to severe erythema, severe scaling, desquamation, encrustation, and some hair loss. In a 3-year study, mice painted with 1,2,4-trichlorobenzene exhibited excitability, panting, keratinization, and local skin thickening.

(For additional information on the toxicity of these hazardous constituents, see the Chlorinated Toluene Health Assessment Document and associated materials available from the Public Docket at EPA Headquarters. See **ADDRESSES** section.)

5. Mobility and Persistence of Constituents in Chlorinated Toluene Wastes

As discussed above, the Agency has obtained data demonstrating that the constituents found in the wastes generated by the production of chlorinated toluenes are carcinogens and/or systemic toxicants. However, for a constituent to be a threat to human health and the environment, it must be both toxic and capable of reaching a human or environmental receptor. The Agency has evaluated the potential for constituents of concern in chlorinated toluene wastes to reach a receptor by considering mobility and persistence of each constituent.

In summary, the Agency has found that each of the constituents of concern has the potential to reach environmental receptors by either the ground-water scenario and/or the air transport scenario. All of the constituents, with the exception of benzotrichloride and benzyl chloride, are believed to pose a threat by the ground-water transport route. Benzotrichloride and benzyl chloride, as well as a number of other constituents of concern, are believed to be a threat to human health by the air transport scenario.

Mobility is the ability of a constituent to migrate from a waste to a transport medium, such as air or ground water. Persistence is a measure of a constituent's stability or its resistance to degradation in the environment. To assess mobility and persistence, the Agency has identified environmental release and transport pathways representing reasonable worst-case management and disposal scenarios. By assessing these pathways, potential exposure can be estimated. Thus, if a constituent is sufficiently mobile and does not degrade as it moves along an environmental pathway, a potential exists that the constituent will reach a receptor and threaten human health and the environment.

Based on current management practices in the chlorinated toluene industry, the two exposure pathways that create the most significant human health threats are ground water and air. Both of these pathways have been evaluated by the Agency. (For additional information on the fate and transport of these hazardous constituents, see the Chlorinated Toluene Health Assessment Document and associated materials available from the Public Docket at EPA Headquarters. See **ADDRESSES** section.)

The Agency assesses mobility by estimating the concentration at which a constituent could migrate from the waste disposal or storage unit to the underlying aquifer or to the air above the unit. The propensity of each specific constituent to either leach or volatilize can be estimated using well-established physical parameters as well as historic damage incidence cases and transport theories.

Mobility and transport of the constituents of concern in ground water may be controlled by one of three mechanisms: (1) If the waste is solid, the constituents may leach from the solid phase to an aqueous phase; (2) if the waste is liquid, the constituents may enter the ground water directly; or (3) if the waste forms an insoluble but mobile liquid phase, the constituents may migrate as a discrete nonaqueous phase. The wastes proposed for listing today are organic liquid wastes; therefore, the last two mechanisms are the most likely ground-water transport scenarios.

For two-phase migration, the nonaqueous phase may exist as oily sludges, lenses, or a floating oil layer on the water table. Because nonaqueous phases differ from the aqueous phase in their chemical and physical properties (including density), the nonaqueous phase may migrate independently of the ground-water flow.

Numerous cases exist where toxic constituents are present in ground water in concentrations that far exceed their solubility. Although exact reasons for these phenomena are not fully understood, the Agency believes that they are primarily the result of the oily nature of these wastes and solvent-assisted transport. The damage incidence cases presented in today's proposal illustrate the mobility of the contaminants of concern.

When assessing the air pathway, constituents must be evaluated considering the waste management and transport scenario to determine if they are sufficiently mobile to support an air plume capable of threatening human health. The key parameters used to estimate the mobility of constituents into the air are the vapor pressure of the pure substance and the Henry's law constant of the compound.

The Agency has evaluated several air release scenarios using these parameters and has found that a number of constituents, including

[2] The B2 classification for PCE is being re-evaluated by the Office of Health and Environmental Assessment.

benzotrichloride, may present a threat to human health and the environment by the air transport pathway. These air transport assessments are consistent with the assessments used by the Agency in its air emissions rule and use the Stationary Tank Loading and Stationary Tank Storage models to estimate releases from tanks and materials balance calculations for incineration. The estimated losses are applied to the SCREEN, an air dispersion model that executes the screening procedures for estimating the transport of these constituents after release from stationary sources. These evaluations are presented in detail in the Public Docket. (For additional information on the air transport assessments see the Chlorinated Toluene Health Assessment Background Document and associated materials available from the Public Docket at EPA Headquarters. See **ADDRESSES** section.)

Persistence can be evaluated by considering the various rates of degradation or adsorption that affect the compound during transport. A number of factors can potentially dilute or attenuate a compound during transport. Many of these processes, including biodegradation, photolysis, and adsorption, only affect constituent concentrations under certain situations. Under reasonable worst-case scenarios, these processes and many others cannot be relied upon to attenuate constituents. Therefore, the Agency has chosen to consider hydrolysis as the only significant and reliable degradation process operating in these environmental pathways.

Table 6 presents the relevant hydrolysis half-lives of each compound in water and air. All of these constituents, except benzotrichloride, benzyl chloride, and 1,1,2,2-tetrachloroethane, are highly persistent and have the potential for human exposure. Due to the rate at which they hydrolyze, benzotrichloride and benzyl chloride are considered a threat to human health and the environment through air pathways only. 1,1,2,2-Tetrachloroethane is moderately persistent and may be a threat by ground water or air.

TABLE 6.—PERSISTENCE OF CONSTITUENTS OF CONCERN

Constituents of concern	Hydrolysis half-life in water	Persistence in water	Hydrolysis half-life in air	Persistence in air
Benzene	NES	High		
Benzotrichloride	19 s (1)	Low	1.6 h	Low.
Benzyl Chloride	15 h (1)	Low	190 d	Medium.
Carbon Tetrachloride	7000 y (1)	High	NES	High.
Chlorobenzene	NES (2)	High	NES	High.
Chloroform	3500 y (1)	High	NES	High.
Chloromethane	(2)		NES	High.
1,4-Dichlorobenzene	NES (2)	High	NES	High.
Hexachlorobenzene	NES (2)	High	NES	High.
Pentachlorobenzene	>900 y (3)	High	NES	High.
1,2,4, 5-Tetrachlorobenzene	>900 y (3)	High	NES	High.
1,1,2,2-Tetrachloroethane	100 d (4)	Med	300 d	Medium.
Tetrachloroethylene	NES (2)	High	NES	High.
Toluene	NES (2)	High	NES	High.
1,2,4-Trichlorobenzene	NES (2)	High	NES	High.

NES—Not environmentally significant due to one of the following:
—extremely slow hydrolysis rate.
—no hydrolyzable groups on molecule.

Hydrolysis half-lives in air are typically 30 to 300 times that of the corresponding half-life in water due to the varying moisture content in air. The hydrolysis values presented for air are for 300 times the hydrolysis rate in water.

Unless otherwise specified, all values are from: *Superfund Public Health Evaluation Manual.* October 1986. U.S. EPA Office of Remedial Response, EPA Contract No. 68-01-7090.

(1) W. Mabey and T. Mill. "Critical Review of Hydrolysis of Organic Compounds in Water Under Environmental Conditions." *Journal of Physical Chemistry Reference Data.* 7(2) 1978. pp. 383-415.

(2) W.R. Mabey et al. *Aquatic Fate Process Data for Organic Priority Pollutants.* July 1981. U.S. EPA-440/4-81-014. Final Draft Report.

(3) J. Jackson Effington et al. *Measurement of Hydrolysis Rate Constants for Evaluation of Hazardous Waste Land Disposal: Volume 3. Data on 70 Chemicals* 1988. U.S. EPA, Office of Research and Development.

(4) N. Lee Wolfe. *Screening of Hydrolytic Reactivity of OSW Chemicals.* U.S. EPA Office of Solid Waste.

In theory, benzotrichloride and benzyl chloride undergo rapid hydrolysis [aqueous half-life in water at pH 7 and 25°C is 19 seconds and 15 hours, respectively (Mabey and Mill 1978)] to form benzoic acid and hydrochloric acid. However, the presence of benzotrichloride and benzyl chloride has been reported in ground water at an abandoned waste site excavation effort at Love Canal, Niagara Falls, New York,[3] in industrial wastewater effluents,[4] in Delaware River water,[5] and in surface waters in New Jersey.[6]

The remaining constituents of concern have also been found at other documented damage incidence sites and in the ground water at these sites. These cases do not necessarily describe damage from disposal of chlorinated toluene wastes alone, but they do provide evidence of the mobility of these constituents from a variety of disposal environments and persistence of the constituents of concern in ground water.

(For additional damage incidents cases and details, see the Chlorinated Toluene Health Assessment Document and associated materials available from the Public Docket at EPA Headquarters. See **ADDRESSES** section.)

[3] U.S. EPA, Damage Incidents Data Base, Damage Incident #1194.

[4] International Agency for Research on Cancer (IARC). 1982. IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Man. Benzyl Chloride. Volume 29. WHO, IARC, Lyon, France. p. 46-63, 89-91.

[5] Sheldon, L.S. and R.A. Hites. 1978. Organic Compounds in the Delaware River. Environ. Sci. Technol. 12:1188-1194.

[6] Pellizzari, E.D., M.D. Erickson, and R.A. Zweidinger. 1979. Formulation of Preliminary Assessment of Halogenated Organic Compounds in Man and Environmental Media. U.S. EPA, Research Triangle Park, North Carolina. EPA 560/13-79-006.

III. Impact of Future Land Disposal Restrictions (LDR) Determinations

The Hazardous and Solid Waste Amendments of 1984 (HSWA) impose substantial new responsibilities on those who handle hazardous waste.

HSWA prohibits, in particular, the continued placement of hazardous waste in or on the land unless the Agency makes the determination that the prohibition is not required to protect human health and the environment for as long as the waste remains hazardous. Land disposal of these wastes is only allowed if the wastes meet treatment standards promulgated by the Agency, unless it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous (RCRA section 3004(d)). These treatment standards must substantially reduce the toxicity of or the likelihood of migration of hazardous constituents from the wastes. The statute also established a rigorous schedule for making determinations regarding the continued land disposal of these wastes. This schedule placed special emphasis on all hazardous wastes that were identified prior to the enactment of HSWA (November 8, 1984). As of May 8, 1990, treatment standards have been promulgated for all of the pre-HSWA listed wastes, all of the characteristic pre-HSWA wastes, and several post-HSWA wastes.

The Agency is also required to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR part 261 after November 8, 1984, within six months of the date of identification or listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). Once promulgated, the wastes being proposed to be listed in today's notice would be subject to this requirement.

This section of today's preamble addresses activities EPA is planning to perform in order to comply with the mandatory requirements to develop land disposal restrictions for these wastes. The Agency is requesting comments and information in the areas of pollution prevention, recycling, treatment, and treatment capacity for these wastes.

A. Request for Comment on the Agency's Approach to Pollution Prevention in the LDR Program

EPA has made considerable progress over the years in improving environmental quality through its media-specific pollution control programs. Standard industrial practice, however, has traditionally relied primarily on land disposal of solid wastes, including those residuals generated from the control of air and water emissions. As a fallout of the national energy crisis in the 1970's, industry began to reduce the generation and disposal of many wastes by recycling some wastes as fuel substitutes where such technologies were relatively easy to apply. In the 1980's, industry also began reducing the generation of certain wastes in response to higher disposal costs, environmental regulation, and liability concerns.

In 1984, when HSWA was enacted, the Agency established elimination or reduction of wastes as the first priority for managing all wastes, and recycling and treatment as the second-most preferred waste management methods. Land disposal was established as the least preferred means of managing wastes, although, land disposal was recognized as necessary for some wastes, provided they were treated prior to disposal.

The Agency seeks to implement this policy in part through its regulation of wastes from the chlorinated toluene industry. To this end, the Agency intends to gather information on pollution prevention potential wherever feasible and thus is requesting comment on particular opportunities for volume and toxicity reduction for the chlorinated toluene wastes proposed to be listed as hazardous in today's rule. Through cooperative efforts such as these, the Agency can better inform the public and make enlightened decisions on regulatory matters. At the same time, the information collected as a response to today's notice can be assembled, evaluated, and potentially disseminated through the Agency's technology transfer program, potentially resulting in short-term positive impacts on volume reductions. The Agency points out that even if the listing of these wastes is not promulgated, the pollution prevention approaches submitted in response to this notice still can be very useful to regulatory agencies, and disseminated in the interest of national pollution prevention.

Successful reduction in waste generation is often erroneously perceived by industry as resulting only from complex and/or expensive process changes; however, there may be relatively simple, easily implemented solutions that will achieve this goal. Defined process control, waste segregation, and good housekeeping practices can often result in significant volume reduction. Evaluations of existing processes may also point out the need for more complex engineering approaches (*e.g.*, waste reuse, secondary processing of distillation bottoms, and use of vacuum pumps instead of steam jets) to achieve pollution prevention objectives. Simple physical audits of current waste generation and in-plant management practices for the wastes can also yield positive results. These audits often turn up simple nonengineering practices that can be successfully implemented.

