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Thursday
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 958

[Docket No. FV94-958-1IFR]

### Idaho-Eastern Oregon Onions; Expenses and Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes expenditures of $1,020,039 and establishes an assessment rate of $0.10 per hundredweight of onions under Marketing Order No. 958 for the 1994–95 fiscal period. Authorization of this budget enables the Idaho-Eastern Oregon Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**DATES:** Effective July 1, 1994, through June 30, 1995. Comments received by June 13, 1994 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone number 202–720–9918, or Robert J. Curry, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone number 503–326–2724.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect Idaho-Eastern Oregon onions are subject to assessments. Funds to administer the Idaho-Eastern Oregon onion marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions during the 1994–95 fiscal period which begins July 1, 1994, and ends June 30, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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. Marketing orders issued pursuant to the Act, and the 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 450 producers of Idaho-Eastern Oregon onions under the marketing order and approximately 35 handlers. 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 Idaho-Eastern Oregon onion producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 fiscal period was prepared by the Idaho-Eastern Oregon Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Idaho-Eastern Oregon onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Idaho-Eastern Oregon onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on March 22, 1994, and unanimously recommended a 1994–95 budget of $1,020,039, $10,161

less than the previous year. Increases in expenditures, which include $154 for research and $18,500 for promotion and advertising, will be offset by decreases of $18,495 for salary expenses and $10,320 for travel and office expenses. Major expense items include $113,785 for salary expenses, $57,600 for travel and office expenses, $60,154 for research, $668,500 for promotion and advertising, $60,000 for export, and $50,000 for contingencies.

The Committee also unanimously recommended an assessment rate of $0.10 per hundredweight, the same as last season. This rate, when applied to anticipated shipments of 8,000,000 hundredweight, will yield $800,000 in assessment income. This, along with $30,000 in interest income and $190,039 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1994–95 fiscal period, estimated at $898,928, will be within the maximum permitted by the order of one fiscal period's expenses.

While this action will 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 will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on July 1, 1994, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

**List of Subjects in 7 CFR Part 958**

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

## PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new § 958.238 is added to read as follows:

**Note:** This section will not appear in the Code of Federal Regulations.

**§ 958.238 Expenses and assessment rate.**

Expenses of $1,020,039 by the Idaho-Eastern Oregon Onion Committee are authorized, and an assessment rate of $0.10 per hundredweight of assessable onions is established for the fiscal period ending June 30, 1995. Unexpended funds may be carried over as a reserve.

Dated: May 5, 1994.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 94–11490 Filed 5–11–94; 8:45 am]

BILLING CODE 3410–02–P

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**7 CFR Part 982**

**[Docket No. FV94–982–2IFR]**

## Filberts/Hazelnuts Grown in Oregon and Washington; Expenses and Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 982 for the 1994–95 marketing year. Authorization of this budget enables the Filbert/Hazelnut Marketing Board (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**DATES:** Effective July 1, 1994, through June 30, 1995. Comments received by June 13, 1994, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, Room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 982, both as amended (7 CFR part 982), regulating the handling of filberts/hazelnuts grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Oregon-Washington filbert/hazelnuts are subject to assessments. Funds to administer the Oregon-Washington filbert/hazelnut order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable filberts/hazelnuts during the 1994–95 marketing year which begins July 1, 1994, and ends June 30, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law

and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the 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. Marketing orders issued pursuant to the Act, and the 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 950 producers of Oregon and Washington filberts/hazelnuts under this marketing order, and approximately 21 handlers. 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 $5,000,000. The majority of Oregon and Washington filbert/hazelnut producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 marketing year was prepared by the Filbert/Hazelnut Marketing Board, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Board are producers and handlers of filberts/hazelnuts. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by the expected quantity of assessable filberts/hazelnuts handled. Because that rate will be applied to the actual quantity of filberts/hazelnuts, it must be established at a rate that will provide sufficient income to pay the Board's expenses.

In a mail vote conducted the week of March 28, 1994, the Board unanimously recommended a 1993–94 budget of $507,010, $97,215 more than the previous year. The major budget item is $250,000 for the Board's promotion program to maintain and expand markets for filberts/hazelnuts. This is $30,000 more than budgeted last year for promotion. Other increases include $2,865 for general and administrative expenses, $1,350 for furniture, $1,000 for a crop survey, $20,000 for research, and $42,000 for the emergency reserve fund.

The Board also unanimously recommended an assessment rate of $0.007 per pound, the same as last year. This rate, when applied to anticipated shipments of 56,000,000 pounds, will yield $392,000 in assessment income. This, along with $28,000 from previously unassessed 1993 crop filberts, $6,000 in interest income, and $81,010 from the Board's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1994–95 marketing year, estimated at $453,673, will be within the maximum permitted by the order of one marketing year's expenses.

While this action will 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 will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the marketing year begins on July 1, 1994, and the marketing order requires that the rate of assessment for the marketing year apply to all assessable filberts/hazelnuts handled during the marketing year; (3) handlers are aware of this action which was unanimously recommended by the Board in a mail vote and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

**List of Subjects in 7 CFR Part 982**

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

## PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new § 982.338 is added to read as follows:

**Note:** This section will not appear in the Code of Federal Regulations.

**§ 982.338 Expenses and assessment rate.**

Expenses of $507,010 by the Filbert/Hazelnut Marketing Board are authorized, and an assessment rate of $0.007 per pound of assessable filberts/hazelnuts is established for the marketing year ending June 30, 1995. Unexpended funds may be carried over as a reserve.

Dated: May 5, 1994.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 94–11488 Filed 5–11–94; 8:45 am]

BILLING CODE 3410–02–P

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**7 CFR Part 998**

**[Docket No. FV94–998–1IFR]**

## Expenses, Assessment Rate, and Indemnification Reserve for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes expenditures for administration and indemnification, establishes an assessment rate, and

authorizes continuation of an indemnification reserve under Marketing Agreement 146 (agreement) for the 1994–95 crop year. This rule also increases the administrative assessment rate for the 1993–94 crop year. Authorization of this budget enables the Peanut Administrative Committee (Committee) to incur operating expenses, collect funds to pay those expenses, and settle indemnification claims during the 1994–95 crop year. Authorization of the increase in the administrative assessment rate for the 1993–94 crop year enables the Committee to collect sufficient funds to pay expenses projected for the remainder of that year. Funds to administer this program are derived from assessments on handlers who have signed the agreement.

**DATES:** Section 998.407 is effective July 1, 1994, through June 30, 1995. Section 998.406 is effective July 1, 1993, through June 30, 1994. Comments received by June 13, 1994, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or William G. Pimental, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, PO Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12887, Civil Justice Reform. Under the agreement now in effect, peanut handlers signatory to the agreement are subject to assessments. Funds to administer the peanut agreement program are derived from such assessments, and deductible type insurance for 1994–95 indemnification expenses. This rule authorizes expenditures and establishes an assessment rate for the Committee for the crop year beginning July 1, 1994, and increases the administrative assessment rate for the crop year which began July 1, 1993. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this 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.

There are approximately 47,000 producers of peanuts in the 16 States covered under the agreement, and approximately 76 handlers regulated under the agreement. 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. A majority of the producers may be classified as small entities, and some of the handlers covered under the agreement are small entities.

Under the agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods, services, and personnel for program operations and, thus, are in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide meetings. Thus, all directly affected persons have an opportunity to provide input in recommending the budget, assessment rate, and indemnification reserve. The handlers of peanuts who are directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the Committee for the 1994–95 crop year was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It applies to all assessable peanuts received or acquired by handlers from July 1, 1994. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the Committee's expenses.

The Committee met on March 16, 1994, and unanimously recommended 1994–95 crop year administrative expenses of $1,056,000 and an administrative assessment rate of $0.60 per net ton of assessable farmers' stock peanuts received or acquired by handlers. In comparison, 1993–94 crop year budgeted administrative expenditures were $1,020,000, and the administrative assessment rate was initially recommended and fixed at $0.60 per ton.

Administrative budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Executive salaries, $140,146 ($134,304), clerical salaries, $132,500 ($127,479), field representatives salaries, $290,420 ($278,778), field representatives travel, $110,000 ($107,000), insurance and bonds, $8,500 ($7,500), and furniture and equipment, $9,500 ($4,000). Items which have decreased compared to those budgeted for 1993–94 (in parentheses) are: Payroll taxes, $43,000 ($45,000), office rent and parking, $50,000 ($52,500), postage and mailing, $12,000 ($13,000), and audit fees, $9,200 ($9,500). All other items are budgeted at last year's amounts. The administrative budget includes $14,234 for contingencies ($4,439 last year).

The Committee also unanimously recommended 1994 crop indemnification claims payments of up to $9,000,000 and an indemnification assessment of $2.00 per net ton of farmers' stock peanuts received or acquired by handlers to continue its indemnification program. The 1993–94 crop year indemnification assessment was $1.00 per net ton. Because of the high number of claims being processed during the 1993–94 crop year, the Committee recommended a higher assessment rate so that sufficient reserve funds will be available. The $9,000,000 of indemnification claims coverage to be provided on 1994 crop peanuts includes $5,000,000 in excess loss insurance to

be purchased by the Committee—the same as last year.

The cost of the indemnification insurance premium and the costs to carry out indemnification procedures (sampling and testing of 2–AB and 3–AB Subsamples, and crushing supervision, of indemnified peanuts, pursuant to § 998.200 (c), are additional indemnification costs which must be authorized and paid from available indemnification funds. Such costs are not expected to exceed $2,000,000.

The total assessment rate is $2.60 per ton of assessable peanuts ($0.60 for administrative and $2.00 for indemnification). Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Application of the recommended rates to the estimated assessable tonnage of 1,760,000 will yield $1,056,000 for program administration and $3,520,000 for indemnification. The indemnification amount, when added to expected cash carry over from 1993–94 indemnification operations of $12,609,100, will provide $16,129,100, which should be adequate for the 1994 fund, and to maintain an adequate reserve.

The 1993–94 budget was published in the **Federal Register** as an interim final rule on June 11, 1993 (58 FR 32600), and finalized on August 13, 1993 (58 FR 43066). The administrative expenses and assessment rate for the 1993–94 crop year were based on an estimated assessable tonnage of 1,700,000. Due to an unexpected short crop, the assessable tonnage is estimated to be only 1,476,377. In order to have sufficient revenue to cover budgeted expenses of $1,020,000, the Committee unanimously recommended that the 1993–94 crop year administrative assessment be increased from $0.60 to $0.70 per net ton of assessable farmers' stock peanuts.

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

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1993–94 crop year began on July 1, 1993, and the 1994–95 crop year begins on July 1, 1994, and the marketing agreement requires that the rate of assessment for the fiscal period apply to all assessable peanuts handled during the fiscal period; (3) handlers are aware of these actions which were unanimously recommended by the Committee at a public meeting and are similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

**List of Subjects in 7 CFR Part 998**

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

## PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

**Note:** These sections will not appear in the Annual Code of Federal Regulations.

2. A new section § 998.407 is added to read as follows:

**§ 998.407 Expenses, assessment rate, and indemnification reserve.**

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1994, shall be in the amount of $1,056,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the Committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the Committee not to exceed $9,000,000 for indemnification claims payments and claims expenses, pursuant to the terms and conditions of indemnification applicable to the 1994 crop effective July 1, 1994, are authorized. In addition, indemnification expenses, in an undetermined amount estimated not to exceed $2,000,000, which are incurred by the Committee for excess loss insurance, sampling and testing fees for 2–AB and 3–AB Subsamples, and fees for the supervision of the crushing of indemnified peanuts are also authorized.

(c) *Rate of assessment.* Each handler shall pay to the Committee, in accordance with § 998.48 of the marketing agreement, an assessment at the rate of $2.60 per net ton of farmers' stock peanuts received or acquired other than from those described in §§ 998.31(c) and (d). A total of $0.60 shall be for administrative expenses and a total of $2.00 shall be for indemnification. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired.

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop year pursuant to § 998.48 of the agreement, shall continue. That portion of the total assessment funds accrued from the $2.00 rate not expended on indemnification claims payments on 1994 crop peanuts and related expenses shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

**§ 998.406 [Amended]**

3. In § 998.406, paragraph (c) is amended by removing "$1.60" and adding in its place "$1.70" and by removing "$0.60" and adding in its place "$0.70."

Dated: May 5, 1994.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 94–11489 Filed 5–11–94; 8:45 am]

BILLING CODE 3410–02–P

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## Farmers Home Administration

### 7 CFR Part 1948

**RIN 0575–AB83**

### Intermediary Relending Program Loan Limit

**AGENCIES:** Farmers Home Administration and Rural Development Administration, USDA.

**ACTION:** Interim final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) and Rural

Development Administration (RDA) are amending the regulations for the Intermediary Relending Program (IRP) to raise the loan limit. This action is needed to allow intermediaries that have received and successfully used the maximum amount of IRP loans allowed by the current regulations, and have need for additional funds, to be eligible to apply for such additional funds. The amendment is intended to raise the maximum outstanding IRP indebtedness of an intermediary to $4 million, from the current limit of $2 million.

**DATES:** Effective May 12, 1994.

Comments must be received on or before July 11, 1994.

**ADDRESSES:** Submit written comments in duplicate to the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, Ag. Box 0743, Washington, DC 20250–0743. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above office, located in room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** M. Wayne Stansbery, Business and Industry Loan Specialist, Rural Development Administration, USDA, Ag. Box 3221, Washington, DC 20250–3221, Telephone (202) 720–6819.

**SUPPLEMENTARY INFORMATION:**

**Classification**

We are issuing this interim rule in conformance with Executive Order 12866, and have determined that it is a "significant regulatory action."

**Program Affected**

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.767, Intermediary Relending Program.

**Intergovernmental Review**

As set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983, this program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA and RDA conduct intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

**Paperwork Reduction Act**

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0130 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This interim rule does not revise or impose any new information collection or recordkeeping requirements from those approved by OMB. Please send written comments to the Office of Information Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, FmHA, Ag. Box 0743, Washington, DC 20250.

**Civil Justice Reform**

This document has been reviewed in accordance with Executive Order 12778. It is the determination of RDA and FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the Executive Order.

**Environmental Impact Statement**

This action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA and RDA have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

**Background**

This regulatory package is an agency initiative to make the IRP more effective at stimulating rural community economic development. The current regulation prohibits approval of any IRP loan that would result in any one intermediary having an outstanding IRP indebtedness exceeding $2,000,000. RDA is still not encouraging initial loans of more that $2,000,000. However, some intermediaries have received and reloaned $2,000,000 and have demand for additional funding to meet the needs of the communities they serve. The primary reason for this action is to allow subsequent loans to those successful intermediaries that have reached the current limit.

**Interim Rule**

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, FmHA/RDA is making this action effective upon publication in the **Federal Register** without securing prior public comment. It would be contrary to the public interest to wait for public comments before implementing an increase in loan ceiling. There is an immediate need to provide funds to the public to help alleviate severe economic hardship which exists in many rural areas as the result of high unemployment and poverty level wages. Numerous intermediaries now exist that have received the maximum of $2 million, have successfully used all of the funds to assist rural businesses, and have urgent need for additional loan funds. These intermediaries have proven their ability to play a major and successful role in stimulating the economy and developing jobs in rural areas with high unemployment and depressed economies. Increasing the IRP loan ceiling quickly will allow them to receive additional IRP funds and continue to provide urgently needed assistance to businesses in their service areas. Delaying action will deprive them of needed funding. Comments will be accepted for 60 days after publication and, if appropriate, adjustments will be made in the regulation based on the comments.

**List of Subjects in 7 CFR Part 1948**

Business and industry, Credit, Economic development, Rural areas.

Accordingly, part 1948, chapter XVIII, title 7 of the Code of Federal Regulations is amended as follows:

## PART 1948—RURAL DEVELOPMENT

1. The authority citation for part 1948 continues to read as follows:

**Authority:** 7 U.S.C. 1932 note; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart C—Intermediary Relending Program (IRP)

**§ 1948.103 [Amended]**

2. Section 1948.103 is amended in paragraph (c)(4) by revising the number "$2,000,000" to read "$4 million ($2 million for loans approved after September 30, 1995)."

Dated: April 12, 1994.

**Bob J. Nash,**

*Under Secretary for Small Community and Rural Development.*

[FR Doc. 94–11419 Filed 5–11–94; 8:45 am]

BILLING CODE 3410–07–U

**Animal and Plant Health Inspection Service**

**9 CFR Part 94**

**[Docket No. 93–149–2]**

## Importation of Animal Products and Byproducts From Countries Where BSE Exists; Removal of Portugal

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

**ACTION:** Final rule.

**SUMMARY:** We are amending our regulations by removing Portugal from the list of countries where bovine spongiform encephalopathy exists. Portugal had been added to the list in December 1993 after the disease was diagnosed in cattle in that country. We are now removing Portugal from the list of countries where bovine spongiform encephalopathy exists because epidemiological investigations have revealed that the cattle in which the disease was detected had been imported into Portugal from Great Britain, and that all suspect animals were destroyed. This action will relieve certain prohibitions or restrictions on the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts derived from ruminants that have been in Portugal.

**EFFECTIVE DATE:** May 27, 1994.

**FOR FURTHER INFORMATION CONTACT:** Dr. John W. Cougill, Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 759, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7834.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in 9 CFR parts 94 and 95 (referred to below as the regulations) govern the importation of meat, animal products, animal byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of bovine animals and other ruminants. The disease is not known to be contagious. The major means of spread of BSE appears to be through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, or animal byproducts derived from ruminants in countries in which BSE exists, were imported into the United States and fed to ruminants.

Sections 94.18 and 95.4 of the regulations prohibit or restrict the importation of certain meat, animal products, and animal byproducts derived from ruminants that have been in countries in which BSE exists, and § 96.2(b) prohibits the importation of ruminant casings from countries in which BSE exists. Those countries are listed in § 94.18 of the regulations.

In an interim rule published in the **Federal Register** on December 13, 1993 (58 FR 65103–65104, Docket No. 93–149–1) and effective on December 7, 1993, we amended the regulations by adding Portugal to the list of countries where BSE exists after the disease was detected in cattle in Portugal.

We solicited comments concerning the interim rule for a 60-day comment period ending February 11, 1994. We received three comments by that date, all of which opposed the interim rule. The comments were sent by a representative of a U.S. trade association, a U.S. manufacturer, and a representative of the Commission of the European Communities. Two of the commenters opposed the interim rule because of its effect on the importation of certain animal products from Portugal; the third commenter urged us to consider updated information regarding Portugal's epidemiological investigation of the situation.

A report from the Portuguese Ministry of Agriculture to the Office of International Epizootics and the European Economic Union stated that BSE had been detected in one cow and suspected in three other cows, all of which had been imported into Portugal from Great Britain, where BSE is known to exist. This report led to our December 1993 interim rule adding Portugal to the list of countries where BSE is known to exist.

Subsequent epidemiological investigations conducted by Portuguese veterinary officials revealed that the infected animal, an 8-year-old Holstein-Friesian cow, was born in Great Britain in 1984 and imported into Portugal from Great Britain in 1987. The affected cow and the three suspect cows were destroyed and the premises placed under quarantine and official control throughout the epidemiological investigation. There have been no reports of any additional animals in Portugal being affected with BSE.

In the course of their investigation, Portuguese veterinary officials established that no rendered products of animal origin were ever imported for animal feed. In February 1990, the Portuguese Government prohibited the importation of live cattle and all raw materials and byproducts of animal origin from Great Britain, Northern Ireland, and the Republic of Ireland. Additionally, all livestock in Portugal, both domestic and imported, are subject to official supervision and veterinary controls established at the national level. These veterinary controls include an official registry system, animal identification, and monitoring of all animal movement. Diagnostic capabilities for BSE are available at national veterinary laboratories in Lisbon and Porto.