Pollution prevention opportunities for the manufacturing processes generating chlorinated toluene wastes (K149, K150, and K151) may potentially result in significant reductions in waste generation and, thus, considerable cost-savings for the industry. The Agency is interested in comments and data on such opportunities, including both successful and unsuccessful attempts to reduce waste generation, as well as the potential for volume or toxicity reductions. It is also possible that, owing to previous implementation of waste minimization procedures, some facilities or specific processes have very little potential for decreases in waste generation rates or toxicity. The Agency is particularly interested in such specific information as: (1) Data on the quantities of wastes that have been or could be reduced; (2) a means of calculating percentage reductions that are achievable (accounting for changes in production rates); (3) the potential for reduction in toxicity and mobility of the wastes; (4) the results of waste audits that have been performed; and (5) potential cost savings that can be (or have been) achieved.

B. Request for Comment on the Agency's Approach to the Development of BDAT Treatment Standards

While the Agency prefers source reduction/pollution prevention and recycling/recovery over conventional treatment, inevitably, some wastes (such as residues from recycling and inadvertent spill residues) will be generated. Thus, standards based on treatment using BDAT will be required to be developed for these wastes.

(**Note:** The Agency does recognize there may be some special situations where the generation of a particular waste can be totally eliminated. This is unlikely, however, for most wastes.)

A general overview of the Agency's approach in performing analysis of BDAT for hazardous wastes can be found in section III.A.1. of the preamble to the final rule for Third Third wastes (55 FR 22535–22542, June 1, 1990). If the proposed listing of chlorinated toluene wastes identified in today's notice is promulgated in a later rulemaking, the Agency may develop BDAT treatment standards for these wastes based on the transfer of performance data from the treatment of wastes with similar chemical and physical characteristics or similar concentrations of hazardous constituents. It is likely that the

treatment standards will be established for both wastewater and nonwastewater forms of these wastes on a constituent-specific basis, with the regulated BDAT constituents selected based on their presence in the untreated wastes. These constituents are not necessarily limited to the hazardous constituents identified as present in the wastes in today's proposed rule.

The technologies required by and those forming the basis of the treatment standards, in general, are determined by whether the wastes contain organics and/or metals. For wastes containing primarily organics, the Agency has found that incineration and other thermal destruction techniques can destroy most organics to concentrations at or near the limit of detection as measured in the ash residues. Many people, however, are apprehensive about incineration of hazardous wastes and prefer the use of alternative treatment technologies for wastes that must be treated. While the Agency believes that incineration and other thermal destruction technologies achieve a level of relatively complete destruction for the organics, it typically establishes concentration-based standards based on these data rather than requiring the wastes to be incinerated. Thus, any alternative technologies that can achieve these levels may be used. In fact, where alternative treatment technologies cannot achieve these levels, but achieve reasonably comparable results, the Agency may promulgate adjusted treatment standards achievable by both incineration and the alternative technologies (*e.g.*, the treatment standards for petroleum refinery wastes (K048–K052) are achievable by critical fluid extraction, thermal desorption, or incineration). Since metals are never destroyed, any wastes containing metals must be directly reused, extracted for recovery, chemically stabilized, or generated such that the metals are in a chemical state that represents the least toxic form when in a land disposal unit. Wastes containing both organics and metals are usually incinerated. Metals typically concentrate in the ash and may have to be chemically stabilized.

Thus, the Agency is soliciting data and information on appropriate treatment technologies for the chlorinated toluene wastes proposed for listing in today's rule. The Agency is not proposing land disposal treatment requirements for chlorinated toluenes as part of today's rule, nor will such requirements be included in the final version of this rule. Information should include, but not be limited to, the following: (1) Technical descriptions of the treatment systems that are currently used for these wastes; (2) descriptions of alternative technologies that might be currently available or anticipated as applicable; (3) performance data for the treatment of these wastes (in particular, constituent concentrations in both treated and untreated wastes, as well as equipment design and operating conditions); (4) information on known or perceived difficulties in analyzing treatment residues or specific constituents; and (5) quality assurance/control information for all data submissions.

C. Request for Comment on the Agency's Approach to the Analyses of BDAT Treatment Capacity

In today's notice, the Agency is proposing to list wastes generated by chlorinated toluene manufacturing processes as hazardous under 40 CFR part 261. Although data on waste characteristics and current management practices have been gathered for the purpose of listing the wastes, the Agency has not evaluated the value of these data for the purposes of developing specific BDAT treatment standards or assessing the capacity to treat (or recycle) these wastes. As a result, we are soliciting comments on the completeness of the existing data [(which can be found in the RCRA docket)] and requesting additional data and information with respect to treatment and capacity.

The Agency is particularly interested in the following information about the proposed wastes (K149, K150, and K151) in order to update the existing information collected from previous studies conducted few years ago: (1) The total annual volume of waste (by waste code) generated by each facility; (2) the quantities (on-site and off-site) stored, treated, recycled, or disposed (and types of units) with particular emphasis on those managed in units designated as land disposal under HSWA (including, in addition to landfills, underground injection units, surface impoundments, land treatment, and waste piles); (3) the treatability group classifications of the wastes (*i.e.*, wastewaters or nonwastewaters as defined in the Third Third rule, see 55 FR 22520); (4) the chemical/physical characteristics of the wastes, including information such as total organic carbon content, BTU value, concentration of organic and metal constituents, ash content, etc.; and (5) the specific chemical composition or physical form of the waste that could potentially interfere or otherwise limit the application of specific treatment or recycling technologies and thus would impact EPA's analysis of capacity.

The Agency also needs data on the number of facilities and volume of these wastes currently regulated under other regulations (*e.g.*, the Clean Water Act), along with State waste management requirements. We need to evaluate the impact of shifting these wastes from land disposal to on-site, captive, and commercial treatment or recycling capacity. The Agency is also soliciting comment on the viability of treating or recycling these wastes at commercial treatment and/or recycling facilities. It is particularly important that short-term and long-term trends (including potential capacity shortfalls) be identified, especially for new treatment and for recycling technologies. Finally, it is important to have this information provided on a facility-specific basis in order to address the impacts of the land disposal restrictions program on the regulated community.

IV. State Authority

A. Applicability of Final Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Before HSWA amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities located in the State with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

By contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted

authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

Today's rule is proposed pursuant to section 3001(e)(2) of RCRA, a provision added by the HSWA. Therefore, the Agency is proposing to amend Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the HSWA, and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1 [in 40 CFR 271.1(j)], as discussed in the following section of this preamble.

B. Effect on State Authorizations

As noted above, EPA would implement today's proposed rule when a final rule has been promulgated and is in effect in authorized States until they modify their programs to adopt the final rule, and the modification is approved by EPA. Because the final rule would be promulgated pursuant to the HSWA, a State submitting a program modification would be able to apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's requirements. The procedures and schedule for State program modifications under section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for section 3006(g)(2).

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and subsequently must submit the modification to EPA for approval. The deadline by which States must modify their programs to adopt this proposed regulation will be determined by the date of promulgation of the final rule in accordance with § 271.21(e)(2).

States with authorized RCRA programs already may have regulations similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State would not be authorized to implement these proposed regulations in lieu of EPA regulations until the State program modification is approved. Of course, States with existing regulations may continue to administer and enforce their regulations as a matter of State law. In implementi.ng the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the promulgation of EPA's regulations are not required to include standards equivalent to those promulgated in their applications (see 40 CFR 271.3(f)). However, the State must modify its program by the deadlines set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards, when promulgated, must include equivalent standards in their application. Section 271.3 sets forth the requirements that a State must meet when submitting its final authorization application.

V. CERCLA Designation and Adjustment

Pursuant to section 101(14)(C) of CERCLA, as amended, the wastes proposed to be listed as hazardous in today's notice will, on the effective date of the final rule, automatically become hazardous substances under CERCLA by virtue of their listing under RCRA. The CERCLA hazardous substances are listed in Table 302.4 in 40 CFR 302.4 along with their reportable quantities (RQs). CERCLA section 103(a) requires that persons in charge of vessels or facilities from which a hazardous substance has been released in a quantity that is equal to or greater than its RQ shall immediately notify the National Response Center (NRC) of the release at (800) 424–8802 or at (202) 426–2675. In addition, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owner or operator of a facility to report the release of a CERCLA hazardous substance or an extremely hazardous substance to the appropriate State emergency response commission (SERC) and to the local emergency planning committee (LEPC) when the amount released equals or exceeds the RQ for the substance or 1 pound where no RQ has been set.

The release of a hazardous waste to the environment must be reported when the amount released equals or exceeds the RQ for the waste, unless the concentrations of the constituents of the waste are known (48 FR 23566, May 25, 1983). If the concentrations of the constituents of the waste are known, the mixture rule may be applied. According to the "mixture rule" developed in connection with the CWA section 311 regulations [40 CFR 302.6(b)] and also used in notification under CERCLA and SARA (50 FR 13463, April 4, 1985 and amended on August 14, 1989, 54 FR 33481), the release of mixtures or solutions (including hazardous waste streams) of hazardous substances would need to be reported to the NRC, and to the appropriate LEPC and SERC: (1) If the quantity of all of the hazardous constituents of the mixture or solution is known, when an RQ or more of any hazardous constituent is released, or (2) if the quantity of one or more of the hazardous constituents of the mixture or solution is unknown, when the total amount of the mixture or solution released equals or exceeds the RQ for the hazardous constituent with the lowest RQ. RQs of different hazardous substances are not additive under the mixture rule, so that spilling a mixture containing half an RQ of one hazardous substance and half an RQ of another hazardous substance does not require a report.

Under section 102(b) of CERCLA, all hazardous wastes newly designated under RCRA will have a statutorily imposed RQ of 1 pound unless and until adjusted by regulation under CERCLA. To coordinate the RCRA and CERCLA rulemaking with respect to new waste listings, the Agency today is proposing regulatory amendments under CERCLA authority in connection with the proposed listing of wastes K149, K150, and K151. The Agency is proposing to: (1) Designate wastes K149, K150, and K151 as hazardous substances under section 102(a) of CERCLA; and (2) adjust the RQs of wastes K149, K150, and K151 to 10 pounds. Releases of a waste stream are reportable if any hazardous constituent of the waste stream is released in a quantity greater than or equal to the RQ for that constituent (50 FR 13463, April 4, 1985). Wastes K149, K150, and K151 each contain one or more hazardous constituents that have a 10-pound RQ; therefore, the RQs of the wastes are also proposed as 10 pounds. The RQs for each of the hazardous constituents and the proposed RQs for each waste are identified in Table 7.

TABLE 7.—RQS FOR CONSTITUENTS OF CONCERN FOR WASTES K149, K150, AND K151

Waste No.	Constituent of Concern	RQ (pounds)
K149		10
	Benzotrichloride	10
	Benzyl chloride	100
	Chlorobenzene	100
	Chloroform	10
	Chloromethane	100
	1,4-Dichlorobenzene	100
	Hexachlorobenzene	10

TABLE 7.—RQS FOR CONSTITUENTS OF CONCERN FOR WASTES K149, K150, AND K151—Continued

Waste No.	Constituent of Concern	RQ (pounds)
	Pentachlorobenzene	10
	1,2,4,5-Tetrachlorobenzene.	5,000
	Toluene	1,000
K150		10
	Carbon tetrachloride	10
	Chloroform	10
	Chloromethane	100
	1,4-Dichlorobenzene	100
	Hexachlorobenzene	10
	Pentachlorobenzene	10
	1,2,4,5-Tetrachlorobenzene.	5,000
	1,1,2,2-Tetrachloroethane	100
	Tetrachloroethylene	100
	1,2,4-Trichlorobenzene	100
K151		10
	Benzene	10
	Carbon tetrachloride	10
	Chloroform	10
	Hexachlorobenzene	10
	Pentachlorobenzene	10
	1,2,4,5-Tetrachlorobenzene.	5,000
	Tetrachloroethylene	100
	Toluene	1,000

Finally, although each listed hazardous waste automatically becomes a hazardous substance under CERCLA section 101(14), the Agency also has authority to independently designate hazardous substances under section 102. To eliminate confusion concerning whether a released substance in a particular form is subject to CERCLA authority, the Agency designates under section 102 all hazardous substances designated under the other statutes listed in section 101(14). Accordingly, the Agency also is proposing today to designate wastes K149, K150, and K151 as "hazardous substances" under CERCLA section 102.

VI. Compliance Dates

A. Notification

Under the Solid Waste Disposal Amendments of 1980 (Pub. L. 96–452) EPA was given the option of waiving the notification requirement under section 3010 of RCRA following revision of the section 3001 regulations at the discretion of the Administrator.

If these listings are promulgated, EPA is proposing to waive the notification requirement as unnecessary for persons already identified within the hazardous waste management universe. EPA is not proposing to waive the notification requirement for waste handlers who have neither notified the Agency that they may manage hazardous wastes nor received an EPA identification number.

B. Interim Status

Because HSWA requirements are applicable in authorized States at the same time as in unauthorized States, EPA will regulate K149, K150, and K151 until States are authorized to regulate these wastes. Thus, once this regulation becomes effective in a final Agency rule, EPA will apply Federal regulations to these wastes and to their management in both authorized and unauthorized States. Facilities that treat, store, or dispose of K149, K150, and K151, but that have not received a permit pursuant to section 3005 of RCRA and are not operating pursuant to interim status, might be eligible for interim status under HSWA (see section 3005(e)(1)(A)(ii) of RCRA, as amended). To operate pursuant to interim status, the eligible facilities will be required to possess an EPA ID number pursuant to 40 CFR 270.70(a) and will be required to submit a part A permit application within 6 months of promulgation of the listing pursuant to 270.10(e).

Under section 3005(e)(3), within 18 months of promulgation of the listing, land disposal facilities qualifying for interim status under section 3005(e)(1)(A)(ii) also will be required to submit a part B permit application and certify that the facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements. If the facility fails to do so, interim status will terminate on that date.

All existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of K149, K150, and K151 and that are currently operating pursuant to interim status under section 3005(e) of RCRA, will be required to file with EPA an amended part A permit application within 6 months of promulgation of the listing. Physical construction of any new facility that will treat, store, or dispose of these wastes may not commence until parts A and B of the permit application have been submitted and a RCRA permit approved. 40 CFR 270.10(f).

Under current regulations, a hazardous waste management facility that has received a permit pursuant to section 3005 may not treat, store, or dispose of K149, K150, and K151 unless the permit modification procedures set forth in § 270.42 are satisfied. Note that EPA has recently amended the permit modification requirements for newly listed or identified wastes. See 53 FR 37912 et seq. (September 28, 1988).

Under 40 CFR 270.42(g)(1)(v), for newly regulated land disposal units, permitted facilities must certify that the facility is in compliance with all applicable 40 CFR 265 groundwater monitoring and financial responsibility requirements no later than [insert 18 months after the date of publication in the **Federal Register** of Final Rule]. If the facility fails to submit these certifications, authority to manage the newly listed wastes under 40 CFR 270.42(g) will terminate on that date.

VII. Economics Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis (RIA). The total additional incurred cost for disposal of these wastes as hazardous is approximately $12,000 per year, which is significantly less than the $100 million constituting a major regulation. EPA expects that these costs would be insignificant and are the result of additional compliance requirements, such as reporting, waste analyses, and permit modifications for these wastes, as well as costs for managing the remaining wastes as hazardous (less than 10 percent of the total hazardous wastes generated by this industry). EPA is requesting comments on these specific and any other compliance costs that may be incurred by the industry due to today's proposed rule.

Since EPA does not expect that the amendments proposed in today's rule will have an annual effect on the economy of $100 million or more or result in a measurable increase in cost or prices, or have an adverse impact on the ability of U.S.-based enterprises to compete with either domestic or foreign markets, these amendments are not believed to constitute a major action. As such, an RIA is not required.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities, no regulatory flexibility analysis is required.

The hazardous wastes proposed to be listed here are not generated by small entities (as defined by the Regulatory Flexibility Act). Accordingly, I hereby certify that this proposed amendment

would not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

IX. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects

40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: September 27, 1991.

William K. Reilly,

Administrator.

X. References

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For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Relations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922 and 6938.

2. In § 261.32, add the following waste streams to the subpgroup "Organic Chemicals:"

§ 261.32 Hazardous wastes from specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	*	*
Organic chemicals:		
*	*	*
K149	Distillation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillation of benzyl chloride.)	(T)
K150	Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	(T)
K151	Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	(T)
*	*	*

3. Add the following entries in numerical order to appendix VII of part 261:

APPENIX VII.—BASIS FOR LISTING HAZARDOUS WASTE

EPA hazardous waste No.	Hazardous constituents for which listed
*	*
K149	Benzotrichloride, benzyl chloride, chloroform, chloromethane, chlorobenzene, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, toluene.
K150	Carbon tetrachloride, chloroform, chloromethane, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, 1,1,2,2-tetrachloroethane, tetrachloroethylene, 1,2,4-trichlorobenzene.
K151	Benzene, carbon tetrachloride, chloroform, hexachlorobenzene, pentachlorobenzene, toluene, 1,2,4,5-tetrachlorobenzene, tetrachloroethylene.
*	*

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

4. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

5. § 271.1(j) is amended by adding the following entry to Table 1 in chronologica1 order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* * * * *	* * *	* *	
[insert date of FR publication]	Listing wastes from the production of chlorinated toluenes.....	[insert Federal Register page numbers].	[insert effective date].
* * * * *	* * *	* *	

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

6. The authority citation for part 302 continues to read as follows:

Authority: 42. U.S.C. 9602; 33 U.S.C. 1321 and 1361.

7. Section 302.4 is amended by adding the following entries to Table 302.4:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Proposed RQ	
			RQ	Code †	RCRA Waste No.	Category	Pounds (kg)
* * * * *	*	*	*		*		
K149..... Distillation or fractionation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. [This waste does not include still bottoms from the distillation of benzoyl chloride.]			1 *	4	K149	A	10 (4.54)
K150..... Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.			1 *	4	K150	A	10 (4.54)
K151..... Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.			1 *	4	K151	A	10 (4.54)

† indicates the statutory source as defined by 1, 2, 3, 4, or 5 below.
4 indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.
1 * indicates that the 1-pound RQ is a CERCLA statutory RQ.

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federal register

Friday
October 11, 1991

Part VI

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Explosives and Blasting in Underground Coal Mines; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA16

Safety Standards for Explosives and Blasting in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule updates and clarifies three provisions of the Mine Safety and Health Administration's (MSHA) existing safety standards for explosives and blasting in underground coal mines. It revises the criteria for miners to become "qualified" to use explosives for blasting to allow experience in construction blasting as well as production blasting. It addresses the hazard of accidental initiation of detonators caused by stray current originating from contact with energized electric equipment. Finally, it allows multiple face blasting under specified conditions.

EFFECTIVE DATE: The final rule is effective December 10, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, room 627, Arlington, Virginia 22203; phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

These revisions do not contain collection requirements subject to the Paperwork Reduction Act of 1980 other than those previously reported (53 FR 46768) which have been approved by OMB under control numbers 1219-0106 and 1219-0025.

II. Rulemaking Background

The final rule revises and clarifies MSHA's existing safety standards for explosives and blasting in underground coal mines. These revisions are promulgated under section 101 of the Federal Mine Safety and Health Act of 1977.

On November 18, 1988, MSHA published a final rule in the **Federal Register** (53 FR 46768) which became effective on January 17, 1989. Prior to the effective date of the final rule, MSHA received comments from the coal mining industry regarding 30 CFR 75.1316(a) and 75.1325(b) which raised questions concerning the justification and interpretation of these provisions. Consequently, the Agency reevaluated these two provisions and published a stay of one provision, 30 CFR 75.1325(b), in the **Federal Register** on January 13, 1989 (54 FR 1360). No stay of § 75.1316(a) was issued, and that provision is currently in effect. However, an Agency program policy letter clarifying application of the standard was issued on August 1, 1989. MSHA has also received questions regarding the application of the "qualified person" provision in 30 CFR 75.1301. As a result of these comments and questions, MSHA proposed changes to these three provisions on December 8, 1989 (54 FR 50714). The comment period, initially scheduled to close February 16, 1990, was extended to March 16, 1990 (55 FR 2204).

On May 4, 1990, MSHA published a **Federal Register** notice scheduling a public hearing to receive relevant comments and respond to questions about the proposed rule (55 FR 18737). This hearing was conducted in Lexington, Kentucky, on May 30, 1990. The closing date for the comment period was extended from June 15 to June 29, 1990, in response to requests from the mining community to allow for the submission of post-hearing written comments and data (55 FR 25339).

III. Discussion of the Final Rule

Section 75.1301 Qualified Persons

This section revises the requirements in § 75.1301(a)(2) for becoming a "qualified person" to use permissible explosives or approved sheathed explosive units in underground coal mines.

MSHA statistics indicate that the persons most frequently injured in accidents with explosives are those firing the explosives. A significant factor has been the failure of these persons to follow safe blasting practices. To address this risk to miner safety, MSHA issued requirements in November 1988 for becoming a "qualified person" to perform blasting. Through these requirements, persons can be qualified to use explosives if certified by the State in which the mine is located or, in States where no certification program exists, if they have at least 1 year of experience working underground on a coal-producing section of a mine where explosives are used for production. In both cases, the ability to safely use permissible explosives must be demonstrated.

Mine operators asked how miners could be qualified under § 75.1301(a)(2) if their mines did not perform production blasting. They pointed out that many coal mines do not perform production blasting but routinely use explosives for construction of overcasts, undercasts, boom holes and sump holes, and performing similar activities. To address this, the Agency proposed separate requirements to qualify production and construction blasters. Both categories would have required 1 year of experience and a demonstration of ability to safely use permissible explosives to an authorized representative of the Secretary. However, the production blaster's experience of working underground on a coal-producing section would have differed from the construction blaster's experience of working underground in a mine where explosives are used for construction purposes. Under the proposal, a person qualified by MSHA to perform only construction blasting would not have been permitted to blast coal. The "qualified person" card issued by MSHA to these persons would have restricted the person to construction blasting only. A person with this type qualification would have had to requalify to perform production blasting and also would have been required to have the specific experience stipulated. However, a person qualified to perform production blasting would have also been qualified to perform construction blasting.

Pointing to the greater complexity of construction blasting, for example, in design, timing, circuits and the number of holes, commenters stated that construction blasting requires a broader knowledge and higher degree of skill than production blasting. These commenters recommended that construction blasters be permitted to perform production blasting. Another commenter questioned the requirement for 1 year of underground coal mining experience, suggesting that blasters experienced in surface blasting at strip mines, construction projects, and quarries should qualify to do production blasting. Other commenters suggested that the 1-year-experience period should require exposure to the actual work of preparation for blasting. Commenters also stated that separate qualification categories are not necessary.

In previous reviews of accident data, MSHA found that failure of blasters to follow safe blasting practices or safety standards was a contributing factor in over three-fourths of the fatal blasting accidents in underground coal mines. In addition, a U.S. Bureau of Mines evaluation of underground coal mine accidents shows that the blaster was the person injured in two-thirds of the accidents. A blaster must recognize hazards associated with the potential dangers of equipment and other mining activities in the area to protect mine

personnel. Conditions and hazards inherent to the use of explosives in underground coal mining are different from those at surface mines, quarries and construction projects. The hazards of ignitions, fires and mine explosions in the presence of methane gas and coal dust in a confined area are absent in the use of explosives in surface blasting. Consequently, the final rule retains the existing requirement for underground coal mining experience.

The final rule does not retain separate qualification requirements for becoming a "qualified person" to perform production or construction blasting. After consideration of the comments received, the Agency is persuaded that two separate categories are not necessary. MSHA agrees that it is not the kind of blasting which ultimately will be performed by a "qualified person" that is crucial. Instead, it is the quality and relevance of both the experience and knowledge gained in using explosives that is the critical factor in becoming qualified to conduct any kind of blasting underground. Therefore, the final rule strengthens the work experience requirement for qualification by adding that this experience must include direct involvement with handling, loading and preparing explosives for blasting. This change reflects the need for relevant experience to provide the prospective qualified person with basic knowledge in the use of explosives in an underground coal mining environment. Moreover, the change is consistent with numerous comments which stressed the importance of the quality and type of experience involved.

In this regard, some commenters stated that 6 months of experience should be sufficient to qualify blasters. Another viewed the proposed period of 1 year as insufficient, stating this could diminish the protection provided to miners. The safety standards for explosives and blasting in 30 CFR part 75 require that a nonqualified blaster work in the presence of and under the direction of a qualified person when loading boreholes, priming, placing sheathed explosive units in position and firing shots. Beyond the 1 year of experience required by this final rule, additional knowledge is also acquired by virtue of other training provided under 30 CFR part 48 which addresses specific underground aspects such as roof control, ventilation and dust control as well as explosives. The Agency believes the 1 year of experience specified in the final rule, which is consistent with the experience requirements of many State mining laws, is an appropriate time period. Due to the wide variation in the frequency of using explosives in underground coal mining, 1 year provides ample time for a prospective blaster to acquire sufficient experience and training with the handling and use of explosives. This, together with the demonstration of ability that is also required as part of the qualification program, will ensure that the miner has received proper and adequate training and experience.