Therefore, based on the comments received, on the epidemiological information provided by Portuguese veterinary officials, and on the results of our continuing study of the situation described in the December 1993 interim rule, we are removing Portugal from the list of countries where BSE is known to exist.

### Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register.**

Prompt implementation is needed to relieve unnecessary restrictions on the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts derived from ruminants that have been in Portugal. With these restrictions lifted, U.S. importers will be able to resume their importation of the animal products and animal byproducts described above. Portuguese producers and exporters that had been denied these U.S. markets by our December 1993 interim rule will be able to resume their business with the United States.

### Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866.

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

The provisions of this rule will not have a significant economic impact. The December 1993 interim rule that placed Portugal on the list of countries in which BSE exists had the effect of restricting the importation of some animal products and prohibiting the importation of others. Natural sausage casings were the only affected commodity that had been imported from Portugal in quantities sufficient to cause any economic impact.

This rule will remove the prohibition on the importation of natural sausage

casings of ruminant origin from Portugal. About 20 small U.S. entities had been importing natural sausage casings from Portugal prior to the December 1993 interim rule. None of the companies had been totally dependent on Portugal for sausage casings, as Portugal supplied only 2.5 percent of natural sausage casings imported into the United States. This rule will have a negligible economic impact on these small entities. Additionally, price and competition in the United States will not be affected.

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

**Executive Order 12778**

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

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

**List of Subjects in 9 CFR Part 94**

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

## PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

**Authority:** 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.18, paragraph (a) is revised to read as follows:

**§ 94.18 Ruminant meat and edible products from ruminants that have been in countries where bovine spongiform encephalopathy exists.**

(a) Bovine spongiform encephalopathy exists in the following countries: France, Great Britain, Northern Ireland, the Republic of Ireland, Oman, and Switzerland.

* * * * *

Done in Washington, DC, this 5th day of May 1994.

**Lonnie J. King.**

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

[FR Doc. 94–11486 Filed 5–11–94; 8:45 am]

BILLING CODE 3410–34–P

## FARM CREDIT SYSTEM INSURANCE CORPORATION

## 12 CFR Part 1402

## Releasing Information

**AGENCY:** Farm Credit System Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit System Insurance Corporation (Corporation) adopts final regulations relating to the public availability of Corporation records. The final regulations implement requirements of the Freedom of Information Act relating to receipt and processing of requests for Corporation records, fees to be charged and procedures to be followed in processing requests for records, and requests for waiver or reduction in fees under the Freedom of Information Act. The final regulations will assist the public in requesting records from the Corporation. The final regulations also implement provisions of Executive Order 12600 by providing predisclosure notification procedures for confidential or financial information.

**EFFECTIVE DATE:** June 13, 1994.

**FOR FURTHER INFORMATION CONTACT:**

Ronald H. Erickson, Freedom of Information Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, (703) 883–4113, or

Jane M. Virga, Senior Attorney, Office of General Counsel, 1501 Farm Credit Drive, McLean, Virginia 22102–0826, (703) 883–4020, TDD (703) 883–4444.

**SUPPLEMENTARY INFORMATION:** On November 8, 1993, the Corporation proposed regulations setting forth procedures to be used in requesting access to and responding to requests for Corporation records. See 58 FR 59210. Essentially, the Corporation proposed regulations that provided that all requests for access to Corporation records must be in writing, adequately describe the material sought, and be sent to the Corporation in McLean, Virginia. The proposed regulations delegated to the Freedom of Information Officer authority to make initial determinations concerning requests for access to records, and provided procedures for final Corporation decisions on administrative appeals. The proposed regulations also recited the statutory bases for exemption from disclosure and provided that any reasonably segregable portion of a record shall be produced as provided by the Freedom of Information Act, 5 U.S.C. 552 (FOIA). The proposed regulations provided a fee structure consistent with the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget on March 27, 1987 (52 FR 10012). The proposed regulations also set forth factors to be considered in determining whether to waive or reduce fees. Consistent with Executive Order 12600 published on June 23, 1987, pertaining to access to certain information submitted to an agency, the proposed regulations provided that, upon receipt of a request for possibly confidential commercial or financial information which may be protected from disclosure under FOIA exemption (b)(4), the Corporation shall notify the submitter and provide an opportunity to comment on possible disclosure. The Corporation did not receive any comments in response to the proposed regulations. The Corporation now adopts 12 CFR part 1402 as a final regulation without any revision.

**List of Subjects in 12 CFR Part 1402**

Archives and records, Freedom of Information Act, Information, Records, Bonds, Insurance.

For the reasons set out in the preamble, part 1402 of chapter XIV, title 12 of the Code of Federal Regulations is added to read as follows:

## PART 1402—RELEASING INFORMATION

Sec.

**Subpart A—[Reserved]**

**Subpart B—Availability of Records of the Farm Credit System Insurance Corporation**

1402.10 Official records of the Farm Credit System Insurance Corporation.
1402.11 Current index.
1402.12 Identification of records requested.
1402.13 Request for records.
1402.14 Response to requests for records.
1402.15 Business information.

**Subpart C—Fees for Provision of Information**

1402.20 Definitions.
1402.21 Categories of requesters—fees.
1402.22 Fees to be charged.
1402.23 Waiver or reduction of fees.
1402.24 Advance payments—notice.
1402.25 Interest.
1402.26 Charges for unsuccessful searches or reviews.
1402.27 Aggregating requests.

**Authority:** Secs. 5.58, 5.59 of the Farm Credit Act (12 U.S.C. 2277a–7, 2277a–8); 5 U.S.C. 552; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

## Subpart A—[Reserved]

## Subpart B—Availability of Records of the Farm Credit System Insurance Corporation

### § 1402.10 Official records of the Farm Credit System Insurance Corporation.

(a) The Farm Credit System Insurance Corporation shall, upon any request for records which reasonably describes them and is made in accordance with the provisions of this subpart, make the records available as promptly as practicable to any person, except exempt records, which include the following:

(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of the Farm Credit System Insurance Corporation, including matters which are for the guidance of agency personnel;

(3) Records which are specifically exempted from disclosure by statute;

(4) Trade secret, commercial, proprietary, or financial information obtained from any person or organization and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the Farm Credit System Insurance Corporation or in litigation in which the United States, as a real party in interest on behalf of the Farm Credit System Insurance Corporation, is a party;

(6) Personnel and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual; and

(8) Records of or related to examination, operation, reports of condition and performance, or reports of or related to Farm Credit System institutions and that are prepared by, on behalf of, or for the use of the Farm Credit System Insurance Corporation.

(b) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this section.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

### § 1402.11 Current index.

The Farm Credit System Insurance Corporation will make available for public inspection and copying a current index to provide identifying information as to any matter required by 5 U.S.C. 552(a)(2)(C) to be made available or published in the **Federal Register**. Because of the anticipated infrequency of requests for material required to be indexed, it is determined that the publication of the index in the **Federal Register** is unnecessary and impracticable. However, the Farm Credit System Insurance Corporation will provide a copy of such index to a member of the public upon request therefor at a cost not in excess of the direct cost of duplication.

### § 1402.12 Identification of records requested.

A member of the public who requests records from the Farm Credit System Insurance Corporation shall provide a reasonable description of the records sought including, where possible, specific information as to dates, titles, and subject matter, so that such records may be located without undue search or inquiry. If a record is not identified by a reasonable description, the request therefor may be denied.

### § 1402.13 Request for records.

Requests for records shall be in writing, in an envelope clearly marked "FOIA Request," and addressed to the Freedom of Information Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826. A request improperly addressed will be deemed not to have been received for purposes of the 10-day time period set forth in § 1402.14(a) until it is received, or would have been received with the exercise of due diligence by the Freedom of Information Officer. Records requested in conformance with this subpart and which are not exempt records may be received in person or by mail as specified in the request. Records to be received in person will be available for inspection or copying during business hours on a regular business day in the offices of the Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

### § 1402.14 Response to requests for records.

(a) Within 10 days (excluding Saturdays, Sundays, and legal public holidays), or any extension thereof as provided in paragraph (d) of this section, of the receipt of a request, the Freedom of Information Officer shall determine whether to comply with or to deny such request and place a notice thereof in writing in the mail addressed to the requester.

(b) Within 30 days of the receipt of a notice denying, in whole or in part, a request for records, the requester may appeal the denial. The appeal shall be in writing addressed to the Chief Financial Officer, Farm Credit System Insurance Corporation, and both the letter and envelope shall be clearly marked "FOIA Appeal." An appeal improperly addressed shall be deemed not to have been received for purposes of the 20-day time period set forth in paragraph (c) of this section until it is received, or would have been received with the exercise of due diligence by Farm Credit System Insurance Corporation personnel.

(c) Within 20 days (excluding Saturdays, Sundays, and legal public holidays), or any extension thereof as provided in paragraph (d) of this section, of the receipt of an appeal, the Farm Credit System Insurance Corporation shall act upon the appeal and place a notice of the determination thereof in writing in the mail addressed to the requester. If the determination on the appeal upholds in whole or in part the denial of the request for records, or, if a determination on the appeal has not been mailed at the end of the 20-day period or the last extension thereof, the requester is deemed to have exhausted that person's administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When a determination cannot be mailed within the applicable time limit, the appeal will nevertheless be processed. In such case, upon the expiration of the time limit, the requester will be informed of the reason for the delay, of the date on which a determination may be expected to be mailed, and of that person's right to seek judicial review. The requester may be asked to forego judicial review until determination of the appeal.

(d) In unusual circumstances as specified in this paragraph the 10-day time limit prescribed in paragraph (a) of this section or the 20-day time limit prescribed in paragraph (c) of this section, or both, may be extended provided that the total of all extensions shall not exceed 10 days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be made by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be mailed. As used in this paragraph, *unusual circumstances* means, but only to the extent necessary to the proper processing of the request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Farm Credit System Insurance Corporation having substantial subject-matter interest therein.

**§ 1402.15 Business information.**

(a) Business information provided to the Farm Credit System Insurance Corporation by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. The requirements of this section shall not apply if:

(1) The Farm Credit System Insurance Corporation determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(b) For the purpose of this section, the following definitions shall apply.

(1) *Business information* means trade secrets or other commercial or financial information.

(2) *Business submitter* means any person or entity which provides business information to the government.

(3) *Requester* means the person or entity making the Freedom of Information Act request.

(c)(1) The Freedom of Information Officer shall, to the extent permitted by law, provide a business submitter with prompt written notice of a request encompassing its business information whenever required under paragraph (d) of this section. Such notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(2) Whenever the Freedom of Information Officer provides a business submitter with the notice set forth in paragraph (c)(1) of this section, the Freedom of Information Officer shall notify the requester that the request includes information that may arguably be exempt from disclosure under 5 U.S.C. 552(b)(4) and that the person or entity who submitted the information to the Farm Credit System Insurance Corporation has been given the opportunity to comment on the proposed disclosure of information.

(d)(1) The Farm Credit System Insurance Corporation shall provide a business submitter with notice of a request whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information; or

(ii) The Farm Credit System Insurance Corporation has reason to believe that the disclosure of the information may result in commercial or financial injury to the business submitter.

(2) Notice of a request for business information falling within paragraph (d)(1)(i) of this section shall be required for a period of not more than 10 years after the date of submission unless the business submitter requests and provides acceptable justification for a specific notice period of greater duration.

(3) Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business submitter that the information in question is in fact a trade secret or commercial or financial information that is privileged or confidential.

(e) Through the notice described in paragraph (c) of this section, the Farm Credit System Insurance Corporation shall, to the extent permitted by law, afford a business submitter a reasonable period within which it can provide the Farm Credit System Insurance Corporation with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of the exemption provided by 5 U.S.C. 552(b)(4), shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(f)(1) The Farm Credit System Insurance Corporation shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the Farm Credit System Insurance Corporation decides to disclose business information over the objection of a business submitter, the Freedom of Information Officer shall forward to the business submitter a written notice which shall include:

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) The notice of intent to disclose required by this paragraph shall be sent, to the extent permitted by law, within a reasonable number of days prior to the specified date upon which disclosure is intended.

(3) The Freedom of Information Officer shall send a copy of such disclosure notice to the requester at the

same time the notice is sent to the business submitter.

(g) Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (d) of this section, the Farm Credit System Insurance Corporation shall promptly notify the business submitter of such action.

## Subpart C—Fees for Provision of Information

### § 1402.20 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) *Commercial use request* means a request for information that is from or on behalf of an individual or entity seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or on whose behalf the request is being made. To determine whether a request is properly classified as a commercial use request, the Farm Credit System Insurance Corporation shall determine the purpose for which the documents requested will be used. If the Farm Credit System Insurance Corporation has reasonable cause to doubt the purpose specified in the request, for which a requester will use the records sought, or where the purpose is not clear from the request itself, the Farm Credit System Insurance Corporation shall seek additional clarification before assigning the request to a specified category.

(b) *Direct costs* means those expenditures the Farm Credit System Insurance Corporation actually incurs in searching for and reproducing documents to respond to a request for information. In the case of a commercial use request, the term also means those expenditures the Farm Credit System Insurance Corporation actually incurs in reviewing documents to respond to the request. The direct cost shall include the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating reproduction equipment. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(c) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education that operates a program or programs of scholarly research.

(d) *Noncommercial scientific institution* refers to an institution that is not operated on a commercial, trade, or profit basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(e) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunication services), such alternative media would be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by the organization. A publication contract would be the clearest proof that a journalist is working for a news organization, but the Farm Credit System Insurance Corporation may look to a requester's past publication record to determine whether a journalist is working for a news organization.

(f) *Reproduce* and *reproduction* mean the process of making a copy of a document necessary to respond to a request for information. Such copies take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(g) *Review* means the process of examining documents located in response to a request for information to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure (e.g., doing all that is necessary to prepare the documents for release). The term review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. The Farm Credit System Insurance Corporation shall only charge fees for reviewing documents in response to a commercial use request.

(h) *Search* includes all time spent looking for material that is responsive to a request for information, including page-by-page or line-by-line identification of material within documents. Searching for material shall be done in the most efficient and least expensive manner so as to minimize the costs of the Farm Credit System Insurance Corporation and the requester. For example, a line-by-line search for responsive material should not be performed when merely reproducing an entire document would be the less expensive and the faster method of complying with a request for information. Searches may be done manually or by computer using existing programming. A "search" for material that is responsive to a request should be distinguished from a "review" of material to determine whether the material is exempt from disclosure.

### § 1402.21 Categories of requesters—fees.

There are four categories of requesters: Commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters.

(a) The Farm Credit System Insurance Corporation shall charge fees for records requested by or on behalf of educational institutions and noncommercial scientific institutions in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a noncommercial scientific institution).

(b) The Farm Credit System Insurance Corporation shall charge fees for records requested by representatives of the news media in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, the requester must qualify as a representative of the news media and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(c) The Farm Credit System Insurance Corporation shall charge fees for records requested by persons or entities making a commercial use request in an amount that equals the full direct costs for searching for, reviewing for release, and reproducing the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents. In accordance with § 1402.26, commercial use requesters may be charged the costs of searching for and reviewing records even if there is ultimately no disclosure of records.

(d) The Farm Credit System Insurance Corporation shall charge fees for records requested by persons or entities that are not classified in any of the categories listed in paragraphs (a), (b), or (c) of this section in an amount that equals the full reasonable direct cost of searching for and reproducing records that are responsive to the request, excluding the first 2 hours of search time and the cost of reproducing the first 100 pages of records. In accordance with § 1402.26, requesters in this category may be charged the cost of searching for records even if there is ultimately no disclosure of records, excluding the first 2 hours of search time.

(e) For purposes of the exceptions contained in this section on assessment of fees, the word *pages* refers to paper copies of "8½ × 11" or "11 × 14." Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or a computer disk containing the equivalent of 100 pages of computer printout meets the terms of the exception.

(f) For purposes of paragraph (d) of this section, the term *search time* has as its basis, manual search. To apply this term to searches made by computer, the Farm Credit System Insurance Corporation will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent of that rate. When the cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of 2 hours of the salary of the person performing the search, i.e., the operator, the Farm Credit System Insurance Corporation will begin assessing charges for computer search.

**§ 1402.22 Fees to be charged.**

(a) Generally, the fees charged for requests for records shall cover the full allowable direct costs of searching for, reproducing, and reviewing documents that are responsive to a request for information.

(b) Manual searches for records will be charged at the salary rate(s) (i.e., basic pay plus 16 percent of that rate) of the employee(s) making the search.

(c) Computer searches for records will be charged at the actual direct cost of providing the service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records and the operator/programmer salary apportionable to the search. A charge shall also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon the prevailing levels of costs to the Farm Credit System Insurance Corporation for the type and amount of such supplies of materials that are used. Nothing in this paragraph shall be construed to entitle any person or entity, as a right, to any services in connection with computerized records, other than services to which such person or entity may be entitled under the provisions of this subpart.

(d) Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time the Farm Credit System Insurance Corporation analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

(e) Records will be reproduced at a rate of $.15 per page. For copies prepared by computer, such as tapes or printouts, the requester shall be charged the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction, the actual direct costs of producing the document(s) shall be charged.

(f) The Farm Credit System Insurance Corporation will recover the full costs of providing services such as those enumerated below when it elects to provide them:

(1) Certifying that records are true copies; or

(2) Sending records by special methods such as express mail.

(g) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Farm Credit System Insurance Corporation.

(h) A receipt for fees paid will be given upon request.

**§ 1402.23 Waiver or reduction of fees.**

(a) The Farm Credit System Insurance Corporation may grant a waiver or reduction of fees if the Farm Credit System Insurance Corporation determines that the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and the disclosure of the information is not primarily in the commercial interest of the requester.

(b) The Farm Credit System Insurance Corporation will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs of receiving and recording a requester's remittance and processing the fee.

**§ 1402.24 Advance payments—notice.**

(a) Where it is anticipated that the fees chargeable will amount to more than $25 and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof that can be readily estimated.

(b) If the anticipated fees exceed $250 and if the requester has a history of promptly paying fees charged in connection with information requests, the Farm Credit System Insurance Corporation may obtain satisfactory assurances that the requester will fully pay the fees anticipated.

(c) If the anticipated fees exceed $250 and if the requester has no history of paying fees charged in connection with information requests, the Farm Credit System Insurance Corporation may require an advance payment of fees in an amount up to the full amount anticipated.

(d) If the requester has previously failed to pay a fee charged within 30 days of the date of a billing for fees charged in connection with information requests, the Farm Credit System Insurance Corporation may require the requester to pay the fees owed, plus interest, or demonstrate that the full amount owed has been paid, and require the requester to make an advance payment of the full amount of the fees anticipated before processing a

new request or a pending request from that requester.

(e) The notice of the amount of an anticipated fee or a request for an advance deposit shall include an offer to the requester to confer with identified Farm Credit System Insurance Corporation personnel to attempt to reformulate the request in a manner which will meet the needs of the requester at a lower cost.

**§ 1402.25 Interest.**

The Farm Credit System Insurance Corporation may begin charging interest on unpaid fees, starting on the 31st day following the day on which the bill for such fees was sent. Interest will not accrue if payment of the fees has been received by the Farm Credit System Insurance Corporation, even if said payment has not been processed. Interest will accrue at the rate prescribed in section 3717 of title 31, United States Code, and will accrue from the day on which the bill for such fees was sent.