Other comments were also received on aspects of MSHA's qualification program that are not specified in the rule. Commenters questioned the need to issue qualification cards to blasters, as discussed in the proposal. These commenters suggested that, as an alternative, the mine operator maintain a list of qualified persons at the mine. Another commenter suggested that a written test be given to ensure the prospective blaster's understanding of safe blasting procedures.

The Agency disagrees with those commenters who believe the qualification procedures to be followed by MSHA should be specified in the rule. Various regulations contained in 30 CFR part 75 require that specific work be performed by a person qualified to perform that duty; for example, testing, repair, and operation of certain equipment, and handling and use of some materials. While the training and experience requirements needed to become a qualified person in each of these areas are specified in the Agency's standards, the qualifying procedures under which MSHA operates generally are not specified. Where the Agency finds it appropriate for a qualified person to be identified through the issuance of a "qualified person" card, MSHA has incorporated the issuance of such cards into its various qualification programs. The procedures followed by MSHA in qualifying persons to use explosives in underground coal mines do include both testing and demonstration of ability. The test, which is normally given in written form, may also be taken verbally. MSHA issues a "qualified person" card to blasters only after successful completion of all aspects of the qualification program.

A suggestion was also included in the comments that MSHA not accept State certification of blasters as set out in § 75.1301(a)(1). This suggestion was based on the concern that in some States a certification, such as a mine foreman certification, authorizes a person to blast without requiring experience or the demonstration of ability to use and handle explosives. Although this provision of the existing rule was not included in the proposed revisions to § 75.1301(a)(2) published on December 8, 1989, and therefore is not a proper subject of this rulemaking, the Agency wishes to address this point. MSHA recognizes that while State requirements are not uniform, these programs can be appropriate systems to qualify blasters. The existing provision of § 75.1301(a)(1) allows MSHA to recognize a blaster certified or qualified by the State in which the mine is located as a "qualified person" only when a demonstration of ability to use permissible explosives is required by the State. Such a requirement provides a means of ensuring that each person certified is competent to use such explosives. The Agency believes this constraint on the acceptance of State certification or qualification programs adequately addresses the concerns expressed and therefore has no plans to revise § 75.1301(a)(1) at this time.

Section 75.1316 Preparation Before Blasting

This final rule clarifies requirements in paragraph (a) for addressing the hazard of accidental initiation of detonators caused by stray electric current originating from contact with energized electric equipment. It requires all nonbattery-powered electric equipment, including cables, located within a specified distance of the blast area to be deenergized or removed. In this context, "deenergized" is defined to mean the removal of the operating voltage from the electric equipment, including cables.

Since it is impractical to remove the batteries, battery-powered equipment is unique among the electric mining equipment addressed by this requirement in that all of its components cannot be deenergized as intended in this section. The batteries and the battery cables remain energized and a source of stray current, even though voltage can be removed from the other components on the equipment. Therefore, battery-powered mining equipment, such as scoops or locomotives, must be removed to a distance outside the specified area to comply with §§ 75.1316 (a)(1) and (a)(2).

The existing rule requires removing mobile electric equipment and deenergizing stationary electric equipment within 50 feet from the working place or other area where blasting is to be performed. Either removing nonbattery-powered electric equipment from the blast area or deenergizing it eliminates that equipment as a source of stray current that could cause premature initiation.

Therefore, the final rule allows deenergizing or removing nonbattery-powered electric equipment.

The basic safety practice underlying § 75.1316(a); that is, keeping energized electric equipment away from the area where explosives are being prepared for blasting so accidental initiation of detonators from stray current does not occur, is well recognized in the mining industry. The National Safety Council's Data Sheet I–644 and the Atlas Powder Company's "Handbook of Electric Blasting" recognize this hazard. The hazards of stray current were also addressed in the applicable Federal Mine Safety Code as it appeared in 30 CFR part 15 prior to its revision in 1988. (See section IV, "Explosives and Blasting," appearing in the section following § 15.24.)

During the course of MSHA's rulemaking effort to revise its explosives and blasting standards between 1984 and 1988, the Agency included in § 75.1325(a)(2) of its preproposal draft and §§ 75.1316(a) (2) and (3) of its proposed rule, a provision requiring energized electric equipment in the blast area to be deenergized or removed. During the comment periods for both the preproposal and the proposal, no commenter questioned the basic premise of the standard or objected to the provision as unnecessary. In fact, the only comment received stated that the provision could be subject to varied interpretations as to what equipment at which locations in the mine should be deenergized. Thus, it raised the broader issue of designating a distance from the blast area from which energized electric equipment would have to be either removed or deenergized to minimize the potential of premature detonation from stray current.

To address this concern, MSHA conducted an extensive search of existing regulations and industry literature concerning the use of explosives to determine an appropriate distance. For circumstances similar to those being addressed; that is, the priming, loading, and firing of explosives, the applicable references were determined to include the National Safety Council's Data Sheet I–644 (dated 1983), MSHA metal and nonmetal blasting standard, 30 CFR 57.6126, and OSHA construction regulations (29 CFR 1926). These references, and also, as commenters pointed out, earlier editions (prior to 1985) of the Atlas Powder Company's "Handbook of Electric Blasting," all specified a 50-foot distance as adequate to address the potential hazard of stray current. Since these references indicated historical use of the 50-foot distance as an industry standard, unless safety is assured through other actions, this distance was selected to ensure uniform enforcement for removing or deenergizing electric equipment in § 75.1316(a) of the existing rule.

Following promulgation of the final explosives and blasting standards on November 18, 1988, the Agency received a number of comments on § 75.1316(a). Some raised questions on how the 50-foot distance was to be measured while others cited problems with the 50-foot distance itself and its impact on the mining cycle. When MSHA oommitted to rulemaking on the multiface blasting provision in § 75.1325(b) which was stayed, it was decided to propose clarifying revisions to § 75.1316(a) in response to the questions of interpretation. This was done in the subsequent proposal (54 FR 50714) which is the subject of this rulemaking.

A number of commenters questioned the necessity of proposed § 75.1316(a) in that electric equipment subject to being removed or deenergized is required to have certain electrical protection and to be maintained in permissible condition. Therefore, they reasoned, it could not be a source of hazardous stray current. MSHA disagrees with the commenters and continues to believe that energized equipment can introduce hazardous conditions if not tested prior to priming explosives. Typical detonator firing currents are within the range of 0.2 to 0.5 ampere. The required electrical protection for this equipment, which commenters asserted would prevent the existence of hazardous stray currents, is designed and installed to detect ground fault currents of several amperes and short circuit currents of several hundred amperes. These levels far exceed the typical detonator firing current range. Therefore, protective devices with these detection levels will not detect the existence of stray current at low levels sufficient to initiate a typical electric detonator. Even if the permissibility of this equipment were to be maintained at all times, which a review of MSHA's permissibility citations indicates is not always the case, the electric equipment would not be eliminated as a potential source of stray current.

Many comments were directed to the 50-foot distance required between the blasting area and energized electric equipment. Commenters suggested that haulage accidents would increase in conventional mining because travel patterns during the mining cycle would have to be modified to comply with the 50-foot requirement. All vehicles and trailing cables employed on the section, they reasoned, would be required to use common entries to ensure compliance with the 50-foot limit for energized electrical equipment. Commenters stated that good mining practice dictates that the last open crosscut be established as a travelway as quickly as possible. Compliance with the 50-foot requirement, they asserted, delayed this progression in the mining cycle. Commenters also estimated that the travel patterns necessary to comply with the 50-foot requirement would cause some equipment operators to travel additional distances, exceeding 26 million feet per year.

Since commenters claimed more tonnage is produced by conventional means at mines within MSHA's District 10 than other areas of the nation, MSHA reviewed haulage accidents of District 10 mines with conventional sections. The review included those accidents that occurred during the 2-year period just prior to and the 2-year period immediately following the January 17, 1989, effective date of § 75.1316. A small decrease in the number of haulage accidents has occurred in areas within these mines where travel patterns may have been modified as a result of the rule. This accident data review of mines using conventional mining methods showed no adverse impact from the standard due to modification of travel patterns.

To further evaluate the comments, MSHA personnel visited three high-production conventional mines in western Kentucky. One mine uses "standard" conventional sections and the others use variations of "super" sections. They represent typical mining procedures and conditions found in those high-production conventional mines identified by commenters. Progression of mining activities on the section, as witnessed, substantiates the information obtained through interviews in which personnel confirmed that traditional mining procedures and equipment types had remained unchanged since the 50-foot rule went into effect. Observation of mining operations and conversations with mine and MSHA District 10 personnel indicate that compliance with the 50-foot rule is not a problem with the mining procedures in use at these mines.

Prompt cleanup of the newly established last open crosscut so it can be used as a travelway, however, determines the impact of the 50-foot rule on the mining cycle. In the mines visited, this did not occur until after the entry advanced three to four 10-foot cuts past the crosscut. Therefore, the actual mining procedures followed at these

mines, rather than the requirements of § 75.1316(a), determine when the new crosscut can be used as a travelway.

MSHA also reviewed the production and employment records for the same mines and time frames as those used to review the haulage accidents. MSHA determined that both the total coal production and the average productivity at these mines had increased slightly for the time frame after the effective date of the rule.

The commenters further stated that in their experience with stray current in coal mines, the 50-foot distance between explosives or sheathed units to be primed and energized electric equipment could be reduced safely. The basis for selection of 50 feet as the distance between energized equipment and the blasting area was also questioned by commenters who suggested that the 15-foot distance between sources of electric current and explosives and detonators outside of magazines required by § 75.1313(b)(1) was more appropriate.

The 15-foot distance in § 75.1313(b)(1) expressly applies to explosives and detonators outside a magazine "that are not being transported or being prepared for loading boreholes." They must be kept in separate, closed containers made of nonconductive material with no metal or other conductive material exposed inside. Containment of the detonators and explosives in this manner provides added protection against premature initiation due to stray currents. This added protection is not present when the detonators and explosives are outside of their containers during preparation for blasting. Therefore, the 15-foot distance specified in § 75.1313(b)(1) for detonators and explosives outside a magazine is not applicable to the priming and preparation operations of § 75.1316.

Commenters asserted that the 50-foot distance adopted by MSHA had been developed for metal and nonmetal mining operations and therefore is inappropriate for use in coal mines. These commenters stated that the geology of metal and nonmetal mines provided more paths for stray current than are available in coal mines, and the provision in part 57 allowed a reduction in the 50-foot distance to 25 feet with stray current testing. Further, they speculated the origin of the 50-foot distance specified in National Safety Council's Data Sheet I–644, prepared by the Mining Section, Industrial Division of the National Safety Council, may have been the 50-foot distance contained in a previous edition of the Atlas Powder Company's "Handbook of Electric Blasting." This distance reportedly was based primarily on metal and nonmetal mining conditions.

MSHA recognizes the geology of most metal and nonmetal mines differs from that found in coal mines. However, there are nonmetal mines, such as trona and salt mines, where electric blasting is performed and the geology provides similar stray current paths as those in coal mines. In these mines the provisions of part 57 have proved to be an effective safeguard against unintended initiation of explosives by stray current from contact with energized equipment.

The Agency has also reexamined the National Safety Council's Data Sheet I–644 in regard to its applicability to coal mines. Data Sheet I–644 (dated 1983) includes examples of electric circuits addressed by its recommendations. Some of these examples reference part 75 requirements and installations in coal mines, indicating the National Safety Council drafters had knowledge of coal mining requirements. Although commenters stated that the coal mining industry was not involved in the drafting or review of this document for application to underground coal mines, these references show that consideration of underground coal mines was given when compiling the document.

Stray current in underground coal mines is a potential hazard that can cause unintended initiation of explosives. The Agency continues to believe that a specified distance is necessary to ensure uniform enforcement by MSHA and to prevent varied interpretations of the distance for deenergizing or removing equipment. However, the Agency has determined that the distance between energized electric equipment and explosives to be primed can be reduced if stray current tests are conducted in the area.

MSHA has chosen a 25-foot distance with stray current testing as an alternate method of addressing the hazard of premature initiation of the blasting circuit from stray current due to contact with energized equipment in the blast area. A reduction of the distance to 25 feet, based upon satisfactory results of stray current testing, provides safety protection against these hazards equivalent to that established by the 50-foot distance without such testing. This same alternative has been provided by part 57 for metal and nonmetal mines for many years and has proved to be a safe and effective means of safeguarding against stray current. Therefore, the final rule modifies § 75.1316(a) by adding an alternative in paragraph (a)(2) that will allow the 50-foot distance to be reduced to 25 feet, provided stray current testing is conducted with satisfactory results before priming of explosives or sheathed units for each round.