**§ 1402.26 Charges for unsuccessful searches or reviews.**

The Farm Credit System Insurance Corporation may assess charges for time spent searching for records on behalf of requesters in the categories provided for in § 1402.21 (c) and (d), even if there are no records that are responsive to the request or there is ultimately no disclosure of records. The Farm Credit System Insurance Corporation may assess charges for time spent reviewing records for requesters in the category provided for in § 1402.21(c) even if the records located are determined to be exempt from disclosure.

**§ 1402.27 Aggregating requests.**

A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Farm Credit System Insurance Corporation reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Farm Credit System Insurance Corporation may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

Dated: May 3, 1994.

**Nan P. Mitchem,**

*Acting Secretary to the Board, Farm Credit System Insurance Corporation.*

[FR Doc. 94–11443 Filed 5–11–94; 8:45 am]

BILLING CODE 6710–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 74

**[Docket No. 92C–0292]**

### Listing of Color Additives Subject to Certification; FD&C Red No. 40; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of March 19, 1994, of the final rule that appeared in the Federal Register of February 16, 1994 (59 FR 7635; corrected February 22, 1994 (59 FR 8507)), and amended the color additive regulations to provide for the safe use of FD&C Red No. 40 and FD&C Red No. 40 Aluminum Lake for coloring drugs and cosmetics intended for use in the area of the eye.

**DATES:** Effective date confirmed: March 19, 1994.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–254–9519.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of February 16, 1994 (59 FR 7635; corrected February 22, 1994 (59 FR 8507)), FDA amended 21 CFR 74.1340 and 21 CFR 74.2340 to provide for the use of FD&C Red No. 40 and FD&C Red No. 40 Aluminum Lake for coloring drugs and cosmetics intended for use in the area of the eye.

FDA gave interested persons until March 18, 1994, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA concludes that the final rule published in the **Federal Register** of February 16, 1994, should be confirmed as corrected on February 22, 1994.

**List of Subjects in 21 CFR Part 74**

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the February 16, 1994, final rule. Accordingly, the amendments promulgated thereby became effective March 19, 1994.

Dated: May 4, 1994.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 94–11593 Filed 5–11–94; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### 31 CFR Part 565

### Panamanian Transactions Regulations; Resolution of Claims from Blocked Government of Panama Assets

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule; amendment.

**SUMMARY:** The Office of Foreign Assets Control is amending the Panamanian Transactions Regulations to include a statement of licensing policy indicating that specific licenses may be issued authorizing the release of blocked Government of Panama funds at the request of that government to satisfy settlements, final judgments and arbitral awards with respect to claims of U.S. persons arising prior to April 5, 1990. The Office of Foreign Assets Control will also accept license applications with respect to such claims from U.S. persons seeking judicial orders of attachment against blocked Government of Panama assets in satisfaction of final judgments entered against the Government of Panama provided such applications are submitted no later than June 15, 1994.

**EFFECTIVE DATE:** May 9, 1994.

**FOR FURTHER INFORMATION CONTACT:** Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability**

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the

Federal Register. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

**Background**

Executive Order 12710 of April 5, 1990, 3 CFR, 1990 Comp., p. 282, terminated the national emergency declared on April 8, 1988, with respect to Panama, and lifted sanctions imposed against the Noriega regime. Pursuant to section 207(a)(2) of the International Emergency Economic Powers Act, 50 U.S.C. 1706(a)(2), however, the order continued the blocking of certain Government of Panama assets in the United States, with the understanding of the Government of Panama, to facilitate resolution of claims of U.S. persons.

To foster the resolution of U.S. persons' claims against the Government of Panama arising prior to the April 5, 1990 lifting date, the Office of Foreign Assets Control, Department of the Treasury ("FAC"), is amending the Panamanian Transactions Regulations, 31 CFR part 565 (the "Regulations") to include a statement of licensing policy announcing that the release of blocked Government of Panama assets may be licensed at the request of that government to satisfy settlements, final judgments and arbitral awards in favor of U.S. persons, where the claims arose prior to April 5, 1990. In addition, FAC will accept license applications from U.S. persons seeking judicial orders of attachment against blocked Government of Panama assets in satisfaction of final judgments entered in favor of the applicants with respect to such claims against the Government of Panama, provided such applications are submitted no later that June 15, 1994. The term "Government of Panama" for these purposes is defined in § 565.303 of the Regulations, including appendix A to part 565.

Note: Procedures for specific license applications are set forth in § 565.801 of the Regulations. Unlicensed transfers of blocked Government of Panama assets, including transfers pursuant to judicial order, are prohibited and are null and void as provided in §§ 565.201 and 565.204. Violations of this part are punishable by criminal and civil penalties as provided in §§ 565.701 through 565.705.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

**List of Subjects in 31 CFR Part 565**

Panama, Blocking of assets, Foreign claims, Penalties, Reporting and recordkeeping requirements, Transfer of assets.

For the reasons set forth in the preamble, 31 CFR part 565 is amended as follows:

## PART 565—PANAMANIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 565 is revised to read as follows:

Authority: 50 U.S.C. 1701–1706, E.O. 12635, 3 CFR, 1988 Comp., p. 563; E.O. 12710, 3 CFR, 1990 Comp., p. 282.

### Subpart E——Licenses, Authorizations and Statements of Licensing Policy

2. Section 565.512 is added to subpart E to read as follows:

**§ 565.512 Licensing policy with respect to blocked Government of Panama Assets.**

(a) Licenses may be issued on a case-by-case basis authorizing the release of blocked Government of Panama assets at the request of that government to satisfy settlements, final judgments and arbitral awards with respect to claims of U.S. persons arising prior to April 5, 1990.

(b) Licenses may be issued on a case-by-case basis authorizing U.S. persons to seek judicial orders of attachment against blocked Government of Panama assets in satisfaction of final judgments entered in favor of the applicants with respect to claims arising prior to April 5, 1990 against the Government of Panama. The term "Government of Panama" for these purposes is defined in § 565.303, including appendix A to this part.

(1) Applications pursuant to paragraph (b) of this section must be submitted to the Licensing Division of the Office of Foreign Assets Control not later than June 15, 1994, and must include a certified copy of the final judgment and evidence that the claim on which the judgment was entered arose against the Government of Panama prior to April 5, 1990.

(2) If the licensed proceedings result in a final judicial order of attachment against the blocked assets, a certified copy of that order must be submitted to the Licensing Division of the Office of Foreign Assets Control. Specific licenses may be issued on the basis of such orders authorizing release of blocked Government of Panama funds deemed in the attachment order to be subject to attachment to satisfy the applicant's final judgment.

Dated: April 22, 1994.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

Approved: April 28, 1994.

**John P. Simpson,**

*Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 94–11577 Filed 5–9–94; 3:55 pm]

BILLING CODE 4810–25–F

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[KS–3–1–6332; FRL–4882–4]

### Approval and Promulgation of Implementation Plans; State of Kansas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action approves the State Implementation Plan (SIP) revision submitted by the state of Kansas for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBAP). The revision was submitted by the state to satisfy the Federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA.

**DATES:** This final rule will be effective July 11, 1994 unless notice is received by June 13, 1994 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Kansas Department of Health and Environment (KDHE), Bureau of Air and Radiation, Forbes Field, Building 283, Topeka, Kansas 66620–0001.

**FOR FURTHER INFORMATION CONTACT:** Wayne A. Kaiser at (913) 551–7603.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Implementation of the provisions of the CAA, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards and reduce the emission of air toxics. Small businesses frequently lack the technical expertise

and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBAP), and submit this program as a revision to the federally approved SIP. In addition, the CAA directs EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing an SBAP are set out in section 507 of title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and state roles in meeting the new statutory provisions, and as a tool to provide further guidance to the states on submitting acceptable SIP revisions.

The state of Kansas has submitted an SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the state submittal must provide for each of the following program elements: (1) The establishment of an SBAP to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

## II. Analysis

### *1. Small Business Assistance Program*

Section 507(a) sets forth six requirements (a seventh requirement, establishment of an Ombudsman office, is discussed in the next section) that the state must meet to have an approvable SBAP. Specifically, these elements are: (1) Developing, collecting, and coordinating information exchange on compliance methods and control technologies; (2) providing assistance to small business stationary sources with pollution prevention and accidental release prevention and detection; (3) providing assistance for determining applicable requirements under the Act and permit issuance; (4) determining adequate mechanisms for notifying small business stationary sources of their right under the Act on a timely basis; (5) determining adequate mechanisms for informing small business stationary sources of their obligations under the Act, including a program for referring sources to qualified auditors, or for the state to provide for such audits to determine compliance with this Act; and (6) procedures for considering requests from small business stationary sources for modifications of work practices, or technological methods of compliance or compliance procedures. The SBAP services will be provided by a consortium of three state universities: the University of Kansas' Center for Environmental Education and Training within the Division of Continuing Education; Kansas State University's Industrial Extension Service, a program of the College of Engineering and the Cooperative Extension Service; and Wichita State University's Center for Technology Application. The SBAP will provide information and/or compliance and technical assistance relevant to each of the six elements above. Additional information concerning individual responsibilities of the consortium members is contained in the technical support document, which is part of the docket for this rulemaking and which is available from the EPA office listed above. The SBAP has been operational since October 1, 1993. The SBAP consortium's contract with KDHE will be renewed yearly.

### *2. Ombudsman*

Section 507(a)(3) requires the designation of a state office to serve as the Ombudsman for small business stationary sources. The Ombudsman position has been designated in the Office of Science and Support of the KDHE. This position was filled on November 18, 1993. The Ombudsman will have direct access to the Secretary (program manager) of the KDHE, to the director of the Division of the Environment of the KDHE, the manager of the air pollution control program, and other state agencies as necessary to perform the functions of its office independently of the air pollution regulatory and enforcement programs.

### *3. Compliance Advisory Panel (CAP)*

Section 507(e) requires the state to establish a CAP that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the state legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The state has met this requirement. All members of the CAP have been appointed in accordance with the provisions of section 507(e). The CAP held its initial meeting on December 9, 1993.

In addition to establishing the minimum membership of the CAP, the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered, and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act; (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The state has met these requirements by committing the CAP to perform these functions.

Legislative authority for the SBAP, CAP, and ombudsman was obtained during the 1993 legislative session and is contained in the Kansas Air Quality Act, Section 15. All three programs are funded by air emissions fees, authority for which is contained in section 8 of the Kansas Air Quality Act.

### *4. Two Additional Provisions Which the State Submittal Must Address Include Source Eligibility and Fee Reduction Authority*

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(a) Is owned or operated by a person who employs 100 or fewer individuals,

(b) Is a small business concern as defined in the Small Business Act;

(c) Is not a major stationary source;

(d) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(e) Emits less than 75 tpy of all regulated pollutants.

Section 507(c) allows states, after notice and opportunity for public comment, to extend the definition of eligible source to include small business stationary sources which do not meet the criteria of subparagraphs (3), (4), or (5) of section 507(c), but do not emit more than 100 tpy of all regulated pollutants.

The state submittal specifies that upon petition by a source, the Secretary, after notice and opportunity for public comment, may include as a small business stationary source, any source which does not meet the criteria of subparagraphs (3), (4), or (5) of section 507(c), but which does not emit more than 100 tpy of all regulated pollutants. This conforms to the requirements of section 507(c) and is acceptable.

Also, the state submittal provides that the Secretary may exclude from the

small business stationary source definition any category or subcategory of sources that the Administrator of EPA determines to have sufficient technical and financial capabilities to meet the requirements of the Act without the application of this program, as provided by section 507 (c)(3)(A) of the Act.

The Secretary, in consultation with the Administrator of EPA and the Small Business Administration, and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition under this section, any category or subcategory of sources that the Secretary determines to have sufficient technical and financial capabilities to meet the requirements of the Act without the application of this subsection.

Section 507(b) allows states flexibility to reduce permit fees to take into account the financial resources of small business.

Under state statute, the Secretary may reduce any fee required by the Act for any classification of small business source to take into account the financial resources of such classification.

**Summary**

The state has submitted an SIP revision implementing or committing to implement each of the required SBAP elements required by section 507 of the CAA. The KDHE has contracted with a consortium of state universities to implement the small business stationary source technical and environmental compliance assistance program. The Ombudsman position has been established within the KDHE and the position has been filled. The CAP has been appointed and has met. The state submittal meets in full the requirements of section 507 of the Act.

**EPA Action**

EPA is approving the SIP revision submitted by the state of Kansas. The state has submitted an SIP revision implementing each of the required program elements required by section 507 of the Act.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective July 11, 1994 unless, by June 13, 1994, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent documents. One document will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective July 11, 1994.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Office of Air and Radiation. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal/state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* vs. *U.S. E.P.A.*, 427 U.S. 246, 255–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air Pollution Control, Incorporation by reference, Small business assistance program.

Dated: April 28, 1994.

**William Rice,**

*Acting Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart R—Kansas

2. Section 52.870 is amended by adding paragraph (c)(28) to read as follows:

**§ 52.870 Identification of plan.**

* * * * *

(c) * * *

(28) A plan for implementation of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program was submitted by the Kansas Department of Health and Environment as a revision to the Kansas State Implementation Plan (SIP) on January 25, 1994.

(i) Incorporation by reference.

(A) Kansas SIP, Small Business Stationary Source Technical and Environmental Compliance Assistance Program, dated November 15, 1993.

[FR Doc. 94–11469 Filed 5–11–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[MO 15–1–6333; FRL–4883–2]

## Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this revision to the Missouri State Implementation Plan (SIP) is to include the lead nonattainment areas into the existing new source review (NSR) program. This revision changes the applicability requirements by changing the definition of nonattainment area in the state regulations to include lead nonattainment areas, and to delete the Kansas City area as a nonattainment area in light of its attainment of the ozone standard.

In this document EPA takes final action on a limited approval, because Missouri has not yet submitted to EPA augmented new source permit rules which meet the amended requirements of part D of title I of the Clean Air Act.

EFFECTIVE DATE: This final rule will become effective on June 13, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; the Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101; and the EPA Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Lambrechts at (913) 551–7846.

SUPPLEMENTARY INFORMATION: On February 4, 1994, EPA proposed a rulemaking to approve the three Missouri lead nonattainment areas into the existing Missouri NSR program. The objective of this final rulemaking is to approve the three Missouri lead nonattainment areas into the existing NSR program in Missouri. This SIP revision contains the amendments to the SIP defining three areas in Missouri as nonattainment for lead. This SIP revision is also being accorded limited approval because it does not meet all of the applicable requirements of the Act.[1] As of April 6, 1994, Missouri submitted NSR provisions intended to address the limited approval, and EPA is currently reviewing this latest submittal. The limited approval strengthens the existing SIP as representing an improvement over what is currently in the SIP, and as meeting some of the applicable requirements of the Act. In particular, the amendment means that Missouri's NSR requirements, which meet all of the provisions of the preamended Act, apply to new and modified sources of lead in the nonattainment areas.

In 1978, when EPA promulgated the lead National Ambient Air Quality Standard, it was not authorized to designate areas nonattainment, attainment, or unclassifiable for lead. Under the Clean Air Act Amendments of 1990, EPA was authorized to require states to designate areas as nonattainment, attainment, or unclassifiable for lead. On November 6, 1991, at 56 FR 56694, EPA designated the following areas as nonattainment for lead: the city of Herculaneum in Jefferson County; and the Dent, Liberty and Arcadia townships in Iron County. No comments were received in response to the proposal. For a complete discussion of the state submittal, the reader is directed to the proposed **Federal Register** document at 59 FR 5370.

### EPA Action

In this document, EPA takes final action on the rulemaking to provide limited approval of the incorporation of three Missouri lead nonattainment areas into the existing NSR program in Missouri.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Office of Air and Radiation. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal/state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Lead.

[1] EPA may grant such a limited approval under section 110(k)(3) of the Act, in light of the general authority delegated to EPA under section 301(a) of the Act to take actions necessary to carry out the purposes of the Act.

Dated: April 25, 1994.

**Willaim A. Spratlin,**

*Acting Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

### Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(83) to read as follows:

**§ 52.1320 Identification of plan.**

* * * * *

(c) * * *

(83) A revision to the Missouri State Implementation Plan (SIP) to incorporate the lead nonattainment areas into the existing new source review (NSR) program was submitted by the state on March 15, 1993. This revision changes the applicability requirements by changing the definition of nonattainment area in the state regulations to include lead nonattainment areas, and to delete the Kansas City area as a nonattainment area in light of its attainment of the ozone standard.

(i) Incorporation by reference.

(A) Revision to rule 10 C.S.R. 10–6.020, definitions, effective February 26, 1993.

[FR Doc. 94–11470 Filed 5–11–94; 8:45 am]

BILLING CODE 6560–50–F

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## 43 CFR Public Land Order 7046

**[AK–932–4210–06; AA–56429]**

## Partial Revocation of Executive Order No. 1919½, Dated February 14, 1921, as Amended, and Revocation of Public Land Order No. 219, as Amended; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes and Executive Order and a public land order, both as amended, insofar as they affect approximately 5,728 acres of National Forest System and public land withdrawn for townsite purposes at Passage Canal (Portage Bay), Alaska. The land is no longer needed for the purpose for which it was withdrawn. This action also opens the land for selection by the State of Alaska, if such land is otherwise available, Any land described herein that is not conveyed to, or selected by the State, will be subject to the terms and conditions of the National Forest reservation on any other withdrawal of record.

**EFFECTIVE DATE:** May 12, 1994.

**FOR FURTHER INFORMATION CONTACT:** Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order No. 1919½ (Alaska Townsite Withdrawal No. 1), dated February 14, 1921, and Public Land Order No. 219, both as amended, which withdrew land at Passage Canal (Portage Bay) for townsite purposes, are hereby revoked insofar as they affect the following described land:

**Seward Meridian**

A parcel of land located within secs. 10 to 15, inclusive, and secs. 22 to 27, inclusive, of T. 8 N., R. 4 E., and secs. 19, 20, 29, and 30, of T. 8 N., R. 5 E., more particularly described as:

Beginning at a point from which the highest point of the most northerly knob, about 50 feet high, on the well-defined glaciated spur between Passage Canal and Portage Glacier, about 1¼ miles southwest of Passage Canal, bears west one-quarter mile.

From the point of beginning, South, 40 chains, to a point approximate latitude 60°45′45″ N., and longitude 148°45′ W.; East, 300 chains; North, 140 chains; West, 80 chains; North, 100 chains; West, 220 chains; South, 200 chains, to the place of beginning.

The area described aggregates 6,400 acres, including land and water surface.

Portions of the area described above have been conveyed out of Federal ownership; therefore, the area affected by this order contains approximately 5, 728 acres of National Forest System lands and public land.

2. Subject to valid and existing rights, the land described above, if such land is otherwise available, is hereby opened for selection by the State of Alaska under the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988).

3. The State of Alaska applications for selection made under section 6(a) of the Alaska Statehood Act of July 7, 1958, and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e)(1988), become effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Any of that land not conveyed to the State will be subject to the terms and conditions of the Chugach National Forest reservation or any other withdrawal of record.

4. At 10 a.m. on June 13, 1994, that land not selected by the State under the provisions of the Statehood Act will be opened to such forms of disposition as may be law be made of National Forest System land, including location and entry under the United States mining laws. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right to possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. A portion of the area affected by this order is public land, and has been and will remain subject to overlapping Public Land Order Nos. 396, 587, 2667, or 2791, and the terms and conditions of those Public Land Orders remain otherwise unchanged by this order.

Dated: April 22, 1994.

**Bob Armstrong,**

*Secretary of the Interior.*

[FR Doc. 94–11563 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–JA–M

## 43 CFR Public Land Order 7047

**[AK–932–4210–06; AA–3393]**

## Partial Revocation of Public Land Order No. 4825; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes a Public Land Order insofar as it affects approximately 126 acres of National Forest System lands withdrawn for use by the Forest Service, Department of Agriculture, for the Harriet Hunt and White River Recreation Areas. The lands are no longer needed for the purpose for which they were withdrawn. This action will open the lands to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws.