Stray current testing must be conducted by measuring the current through a 1-ohm resistor using a blasting multimeter or other instrument specifically designed for such testing. Use of other types of instruments can present a safety hazard causing a possible detonator initiation. The testing requires one test electrode to be located at a central point where the explosives are to be fired. The second test electrode is moved to various locations in the area being tested. The instrument reads the stray current flowing through the 1-ohm resistor which is representative of the bridge wire resistance for a typical detonator used in underground coal mines. The testing needs to be conducted in accordance with the instrument manufacturer's instructions to be considered adequate because operating procedures vary between different instruments.

The value of 0.05 ampere (50 milliamps) specified as a maximum for stray current in the final rule is consistent with the commenters' recommended value and represents about one-fourth to one-fifth of the minimum firing current for which commercial electric detonators used in the United States are generally designed. If testing does not detect more than 0.05 ampere, electric equipment need not be deenergized or removed if it is at least 25 feet from boreholes to be loaded with explosives or sites where sheathed explosive units are to be placed and fired.

The final rule specifies certain locations where the stray current tests must, as a minimum, be conducted before priming any explosives or sheathed units in a round. These test locations were selected to ensure that excessive stray currents (more than 0.05 ampere) are not present in the area between 25 and 50 feet from locations where explosives or sheathed units are to be fired. Places where the specified test must be conducted include the frames of any energized electric equipment and all repaired areas of energized cables within this area. The testing must, therefore, include energized cables within this area that are supplying power to equipment that may be in operation outside of the area. The equipment must remain energized during these stray current tests to ensure that the testing is representative of operating conditions during the priming of explosives. Proper precautions, specified by the instrument

manufacturer and varying with the instrument used, need to be followed when the test electrode comes in contact with a surface that may be energized.

Paragraph (a)(1) of the existing rule requires that before priming explosives, all mobile electric equipment shall be removed to a distance of 50 feet from the working place or other area where blasting is to be performed. Paragraph (a)(2) of the existing rule requires that before priming explosives, all stationary electric equipment within 50 feet of the working place or other area where blasting is to be performed shall be deenergized. After promulgation of the existing standard, commenters questioned how to measure the 50-foot distance. Specifically, they asked whether this is a "line of sight" measurement and whether it was to be measured through solid coal or rock. As explained in the preamble to the proposal, MSHA intended the change from "working place or other area where blasting is to be performed" to "boreholes to be loaded with explosives or sites where sheathed explosive units are to be placed and fired" to specify the exact location from which the 50-foot distance would be measured. The 50-foot distance was intended to extend through open spaces in all directions but not through solid coal or rock. Thus, compliance with § 75.1316(a), as proposed, generally would not restrict mining activities in adjacent working places separated from the blasting area by a solid block of coal. Only when the electric equipment for such mining activity is within 50 feet as measured through open spaces would it need to be deenergized or removed. Further, as stated in the preamble of the proposed rule, the 50-foot requirement applied not only before priming explosives but also before priming sheathed explosive units.

Commenters were generally in agreement with the proposal's explanation on how the 50-foot distance was to be measured for electric equipment. Most supported the language change noted above specifying the exact location from which the 50 feet would be measured. One commenter, however, objected to the use of "boreholes to be loaded with explosives or sites where sheathed explosive units are to be placed and fired" rather than "working place," believing this to be a diminution of safety. Specifically, this commenter pointed out that the proposal's wording would allow a blasting cable extending to a blasting unit to cross and contact energized electric equipment or trailing cables located in the working place more than 50 feet from the boreholes.

After consideration of all the comments, MSHA has decided to retain the wording change set out in the proposal and specify the location from which the 50-foot distance is to be measured as "boreholes to be loaded with explosives or sites where sheathed explosive units are to be placed and fired." The final rule adds paragraph (a)(3) to address the concern regarding possible contact between the blasting cable and energized equipment. Protection of blasting circuits from sources of stray electric current is generally addressed by § 75.1323(a). However, MSHA has specifically addressed the hazard of stray current resulting from contact with energized equipment in § 75.1316. Therefore, to clarify MSHA's intent, this section includes a specific prohibition against blasting cables and detonator circuitry, such as leg and connecting wires, contacting energized electric equipment, including cables.

Finally, existing § 75.1316 is modified to specifically include all cables. A modification was proposed to address questions raised by operators as to whether the provisions of § 75.1316(a) applied to trailing cables. The final rule has been expanded to include all other power cables which in construction blasting are also a potential source of stray current. Cables are therefore subject to the same requirements as all other electric equipment.

Section 75.1325 Firing Procedure

Section 75.1325(b) was published as a final rule in the **Federal Register** on November 18, 1988, and allowed only one face to be blasted at a time. However, on January 13, 1989, MSHA published a stay of this provision so that it did not become effective on January 17, 1989, with the other explosives and blasting safety standards (54 FR 1360). This action was based on comments from segments of the mining industry who questioned the basis for prohibiting firing more than one face at a time. In their view, this blasting practice has been conducted safely in several mines. In conjunction with issuing a stay of this provision, MSHA indicated that additional substantive information on this blasting practice was needed. After issuing the stay, the Agency took a number of actions to further examine this issue.

As indicated in the preamble to the proposal, MSHA conducted a reevaluation of the available record of blasting accidents to determine whether any of these accidents were related to multiface blasting. In no instance did this review find that multiface blasting was cited as the sole factor or as a contributing cause in an accident. The only reference to multiface blasting was in describing activities underway at the time certain accidents occurred when blasting coal off the solid. No mention was made of multiface blasting in reports or data relative to accidents occurring when blasting cut coal.

In addition, MSHA conducted a literature search specifically seeking published materials related to the issue of single versus multiface blasting. No pertinent information on this issue was found which was not previously reviewed by the Agency and already a part of the rulemaking record.

MSHA also surveyed various States where explosives are used for production. An analysis of these data shows that almost two-thirds of the conventional bituminous mining sections blast cut coal only. Nearly all of the mines that blast coal off the solid are located in Kentucky or West Virginia. Kentucky prohibits multiface blasting when blasting off the solid. However, Kentucky has no prohibition against multiface blasting in cut coal. Although no provision limits blasting to only one face in West Virginia, that State requires a permit to blast more than 10 boreholes per round. This has the effect of limiting multiface blasting since blasting more than 10 boreholes is allowed only under certain conditions. In Virginia, while there is no specific prohibition against multiface blasting, a permit is needed to blast coal off the solid. No permits allowing multiface blasting of coal off the solid were identified by the State Division of Mines in Virginia when contacted by MSHA. Other States; for example, Wyoming, and Colorado, do not prohibit multiface blasting but limit the number of shots per round to 20. A review of Pennsylvania mining regulations revealed no specific prohibition against multiface blasting, although State inspectors have broad discretionary authority to address such practices.

As indicated in the proposal, the Agency also surveyed other coal-producing nations. None of those contacted had similar mining conditions from which comparison could be drawn.

Based on this reexamination of single versus multiface blasting, MSHA proposed in paragraph (b) to limit blasting in a working place to one face at a time, with one exception. Under the exception, up to three faces were permitted to be blasted at a time provided that each face had a separate kerf and that a total of no more than 20 boreholes connected in a single series were fired in the round.

Several commenters favored the proposal's exception to the prohibition on multiface blasting which would allow such blasting in cut coal where no more than a total of 20 shots connected in a single series were fired in a round. They stated that multiface blasting, when performed in cut coal, has been practiced safely for many years. Another commenter, however, objected to the provision and recommended limiting blasting to only one face at a time. In support, it was claimed that the simultaneous blasting of three adjacent faces in an intersection would release large quantities of gas, toxic fumes and surplus heat into a confined area, which would dramatically increase the potential for an explosion.

Simultaneous firing of more than one face can create a potential for an explosion hazard when shooting coal off the solid. For this reason, multiface blasting is prohibited when this method of production blasting is used. Shooting off the solid is a difficult blasting technique with greater potential for blown-out holes that can ignite gas and dust released by the blasting of adjacent faces. However, the final rule does not prohibit multiface blasting in cut coal because boreholes in this type of shooting have relief provided by the kerf, which greatly diminishes the potential for blown-out holes. This position is consistent with the specific prohibition against multiface blasting off the solid in Kentucky and the restriction on such blasting in West Virginia where the number of boreholes permitted to be fired in a round is limited to ten. Approximately 96 percent of all the bituminous mines conducting off-the-solid blasting are located in these two States.

Further, the Agency has limited to 20 the total number of boreholes which can be fired simultaneously in multiface blasting of up to three faces. By restricting the number of shots to 20, no additional amounts of fumes, gases or heat are expected to be released when blasting multiple faces than if 20 boreholes, which is the maximum allowed under the blasting standards without a permit, are fired in a round in a single face.

One commenter was concerned that the permissibility of explosives would be violated by allowing multiface blasting. However, no basis or rationale for this comment was provided as to how this would occur. To perform such blasting, no more than a combined total of 20 boreholes wired in a single series can be fired at one time in up to three faces in cut coal. This is the same number of boreholes which § 75.1320(a) allows to be fired at one time in a single face without a permit granted under § 75.1321. This 20-borehole limitation requires the use of permissible explosives and a permissible blasting unit. In addition, other requirements concerning detonators and delay periods will have to be complied with by operators performing multiface blasting. For example, § 75.1320(b) prohibits the use of instantaneous and delay detonators in the same circuit. Further, § 75.1320(c) allows only detonators with delay periods of 1,000 milliseconds or less to be used and § 75.1320(e)(1) specifies the arrangement of delay periods when blasting cut coal. Thus, multiface blasting as permitted in the final rule does not violate permissibility requirements.

Another commenter stated that MSHA's recent approval of large capacity blasting units safely permits firing multiple faces with more than 20 holes. MSHA's 30 CFR part 7, subpart D, Multiple-Shot Blasting Units, is the regulation that allows for the approval of blasting units with the capacity to fire more than 20 boreholes in a round. This approval requirement addresses neither the issue of single versus multiface blasting, nor the permission required to fire more than 20 shots in a round. The preamble to this regulation clearly states that it is part 75 which regulates the use of approved blasting units in underground coal mines.

Concern also had been expressed that if multiface blasting were permitted, the firing of one face could cause disruption of the blasting circuit in another face, resulting in undetonated explosives. However, in accordance with § 75.1323(i), when 20 or fewer boreholes are fired in a round, the blasting circuit must be wired in a single series without regard to the number of faces being fired. This ensures that firing energy is applied to all detonators at the same time, preventing circuit disruption caused by the blast.

Paragraph (b) of the proposal also specified that a permit to fire more than 20 boreholes in a round when blasting multiple faces could not be obtained from the district manager under the provisions of §§ 75.1320 and 75.1321. Instead, operators would have to seek a modification of the standard under part 44, the Agency's petition for modification procedures.

Several commenters objected to this prohibition in the proposal, stating they preferred that requests to fire more than 20 shots in a round when performing multiface blasting continue to be addressed through permits from the district manager rather than the part 44 petition process. They claimed that the Agency takes 2 years to process petitions and that special mining conditions are best addressed at the local level. MSHA's recently promulgated revisions to part 44 permit operators to request expedited investigation and consideration and also specify time frames for completion of certain phases of the petition for modification process.

As indicated in the proposal, MSHA's past experience has shown that the permits generally sought by mine operators are to use nonpermissible blasting units to fire more than 20 boreholes during construction blasting in rock. Currently, only two mines have permission to blast more than 20 boreholes in a round in the coal face. Both are anthracite mines where long-hole blasting is performed. Neither permit involves multiface blasting. Since MSHA is not aware of any evidence of permits being granted to fire more than 20 boreholes in a round in a coal face which involves multiface blasting, the need for such permits in the future does not appear likely. For these reasons, the Agency has not modified § 75.1325(b) to permit firing more than 20 boreholes in a round when blasting multiple faces.

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA prepared an economic impact analysis in November 1988 to identify potential costs and benefits associated with the changes to its explosives and blasting standards for underground coal mines. That analysis revealed that the final rule would not result in a major cost increase or have an incremental effect of $100 million or more on the economy. This final rule will amend three of those standards issued in November 1988. Section 75.1301(a)(2) provides the criteria for blaster qualification based upon experience that includes direct involvment with procedures for handling, loading and preparing explosives. Section 75.1316(a) clarifies the measurement of the 50-foot distance for deenergizing or removing electric equipment and provides a reduced alternative distance of 25 feet in conjunction with testing for stray current. Section 75.1316(a)(3) specifically prohibits contact between the blasting cable or detonator circuitry and energized electric equipment, including cables. Section 75.1325(b) allows multiface blasting under limited conditions.

MSHA has compared the costs associated with the existing

requirements to the costs associated with the requirements of the final rule and has analyzed the impact on small businesses. Based on this analysis, MSHA believes that this final rule will have no significant economic impact on the mining industry. The final rule does, however, contain revised standards that provide the mine operator options from which to select a cost effective compliance method consistent with the mining method.