**EFFECTIVE DATE:** May 12, 1994.

**FOR FURTHER INFORMATION CONTACT:**

Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 4825, which withdrew National Forest System lands for public recreation areas, is hereby revoked insofar as it affects the following described lands:

**Copper River Meridian**

*Tongass National Forest*

Harriet Hunt Recreation Area

Beginning at the witness corner to the meander corner of Secs. 3 and 34, Tps. 73 and 74 S., R. 91 E. (partially surveyed), proceed East 13.5 chains to corner No. 1, the true point of beginning;
Thence North 20 chains to corner No. 2;
Thence West 40 chains to corner No. 3;
Thence North 13 chains to corner No. 4;
Thence East 55 chains to corner No. 5;
Thence South 33 chains to corner No. 6;
Thence West 15 chains to corner No. 1, the true point of beginning.

The area described contains approximately 121 acres.

White River Recreation Area

Beginning at the quarter section corner of Secs. 15 and 16, Tp. 74 S., R. 91 E. (partially surveyed), proceed North 28 chains to corner No. 1, the true point of beginning;
Thence North 11 chains to corner No. 2, a point common to Secs. 9, 10, 15, and 16;
Thence East 11 chains along the section line common to Secs. 10 and 15 to corner No. 3;
Thence S. 46°3′ W. 15.56 chains more or less back to corner No. 1, the true point of beginning.

The area described contains approximately 5 acres.

The total areas affected by this order aggregate approximately 126 acres.

2. At 10 a.m. on June 13, 1994, the lands will be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 22, 1994.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 94–11564 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–JA–M

## 43 CFR Public Land Order 7048

[AK–932–4210–06; AA–17986]

## Partial Revocation of Executive Order No. 3406 Dated February 13, 1921; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes an Executive order insofar as it affects approximately 48.85 acres of National Forest System land withdrawn for use by the Coast Guard, Department of Transportation, for the Gravina Point Lighthouse. The land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State is opened and will be subject to the terms and conditions of the national forest reservation and any other withdrawal of record.

**EFFECTIVE DATE:** May 12, 1994.

**FOR FURTHER INFORMATION CONTACT:** Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order No. 3406 dated February 13, 1921, which withdrew National Forest System land for lighthouse purposes, is hereby revoked insofar as it affects the following described land:

**Copper River Meridian**

*Chugach National Forest*

Land within T. 24 S., R. 6 W., described as Track A of U.S. Survey No. 1618, excluding the following parcel:

All that part of the point lying within a radius of 300 feet from the light. (Approximate latitude 60° 37.4′ north, longitude 146° 15.1′ west.) This parcel contains approximately 3 acres.

The area described, less exclusion, contains approximately 48.85 acres.

2. The State of Alaska application for selection made under Section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State is opened and will be subject to the terms and conditions of the Chugach National Forest reservation, and any other withdrawal of record.

Dated: April 22, 1994.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 94–11565 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–JA–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

[Docket No. FEMA–7596]

## List of Communities Eligible for the Sale of Flood Insurance

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

**EFFECTIVE DATES:** The dates listed in the third column of the table.

**ADDRESSES:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Shea, Division Director, Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase

flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

**Regulatory Classification**

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Paperwork Reduction Act**

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 64.6 [Amended]**

2. The tables published under the authority of § 64.6 are amended as follows:

| State/location | Community No. | Effective date of authorization/cancellation of sale of flood insurance in community | Current effective map date |
|---|---|---|---|
| New Eligibles—Emergency Program: | | | |
| Iowa: Mahaska County, unincorporated areas | 190888 | Mar. 5, 1994 | 6–7–77 |
| North Carolina: Clay County, unincorporated areas | 370063 | Mar. 9, 1994 | 7–17–81 |
| Washington: Burien, city of, King County | 530321 | .....do | ..... |
| Texas: Wilbarger County, unincorporated areas | 481190 | Mar. 14, 1994 | ..... |
| Iowa: Somers, city of, Calhoun County | 190344 | Mar. 11, 1994 | 10–29–76 |
| Michigan: Robinson, township of, Ottawa County | 260913 | Mar. 18, 1994 | ..... |
| Missouri: Galena, city of, Stone County | 290431 | Mar. 22, 1994 | 10–31–75 |
| Iowa: | | | |
| Linn Grove, city of, Buena Vista County | 190032 | Apr. 20, 1994 | 3–5–76 |
| Martensdale, city of, Warren County | 190524 | Apr. 28, 1994 | 4–16–76 |
| Florida: Micanopy, town of, Alachua County | 120344 | Apr. 27, 1994 | 4–16–76 |
| Michigan: Hersey, township of, Osceola County | 260914 | .....do | ..... |
| New Eligible—Regular Program: | | | |
| Texas: Socorro,[1] city of, El Paso County | 481658 | Mar. 14, 1994 | ..... |
| Arkansas: Lonoke County, unincorporated areas | 050448 | .....do | 11–17–82 |
| Florida: High Springs,[2] city of, Alachua County | 120669 | Mar. 24, 1994 | ..... |
| Indiana: North Webster, town of, Kosciusko County | 180465 | .....do | 2–4–87 |
| Arizona: Guadalupe, town of, Maricopa County | 040111 | Apr. 1, 1994 | 12–3–93 |
| Minnesota: Brownton, city of, McLeod County | 270262 | Apr. 5, 1994 | 8–18–92 |
| North Carolina: Stallings,[3] town of, Union County | 370472 | .....do | ..... |
| South Dakota: | | | |
| Columbia, city of, Brown County | 460008 | Apr. 7, 1994 | 8–15–94 |
| Day County, unincorporated areas | 460261 | Apr. 15, 1994 | ..... |
| Reinstatements—Regular Program: | | | |
| Pennsylvania: Springfield, township of, Delaware County | 420434 | Nov. 26, 1971 Emerg. Jan. 19, 1978 Reg .. Dec. 3, 1993 Susp .. Mar. 4, 1994 Reg .... | 9–30–93 |

| State/location | Community No. | Effective date of authorization/cancellation of sale of flood insurance in community | Current effective map date |
|---|---|---|---|
| New Hampshire: Goshen, town of, Sullivan | 330157 | Aug. 20, 1975 Emerg.<br>Apr. 2, 1986 Reg .....<br>Apr. 2, 1986 Susp ...<br>Mar. 7, 1994 Rein ... | 4–2–86 |
| West Virginia: | | | |
| Ranson, city of, Jefferson County | 540068 | Apr. 2, 1975 Emerg .<br>Jun. 15, 1979 Reg ..<br>Jan. 20, 1993 Susp .<br>Mar. 15, 1994 Rein . | 1–20–93 |
| Leon, town of, Mason County | 540113 | Jul. 16, 1975 Emerg<br>Sep. 15, 1978 Reg ..<br>Nov. 18, 1992 Susp<br>Mar. 16, 1994 Rein . | 8–15–78 |
| Pennsylvania: | | | |
| Chester, city of, Delaware County | 420404 | December 10, 1971 Emerg.<br>Aug. 1, 1979 Reg ....<br>Dec. 3, 1993 Susp ..<br>Mar. 16, 1994 Rein . | 9–30–93 |
| Upper Oxford, township of, Chester County | 422278 | August 6, 1975 Emerg.<br>Feb. 25, 1983 Reg ..<br>Jul. 5, 1993 Susp ....<br>Mar. 18, 1994 Rein . | 2–25–83 |
| Ohio: Rome, village of, Adams County | 390003 | February 16, 1977 Emerg.<br>Oct. 18, 1983 Reg ...<br>Mar. 15, 1993 Susp<br>Mar. 18, 1994 Rein . | 10–18–83 |
| Virginia: Spotsylvania County, unincorporated areas | 510308 | February 25, 1977 Emerg.<br>Dec. 1, 1987 Reg ....<br>Dec. 1, 1987 Susp ..<br>Mar. 24, 1994 Rein . | 12–1–87 |
| Wisconsin: Wisconsin Rapids, city of, Wood County | 555587 | April 30, 1971 Emerg.<br>Sep. 14, 1973 Reg ..<br>Feb. 17, 1993 Susp<br>Mar. 24, 1994 Rein . | 12–17–93 |
| Maine: Minot, town of, Androscoggin County | 230008 | June 16, 1976 Emerg.<br>May 17, 1990 Reg ..<br>May 17, 1990 Susp .<br>Mar. 28, 1994 Rein . | 5–17–90 |
| West Virginia: Nicholas County, unincorporated areas | 540146 | June 30, 1976 Emerg.<br>Feb. 15, 1991 Susp<br>Apr. 5, 1991 [4] Rein .. | 11–6–91 |
| New York: | | | |
| Morristown, town of, St. Lawrence County | 360706 | July 30, 1980 Emerg<br>Aug. 6, 1982 Reg ....<br>Jan. 20, 1993 Susp .<br>Apr. 6, 1994 Rein .... | 8–6–82 |
| Clayville, village of, Oneida County | 360524 | June 12, 1984 Emerg.<br>Jun. 12, 1984 Reg ..<br>Nov. 4, 1992 Susp ..<br>Apr. 15, 1994 Rein .. | 7–5–83 |
| Schagticoke, village of, Rensselaer County | 361058 | December 27, 1979 Emerg.<br>Jun. 11, 1982 Reg ..<br>Nov. 4, 1992 Susp ..<br>Apr. 15, 1994 Rein .. | 6–5–85 |
| Willet, town of, Cortland County | 361331 | January 21, 1977 Emerg.<br>Jul. 20, 1984 Reg ....<br>Nov. 4, 1994 Susp ..<br>Apr. 15, 1994 Rein .. | |

| State/location | Community No. | Effective date of authorization/cancellation of sale of flood insurance in community | Current effective map date |
|---|---|---|---|
| Region I: | | | |
| New Jersey: Linden, city of, Union County | 340467 | March 2, 1994 Suspension Withdrawn. | 3–2–94 |
| Region III: | | | |
| Virginia: Williamsburg, city of | 510294 | .....do | 3–2–94 |
| Region VI: | | | |
| Texas: San Angelo, city of, Tom Green County | 480623 | .....do | 3–2–94 |
| Region IX: | | | |
| California: Kern County, unincorporated areas | 060075 | .....do | 3–2–94 |
| Region IV: | | | |
| Mississippi: Richland, city of, Rankin County | 280299 | March 15, 1994 Suspension Withdrawn. | 3–15–94 |
| Region VI: | | | |
| Louisiana: | | | |
| Monroe, City of, Ouachita Parish | 220136 | .....do | 3–15–94 |
| Ouachita Parish, unincorporated areas | 220135 | .....do | 3–15–94 |
| Richwood, town, Ouachita Parish | 220378 | .....do | 3–15–94 |

[1] The City of Socorro has adopted El Paso County's (480212) Flood Insurance Rate Map for floodplain management and insurance purposes (Panel 236 through 277).
[2] The City of High Springs has adopted Alachua County's Flood Insurance Rate Map for floodplain management and insurance purposes (Panel 80).
[3] The Town of Stallings has adopted Union County's Flood Insurance Map for flood insurance purposes.
[4] Initial Regular Program entry date.
Code for reading third column:
Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

**Richard T. Moore,**

*Associate Director for Mitigation.*

[FR Doc. 94–11553 Filed 5–11–94; 8:45 am]

BILLING CODE 6718–21–P

## 44 CFR Part 64

**[Docket No. FEMA–7595]**

## Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Shea, Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

**Regulatory Classification**

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Paperwork Reduction Act**

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 64.6 [Amended]**

2. The tables published under the authority of § 64.6 are amended as follows:

| State/location | Community No. | Effective date of authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|
| **Region II** | | | | |
| New Jersey: New Providence, borough of, Union County. | 345306 | July 16, 1971 Emerg.; November 23, 1973, Reg.; May 16, 1994, Susp. | 5–16–94 | May 16, 1994. |
| **Region III** | | | | |
| Pennsylvania: Wind Gap, borough of, Northampton County. | 420734 | November 14, 1975, Emerg.; May 19, 1981, Reg.; May 16, 1994, Susp. | 5–16–94 | Do. |
| **Region V** | | | | |
| Ohio: | | | | |
| Munroe Falls, city of, Summit County ..... | 390843 | October 26, 1988, Emerg.; May 16, 1994, Reg.; May 16, 1994, Susp. | 5–16–94 | Do. |
| Rock Creek, village of, Ashtabula County .. | 390665 | August 7, 1975, Emerg.; July 7,1978, Reg.; May 16, 1994, Emerg. | 5–16–94 | Do. |
| **Region VI** | | | | |
| Texas: Granbury, city of, Hood County ..... | 480357 | May 16, 1979, Emerg.; January 15, 1988, Reg.; May 16, 1994, Susp. | 5–16–94 | Do. |
| **Region I** | | | | |
| Massachusetts: Topsfield, town of, Essex County. | 250106 | September 26, 1975, Emerg.; June 4, 1980, Reg.; June 2, 1994, Susp. | 6–2–94 | June 2, 1994. |
| **Region III** | | | | |
| Maryland: Princess Anne, town of, Somerset County. | 240063 | January 28, 1974, Emerg.; April 20, 1979, Reg.; June 2, 1994, Susp. | 6–2–94 | Do. |
| Pennsylvania: Texas, township of, Wayne County. | 422176 | July 24, 1976, Emerg.; September 30, 1987, Reg.; September 30, 1987, Susp.; November 6, 1987, Rein.; June 2, 1994, Susp. | 6–2–94 | June 2, 1994. |
| **Region V** | | | | |
| Indiana: Hendricks County, unincorporated areas. | 180415 | March 17, 1975, Emerg.; March 16, 1981, Reg.; March 16, 1981, Susp. | 3–16–81 | Do. |
| Illinois: Jacksonville, city of, Morgan County ..... | 170516 | September 4, 1973, Emerg.; June 15, 1979, Reg.; June 2, 1994, Susp. | 6–2–94 | Do. |
| Michigan: | | | | |
| Baldwin, township of, Iosco County ..... | 260099 | April 9, 1973, Emerg.; February 1, 1988, Reg.; June 2, 1994, Susp. | 6–2–94 | Do. |
| East Tawas, city of, Iosco County ..... | 260100 | May 1, 1973, Emerg.; September 30, 1977, Reg.; June 2, 1994, Susp. | 6–2–94 | Do. |

| State/location | Community No. | Effective date of authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|
| Tawas City, city of, Iosco County | 260102 | July 23, 1973, Emerg.; February 15, 1978, Reg.; June 2, 1994, Susp. | 6–2–94 | Do. |
| Minnesota: | | | | |
| Afton, city of, Washington County | 275226 | March 19, 1971, Emerg.; April 21, 1972, Reg.; June 2, 1994, Susp. | 1–2–76 | Do. |
| Belle Plaine, city of, Scott County | 270429 | September 25, 1974, Emerg.; December 18, 1986, Reg.; June 2, 1994, Susp. | 12–18–86 | Do. |
| Browns Valley, city of, Traverse County | 270480 | April 30, 1974, Emerg.; June 17, 1986, Reg.; June 2, 1994, Susp. | 6–17–88 | Do. |
| Freeborn County, unincorporated areas | 270134 | April 16, 1974, Emerg.; May 3, 1982, Reg.; June 2, 1994, Susp. | 5–3–82 | Do. |
| Red Lake County, unincorporated areas | 270387 | April 5, 1974, Emerg.; July 2, 1987, Reg.; June 2, 1994, Susp. | 7–2–87 | Do. |
| St. Vincent, city of, Kittson County | 270232 | December 17, 1974, Emerg.; September 2, 1982, Reg.; June 2, 1994, Susp. | 9–2–82 | Do. |
| **Region VI** | | | | |
| Arkansas: Hardy, city of, Sharp County | 050330 | November 11, 1977, Emerg.; September 4, 1985, Reg.; June 2, 1994, Susp. | 6–2–94 | Do. |
| Louisiana: Concordia Parish, unincorporated areas. | 220053 | April 30, 1973, Emerg.; April 3, 1978, Reg.; June 2, 1994, Susp. | 6–2–94 | Do. |
| Texas: Denton County, unincorporated areas | 480774 | July 22, 1975, Emerg.; May 4, 1987, Reg.; June 2, 1994, Susp. | 6–2–94 | Do. |

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension; Rein.-Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: April 2, 1994.

**Richard T. Moore,**

*Associate Director for Mitigation.*

[FR Doc. 94–11552 Filed 5–11–94; 8:45 am]

BILLING CODE 6718–21–P

## DEPARTMENT OF THE INTERIOR

## U.S. Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AB74**

## Endangered and Threatened Wildlife and Plants; Final Rule To Establish Additional Manatee Protection Areas in Kings Bay, Crystal River, Florida

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes three additional permanent manatee (*Trichechus manatus*) sanctuaries and expands an existing sanctuary in Kings Bay, Crystal River, Florida. All waterborne activities will be prohibited in these sanctuaries from November 15 through March 31 of each year. This final action will prevent the taking of manatees by harassment resulting from waterborne activities during the winter months. The total number of sanctuaries in Kings Bay is increased from three (10.7 acres) to six (39.0 acres) to accommodate the growing number of manatees using the area each winter, and to offset the harassment from increasing public use. This action is taken under the authority of the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act of 1972.

**EFFECTIVE DATE:** June 13, 1994.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216.

**FOR FURTHER INFORMATION CONTACT:** Robert O. Turner at the above address, 904/232–2580; or Vance Eaddy, Senior Resident Agent, U.S. Fish and Wildlife Service, 9721 Executive Center Dr., Suite 206, St. Petersburg, Florida 33702, 813/893–3651.

**SUPPLEMENTARY INFORMATION:**

### Background

Crystal River is a short tidal river on the west coast of Florida. Forming the headwaters of Crystal River is Kings Bay, a lake-like body of water fed by many freshwater springs. These springs, because of their year-round temperature of over 74° F, provide an essential warm-water wintering area for West Indian manatees (*Trichechus manatus*), a federally listed endangered species.

During cold weather, many of the manatees wintering in Kings Bay congregate in an area known as the main spring or Kings Spring, located just south of Banana Island. This location is also a favorite site for skin and scuba divers, who come to Kings Bay for the clear, calm conditions favorable for learning diving techniques, coupled with the opportunity to "swim with the manatees". Diver use of this area is especially heavy during the cold winter months when diving is impractical through most of the northern states, and when the opportunity for manatee encounters is greatest.

The concurrent use of the main spring area by divers and manatees during cold weather creates a problem for manatees. Manatees are shy, harmless creatures that are easily driven away from warm springs by human activity (Buckingham 1990).

A limited number of manatees (about 15) used the springs in the 1970's prior to the establishment of the Banana Island Sanctuary. They seemed to tolerate and even enjoy some human contact. These "tame" manatees readily approached divers and allowed themselves to be petted and lightly scratched (Hartman 1979, Powell and Rathbun 1984). By 1980, the number of manatees wintering in the bay had increased to just over 100. This increase was greater than could be accounted for by reproduction, so it was apparent that some manatees were immigrating from other areas (Powell and Rathbun 1984). The number of manatees that chose to interact with the public increased only slightly.

Concern for the welfare of the manatees in Kings Bay increased, culminating in 1980 when the first manatee sanctuaries were established. The authority to establish manatee protection areas, either refuges or sanctuaries, is provided by the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act, and is codified at 50 CFR 17, Subpart J. Under Subpart J, the Director may establish, by regulation, manatee protection areas whenever he or she determines there is substantial evidence that there is imminent danger of a taking (including harassment) of one or more manatees, and that such establishment is necessary to prevent such a taking. This regulation allows the U.S. Fish and Wildlife Service to regulate activities in state waters to protect an endangered species.

In 1983 the Crystal River National Wildlife Refuge was created to protect manatees from any potential negative impacts of human activities. The refuge owns Banana Island, Warden Key and Buzzard Island in Kings Bay, a house on the eastern shore currently being used as the headquarters, and some other properties in the area.

Manatee use of Kings Bay during winter months now exceeds 240 animals (FWS unpublished data). A majority of manatees currently using the spring do not tolerate close human contact and leave the warmer spring waters when humans approach too closely. Research conducted during the 1988–89 winters indicated manatees spend a disproportionate amount of their time in sanctuaries, in direct relationship to the number of boats present, regardless of weather conditions (Buckingham 1990).

Efforts have been made to make divers, snorklers, and boaters aware of the manatee harassment problem. Visitors have been instructed through posters, brochures, and by dive shop personnel that they should not aggressively pursue manatees or drive them from the springs. Most visitors to King's Bay have been very cooperative in this regard. While most visitors conscientiously avoid outright harassment, many seek the manatees out, approaching them to observe and even pet them. Although a few manatees tolerate and occasionally invite attention, most appear to find these interactions intolerable and alter their behavior accordingly. At times, the large number of humans concentrated in this relatively confined area forces all the manatees to seek less disturbing conditions.

The largest manatee aggregations on Florida's west coast are found during winter months on the ledges surrounding the refuge's main spring. Manatees often collect there in the evenings and remain throughout the early morning hours. When few divers are present and those few are quiet, manatees usually linger around the main boil, particularly in colder weather. However, on days when divers arrive in force soon after sunrise, those manatees least able to tolerate human crowding begin leaving the spring and move into the sanctuaries. As greater numbers of divers arrive, more manatees leave (FWS unpublished data). On days when the temperatures of the surrounding waters are not excessively cold, this may not be critical, although it still alters the manatee's natural behavior. On days when surrounding water temperatures are below 68° F it presents a potentially serious problem.

Although some manatees can tolerate limited exposure to waters as cold as 56.3° F (13.5° C) (Hartman, 1979) others become lethargic and cease feeding at temperatures less than in 68° F (20° C) water (Campbell and Irvine 1981). Carcasses recovered following major cold events showed atrophy of fat, emaciation, and an absence of food in the gastrointestinal tract with no sign of disease; characteristics consistent with death from hypothermia. Manatees appear unable to increase heat production through metabolic activity sufficient to counter losses to the environment. Manatees are tropical warm-water mammals. They feed on low-energy forage and have high thermal conductance and exceptionally low metabolic rates (only 15 to 22 percent of predicted values based on body size) (Irvine 1983). Florida is at the northern limit of their winter range.

Subadult manatees appear to be especially susceptible to death from hypothermia. This is probably a combination of their larger surface to volume ratio and their lack of experience in finding thermal refuges. The length of time a manatee can tolerate cold water before its health is compromised depends on its condition—a factor which cannot easily be measured on free-ranging manatees. Experiments on Amazonian manatees (*T. inunguis*) showed that underweight, nutritionally stressed, and fasting mammals have a drastically lowered capacity for heat production (Scrimshaw et al. 1968, Chandra and Newberne 1977:127–176).

During an extreme cold event in 1990, several manatees died in Brevard County, Florida. These manatees sought thermal refuge at the warm-water discharge from an electrical power generating plant on the Banana River. Although the discharge raised the temperature of the water approximately 10° F, under those extreme conditions, it was insufficient to keep them alive. There is probably no thermal refuge in Florida warm enough to guarantee the health of all resident manatees during an extremely cold winter.

Crystal River National Wildlife Refuge is probably the best of the thermal refuges and undoubtedly the only one capable of supplying all the needs for over 200 manatees through the winter. The springs are fed by underwater artesian springs deep under the insulating surface of the earth, holding the temperature constant. Unlike industrial discharges, this natural water source is not subject to mechanical breakdowns or power failures. Unlike most artificial refuges, a readily available food source is available close by and in abundant supply. Bengtson (1981) observed manatees remaining in thermal refuges for up to a week without feeding during cold spells. It appears it was more energy efficient for them to fast rather than risk feeding in colder waters. In Crystal River, fasting is probably rarely necessary for long periods, and the enormous outflow from the springs can moderate the temperature of much of the bay, depending on tidal and wind factors.

If left alone, manatees would use the resources of Kings Bay according to their individual needs. However, research has shown that the presence of boaters and divers causes manatees to leave the spring heads in favor of the sanctuaries regardless of weather conditions. On days when there is low diver turnout, a greater proportion of manatees remain in the springs (Buckingham 1990). Observations of other wintering areas, such as Blue Spring State Park, show that, left to their own devices, most manatees will remain in warm water throughout the day during cold weather periods. Activities that cause manatees to leave a natural thermal refuge can, therefore, be considered "harassment" because those activities interfere with normal "sheltering" habits of the animal. Harassment of manatees is a violation of both the Endangered Species Act and the Marine Mammal Protection Act.

Currently, manatees are able to move away from divers by going into three sanctuaries, Banana Island, Sunset Shores, and Magnolia Springs, established in 1980. The Banana Island sanctuary is located near the main spring, Kings Spring, and is relatively warm in relation to surrounding waters. Sunset Shores sanctuary is still within the southern part of the bay and provides a feeding and resting area in

fairly warm water. The Magnolia Springs sanctuary is located in a canal development adjacent to Kings Bay and contains a smaller spring. Since 1980, the number of manatees using Kings Bay has increased from 100 to 246 in 1990. Although it might appear from the increasing numbers of manatees that additional protection is not needed, this is not the case. As manatee habitat is lost elsewhere on the Florida peninsula, Kings Bay is becoming more important. Kings Bay is one of the last *natural* warm-water areas with abundant food resources. Additional sanctuaries are essential to insure adequate undisturbed natural areas in Kings Bay where manatees may meet their needs, including warm water, food, and areas for resting and socializing.

The economic importance of Kings Bay and especially the refuge's main spring to Crystal River and Citrus County centers around recreational SCUBA diving, snorkeling and boating. The area is internationally known as a desirable location for winter diving. The presence of manatees creates a special attraction which dive shop owners exploit by advertising their facilities as a place where one can "swim with the manatees". The tourism industry created by divers coming to Crystal River is significant and total sales at five dive shops and three motels more than doubled between 1980 and 1986, with the "manatee season" accounting for 28 to 53 percent of their sales for the entire year (Milon in prep). Due in part to national and international publicity manatees have received in recent years, the number of divers visiting Kings Bay has increased to about 60,000–80,000 in the winter of 1990–91, double the number in 1980 (FWS unpublished data). This rapid increase in popularity is likely to continue, significantly affecting manatees.

The Service intends to provide manatees needed winter protection without adversely affecting diving and other waterborne activities so important to Crystal River's economy. Aerial survey data available on manatee distribution within Kings Bay suggest that strategically placed manatee sanctuaries could provide manatees warm-water refugia and feeding and resting areas free from harassment without causing a major disruption of current recreational patterns (Kochman *et al.* 1985, Buckingham 1990). It is important to note that, although a few local business people feared losses of revenue following the implementation of the sanctuary additions, no evidence of any losses have been observed during the 2 years the sanctuaries were in effect under emergency rules.

Therefore, the Service, by this rule, is expanding the sanctuary area in Kings Bay to provide manatees additional undisturbed habitat during the cold weather months. These sanctuaries will exclude all waterborne activities by humans from November 15 through March 31 each year. The total sanctuary area, consisting of less than 10 percent of the area of Kings Bay, allows the remaining 90 percent of the bay to remain open to recreational and commercial waterborne activities. The sanctuary areas were carefully selected to provide maximum protection for manatees and minimum impact on divers. Public input into the selection of sanctuary areas was obtained during a workshop held in Crystal River on March 21, 1991. The Service believes that, given these added refugia, manatees will not be forced to leave the warm water necessary for their survival and will be able to feed, rest, and socialize without being harassed.

The sanctuary addition at Magnolia Springs adds 1.5 acres to the previous Magnolia Springs Sanctuary. This short, horseshoe-shaped section of canal joins a canal that feeds directly into Kings Bay. The addition extends the protected area around a significant artesian spring within the original sanctuary, providing additional protection for the small but consistent number of manatees, most notably cows and calves, that use the area for giving birth, resting, and as a warm-water refuge.

The sanctuary on the north and east sides of Buzzard Island contains 18.0 acres of shallow grassbeds along the northwestern edge and down the length of the east side of Buzzard Island. This area is primarily used by manatees as a feeding area. It has limited value as a warm-water sanctuary but contains abundant vegetation within a short distance from the warm waters in the southern part of Kings Bay.

The sanctuary at Tarpon Springs contains 4.6 acres along the northwestern side of Banana Island. This sanctuary contains a small spring and is used by manatees as a thermal refuge, feeding, and resting area.

The 4.0-acre sanctuary on the north side of Warden Key provides a protected feeding area close to the warm-water sanctuaries in the south bay.

A standard survey of the sanctuary areas has been performed. The new areas will be delineated with buoys, as are existing sanctuaries.

**Summary of Comments and Recommendations**

A public workshop, advertised in the Citrus County Chronicle, was held on March 21, 1991 to allow local citizens and other interested parties the opportunity to discuss the pros and cons of different sanctuary locations. A number of the alternatives discussed at the workshop were described in the Service's draft Environmental Assessment supporting the Finding of No Significant Impact that was approved by the Regional Director on August 23, 1991. The sanctuaries as they appear in this rule were selected on the basis of known use by manatees, availability of resources, and minimal impact on recreational use patterns and homeowners. These sanctuaries were implemented for two successive winters, 1991–2 and 1992–3, by two separate emergency rules (57 FR 5988 and 58 FR 5643) when completion of the rulemaking process was delayed. Legal notices were published in the "Citrus County Chronicle" prior to the implementation of the emergency rules, and each emergency rule offered the Environmental Assessment for review by members of the public. The proposed rule, published in the **Federal Register** of May 13, 1993 (58 FR 28381), offered a public hearing, if requested, and announced a public comment period to end July 12, 1993. Following several requests for a public hearing, a notice was published in the **Federal Register** of June 28, 1993 (58 FR 34556) to announce a hearing and extension of the comment period. The hearing was held July 15, 1993, at the Coastal Region Library in Crystal River and the comment period was extended until July 30, 1993, to allow time for written comments to be received following the hearing.

At the July 15, 1993, hearing, a clear majority of the verbal comments and small minority of the written comments consisted of statements opposing either Federal regulations on recreational use of Kings Bay and the Crystal River National Wildlife Refuge in general, and/or the procedures used to implement the sanctuaries. Few people at the hearing addressed the sanctuary issue directly and there were several misconceptions as to what the rule would include. Many expressed a fear that future regulations would either eliminate or so discourage recreational boating that the local economy would be negatively impacted. Many speakers believed the preferences of local citizens and local political representatives should have been given more weight. Others feared that future regulations would include closing of the refuge, including the main spring. Although nearly every speaker expressed affection for, or at least acceptance of, manatees in Kings Bay, many believed manatee

protection areas should not be implemented in Kings Bay if they interfered with their "right" to use public waterways. A few people questioned the soundness of the decision to increase manatee protection, although most also indicated they were not aware of or had not read the research study reports. Many were not aware that a public workshop had been held early in the process and believed the final rule was already in effect. Although one person suggested redrawing one corner of the Buzzard Island Sanctuary to avoid funnelling boats into a narrow channel, none of the negative commenters offered any alternative methods to protect manatees from harassment and a few questioned whether there was any need.

Copies of the proposed rule were provided at the hearing to clear up some commonly held misconceptions. For example, a petition of 230 legible signatures protested against "the closing down of Kings Bay for the Manatees for a period of 8 months per year."Because the rule would prohibit boats from only a small percentage of the bay (the total sanctuary area comprises less than 10 percent of the bay and leaves all the boating channels and the main spring open), and because the period they would be in effect is only 4½ months each year, it is likely these people had confused the dates of the seasonal county speed zone regulations with the shorter sanctuary season. Others may have had the same misconception.

Supportive comments were in the minority at the hearing but constituted a large majority of written comments received. Unlike the hearing, which mostly represented only Citrus County residents, two-thirds of the written comments came from Florida residents outside Citrus County. Five letters were received from people who spoke at the hearing and wished to reiterate or clarify their point of view. One comment came from out-of-state. Of all the comments received, 74 individuals and 12 state and national organizations, including national and local chapters of the Audubon Society, Sierra Club, and the Humane Society, specifically stated they support the sanctuaries. Many supporters suggested additional manatee protection was needed. One-third recommended a ban on night diving. Others recommended allowing only passive observation of manatees. Some people favored expanding the sanctuaries system further either by adding a sanctuary south of Warden Key, extending the season to an earlier date, or creating corridors between sanctuaries. Emphasis centered on the southern and eastern parts of the bay where manatee aggregations are largest and most consistent. Save the Manatee Club and the Citrus County-based Friends of the Manatee proposed a time-sharing plan that prohibited public use of the refuge (including the main spring) during extended cold periods based on air and/or water temperatures. Friends of the Manatee also recommended enlarging the Banana Island Sanctuary, implementing a boat-free, swimming and diving area, and a diver-free manatee corridor between sanctuaries. Both organizations also recommended a ban on night diving and allowing only passive observation of manatees. There were two recommendations for a permit system similar to that used in other refuges to limit the number of divers using the refuge's main spring.

Many people on both sides of the sanctuary issue, expressed the need for additional law enforcement effort to monitor not only the sanctuaries, but the speed zones, and to prevent manatee harassment by divers and snorklers. There was also a clear consensus that an intensive public education campaign would play a key role in preventing intentional and unintentional harassment of manatees. The Crystal River Chamber of Commerce appealed to the audience that regardless of the outcome of the sanctuary issue, government, conservation groups, and citizens should work together to educate and inform the tens of thousands of visitors who visit the area each year of how to interact with manatees in a safe and appropriate manner.

Although, there were a number of general comments opposing Federal regulation of recreational use of Kings Bay and the Crystal River National Wildlife Refuge and procedures used to implement the sanctuaries, very few people expressed specific concerns about the sanctuaries.

After considering all the comments received, the Service concludes that the additional sanctuaries are needed to accommodate the increase in the number of manatees using the area each winter, and to offset harassment from increasing public use and that no changes to the proposed rule are necessary or warranted. Additional sanctuaries are essential to insure adequate undisturbed natural areas in Kings Bay where manatees meet their needs, including warm water, food and areas for resting and socializing. The sanctuaries were carefully selected to provide maximum benefits for manatees and minimum impact on human recreational activities in Kings Bay.

The Crystal River National Wildlife Refuge in its 1993 Public Use Management Plan addressed many of the concerns of those recommending additional manatee protection around the main spring by (1) expanding the Banana Island sanctuary to coincide with the refuge boundary while establishing a "swim only" access corridor to the spring itself from November 15 to March 31, (2) prohibiting accessing to the spring during night hours from 7 p.m. to 7 a.m. during the winter, and (3) coordinating commercial establishments catering to refuge visitors through a special use permit system to ensure the consistency of visitor educational and resource interpretation.

**References Cited**


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**Regulatory Flexibility Act and Executive Order 12866**

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. These changes will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this final rulemaking, it is not expected that significant economic impacts would result. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this final rulemaking. Further, the final rule contains no recordkeeping requirements as defined

by the Paperwork Reduction Act of 1990.

**National Environmental Policy Act**

The Environmental Assessment prepared in conjunction with this rule is on file in the Service's Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216. It may be examined by appointment during regular business hours. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

**Author**

The primary author of this final rule is Robert O. Turner, Manatee Coordinator (see Addresses section above).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Subpart J of part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as follows:

1. The authority citation of Part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.108, List of designated manatee protection areas, by revising paragraphs (a)(3), (a)(4), (a)(5), and (a)(6), removing paragraph (a)(7), and revising the map at the end of this section to read as follows:

**§ 17.108 List of designated manatee protection areas.**

(a) * * *

(3) A tract of submerged land, lying in Sections 21 and 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: All of the submerged land lying within the mean high water line of a canal bordering the western, northern, and eastern sides of Paradise Isle Subdivision, as recorded in Plat Book 3, Page 88 of the Public Records of Citrus County, Florida; bounded at the western exit by a line drawn between the southwestern corner of Lot 7 of said Paradise Isle Subdivision and the southeastern corner of Lot 22 of Springs O'Paradise Subdivision, Unit No. 3, as recorded in Plat Book 3, Page 70 of said Public Records; and bounded at the eastern exit by an easterly extension of the south boundary of said Paradise Isle Subdivision; Containing 3.4 acres, more or less.

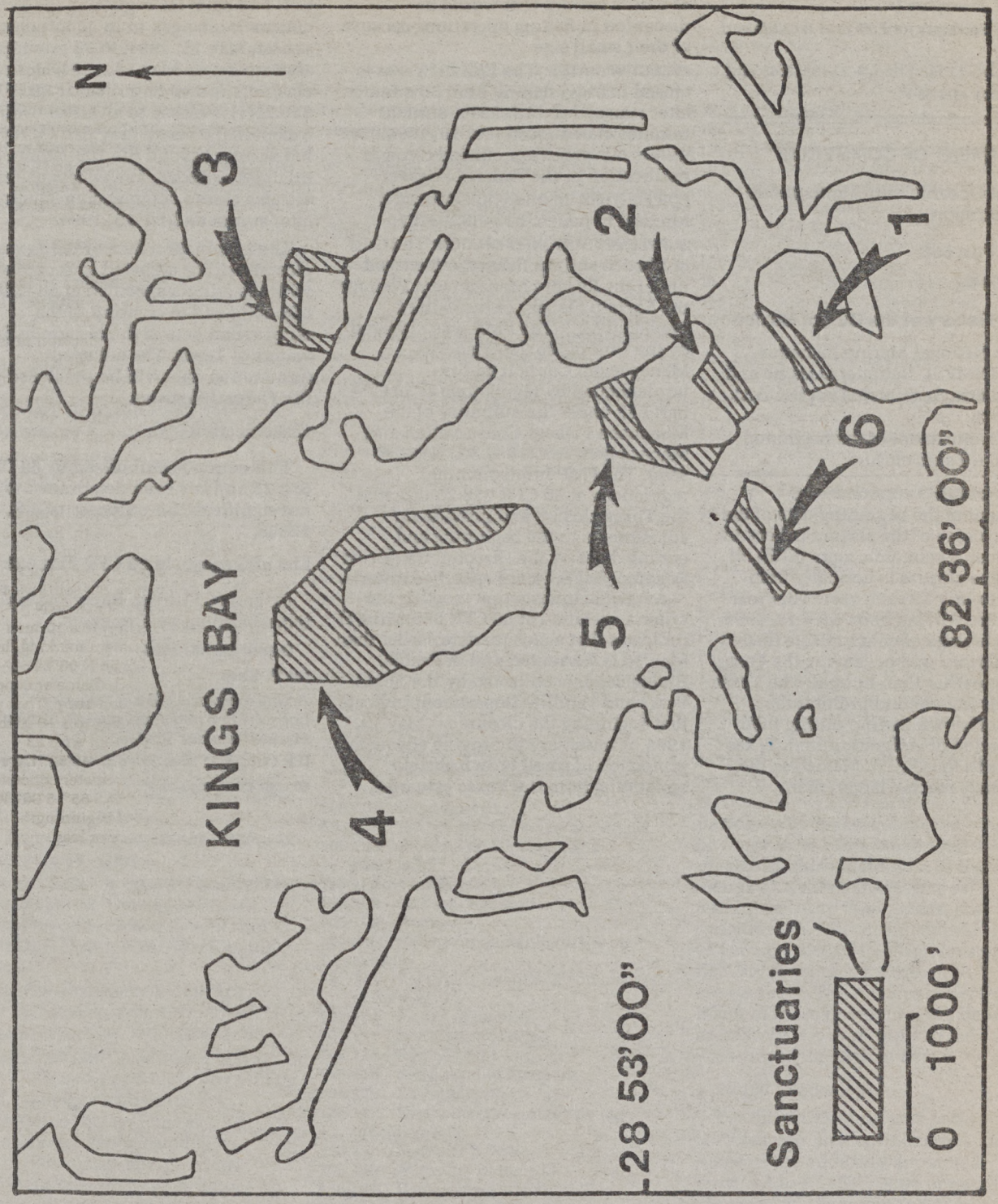
(4) A tract of submerged land, lying in Sections 28 and 29, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 06°01′23″ W for 4466.90 feet to a 10-inch diameter concrete monument marking the Point of Beginning; Then go N 10°05′38″ W for 477.32 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 37°34′41″ E for 651.07 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 73°26′46″ E for 634.10 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 17°50′16″ E for 1691.53 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 71°48′58″ W for 117.87 feet to a 10-inch diameter concrete monument with an attached buoy; Then continue S 71°48′58″ W for 5 feet more or less to the mean high water line of Buzzard Island; Then follow said mean high water line northerly and westerly to a point lying S 10°05′38″ E of the point of beginning; Then go N 10°05′38″ W for 5 feet more or less to the point of beginning; Containing 18.0 acres, more or less.