Section 75.1301(a)(2) broadens the existing standard. Rather than limiting qualified persons to those who have 1 year of experience on a conventional coal-producing section, persons may become qualified if they have relevant experience using explosives in an underground coal mine. This revision eliminates the need for the proposed dual classification of qualified persons as to whether they are qualified for "construction" or "production" blasting. MSHA associates no additional compliance cost with this change.

Section 75.1316(a)(2) adds an alternative method of compliance in which mine operators may take stray current tests between 25 and 50 feet of boreholes to be loaded or sites where sheathed explosive units are to be placed and fired. Purchase of a blasting multimeter for such testing could require a small additional capital expense. No additional cost is associated with this provision because it is an optional alternative and would likely be used only if it were to be less costly than the existing requirement.

Section 75.1316(a)(3) is added to prohibit the detonator circuitry or blasting cable from coming in contact with energized electric equipment, including cables. MSHA expects that mine operators can implement this safe work practice with no additional cost for labor or materials.

Section 75.1325(b) requires that only one face in an area be blasted at one time, but up to three faces of cut coal may be blasted when certain conditions are met. MSHA associated no compliance cost with this provision of the final rule because the affected mines are located primarily in States which either prohibit multiface blasting off the solid or effectively restrict multiface blasting off the solid through other means. All compliance costs, therefore, would be attributed to these preexisting State regulations.

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mines, Explosives and blasting.

Dated: October 3, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Accordingly, subpart N, part 75, chapter 1, subchapter O, chapter I, title 30 of the Code of Federal Regulations is amended as set forth below:

PART 75—[AMENDED]

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

Subpart N—Explosives and Blasting

2. Section 75.1301 is amended by revising paragraph (a)(2) and adding a parenthetical statement at the end of the section to read as follows:

§ 75.1301 Qualified person.

(a) * * *

(2) In States that do not certify or qualify persons to use explosives required by this section, has at least 1 year of experience working in an underground coal mine that includes direct involvement with procedures for handling, loading, and preparing explosives for blasting and demonstrates to an authorized representative of the Secretary the ability to use permissible explosives safely.

* * * * *

(Approved by the Office of Management and Budget under control number 1219–0106)

3. Section 75.1316 is amended by revising paragraph (a) to read as follows:

§ 75.1316 Preparation before blasting.

(a)(1) All nonbattery-powered electric equipment, including cables, located within 50 feet from boreholes to be loaded with explosives or the sites where sheathed explosive units are to be placed and fired shall be deenergized or removed to at least 50 feet from these locations before priming of explosives. Battery-powered equipment shall be removed to at least 50 feet from these locations before priming of explosives.

(2) As an alternative to paragraph (a)(1) of this section, electric equipment, including cables, need not be deenergized or removed if located at least 25 feet from these locations provided stray current tests conducted prior to priming the explosives detect stray currents of 0.05 ampere or less through a 1-ohm resistor.

(i) Tests shall be made at floor locations on the perimeter, on energized equipment frames and on repaired areas of energized cables within the area between 25 to 50 feet from the locations where the explosives are to be primed.

(ii) Tests shall be conducted using a blasting multimeter or other instrument specifically designed for such use.

(3) The blasting cable or detonator circuitry shall not come in contact with energized electric equipment, including cables.

* * * * *

4. Section 75.1325 is amended by revising paragraph (b) to read as follows:

§ 75.1325 Firing procedures.

* * * * *

(b) Only one face in a working place shall be blasted at a time, except that when blasting cut coal up to three faces may be blasted in a round if each face has a separate kerf and no more than a total of 20 shots connected in a single series are fired in the round. A permit to fire more than 20 boreholes in a round under the provisions of 30 CFR 75.1320 and 75.1321 may not be obtained for use when blasting multiple faces.

* * * * *

[FR Doc. 91–24456 Filed 10–10–91; 8:45 am]

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federal register

Friday
October 11. 1991

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Flight Recorders and Cockpit Voice Recorders; Interim Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26666; Amendment No. 91-226]

RIN 2120-AD82

Flight Recorders and Cockpit Voice Recorders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule amends the Federal Aviation Regulations to allow part 91 operators to continue flight, or ferry certain aircraft, in the event that the flight recorder (FR) and/or cockpit voice recorder (CVR) is inoperable. This change provides part 91 operators similar relief to that afforded air carriers and commercial operators operating under part 91 of the Federal Aviation Regulations. Additionally, this change permits part 91 operators to operate for up to 15 days with an inoperative FR or CVR. These amendments are intended to prevent part 91 operations from being forced out of service unnecessarily.

DATES: This interim rule is effective on October 11, 1991. Comments must be received on or before January 13, 1992. This interim rule expires on April 13, 1992.

ADDRESSES: Comments on this interim rule should be sent to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-010), Docket No. 26666, 800 Independence Avenue, SW., room 915G, Washington, DC 20591. Comments may be inspected in room 915G between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Glista, Regulations Branch (AFS-850), General Aviation and Commercial Division, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8150.

SUPPLEMENTARY INFORMATION:

Comments Invited

This interim rule is being issued without prior notice or opportunity for public comment. However, in accordance with the Regulatory Policies and Procedures of the Department of Transportation, an opportunity for public comment on this interim final rule is provided. This interim rule is being issued with an expiration date of April 13, 1992. Interested persons are being afforded time to comment before the FAA makes a final determination on this issue. Delay of this rule would cause part 91 operators to be unjustly burdened by the implementation of § 91.609 on October 11, 1991, since reasonable relief from the rule would otherwise not be available.

Interested persons are invited to submit comments in triplicate to the address listed under the caption "**ADDRESSES**" above. All comments will be available for examination by interested persons in the Rules Docket. This amendment may be changed in response to comments received on this interim rule.

Commenters who want the FAA to acknowledge receipt of comments submitted on this interim rule must submit a pre-addressed, stamped postcard with their comments on which the following statement is made: "Comments to Docket No. 26666." The postcard will be date-stamped by the FAA and returned to the commenter.

Availability of this Interim Rule

Any person may obtain a copy of this interim rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, ATTN: APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling the Office of Public Affairs at (202) 267-3484. Communications must identify the docket number (Docket No. 26666) of this amendment. Persons interested in being placed on a mailing list for future notices should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Section 91.609 of the Federal Aviation Regulations (FAR) requires certain part 91 operators to install an approved flight recorder (FR) and operate it continuously from takeoff to landing. Furthermore, the rule requires that approved cockpit voice recorders (CVR) be installed and operated continuously on the aircraft of certain part 91 operators. Strict compliance with § 91.609 would compel these part 91 operators to land immediately upon an FR or CVR becoming inoperative. The rule, as written, would prevent operators from being able to ferry an aircraft to a location where the equipment could be repaired or replaced, from doing an airworthiness flight check, or from ferrying a newly-acquired aircraft for the purpose of having a FR or CVR installed.

History

The FAA issued Amendment Nos. 91-199, 121-191, 125-8, and 135-23 on March 18, 1987 (52 FR 9622, March 25, 1987), to upgrade flight recorder standards for certain airplanes. The amendments require that all airplanes type certificated before September 30, 1969, and operated under part 121 be equipped with a six-parameter digital flight recorder by May 26, 1989, and that these recorders be upgraded to record 11 parameters of information by May 26, 1994.

The FAA issued Amendment Nos. 23-35, 25-65, 27-22, 29-25, 91-204, 121-197, 125-10, and 135-26 June 30, 1988 (53 FR 26134; July 11, 1988), to require digital flight data recorders and cockpit voice recorders to be installed in a broad range of airplanes and rotorcraft operated by air carriers and commuter airlines, as well as in selected aircraft operated in general aviation. Compliance is required by October 11, 1991. The amendments respond to legislation that required the FAA to amend its FR and CVR requirements in accordance with recommendations from the National Transportation Safety Board. The intent of the amendments was to provide more information to accident investigators in determining the causes of accidents and the measures needed to correct the causes.

Section 91.609 of the FAR currently provides relief to holders of air carrier or commercial operator certificates to operate their aircraft under certain conditions with the FR and/or CVR removed or inoperative. Amendment 91-204 (53 FR 26134, July 11, 1988) expanded the installation requirements for the FR and CVR to include certain U.S. civil-registered aircraft operated under part 91 of the FAR. Similar relief was not provided for part 91 operators in § 91.609. This interim rule is being issued to correct this situation. This interim rule is intended to provide part 91 operators with relief similar to that accorded to holders of air carrier and commercial operator certificates.

On September 27, 1989, the National Business Aircraft Association (NBAA) petitioned for an exemption from §§ 91.609(c) and (d)(2) [formerly §§ 91.35(c) and (d)(2)] of the FAR to permit its members, under certain conditions, to operate under the provisions of § 91.609(a) [formerly § 91.35(a)].

Note: Effective August 18, 1990 (54 FR 34284, August 18, 1989) § 91.35(a), (c), and (d)(2) were renumbered as § 91.609(a), 91.609(c), and 91.609(d)(2).

The petition requested that NBAA members be permitted to operate those U.S.-registered multiengined turbine-powered civil airplanes and rotorcraft

that are required to have FR's and CVR's while the aircraft's FR and/or CVR is removed temporarily for inspection, repair, modification, or replacement. Additionally, the NBAA requested that its members be permitted to operate their aircraft for a period of not more than 120 days after the FR and/or CVR is initially removed from the aircraft for repair. Approximately 260 comments supporting the petition were received in response to the **Federal Register** publication of the summary of the petition. No comments opposing the petition were received.

On January 23, 1990, Gulfstream Aerospace Corporation petitioned the FAA to amend the requirements of § 91.609. The petition requested that subject to certain conditions, operators that do not hold an air carrier or commercial operator certificate be allowed to operate under the provisions of § 91.609(a) with an FR and/or CVR temporarily removed for inspection, repair, modification, or replacement.

General Discussion of This Interim Rule

FR/CVR Requirements

The FAA has determined that the circumstances cited in the NBAA and Gulfstream Aerospace petitions apply to all part 91 operators. Accordingly, it is appropriate to respond to these petitions through the rulemaking process. Therefore, the FAA is amending § 91.609 to permit part 91 operators to continue a flight or ferry certain aircraft with an inoperative FR and/or CVR. Although this rule is not identical to the provisions provided to air carriers and commercial operators, the relief being provided to the part 91 operators is intended to be similar.

Air carriers and commercial operators may: 1. Ferry an aircraft with an inoperative flight recorder or cockpit voice recorder from a place where repair or replacement cannot be made to a place where such can be made.

2. Continue a flight as originally planned, if the flight recorder or cockpit voice recorder becomes inoperative after the aircraft has taken off.

3. Conduct an airworthiness flight test during which the flight recorder or cockpit voice recorder is turned off to test it or to test any communication or electrical equipment installed in the aircraft.

4. Ferry a newly acquired aircraft from the place where possession of it was taken to a place where the flight recorder or cockpit voice recorder is to be installed.

5. Use an aircraft's minimum equipment list (MEL) to continue flight operations. The normal relief provided by most MEL's allows a flight recorder to be inoperative if the cockpit voice recorder is operative and vice versa when both are required to be installed. However, CVR and FR equipment are classified as Category A items on an MEL, and Category A items are permitted to be inoperative for a maximum of 3 flight days.

The relief provided by this rule change permits part 91 operators: 1. To ferry an aircraft with an inoperative flight recorder or cockpit voice recorder from a place where repair or replacement cannot be made to a place where they can be made.

2. To continue a flight as originally planned, if the flight recorder or cockpit voice recorder becomes inoperative after the aircraft has taken off.

3. To conduct an airworthiness flight test during which the flight recorder or cockpit voice recorder is turned off to test it or to test any communication or electrical equipment installed in the aircraft.

4. To ferry a newly acquired aircraft from the place where possession of it was taken to a place where the flight recorder or cockpit voice recorder is to be installed. In addition, this rule will permit a part 91 operator:

5. To operate an aircraft for not more than 15 days while the flight recorder or cockpit voice recorder is inoperative, provided that the aircraft records contain an entry which indicates the date of failure, and a placard is located in view of the pilot to show that the flight recorder or cockpit voice recorder is inoperative.

6. To operate an aircraft for an additional 15 days provided that the requirements of paragraph 5 are met and certification is made in the aircraft maintenance records that additional time is required to complete repairs or obtain a replacement unit. At no time does this amendment permit the aircraft to be operated for more than 30 days with the flight recorder or cockpit voice recorder inoperative.

Additional Relief

Although the relief provided by this rule for part 91 operators is not identical to that provided for air carriers and commercial operators, the FAA has had to consider the fact that part 91 operators do not normally have the maintenance, repair, and replacement capabilities that air carriers and commercial operators have. Part 91 operators normally have only one maintenance base, whereas air carriers and commercial operators normally have numerous maintenance bases at which their CVR's and FR's may be repaired or replaced. Air carriers' and commercial operators' maintenance bases normally have a ready supply of spare parts for repairing or replacing CVR's and FR's. Air carriers and commercial operators normally have a larger fleet of aircraft in which the CVR's and FR's can be moved from one aircraft to another. Part 91 operators, however, normally have only one or two aircraft. Therefore, if a CVR or FR becomes inoperative on a part 91 operator's aircraft, it may result in the aircraft being grounded for an indefinite period of time. The FAA has determined that this grounding is not necessary and the possible operational and financial burden on these operators is unacceptable. The relief provided for part 91 operators by this amendment is reasonable. The FAA does not anticipate that a large number of aircraft will be flying without a functioning FR and/or CVR, and in view of the excellent safety record of multiengine, turbine-powered airplanes and rotorcraft, the probability of one of these aircraft being involved in an accident is small.

The NBAA stated that due to the expense of an FR or CVR (FR=$25,000 to $30,000 each; CVR=$10,000 each), one would not expect part 91 operators to purchase spares in case of failure, and few, if any, maintenance facilities catering to part 91 operators would stock spare units. There is merit in this statement, and the FAA finds that it is appropriate to provide additional relief to part 91 operators to operate for a reasonable period of time with the FR and/or CVR removed for repair. However, the FAA has determined the 120-day period requested by the NBAA is excessive and could compromise the intent of the rule. The FAA surveyed manufacturers of FR's and CVR's. Current estimates by these manufacturers indicate that 15 days is the average time needed to accomplish most repairs or to insure the availability of a replacement unit. Accordingly, this change permits part 91 operators who do not hold an air carrier or commercial operator certificates to operate an aircraft with an inoperative FR and/or CVR for 15 days. This change also permits aircraft to be operated for an additional 15 days (for a total of 30 days) provided that certification is made in the aircraft maintenance records that additional time is required to complete repairs or obtain a replacement unit. This certification must be made by a certificated pilot or mechanic. At no time may the aircraft be operated for more than 30 days with the FR or CVR inoperative.

Special Requirements

The NBAA also suggests, as an additional safeguard to aviation safety, that provisions be included to require an entry in the airplane/rotorcraft records that include the date the equipment become inoperative, and that a placard be located in view of the pilot to show that the FR and/or CVR has not been installed or is inoperative. The FAA has determined that these suggestions have merit, and these provisions are included in this interim rule.

Benefit/Cost Comparison

Executive Order 12291, dated February 17, 1981, directs Federal Agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each proposed change outweigh potential costs. Accordingly, the FAA has examined the benefits of this interim rule in an effort to identify and quantify benefits and costs. As a result of that examination, the agency has determined that the benefits are positive, but minimal, and that the costs are negligible.

The major benefit of this interim rule is that part 91 operators are not required to land immediately upon the loss of an FR or CVR, nor are they prevented from ferrying an aircraft to a location where such equipment can be repaired or installed. As indicated above, the operational and financial burden of being prevented from operating due to the lack of a functioning CVR or FR is unduly burdensome for part 91 operators. As a practical matter, it makes economic sense to provide a reasonable time to repair or replace malfunctioning equipment. Based on information provided by manufacturers and repair facilities, this rule provides sufficient time so that equipment can, in virtually all cases, be repaired or replaced in the time provided. On the other hand, providing a longer amount of time (such as the requested 120 days), could unnecessarily result in the loss of vital safety information in the event of an accident, would not be justified economically, and would be contrary to the underlying purpose of requiring these devices. Furthermore, since the FAA routinely authorizes aircraft to be ferried with an inoperative FR or CVR, another benefit of this amendment is to relieve part 91 operators from having to complete paperwork for requesting ferry permits. Therefore, the FAA has determined this interim rule will result in a positive but minimal benefit.

With respect to costs, there is a requirement that a placard be located in view of the pilot whenever an FR or CVR is temporarily out of service. The placard will state that the equipment is not installed or is inoperative. The estimated cost of such a placard is $25. This cost is considered negligible when compared to the savings realized by temporarily permitting further flights while the equipment is inoperative.

Another potential cost would be that, in the event of an accident, an inoperative FR or CVR would not be available to provide information to assist in determining the cause of the accident. However, the FAA estimates that few aircraft will be flying without a functioning FR or CVR. Furthermore, the probability of one of these aircraft being involved in an accident is extremely small, so the potential cost is estimated to be negligible and acceptable to the FAA. Also, since most flights that are affected by this interim rule would be flying under a ferry permit in the absence of this rule, the incremental cost of allowing flights without a ferry permit is even less.

The FAA has determined that this interim rule is cost-beneficial, but because both benefits and costs are minimal, a regulatory evaluation was not prepared for placement in the docket.

Reason for Immediate Adoption

As stated above, strict enforcement of the current regulations would compel part 91 operators to land immediately upon loss of an FR or CVR, and would prevent operators from ferrying an aircraft to a location where the equipment could be repaired or replaced, from doing an airworthiness flight check, and from ferrying a newly-acquired aircraft for FR or CVR installation. This could be a substantial burden on part 91 operators and have a disruptive effect on the general aviation community. The FAA did not intend to exclude part 91 operators from the kind of relief that the FAR currently provides to holders of air carrier or commercial operator certificates. The FAA intends for this interim rule to provide similar relief.

As noted, this action will not have any adverse effect on safety. The operation of FR and CVR equipment does not effect the operation of the aircraft. The purpose of FR and CVR equipment is to assist persons performing investigations of accidents or other incidents for which the recorded information might be useful. This action provides relief to part 91 operators from the FR and CVR requirements that become effective on October 11, 1991. The relief provided by this interim rule is intended to be similar to that already available to air carriers and commercial operators. Because a delay in implementing this interim rule would cause an unnecessary burden on part 91 operators, the FAA has determined that notice and public procedure hereon are impracticable.

Furthermore, since part 91 operators must comply with the FR and CVR requirements of § 91.609 by October 11, 1991, the relief provided by this amendment should be available at that time. Accordingly, the FAA has determined that good cause exists to make this interim rule effective in less than 30 days.

Although this action is an interim rule, interested persons may comment by submitting such written data, views, or arguments as they may desire. Comments are specifically invited on the overall regulatory, economic and environmental aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is especially helpful in determining whether modification of the rule is necessary. Comments received on or before January 13, 1992, will be considered prior to the FAA making any final determination on this matter, and this rule may be amended in light of the comments received. Comments should be submitted pursuant to the procedure outlined in the "Comments Invited" section above.

Because this amendment was not preceded by notice and an opportunity for public comment, this rule is considered interim and will expire on April 13, 1992. Before that date, the FAA intends to review all comments received on or before January 13, 1992, review the rule for any changes that may be necessary in light of the comments received, and publish a disposition of those comments and a final rule.

International Trade Impact Analysis

The FAA finds that the negligible costs that may be imposed by this interim rule will not have an impact on international trade, since it would be applicable to all airplanes operating under part 91.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) (RFA) was enacted to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, "Regulatory

Flexibility Criteria and Guidance," establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions.

The small entities that could be affected by this rule are part 91 operators with nine or fewer aircraft. An operator with nine aircraft each with the FR or CVR out for repair would be required to buy a total of nine placards at $25 each for a total cost of $225. This cost is well below the $3300 threshold cost for unscheduled aircraft operators shown in FAA Order 2100.14A. Therefore, the FAA has determined that this interim rule will not have a significant economic impact on a substantial number of small entities and that a Regulatory Flexibility Analysis is not required.

Federalism Implications

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), there are no requirements for information collection associated with this rule.

Conclusion

For the reasons discussed in the preamble, the FAA has determined that this interim rule is not major under Executive Order 12291. However, it is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) due to substantial public interest. It is certified that under the criteria of the Regulatory Flexibility Act this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because of the negligible costs resulting from this rule, the FAA has determined that the expected impact of these regulations is so minimal that they do not warrant a full regulatory evaluation.

List of Subjects in 14 CFR Part 91

Aircraft, Aviation safety.

The Amendment

In consideration of the foregoing, 14 CFR part 91 of the Federal Aviation Regulations is amended as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449 January 12, 1983).

2. Section 91.609 is amended by redesignating paragraphs (b) through (f) as paragraphs (c) through (g) respectively, and adding a new paragraph (b) to read as follows:

§ 91.609 Flight recorders and cockpit voice recorders.

* * * * *

(b) Notwithstanding paragraphs (c) and (e) of this section, an operator other than the holder of an air carrier or a commercial operator certificate may—

(1) Ferry an aircraft with an inoperative flight recorder or cockpit voice recorder from a place where repair or replacement cannot be made to a place where they can be made;

(2) Continue a flight as originally planned if the flight recorder or cockpit voice recorder becomes inoperative after the aircraft has taken off;

(3) Conduct an airworthiness flight test during which the flight recorder or cockpit voice recorder is turned off to test it or to test any communications or electrical equipment installed in the aircraft;

(4) Ferry a newly acquired aircraft from a place where possession of it was taken to a place where the flight recorder or cockpit voice recorder is to be installed; or

(5) Operate an aircraft:

(i) For not more than 15 days while the flight recorder or cockpit voice recorder is inoperative provided that the aircraft maintenance records contain an entry that indicates the date of failure, and a placard is located in view of the pilot to show that the flight recorder or cockpit voice recorder is inoperative.

(ii) For not more than an additional 15 days, provided that the requirements in paragraph (b)(5)(i) of this section are met and that a certificated pilot or mechanic certifies in the aircraft maintenance records that additional time is required to complete repairs or obtain a replacement unit.

* * * * *

Issued in Washington, DC, on October 4, 1991.

James B. Busey,

Administrator.

[FR Doc. 91–24678 Filed 10–10–91; 8:45 am]

BILLING CODE 4910–13–M

federal register

Friday
October 11 1991

Part VIII

Department of the Interior

Bureau of Indian Affairs

Consultation Session on the Fiscal Year (FY) 1992 Title II Indian Child Welfare Act (ICWA) Discretionary Grant Funds Distribution Plan for All Grantees; Notice

DEPARTMENT OF INTERIOR

Bureau of Indian Affairs

Consultation Session on the Fiscal Year (FY) 1992 Title II Indian Child Welfare Act (ICWA) Discretionary Grant Funds Distribution Plan for All Grantees

October 7, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation.

SUMMARY: The Bureau of Indian Affairs (BIA), Office of Tribal Services, Division of Social Services, announces its forthcoming consultation session with tribal representatives, off-reservation Indian organizations and other interested parties on the alternative FY 1992 ICWA grant distribution formulas for all ICWA grantees. The grant distribution plan will be correlated to the proposed regulatory changes to 25 CFR part 23, the Indian Child Welfare Act regulations governing the grant process, as authorized under title II of Public Law 95–608, the Indian Child Welfare Act of 1978.

LOCATION, DATE AND TIME: The consultation session is scheduled to be held at the Embassy Suites-Airport, 4444 N. Havana St., Denver, Colorado, telephone number (303) 375–0400, on November 5 and 6, 1991, commencing daily at 9 a.m. and adjourning at 5 p.m. Mountain Standard Time.

FOR FURTHER INFORMATION CONTACT: David Hickman, Chief, Division of Social Services, BIA, 1849 C St., NW., room 310–SIB, Washington, DC 20240, (202) 208–2721 or (202) 208–2536.

SUPPLEMENTARY INFORMATION: In response to comments and recommendations solicited during the March 1991 consultation sessions with Indian tribes, Indian organizations, and interested parties on the proposed ICWA grant distribution formula for the FY 1992 ICWA initiative, the BIA's Division of Social Services has developed alternative ICWA grant funds distribution formulas for all ICWA grantees. The objective of the consultation session will be to present the alternative grant distribution formulas and to arrive at a consensus. Subsequent to the consultation session, the BIA will finalize a fair and equitable grant distribution plan to implement the FY 1992 ICWA grant program. All areas will be notified of the final grant distribution plan.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–24589 Filed 10–10–91; 8:45 am]

BILLING CODE 4310–02–M

federal register

Friday
October 11, 1991

Part IX

Environmental Protection Agency

Hazardous Substances Task Force; Approaches for Addressing the Problem of Hazardous Chemicals; Open Forum; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4021-2]

Hazardous Substances Task Force; Approaches for Addressing the Problem of Hazardous Chemicals; Open Forum

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

Notice is hereby given of a meeting to assist the U.S. Environmental Protection Agency (EPA) and the interagency Hazardous Substances Task Force in identifying innovative, non-traditional approaches that may be used to prevent and better control accidental releases of chemicals that may pose a hazard to human health, welfare, or the environment. The meeting will be held at the Sheraton Premiere Hotel at Tysons Corner, 8861 Leesburg Pike, Vienna, Virginia on October 29th, 1991. The meeting will begin at 8:30 a.m. and end at 4 p.m. An open invitation is extended to the public.

Background

On July 14, 1991, the derailment of a Southern Pacific train near Dunsmuir, California resulted in the release of the herbicide metam sodium into the Sacramento River. As a result of the spill, a 45-mile stretch of the Sacramento River and portions of Lake Shasta were significantly affected. In addition, more than 200 people sought medical assistance.