(5) A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 28°55′06″ E for 2546.59 feet to a 4-inch diameter iron pipe marking the Point of Beginning; Then go N 44°23′41″ W for 282.45 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 33°53′16″ E for 764.07 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 31°51′55″ E for 333.22 feet to a 4-inch diameter iron pipe; Then continue S 31°51′55″ E for 5 feet more or less to the mean high water line of Banana Island; Then go westerly along said main high water line to a point lying S 44°23′41″ E from the point of beginning; Then go N 44°23′41″ W for 5 feet more or less to the point of beginning; Containing 4.6 acres, more or less.

(6) A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 06°43′00″ E for 1477.54 feet to a 10-inch diameter concrete monument marking the Point of Beginning; Then go N 06°24′59″ W for 251.66 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 65°41′12″ E for 637.83 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 55°40′52″ E for 272.86 feet to a 10-inch diameter concrete monument; Then continue S 65°15′06″ W for 857.22 feet to the point of beginning; Containing 4.0 acres, more or less.

* * * * *

BILLING CODE 4310-55-P




BILLING CODE 4310-55-C

Dated: March 28, 1994.

**George T. Frampton Jr.,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 94–11343 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 658

**[I.D. 050594A]**

### Shrimp Fishery of the Gulf of Mexico

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

**ACTION:** Adjustment of the beginning date of the Texas closure.

**SUMMARY:** NMFS announces an adjustment of the beginning date of the annual closure of the shrimp fishery in the exclusive economic zone (EEZ) off Texas. The closure is normally from May 15 to July 15 each year. This year the closure will begin on May 13, 1994, because biological data indicate that brown shrimp will be leaving the Texas estuaries earlier than normal. The Texas closure is intended to prohibit the harvest of brown shrimp during their major period of emigration from Texas estuaries to the Gulf of Mexico so the shrimp may reach a larger, more valuable size and to prevent the waste of brown shrimp that would be discarded in fishing operations because of their small size.

**EFFECTIVE DATES:** The EEZ off Texas is closed to trawl fishing from 30 minutes after sunset, May 13, 1994, until 30 minutes after sunset, July 15, 1994, unless otherwise announced through notification in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813–893–3161.

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico shrimp fishery is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by regulations at 50 CFR part 658 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The FMP implementing regulations at 50 CFR 658.25 describe the Texas closure and provide for adjustments to the beginning and ending dates by the Director, Southeast Region, NMFS, under specified criteria.

Available information meeting the criteria specified at 50 CFR 658.25(b)(1) indicates that a closure date earlier than May 15 is warranted and desirable. Biological data collected by the Texas Parks and Wildlife Department indicate that beginning the closure on May 13, 1994, is necessary to provide adequate protection of small brown shrimp emigrating from the Texas estuaries.

Accordingly, the time and date at 50 CFR 658.25(a) for beginning the Texas closure is changed from 30 minutes after sunset, May 15, 1994, to 30 minutes after sunset on May 13, 1994. During the closure, the area described at 50 CFR 658.25(a) is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100-fathom (183-m) depth contour. The waters of Texas are also closed commencing 30 minutes after sunset on May 13, 1994.

The termination date of the Texas closure will be adjusted in accordance with the criteria specified at 50 CFR 658.25(b) and to conform to the termination date of the closure in the waters of Texas. The adjusted termination date will be published in the **Federal Register.**

### Classification

This action is authorized by 50 CFR 658.25 and has been determined to be not significant for purposes of E.O. 12866.

### List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 6, 1994.

**Joe P. Clem,**

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

[FR Doc. 94–11494 Filed 5–9–94; 2:26 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 59, No. 91
Thursday, May 12, 1994

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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 185

RIN 3206–AF77

### Implementation of the Program Fraud Civil Remedies Act of 1986

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is proposing to issue regulations to implement the Program Fraud Civil Remedies Act (PFCRA) which Congress enacted on October 21, 1986. The PFCRA provides a statutory right for the Federal Government to take administrative action against fraud. The PFCRA also outlines the procedures that must be followed in administrative actions brought in accordance with the act. These regulations will implement these procedural requirements.

**DATES:** Comments must be submitted on or before July 11, 1994.

**ADDRESSES:** Send or deliver comments to Lorraine Lewis, General Counsel, Office of Personnel Management, Room 7355, 1900 E Street, NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Murray M. Meeker, Attorney, Office of the General Counsel, (202) 606–1980.

**SUPPLEMENTARY INFORMATION:** Public Law 99–509 provides a means by which Federal agencies may institute administrative proceedings against persons who have presented false claims or statements and provides further that Federal agencies who institute such administrative proceedings may recover double damages as well as penalties of up to $5,000 per violation.

The Program Fraud Civil Remedies Act requires agencies to issue regulations. This rule establishes the procedures that OPM will follow under this Act. The moneys collected as a result of these procedures are deposited as miscellaneous receipts in the Treasury of the United States.

### E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited primarily to federal employees and other entities who do business with OPM.

### List of Subjects in 5 CFR Part 185

Claims.

Office of Personnel Management.

**Lorraine A. Green,**

*Deputy Director.*

Accordingly, OPM is adding part 185 of title 5, Code of Federal Regulations as follows:

## PART 185—PROGRAM FRAUD CIVIL REMEDIES

Sec.

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**Authority:** 31 U.S.C. 3801–3812.

### § 185.101 Purpose.

The purpose of this part is to implement the Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509, 6101–6104, 100 Stat. 1874 (October 21, 1986), codified at 31 U.S.C. 3801–3812. Section 3809 requires each authority head to promulgate regulations necessary to implement the provisions of the statute. This part establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments. The moneys collected as a result of these procedures are deposited as miscellaneous receipts in the Treasury of the United States.

### § 185.102 Definitions.

For the purposes of this part—

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

*Authority* means the Office of Personnel Management (OPM).

*Authority head* means the Director of the Office of Personnel Management or the Director's designee.

*Benefit* is very broad, and is intended to cover anything of value, including but not limited to any advantage, preference, privilege, license, permit,

favorable decision, ruling, status or loan guarantee.

*Claim* means any request, demand, or submission—

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

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

(i) For property or services if the United States:

(A) Provided such property or services;

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

(C) Will reimburse such recipient or party for the purchase of such property or services.

(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States:

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

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

(3) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

*Complaint* means the administrative complaint served by the reviewing official on the defendant under § 185.107.

*Defendant* means any person alleged in a complaint under § 185.107 to be liable for a civil penalty or assessment under § 185.103.

*Government* means the United States Government.

*Individual* means a natural person.

*Initial decision* means the written decision of the ALJ required by § 185.110 or § 185.137, and includes a revised initial decision issued following a remand or a motion for reconsideration.

*Investigating Official* means the Inspector General or the Inspector General's designee.

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

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

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

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

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

*Person* means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

*Representative* means an attorney who is in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico or other individual designated in writing by the defendant.

*Reviewing Official* means the General Counsel of OPM or the General Counsel's designee. For the purposes of § 185.105 of these rules, the General Counsel personally, or the General Counsel's designee, shall perform the functions of the reviewing official provided that such person serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay payable under section 5376 of title 5, U.S. Code. All other functions of the reviewing official, including administrative prosecution under these rules, shall be performed on behalf of the reviewing official by the staff of the Office of the General Counsel.

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

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

(2) With respect to (including relating to eligibility for):

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

(ii) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

**§ 185.103 Basis for civil penalties and assessments.**

(a) In addition to any other remedy that may be prescribed by law, any person shall be subject to a civil penalty of not more than $5,000, where the person makes a claim and knows or has reason to know that the claim:

(1) Is false, fictitious, or fraudulent;

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

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

(i) Omits a material fact;

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

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

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

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

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

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

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

(f) Any person who makes a written statement that:

(1) The person knows or has reason to know:

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

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

(2) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement may be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

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

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

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

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

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

**§ 185.104 Investigation.**

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted, he or she may issue a subpoena:

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

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

(3) The person receiving such subpoena shall be required to tender to the investigating official, or the person designated to receive the documents, a certification that:

(i) The documents sought have been produced;

(ii) Such documents are not available and the reasons therefor; or

(iii) Such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

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

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

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

**§ 185.105 Review by the reviewing official.**

(a) If, based on the report of the investigating official under § 185.104(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 185.103, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to have a complaint issued under § 185.107. Such notice shall include:

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

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

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

(4) An estimate of the amount of money, or the value of property, services, or other benefits, requested or demanded in violation of § 185.103.

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

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

**§ 185.106 Prerequisites for issuing a complaint.**

(a) The reviewing official may issue a complaint under § 185.107 only if:

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

(2) In the case of allegations of liability under § 185.103(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money, or the value of property or services, demanded or requested in violation of § 185.103(a) does not exceed $150,000.

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

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

**§ 185.107 Complaint.**

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 185.108.

(b) The complaint shall state the following:

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

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

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

(4) The fact that failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 185.110.

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

**§ 185.108 Service of complaint.**

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

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

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

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

**§ 185.109 Answer.**

(a) The defendant may request a hearing in the answer filed with the reviewing official within 30 days of service of the complaint.

(b) In the answer, the defendant:

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

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

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

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 185.110. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section. The ALJ shall decide expeditiously whether the defendant shall be granted an additional period of time to file such answer.

**§ 185.110 Default upon failure to file an answer.**

(a) If the defendant does not file an answer within the time prescribed in § 185.109(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on the defendant in the manner prescribed in § 185.108, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 185.103, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

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

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

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

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 185.138.

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

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

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

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

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

**§ 185.111 Referral of complaint and answer to the ALJ.**

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

**§ 185.112 Notice of hearing.**

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 185.108. At the same time, the ALJ shall send a copy of such notice to the reviewing official or his or her designee.

(b) Such notice shall include:

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

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

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

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

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

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

**§ 185.113 Location of hearing.**

(a) The hearing may be held:

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the parties and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

**§ 185.114 Parties to the hearing.**

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

(b) Except where the authority head designates another representative, OPM shall be represented by the staff of the Office of the General Counsel.

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

**§ 185.115 Separation of functions.**

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

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the review of the initial decision by the authority head; or

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

(b) The ALJ shall not be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

**§ 185.116 Ex parte contacts.**

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

**§ 185.117 Disqualification of reviewing official or ALJ.**

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with this section:

(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

**§ 185.118 Rights of parties.**

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery as provided under § 185.122;

(d) Agree to stipulations of fact of law, which shall be made a part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

**§ 185.119 Authority of the ALJ.**

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to:

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters:

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties:

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) ALJ does not have the authority to find Federal statutes or regulations invalid.

**§ 185.120 Prehearing conferences.**

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

**§ 185.121 Disclosure of documents.**

(a) Upon written request to the reviewing official, generally prior to the filing of an answer, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 185.104(b) are based, unless such documents are subject to the privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant, may also obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 185.105 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 185.109.

**§ 185.122 Discovery.**

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 185.122 and 185.123, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing

contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) Motions for discovery are to be handled according to the following procedures:

(1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within 10 days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 185.125.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought:

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 185.125.

(e) Depositions are to be handled in the following manner:

(1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 185.108.

(3) The deponent may file with the ALJ within 10 days of service a motion to quash the subpoena or a motion for a protective order.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

**§ 185.123 Exchange of witness lists, statements, and exhibits.**

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 185.133(b). At the time the documents listed in this paragraph are exchanged, any party that intends to rely on the transcript or deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ may not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

**§ 185.124 Subpoenas for attendance at hearing.**

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefore not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ upon a showing of good cause. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 185.108. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within 10 days after service or on or before the time specified in the subpoena for compliance if it is less than 10 days after service.

**§ 185.125 Protective order.**

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be the subject of inquiry, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a sealed disposition be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ;

**§ 185.126 Evidence.**

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g. to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 185.125.

**§ 185.127 Fees.**

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

**§ 185.128 Form, filing, and service of papers.**

(a) *Form.* Documents filed with the ALJ shall include an original and two copies. Every pleasing and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena). Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(b) *Filing.* Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(c) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served a prescribed in § 185.108 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(d) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

**§ 185.129 Computation of time.**

(a) In computing any period of time under this pat or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response.

**§ 185.130 Motions.**

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

**§ 185.131 Sanctions.**

(a) The ALJ may sanction a person including any party or representative for the following reasons:

(1) Failure to comply with an order, rule, or procedure governing the proceeding;

(2) Failure to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the proceeding.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

**§ 185.132 The hearing and burden of proof.**

(a) Where requested in accordance with § 185.109 the ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 185.103 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise closed by the ALJ for good cause shown.

**§ 185.133 Determining the amount of penalties and assessments.**

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, double damages and a significant civil penalty ordinarily should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon public confidence in the management of Government programs and operations;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly;

(16) The need to deter the defendant and others from engaging in the same or similar misconduct; and

(17) The potential impact of the misconduct on the rights of others.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

**§ 185.134 Witnesses.**

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 185.123(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceedings without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of the following:

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

**§ 185.135 The record.**

(a) The hearing shall be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 185.125.

**§ 185.136 Post-hearing briefs.**

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

**§ 185.137 Initial decision.**

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 185.103.

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 185.133.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

**§ 185.138 Reconsideration of initial decision.**

(a) Except as provided in paragraph (d) of this section, any party may file a

motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be 5 days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on all parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 185.139.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 185.139.

**§ 185.139 Appeal to authority head.**

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section:

(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 185.138, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal shall be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The authority head may extend the initial 30 day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30 day period and shows good cause.

(b) If the defendant files a timely notice of appeal with the authority head and the time for filing motions for reconsideration under § 185.138 has expired, the ALJ shall forward the record of the proceeding to the authority head.

(c) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(d) The representative for OPM may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(e) There is no right to appear personally before the authority head.

(f) There is no right to appeal an interlocutory ruling by the ALJ.

(g) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless the objecting party can demonstrate extraordinary circumstances causing the failure to raise the objection.

(h) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(i) The authority head may affirm, reduce, reverse, compromise, remand or settle any penalty or assessment determined by the ALJ in any initial decision.

(j) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(k) Unless a petition for review is filled as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 185.103 is final and not subject to judicial review.

**§ 185.140 Stays ordered by the Department of Justice.**

If at any time, the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General or of the Assistant Attorney General who ordered the stay.

**§ 185.141 Stay pending appeal.**

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

**§ 185.142 Judicial review.**

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties and/or assessments under this part and specifies the procedures for such review.

**§ 185.143 Collection of civil penalties and assessments.**

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

**§ 185.144 Right to administrative offset.**

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 185.142 or § 185.143, or any amount agreed upon in a compromise or settlement under § 185.146, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

**§ 185.145 Deposit in Treasury of the United States.**

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

**§ 185.146 Compromise or settlement.**

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 185.142 or during the pendency of any action to collect penalties and assessments under § 185.143.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 185.142 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

**§ 185.147 Limitations.**

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 185.108 within 6 years after the date on which such a claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 185.110(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by written agreement of the parties.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 94–NM–42–AD]**

## Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, that currently requires replacing the quick release coupling halves on each end of the pump case drain line on the hydraulic engine driven pump (EDP) on the number 2 and number 3 engines with improved fire resistant coupling halves. This action would revise the applicability of the existing AD. This proposal is prompted by the identification of additional airplanes that are subject to the addressed unsafe condition. The actions specified by the proposed AD are intended to prevent hydraulic fluid leakage from the pump case drain line quick release coupling, which could fuel the flames in the event of an engine fire.

**DATES:** Comments must be received by June 13, 1994.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–42–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW. , Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered 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 postcard on which the following statement is made: "Comments to Docket Number 94–NM–42–AD." The postcard will be date stamped and returned to the commenter

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–42–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

On November 29, 1993, the FAA issued AD 93–24–05, Amendment 39–8754 (58 FR 67310), applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, to require replacement of the quick release coupling halves on each end of the pump case drain line on the hydraulic engine driven pump (EDP) on the number 2 and number 3 engines with improved fire resistant coupling halves. That action was prompted by a fire resistance test of the hydraulic EDP, associated hoses, and couplings installed on the number 2 and number 3 engines, which revealed that the pump case drain line quick release couplings leaked hydraulic fluid. The requirements of that AD are intended to prevent hydraulic fluid leakage from the pump case drain line quick release coupling, which could fuel the flames in the event of an engine fire.

Since issuance of that AD, British Aerospace has issued Service Bulletin SB.29–31–01339A, Revision 1, dated July 8, 1993, which revises the effectivity listing of the original issue of the service bulletin by adding the serial numbers of affected Model BAe 146–100A and –200A series airplanes. In addition, one Model BAe 146–300A series airplane, serial number E3220, is removed from the service bulletin effectivity. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral

airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 93–24–05 to continue to require replacement of the quick release coupling halves on each end of the pump case drain line on the hydraulic EDP on the number 2 and number 3 engines with improved fire resistant coupling halves. The proposed AD would revise the applicability of the existing AD, and would reflect the latest revision of the service bulletin as the appropriate source of service information.

The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,590, or $165 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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 "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the 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 regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, 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—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. App. 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 removing amendment 39–8754 (58 FR 67310), and by adding a new airworthiness directive (AD), to read as follows:

**British Aerospace:** Docket 94–NM–42–AD. Supersedes AD 93–24–05, Amendment 39–8754.

*Applicability:* Model BAe 146–100A series airplanes, serial numbers E1002 through E1199 inclusive; Model BAe 146–200A series airplanes, serial numbers E2008 through E2204 inclusive, E2210 through E2220 inclusive; and Model BAe 146–300A series airplanes, serial numbers E3001 through E3219 inclusive, and E3222; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

**Note 1:** Paragraph (a) of this AD merely restates the requirement of paragraph (a) of AD 93–24–05, Amendment 39–8754. As allowed by the phrase, "unless accomplished previously," if that requirement of AD 93–24–05 has already been accomplished, this AD does not require that the action be repeated.