EPA has been asked why substances like metam sodium are not listed as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or as hazardous materials under the Hazardous Materials Transportation Act (HMTA). EPA has established an interagency Hazardous Substances Task Force to respond to this question by identifying and initiating short- and long-term actions to prevent releases of chemicals of concern and to improve responses to incidents involving hazardous chemicals. The Task Force consists of representatives from EPA, the U.S. Department of Agriculture, the U.S. Department of Transportation, the U.S. Department of the Interior, the Agency for Toxic Substances and Disease Registry, the National Institute of Environmental Health Sciences, and the National Library of Medicine. Ongoing Task Force activities include reviewing past releases of hazardous chemicals to identify trends and characteristics common to those releases that resulted in damage to human health, welfare, or the environment; assessing potential short term-solutions, including innovative non-regulatory approaches to handling potentially hazardous chemicals; and exploring long-term regulatory solutions, incluidng development of an appropriate strategy for designating additional hazardous substances under CERCLA. The Task Force will present the results of its efforts in a final Task Force Report in 1992.

As part of its effort to assess short-term innovative, non-traditional approaches, the Task Force is holding a meeting of representatives from relevant government agencies, industry, labor, environmental groups, and the general public to provide an open forum for the exchange of information about planned and ongoing initiatives that will enhance the control of chemicals of concern. EPA hopes that information presented at this meeting will assist the Task Force in fully understanding the nature and scope of the problem, and in identifying some potentially innovative solutions. The information presented in this meeting will be incorporated into the final Task Force Report.

The meeting will begin with an overview by federal governemnt staff on the purpose of the meeting and the role and activities of the Hazardous Substances Task Force. Following an opening presentation by EPA and DOT, industry, labor, and environmental representatives will be given an opportunity to inform the Task Force about planned or ongoing initiatives to prevent and control the release of chemicals of concern in transportation and at fixed facilities. The afternoon session will focus on information gathering and fact finding from all interested persons concerning innovative, non-traditional activities that can be undertaken by the federal government and private parties to prevent and control releases of hazardous chemicals. Through this meeting, the Task Force is attempting to gather information and useful facts from individuals not to gain consensus advice or consensus recommendations from the those attending the meeting. Presentations at both the morning and afternoon sessions will be limited to 10 minutes in length.

In order to accommodate as many people as possible, parties wishing to make oral presentations should contact the Hazardous Substances Task Force at 202-797-6547 no later than October 24, 1991. If audiovisual equipment is needed for a presentation, please notify the Task Force at the above number prior to the meeting. Written documents supporting the presentations may be left with the Task Force at the meeting. Alternatively, if attendance at the meeting is not possible, written suggestions and information may be submitted to Dr. Dorothy Canter, U.S. EPA, Mail Code OS-110, 401 M Street SW., Washington, DC, 20460. Audience attendance at the meeting is limited only by space available; parties interested in attending the meeting should contact the Hazardous Substances Task Force at the number above to reserve seating.

Dated: October 8, 1991.

Don R. Clay,

Assistant Administrator, Solid Waste and Emergency Response.

[FR Doc. 91-24763 Filed 10-10-91; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
October 11, 1991

Part X

The President

Proclamation 6353—Polish-American Heritage Month, 1991

Federal Register

Federal Register
Vol. 56, No. 198
Friday, October 11, 1991

Presidential Documents

Title 3—

The President

Proclamation 6353 of October 9, 1991

Polish-American Heritage Month, 1991

By the President of the United States of America

A Proclamation

The ties that exist between the peoples of the United States and Poland are as old as our Nation itself—firmly rooted in kinship and fortified by our mutual devotion to the ideals of liberty and self-government, they have withstood the tests of time and adversity. This month, we proudly celebrate those ties, as well as the many contributions that Americans of Polish descent have made to our country.

Our Polish American heritage traces back to the settlement of Jamestown in 1607, when Poles stood among the first immigrants to the New World. Since then, generations of Polish immigrants have built new lives on these shores, inspiring others by their faith and hard work and enriching American culture through the unique customs and traditions of their ancestral homeland. And from the scientific genius of Copernicus and Madame Curie to the brilliant work of artists such as Chopin and Paderewski, individuals of Polish descent have enriched not just America but the world with a wealth of talent and vision.

However, of all the gifts that Poland has given to the world, one of the most valuable and enduring is the example of her people, who have demonstrated extraordinary faith, courage, and resolve in their quest for freedom. Indeed, since the earliest days of our Republic, Americans and Poles have shared an abiding love of liberty and self-government. Brave Poles such as Tadeusz Kosciuszko and Kazimierz Pulaski helped to achieve our Nation's independence. They stood in solidarity with our ancestors because they knew that the hopes of all freedom-loving peoples were invested in this country's bold experiment in self-government. Through their historic Constitution of May 3, 1791, which was modeled after our own, Poles bravely asserted their desire for freedom. That document has remained a cherished symbol of Polish patriotism and courage.

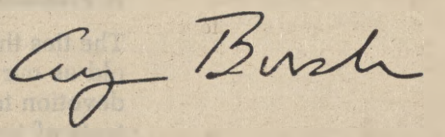
Despite generations of foreign occupation and repressive rule, including invasion by Nazi Germany and the Soviet Union in 1939 and the declaration of martial law in 1981, Poles have remained firm in their hopes for freedom. Their recent triumph over communist rule and their peaceful transition to a democratic system of government underscored the truth of the timeless refrain: "Poland is not lost while Poles still live."

Today the people of Poland are writing a bright new chapter in their nation's history. We Americans applaud their courageous steps to reform their economy and government, and we reaffirm our support for their efforts. In addition to offering direct financial aid, the United States has been engaged in efforts to encourage private sector investment and the growth of market institutions in Poland, through such vehicles as a housing loan guarantee program, the Polish Stabilization Fund, and the Polish-American Enterprise Fund. They symbolize our commitment to helping Poland establish stable democratic rule and a successful market-oriented economy.

In recognition of the strong and friendly ties that exist between the United States and Poland, the Congress, by Public Law 102–115, has designated October 1991 as "Polish-American Heritage Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 1991 as Polish-American Heritage Month. I urge all Americans to join their fellow citizens of Polish descent in observance of this month.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91–24840
Filed 10–10–91; 10:22 am]
Billing code 3195–01–M

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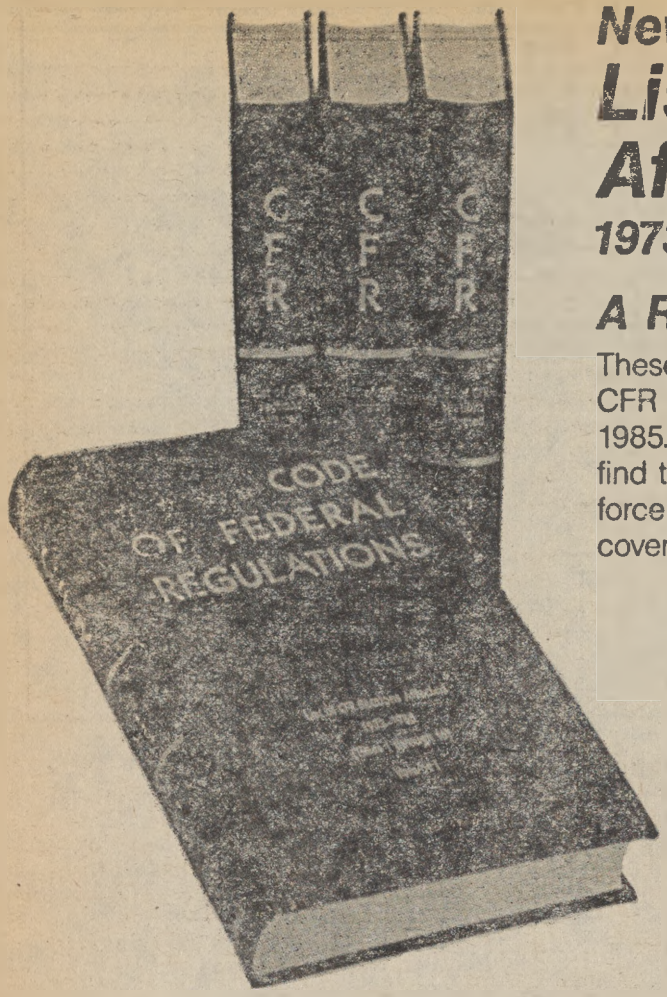
S.J. Res. 78/Pub. L. 102-121

To designate the month of November 1991 and 1992 as "National Hospice Month". (Oct. 8, 1991; 105 Stat. 611; 1 page) Price: $1.00

S.J. Res. 156/Pub. L. 102-122

To designate the week of October 6, 1991, through October 12, 1991, as "Mental Illness Awareness Week". (Oct. 8, 1991; 105 Stat. 612; 2 pages) Price: $1.00

Last List October 10, 1991



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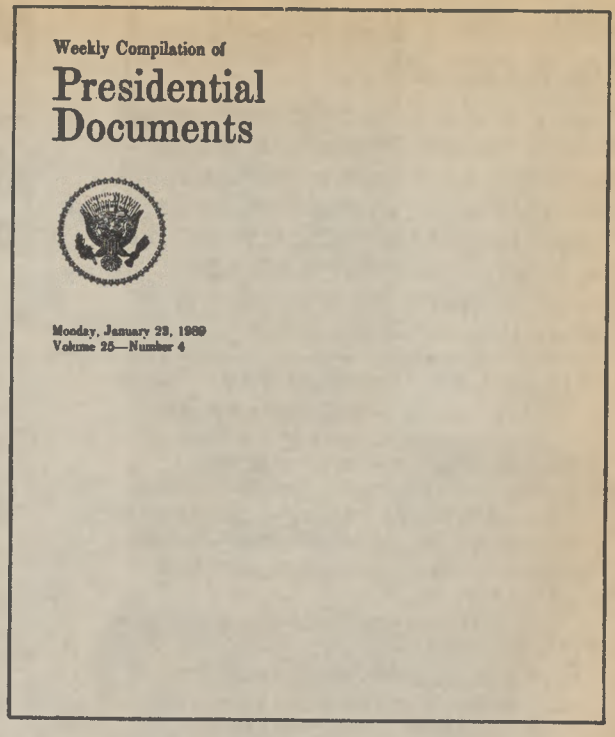
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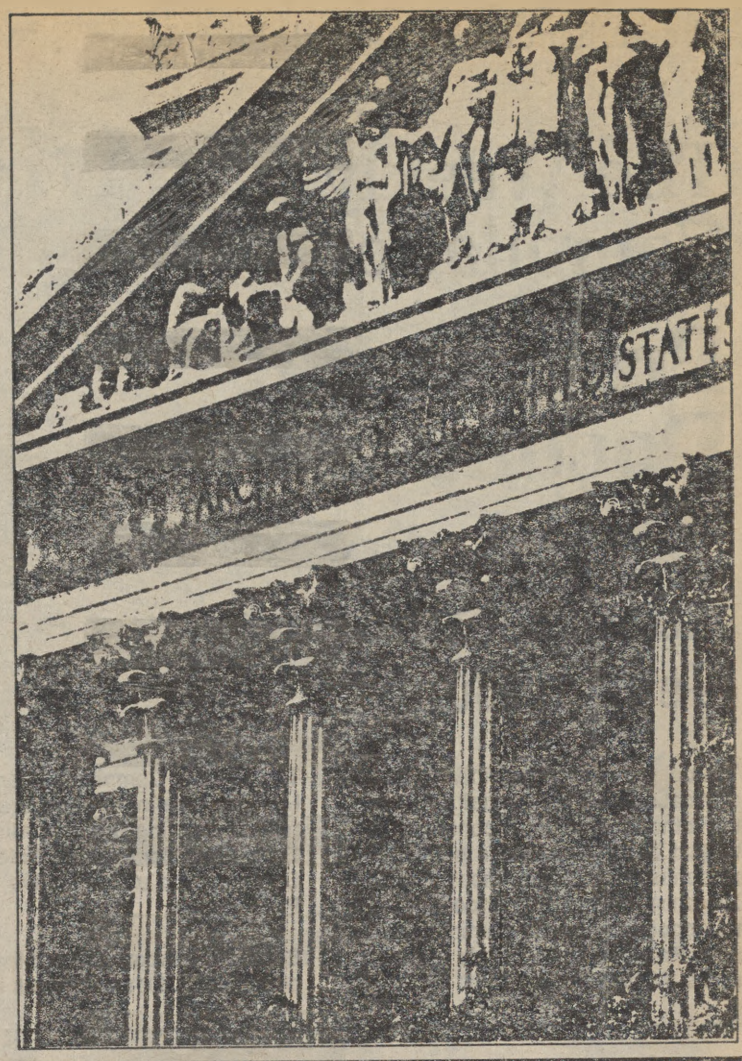
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