To prevent hydraulic fluid leakage from the pump case drain line quick release couplings, which could fuel the flames in the event of an engine fire, accomplish the following:

(a) For airplane serial numbers E3001 through E3207 inclusive, E3209 through E3219 inclusive, and E3222: Within 6 months after January 20, 1994 (the effective date of AD 93–24–05, Amendment 39–8754), replace the quick release coupling halves on each end of the pump case drain line on the hydraulic engine driven pump (EDP) on the number 2 and number 3 engines with improved fire resistant coupling halves, in accordance with British Aerospace Service Bulletin SB.29–31–01339A, dated May 24, 1993, or SB.29–31–01339A, Revision 1, dated July 8, 1993.

(b) For airplane serial numbers E1002 through E1199 inclusive, E2008 through E2204 inclusive, E2210 through E2220 inclusive, and E3208: Within 6 months after the effective date of this AD, replace the quick release coupling halves on each end of the pump case drain line on the hydraulic EDP on the number 2 and number 3 engines with improved fire resistant coupling halves, in accordance with British Aerospace Service Bulletin SB.29–31–01339A, Revision 1, dated July 8, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on May 5, 1994.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 94–11358 Filed 5–11–94; 8:45 am]

BILLING CODE 4910–13–U

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**14 CFR Part 39**

**[Docket No. 94–NM–61–AD]**

## Airworthiness Directives; Boeing Model 747–400 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes. This proposal would require a revision to the Flap Control Unit input wiring. This proposal is prompted by reports of disconnection of the Landing Gear Module electrical connectors, which can result in the loss of the primary, secondary, and alternate control of the flaps. The actions specified by the proposed AD are intended to prevent the possibility of an

all-flaps-up landing due to the loss of control of all flap operations.

**DATES:** Comments must be received by June 13, 1994.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–61–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Kathi Ishimaru, Aerospace Engineer, Systems & Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2674; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

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 shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered 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 postcard on which the following statement is made: "Comments to Docket Number 94–NM–61–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–61–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

Boeing Commercial Airplanes has advised the FAA of an unsafe condition that may exist in certain Boeing Model 747–400 series airplanes. Boeing advises that, if the Landing Gear Module connectors become disconnected, all Flap Control Unit (FCU) modes of flap operation (primary, secondary, and alternate control of flaps) could be lost. There has been one occurrence of a partial disconnection of these connectors during a flight test of one airplane, which resulted in some of the flaps failing to extend. In another incident, there was a partial disconnection of these connectors on one in-service airplane that occurred while the airplane was on the ground; this situation prevented the airplane from being dispatched.

Disconnection of the subject connectors could result in the loss of all three modes of flap operation. If this were to occur, the pilot would be unable to change the position of the leading and trailing edge flaps. This condition, if not corrected, could result in an all-flaps-up (flaps retracted) landing and consequent high landing speeds that could cause the airplane to run off the runway before being able to stop.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–27A2346, dated April 28, 1994, that describes procedures for revising the FCU input wiring by moving two of the three FCU inputs from the "Alt-Arm" switch to the Alternate Flap relays. This will keep the FCU's in the Primary Hydraulic/Pneumatic operation mode if the Landing Gear Module connectors become disconnected, and would allow the pilot to maintain primary and secondary control of the flaps.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the FCU input wiring. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 300 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 34 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $200 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $25,500, or $750 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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 "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the 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 regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, 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—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. App. 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 airworthiness directive:

**Boeing:** Docket 94–NM–61–AD.

*Applicability:* Model 747–400 airplanes having line numbers 696 through 1019, inclusive, and 1021 through 1026, inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the possibility of an all-flaps-up landing due to the loss of control of flap operations, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Flap Control Unit (FCU) input wiring in accordance with Boeing Alert Service Bulletin 747–27A2346, dated April 28, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 6, 1994.

**S.R. Miller,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 94–11526 Filed 5–11–94; 8:45 am]

BILLING CODE 4910–13–U

**14 CFR Part 71**

**[Airspace Docket No. 92–AWA–6]**

**RIN 2120–AF02**

## Proposed Alteration of the Charlotte, NC, Class B Airspace Area

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

**ACTION:** Notice of Proposed Rulemaking (NPRM); correction and extension of comment period.

**SUMMARY:** This document contains corrections to the NPRM published on March 2, 1994. That action proposed to alter the Charlotte, NC, Class B airspace area. However, the NPRM was inadvertently published without the associated graphic and with errors to the geographical references for the Charlotte/Douglas International and Gastonia Municipal Airports. This action also extends the period for public comments.

**DATES:** Comments must be received on or before June 2, 1994.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Airspace Docket No. 92–AWA–6, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Patricia P. Crawford, 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) 267–9255.

**SUPPLEMENTARY INFORMATION:**

On March 2, 1994, the FAA published an NPRM that proposed to alter the Charlotte, NC, Class B airspace area (59 FR 10040). However, the NPRM was inadvertently published without the associated graphic and with errors to the geographical references for the Charlotte/Douglas International and Gastonia Municipal Airports. This action will correct these errors by adding the associated graphic and correcting the geographical references of the airports. This action will also extend the period for public comments by 30 days.

### Correction to NPRM

Accordingly, pursuant to the authority delegated to me, the publication in the **Federal Register** on March 2, 1994 (59 FR 10040; **Federal Register** Document 94–4714) is corrected as follows:

**§ 71.1 [Corrected]**

ASO NC B Charlotte, NC [Corrected]

1. On page 10045, in the first column, under Charlotte/Douglas International Airport (Primary Airport) "(lat. 35°12′52″ N., long. 80°56′37″ W.)" should read "(lat. 35°12′52″ N., long. 80°56′36″ W.) and under Gastonia Airport "(lat. 35°12′00″ N., long. 81°09′00″ W.)" should read "(lat. 35°12′01″ N., long. 81°09′00″ W.)."

2. On page 10045, in the third column, after the signature block, add a note and appendix as set forth below.

Issued in Washington, DC, on April 28, 1994.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

**Note:** This appendix will not appear in the Code of Federal Regulations.

**Appendix—Charlotte, North Carolina, Class B Airspace Area**

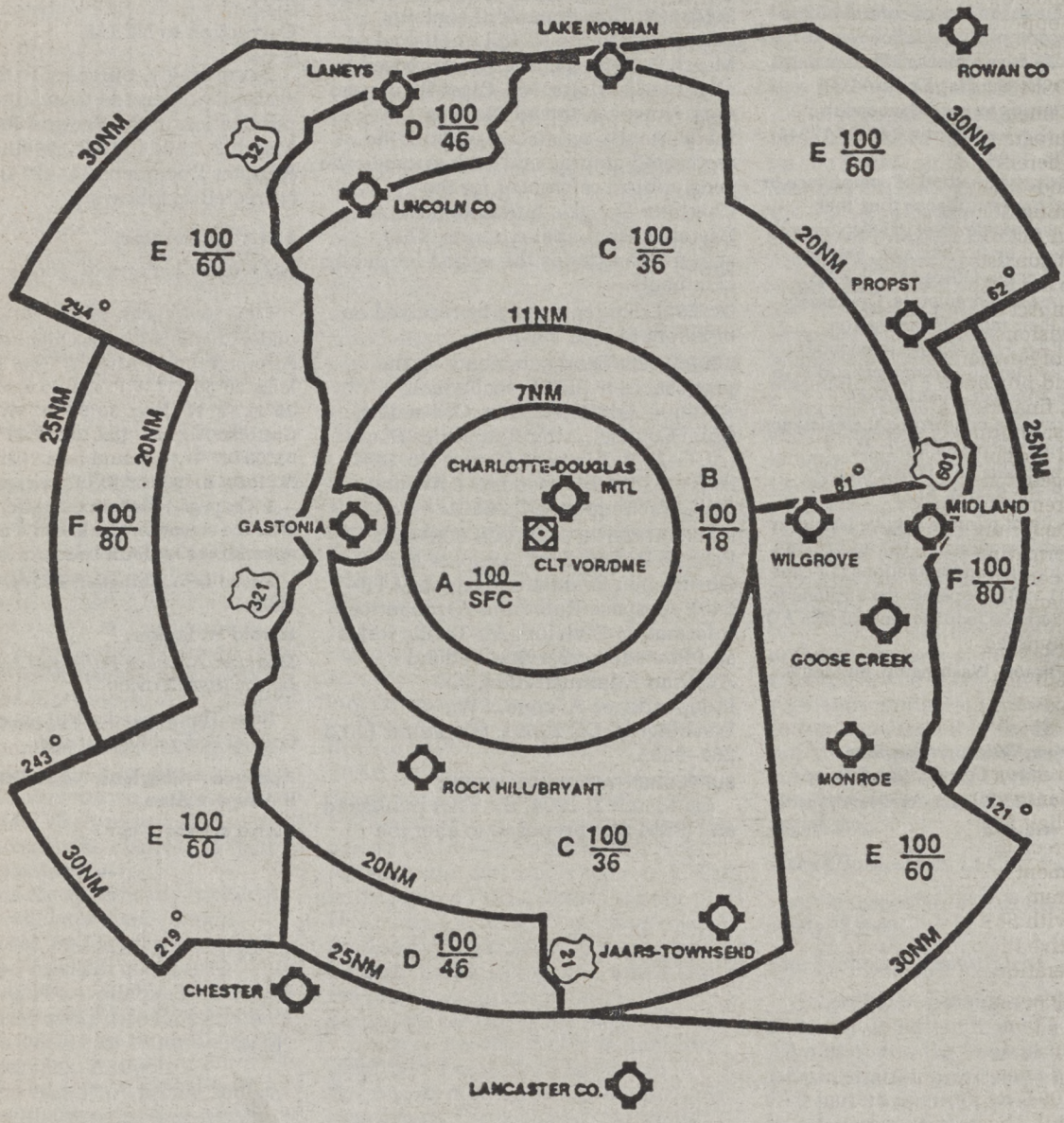
BILLING CODE 4910–13–P

# CHARLOTTE, NORTH CAROLINA
# CLASS B AIRSPACE AREA

## CHARLOTTE/DOUGLAS INTERNATIONAL AIRPORT

**FIELD ELEVATION - 749 FEET**

***(Not to be used for navigation)***




Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
ATP-220

[FR Doc. 94–11409 Filed 5–11–94; 8:45 am]
BILLING CODE 4910–13–P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 944

### Utah Regulatory Program and Abandoned Mine Plan

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Utah regulatory program and abandoned mine plan (hereinafter, the "Utah program" and "Utah plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed revisions to the Utah Coal Mining and Reclamation Act of 1979. The Utah program revisions pertain to purpose; definitions of new terms; rulemaking authority and procedure; administrative procedures; financial interests; permit applications; informal conferences; appeals and further review; performance bonds; revegetation standards on lands eligible for remining; operator requirements for underground coal mining; information provided by permittees; contest of violation or amount of penalty; civil actions to compel compliance with Utah's program; violations of Utah's program or permit conditions; lands unsuitable determination; judicial review of rules and orders; repeal of specific sections of the Utah Code Annotated 1953 (UCA); and a repeal date of certain provisions. The Utah plan revisions pertain to lands and water eligible for reclamation, recovery of reclamation costs, and liens. The amendment is intended to revise Utah's program and plan to be consistent with SMCRA and the Utah Administrative Procedures Act, and to improve operational efficiency.

**DATES:** Written comments must be received by 4 p.m., m.d.t. on June 13, 1994. If requested, a public hearing on the proposed amendment will be held on June 6, 1994. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on May 27, 1994. Any disabled individual who has a need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

**ADDRESSES:** Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Utah program and Utah plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., suite 1200, Albuquerque, New Mexico 87102.

Utah Coal Regulatory Program, Division of Oil, Gas and Mining, 3 Triad Center, suite 350, 355 West North Temple, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Ehmett, Telephone: (505) 766–1486.

**SUPPLEMENTARY INFORMATION:**

#### I. Background on the Utah Program and Utah Plan

On January 21, 1981, and June 3, 1983, the Secretary of the Interior conditionally approved the Utah program and approved the Utah plan. General background information on the Utah program and Utah plan, including the Secretary's findings, the disposition of comments, the conditions of approval of the Utah program, and approval of the Utah plan, can be found in the January 21, 1981, and June 3, 1983, publications of the **Federal Register** (46 FR 5899 and 48 FR 24876). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30. Subsequent actions concerning Utah's plan amendments can be found at 30 CFR 944.25.

#### II. Proposed Amendment

By letter dated April 14, 1994, Utah submitted a proposed amendment to its program and plan pursuant to SMCRA (administrative record No. UT–917). The proposed amendment consists of revisions to the Utah Coal Mining and Reclamation Act of 1979. Utah submitted the proposed amendment with the intent of making its program and plan consistent with SMCRA and the Utah Administrative Procedures Act, and improving operational efficiency.

The program provisions of the Utah Coal Mining and Reclamation Act that Utah proposes to revise are (1) Utah Code Annotated (UCA) 40–10–2, purpose [of Chapter 10]; (2) UCA 40–10–3, definitions of new terms "adjudicative proceeding," "lands eligible for remining," and "unanticipated event or condition;" (3) UCA 40–10–6.5, rulemaking authority and procedure; (4) UCA 40–10–6.7, administrative procedures; (5) UCA 40–10–7, prohibition of financial interest in any coal mining operation; (6) UCA 40–10–8, coal exploration rules issued by the Division of Oil, Gas and Mining (Division) and penalty for violation; (7) UCA 40–10–10, permit applications; (8) UCA 40–10–11, Division action on the permit application; (9) UCA 40–10–12, revision or modification of permit provisions; (10) UCA 40–10–13, informal conferences; (11) UCA 40–10–14, permit approval or disapproval, appeals, and further review; (12) UCA 40–10–15, performance bonds; (13) UCA 40–10–16, release of performance bond, surety, or deposit; (14) UCA 40–10–17, revegetation standards on lands eligible for remining; (15) UCA 40–10–18, operator requirements for underground coal mining; (16) UCA 40–10–19, information provided by the permittee to the Division and right of entry; (17) UCA 40–10–20, contest of violation or amount of penalty; (18) UCA 40–10–21, civil action to compel compliance with Utah's program and other rights not affected; (19) UCA 40–10–22, violations of Utah's program or permit conditions; (20) UCA 40–10–24, determination of unsuitability of lands for surface coal mining; and (21) UCA 40–10–30, judicial review of rules or orders. Utah also proposes to repeal UCA 40–10–4, "Mined land reclamation provisions applied," and UCA 40–10–31, "Chapter's procedures supersede Title 63, Chapter 46b," and add the requirement that UCA 40–10–11(5), modification of permit issuance prohibition, and UCA 40–10–17(2)(t)(ii), revegetation standards on lands eligible for remining, are repealed effective September 30, 2004.

The plan provisions of the Utah Coal Mining and Reclamation Act that Utah proposes to revise are (1) UCA 40–10–25, lands and water eligible for reclamation; (2) UCA 40–10–27, entry upon land adversely affected by past coal mining practices, State acquisition of land and public sale, and water pollution control and treatment plants; and (3) UCA 40–10–28, recovery of reclamation costs and liens against reclaimed land.

Following are more specific descriptions of the revisions that Utah proposes to make to the above-listed sections of its statute. These descriptions do not address several editorial revisions including changes in punctuation and capitalization;

recodification; replacement of the word "regulations" and the term "rules and regulations" with the synonymous word "rules;" the joining with the conjunction "and" of the last two provisions in a series of three or more provisions joined by semicolons; the use of Arabic numbers instead of spelling out the numbers; and the deletion of the word "this" prior to the word "Subsection" when it is followed by a specific statute citation.

Utah proposes the following revisions to its program provisions.

Utah proposes to add new definitions for the terms (1) "adjudicative proceeding" at UCA 40–10–3(1) to mean "a division or board action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, permit, or license;" (2) "lands eligible for remining" at UCA 40–10–3(8) to mean "those lands that would otherwise be eligible for expenditures under Section 40–10–25 or 40–10–25.1;" and (3) "unanticipated event or condition" at UCA 40–10–3(21) to mean "an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit."

Utah proposes to revise its rulemaking authority and procedure provisions at UCA 40–10–6.5 by adding new language at UCA 40–10–6.5(1) to require the Board of Oil, Gas and Mining (Board) to promulgate rules in accordance with Title 63, Chapter 46a of the Utah Administrative Rulemaking Act and deleting the provisions of UCA 40–10–6.5(3), which set forth the requirements for conducting hearings under Chapter 10.

Utah proposes to add new language at UCA 40–10–6.7, administrative procedures, to require that the Division shall conduct informal adjudicative proceedings, which are referred to as conferences or informal conferences. Utah also proposes to require that the Board or Division shall conduct formal adjudicative proceedings, which are referred to as hearings or public hearings. The conduct of these conferences and hearings will be governed by rules adopted by the Board which are in accordance with Title 63, Chapter 46b of the Utah Administrative Procedures Act (UAPA). In addition, Utah proposes that such hearings, will be conducted in a manner which guarantees the parties' due process rights, includes provisions to ensure this protection, and requires a verbatim record of each public hearing required by Chapter 10 will be made and a transcript will be available on the motion of any party or by order of the Board.

Utah proposes an editorial revision at UCA 40–10–10, permit applications, by changing the word "implementing" to "the" before the word "rules."

Utah proposes to revise UCA 40–10–11 by requiring that the schedule listing any and all notices of violations submitted as part of the permit application include violations of any State or Federal program or law approved under SMCRA. Utah also proposes to add new UCA 40–10–11(5) to require that (1) the prohibition of UCA 40–10–11(3), concerning issuance of a permit to persons with outstanding violations or with a history of willful violations, does not apply after October 14, 1992, if the violation resulted from an unanticipated event or condition that occurred on lands eligible for remaining, (2) the term "violation" as used here as the same meaning as the term "violation" under UCA 40–10–11(3) prohibiting permit issuance, and (3) UCA 40–10–11(5) is repealed effective September 30, 2004.

Utah proposes to add new langauge to its provisions pertaining to informal conferences at UCA 40–10–13(2)(b) to specify that, if written objections to a proposed initial or revised application for a surface coal mining and reclamation operations permit are filed, the Division will hold an informal conference and conduct it in accordance with subsection (b) irrespective of the requirements of section 63–46b–5 of UAPA and that such conference may be held in the locality of the coal mining and reclamation operation if requested within a reasonable time after written objections or a request for an informal conference are received by the Division.

Utah proposes to revise its provisions at UCA 40–10–14, pertaining to permit approval or disapproval, appeals, and further review, by adding new language at subsection (6) to provide that an applicant or aggrieved person may appeal the Board's decision granting or denying the permit in whole or in part directly to the Utah Supreme Court, that if the Board fails to act, the applicant or aggrieved person may bring an action in the appropriate district court, and that time frames for appeals under this subsection shall be consistent with UAPA.

Utah proposes to revise its statutory provisions at UCA 40–10–16(6) for release of performance bonds, sureties, or deposits by deleting the requirements that provide for advertisement of a public hearing, govern the manner in which hearings are conducted, and allow the Division to establish an informal conference to resolve written objections. Utah also proposes new language there requiring that:

> If written objections are filed and a conference is requested, the division shall inform all interested parties of the time and place of the conference and hold an informal conference within 30 days after the request is filed with the division. The conference officer may convert the conference to a formal proceeding under the standards set forth in section 63–46b–4 [of the UAPA]. The matter shall be scheduled for hearing before the board and a hearing shall be held in accordance with the rules of practice and procedure of the board. A decision from the informal conference may be appealed to the board. The board shall hold a hearing pursuant to the rules of practice and procedure of the board.

Utah proposes to revise its performance standards provisions at UCA 40–10–17(2) by adding new subsection (t)(ii) to require that on lands eligible for remining, the operations shall assume the responsibility for successful revegetation for a period of 2 full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with performance standards. Utah also proposes to add new UCA 40–10–17(6) to specify that UCA 40–10–17(2)(t)(ii) is repealed effective September 30, 2004.

Utah proposes to revise UCA 40–10–18, operator requirements for underground coal mining, by adding new subsection (4) to require the permittee of an underground coal mining operation after October 24, 1992, to promptly repair or compensate for material damage resulting from subsidence to occupied residential dwellings and related structures or noncommercial buildings. Utah further proposes that repair of damage includes rehabilitation, restoration, or replacement of such damaged dwellings, structures, or buildings; and compensation is to be in the full amount of the diminution in value resulting from the subsidence. Lastly, Utah proposes that the requirement to repair or compensate for material damage resulting from subsidence will not prohibit or interrupt underground coal mining operations, and the Board will adopt final rules to implement these provisions within 1 year after enactment of UCA 40–10–18(4).

Utah proposes to revise UCA 40–10–20, contest of violation or amount of penalty, by adding new subsection (2)(e)(ii) to provide that if the operator fails to submit the amount of the civil penalty within 30 days of receipt of the results of an informal conference, the

operator waives any opportunity for further review of the violation or to contest the violation.

Utah proposes to revise UCA 40–10–22 pertaining to violations of Utah's program or permit conditions by (1) requiring at subsection (1)(d) that, where a determination is made that a pattern of violations exists has existed and the violations were caused by the permittee's unwarranted failure to comply with Utah's program or the conditions of the permit, the Division will request the Board to issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and provide an opportunity for a public hearing; if the permittee requests a hearing, the Board will give notice in accordance with its rules of practice and procedure; and if the permittee fails to show cause as to why the permit should not be suspended or revoked, the Board will immediately enter an order to suspend or revoke the permit; (2) adding the word "district" before "court" at subsection (2)(a) and clarifying that any relief granted by the district court will continue in effect unless the Utah Supreme Court on review grants a stay of enforcement or sets aside or modifies the Board's order which is being appealed; (3) providing at subsection (3)(a) that a permittee or aggrieved person may initiate Board action by requesting a hearing and requiring at subsections (3)(b) and (d) that the Board will act in accordance with its rules of practice and procedure; (4) changing terms at subsection (3)(e) from "issued" to "entered" when describing the outcome of the Board's order and from "administrative" to "adjudicative" when describing "proceeding;" and (5) at subsection (3)(f), providing that the Board's action is subject to judicial review by the Utah Supreme Court as prescribed in subsection 78–2–2(3)(e)(iv), rather than by the appropriate district court.

Utah proposes to add new language to its judicial review of rules and orders provisions at UCA 40–10–30 by adding new language to require that (1) judicial review of adjudicative proceedings is governed by Title 63, Chapter 46b, of UAPA and provisions of Chapter 10 consistent with UAPA and (2) judicial review of the Board's rulemaking procedures and rules adopted under Chapter 10 is governed by Title 63, Chapter 46a, Utah Administrative Rulemaking Act. Utah also proposes to revise recodified subsection (3) to require that an appeal from the Board's order will be directly to the Utah Supreme Court and to revise recodified subsection (4) to require that an action or appeal involving the Board's order will be determined as expeditiously as feasible by the Utah Supreme Court in accordance with subsection 78–2–2(3)(e)(iv). Finally, Utah proposes to delete existing subsection (3) pertaining to review of the adjudication of the district court and add new language at subsection (5) to specify that, if the Board fails to perform any act or duty that is not discretionary, the aggrieved person may bring an action in the appropriate district court.

Utah proposes to repeal UCA 40–10–4, "Mined land reclamation provisions applied," Utah Code Annotated 1953, as enacted by Chapter 145, Laws of Utah 1979. Utah also proposes to repeal UCA 40–10–31, "Chapter's procedures supersede Title 63, Chapter 46b," Utah Code Annotated 1953, as enacted by Chapter 161, Laws of Utah 1987.

Utah proposes to add new language requiring that UCA 40–10–11(5) and UCA 40–10–17(2)(t)(ii) are repealed effective September 30, 2004.

Utah proposes the following revisions to its plan provisions.

Utah proposes to revise UCA 40–10–25 pertaining to lands and water eligible for reclamation by deleting, as a priority for the expenditure of AMLR funds, existing subsection (2)(d), which pertains to research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques, and adding new requirements for eligible lands and water to include lands and water left in an inadequate reclamation status and which meet the criteria of subsection (4)(a) or (b). Utah proposes to allow AMLR funds to be used for reclamation or drainage abatement at sites (1) where operations occurred during the period beginning August 4, 1977, and ending before January 21, 1981, and where funds pursuant to a loan or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site and (2) where operations occurred during the period beginning on August 4,1977, and ending on or before November 5, 1990, and where the surety of the mining operator became insolvent during that period, and as of November 5,1990, funds immediately available from proceedings relating to the insolvency, or from any financial guarantee or other source, are not sufficient to provide for adequate reclamation or abatement at the site. Utah proposes to require that, in determining which sites to reclaim, priority be given to those sites in the immediate vicinity of a residential area or which have an adverse economic impact upon a local community.

Finally, Utah proposes to provide that (1) surface coal mining operations on lands eligible for remining do not affect eligibility for reclamation and restoration after the release of the bond or deposit for the operation, (2) when the bond or deposit for a coal surface mining operation on lands eligible for remining is forfeited and the amount of the bond or deposit is not sufficient to provide for adequate reclamation or abatement, AMLR funds may be used for reclamation, and (3) regardless of the provisions above that pertain to operations on lands eligible for remining, the Director of the Division can expend monies from the abandoned mine reclamation trust fund for any emergency requiring immediate reclamation.

Utah proposes to revise UCA 40–10–28, recovery of reclamation costs and liens against reclaimed land, by adding new language at subsection (1)(a)(ii) to require that the sale price for land reclaimed using reclamation funds that is sold to a State or local government for public purposes, may not be less than the actual cost of purchase of the property by the State plus the costs of reclamation. At subsection (2)(a), Utah proposes that a lien shall not be placed against reclaimed land where the surface owner owned the land prior to May 2, 1977, and neither consented to nor participated in nor exercised control over the mining operation that necessitated the reclamation work.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h) and 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable program and plan approval criteria of 30 CFR 732.15 and 884.14. If the amendment is deemed adequate, it will become part of the Utah program and plan.

### *1. Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

### *2. Public Hearing*

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on May 27, 1994. The location and time

of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

*3. Public Meeting*

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listing under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

**IV. Procedural Determinations**

*1. Executive Order 12866*

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

*2. Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*3. National Environmental Policy Act*

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

*4. Paperwork Reduction Act*

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

*5. Regulatory Flexibility Act*

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

**V. List of Subjects in 30 CFR Part 944**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 6, 1994.

**Russell F. Price,**

*Acting Assistant Director, Western Support Center.*

[FR Doc. 94–11531 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–05–M

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AC09**

## Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status for the Hine's Emerald Dragonfly (Somatochlora hineana)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of public hearing and reopening of comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) gives notice that a public hearing will be held on the proposed determination of endangered status for the Hine's emerald dragonfly (*Somatochlora hineana*) and that the comment period on the proposal will be reopened. The Hine's emerald dragonfly now persists in populations in Cook, DuPage, and Will Counties in Illinois, and in Door County, Wisconsin. It occupies calcareous, marshy streams associated with cattail marshes on dolomite bedrock. The public hearing and reopened comment period will allow comments on this proposal to be submitted from all interested parties.

**DATES:** The public hearing will be held from 7 to 9 p.m. on Wednesday, May 25, 1994, in Sturgeon Bay, Wisconsin. The comment period on the proposal originally closed on December 3, 1993, was extended to January 3, 1994, and now closes June 6, 1994.

**ADDRESSES:** The public hearing will be held at the Door County Courthouse, General Meeting Room (A150), 421 Nebraska Street, Sturgeon Bay, Wisconsin. Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above Regional Office address.

**FOR FURTHER INFORMATION CONTACT:** For information on the public hearing contact Janet Smith, Supervisor, U.S. Fish and Wildlife Service Ecological Services Field Office, 1015 Challenger Court, Green Bay, Wisconsin 54311 (phone 414/433–3803; fax 414/433–3882).

SUPPLEMENTARY INFORMATION:

## Background

The Hine's emerald dragonfly is known to occur in three counties in the Chicago, Illinois, metropolitan area and in Door County, Wisconsin. It was proposed for listing as an endangered species on the basis of evidence that its range and numbers have declined dramatically, primarily as a result of the destruction of its habitat, and that the threats to the habitat are continuing.

On October 4, 1993, the Service published a proposed rule to list the Hine's emerald dragonfly as endangered under the Endangered Species Act, as amended. The original comment period ended on December 3, and the deadline for receipt of public hearing requests was November 18. On December 10, 1993, a notice was published reopening the comment period until January 3, 1994. The Service believes a number of parties interested in the proposed listing did not receive notice of the proposal in sufficient time to submit comments or request a public hearing during the original comment period.

On December 20, 1993, the Service received requests for public hearings on this proposal from Mr. Jerome M. Viste, representing the Door County Environmental Council, Inc., Fish Creek, Wisconsin, and Mr. George M. Reynolds, representing Reynolds & Co., Milwaukee, Wisconsin. The Service has scheduled a hearing on May 25, 1994, from 7:00 to 9:00 p.m. C.S.T., at the Door County Courthouse, Sturgeon Bay, Wisconsin. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes if the number of parties present that evening necessitates some limitation. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

In order to accommodate the hearing, the Service also reopens the public comment period. Written comments may be submitted until June 6, 1994, to the Service office in the ADDRESSES section or at the public hearing.

## Author

The primary author of this notice is Carlita Shumate, Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056 (phone 612/725–3276; fax 612/725–3526).

## Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 9, 1994.

**Richard N. Smith,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 94–11659 Filed 5–10–94; 11:58 am]

BILLING CODE 4310–55–P

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# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 638

**[I.D. 050394C]**

## Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic; Public Hearings

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

**ACTION:** Notice of public hearings; request for comments.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene two public hearings on draft Amendment 2 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic including a Draft Supplemental Environmental Impact Statement, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis. Amendment 2 would provide for management of live rock, a hard substrate material containing an assemblage of living marine organisms used in marine aquaria.

**DATES:** Written comments on draft Amendment 2 will be accepted until June 24, 1994. The hearings are scheduled from 6 p.m. to 9 p.m. as follows:

1. Wednesday, June 1, 1994, in Shalimar, FL.
2. Thursday, June 2, 1994, in Tampa, FL.

**ADDRESSES:** Comments should be addressed to Terrance R. Leary, Fishery Biologist, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609; FAX: 813–225–7015. The hearings will be held at the following locations:

1. Shalimar, FL—Okaloosa County Courthouse Annex, 1250 Eglin Parkway, Shalimar, FL 32579.
2. Tampa, FL—Ramada Airport Hotel, 5303 West Kennedy Boulevard, Tampa, FL 33609.

**FOR FURTHER INFORMATION CONTACT:** Terrance R. Leary, Fishery Biologist, 813–228–2815.

**SUPPLEMENTARY INFORMATION:** These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs (see ADDRESSES) by May 24, 1994.

Dated: May 6, 1994.

**Joe P. Clem,**

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

[FR Doc. 94–11504 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–22–P

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## 50 CFR Parts 671, 672, 675, and 676

**[I.D. 050494B]**

## Pacific Halibut Fisheries; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands; King and Tanner Crab of the Bering Sea and Aleutian Islands; Limited Access Management of Federal Fisheries In and Off of Alaska

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

**ACTION:** Notice of availability of amendments to fishery management plans; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted Amendment 23 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), Amendment 28 to the FMP for Groundfish of the Gulf of Alaska (GOA), and Amendment 4 to the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI for review by the Secretary of Commerce (Secretary). The amendments would establish a moratorium on the entry of new vessels into these fisheries. Comments are requested from the public. Copies of the amendments may be obtained from the Council (see ADDRESSES).

**DATES:** Comments on the FMP amendments must be submitted by July 8, 1994.

**ADDRESSES:** Comments on the FMP amendments must be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel).

Copies of the amendments and the environmental assessment/regulatory impact review/initial regulatory

flexibility analysis prepared for the amendments are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: 907–271–2809.

**FOR FURTHER INFORMATION CONTACT:** David C. Ham, Fishery Management Biologist, Alaska Region, NMFS at 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any FMP or FMP amendment it prepares to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon reviewing the plan or amendment, immediately publish a notice in the **Federal Register** that the plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve these amendments.

The three FMPs and a companion regulatory amendment for the halibut fishery would establish a 3-year moratorium on the entry of new vessels into the groundfish fishery of the GOA and BSAI, the king and Tanner crab fishery of the BSAI, and halibut fishery in and off of Alaska. The purpose of the moratorium is to curtail increases in harvesting capacity and provide industry stability, while the Council assesses long-term management alternatives for its comprehensive management plan.

The moratorium would be implemented through the issuance of Federal vessel permits for groundfish in the GOA and BSAI, Federal vessel permits for crab in the BSAI, and International Pacific Halibut Commission (IPHC) vessel permits for halibut in the Convention waters in and off of Alaska. Vessel permits for these fisheries would be issued only to vessels that had a historical landing in a moratorium fishery from January 1, 1980, to February 9, 1992.

The companion regulatory amendment would effect changes to rules governing the harvest of Pacific halibut by U.S. fishermen in and off of Alaska. The Council does not have an FMP for halibut. The domestic fishery for halibut in and off Alaska is managed by the IPHC, as provided by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention), and the Northern Pacific Halibut Act. The Convention and the Halibut Act authorize the respective Regional Fishery Management Councils established by the Magnuson Act to develop regulations that are in addition to, but not in conflict with, regulations adopted by the IPHC affecting the U.S. halibut fishery. Under this authority, the Council may develop, for approval by the Secretary, limited access policies for the Pacific halibut fishery in Convention waters in and off of Alaska. "Convention waters" means the maritime areas off the west coast of the United States and Canada as described in Article I of the Convention (see 16 U.S.C. 773(d)). The Council acted under this authority in recommending its proposed moratorium for the halibut fishery. Regulations governing the harvesting of Pacific halibut are set forth at 50 CFR parts 301 and 676.

Regulations proposed by the Council to implement these amendments are scheduled to be published within 15 days of this document.

Dated: May 9, 1994.

**David S. Crestin,**

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

[FR Doc. 94–11549 Filed 5–9–94; 2:26 pm]

BILLING CODE 3510–22–P

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**50 CFR Part 676**

**[I.D. 050494A]**

## Limited Access Management of Federal Fisheries In and Off of Alaska

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

**ACTION:** Notice of availability of amendments to fishery management plans and request for comments.

**SUMMARY:** NMFS announces that the North Pacific Fishery Management Council (Council) has submitted Amendment 30 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 34 to the FMP for Groundfish of the Gulf of Alaska (GOA) for Secretarial review; comments are requested from the public. Amendment 30 would raise the sablefish Community Development Quota (CDQ) reserve allocation limit from 12 percent to 33 percent. This action is intended to allow total allocation of the sablefish CDQ reserve.

**DATES:** Comments on the FMP amendments must be submitted by July 8, 1994.

**ADDRESSES:** Comments on the FMP amendments must be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th, room 453, Juneau, AK 99801 or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of the amendments and the regulatory impact review prepared for the amendments are available from the Council, P.O. Box 103136, Anchorage, AK 99510.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, Fisheries Regulations Specialist, Alaska Region, NMFS, at 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon reviewing the plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the amendment for implementation.

Amendment 30 to the FMP for the Groundfish Fishery of the BSAI would raise the allocation limit of sablefish community development quota reserve for qualified applicants from 12 percent to 33 percent. The 33 percent limit would ensure that NMFS would be able to allocate 100 percent of the sablefish CDQ reserves to qualified CDQ applicants. Implementation of Amendment 30 would not change the amount of sablefish available for harvest by fishermen participating in the Pacific halibut and sablefish individual fishing quota program. The sablefish CDQ reserve, 20 percent of the annual fixed gear total allowable catch of sablefish for each management area in the BSAI, would be the same under the proposed action as it is under the current FMP text. Amendment 34 to the FMP for Groundfish of the GOA would correct the inadvertent inclusion of the CDQ program in that FMP by removing and reserving Section 4.4.1.1.8 *Community Development Quotas.* Copies of the amendments may be obtained from the Council (see **ADDRESSES**).

Dated: May 6, 1994.

**Richard H. Schaefer,**

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

[FR Doc. 94–11495 Filed 5–9–94; 2:26 pm]

BILLING CODE 3510–22–P

# Notices

Federal Register
Vol. 59, No. 91
Thursday, May 12, 1994

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

### Forms Under Review by Office of Management and Budget

May 6, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

**Revision**

- Agricultural Stabilization and Conservation Service.

7 CFR 723.501–508 Tobacco: Domestic Marketing Assessment—Addendum.
MQ–25, 32, 38, 38 Burley, 53, 71, 72, –2, 76, 77 (ALL), 76–1, 78, 79 (ALL), 79 Suppl., 79–2A, 80 (ALL), 82, 92, 99, 108, 108–1, 117, ASCS–364, 375 (ALL), 378, 807.
Recordkeeping; Annually.
Businesses or other for-profit; 1,403,233 responses; 231,024 hours.
Mike Thompson (202) 720–4281.

**Extension**

- Food and Nutrition Service.

Food Stamp Program Regulations, Part 275—Quality Control.
Recordkeeping; On occasion.
State or local governments; 53 responses; 266 hours.
Retha Oliver (703) 305–2472.

- Agricultural Marketing Service.

Tomatoes Grown in Florida, Marketing Order No. 966; FV–68, FV–69.
Recordkeeping; On occasion; Weekly; Monthly; Annually; Daily.
Farms; Businesses or other for-profit; Small businesses or organizations; 311 responses; 35 hours.
Shoshana Avrishon (202) 720–3610.

**New Collection**

- Rural Development Administration

7 CFR 4285–A, Federal-State Research on Cooperatives Program m).
Recordkeeping; On occasion; Quarterly.
State or local governments; 285 responses; 1,712 hours.
Jack Holston (202) 720–9736.

**Larry K. Roberson,**
*Deputy Department Clearance Officer.*
[FR Doc. 94–11484 Filed 5–11–94; 8:45 am]
BILLING CODE 3410–01–M

### Animal and Plant Health Inspection Service

**[Docket No. 94–037–1]**

### Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

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

**ACTION:** Notice.

**SUMMARY:** We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

**ADDRESSES:** Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:40 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

| Application No. | Applicant | Date received | Organisms | Field test location |
|---|---|---|---|---|
| 94–076–01 | Rutgers University | 03–17–94 | *Agrostis palustris* plants genetically engineered to express tolerance to the phosphinothricin class of herbicides. | New Jersey. |
| 94–081–01 | R.J. Reynolds Tobacco Company. | 03–22–94 | Tobacco mosaic virus genetically engineered to express a carotenoid biosynthetic gene. | North Carolina. |

Done in Washington, DC, this 5th day of May 1994.

**Lonnie J. King,**

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

[FR Doc. 94–11487 Filed 5–11–94; 8:45 am]

BILLING CODE 3410–34–P

## Forest Service

### Bronco Beauty Resource Area; Idaho Panhandle National Forests, Kootenai County, Idaho

**ACTION:** Cancellation of the notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Notice of Intent to prepare an EIS (Environmental Impact Statement) for a proposal to harvest timber in a portion of the Bronco Beauty Resource Area, published in the **Federal Register** on June 17, 1993 (58 FR 33431) is hereby rescinded. The area is located approximately 8 miles southeast of Coeur d'Alene, Idaho, and is approximately 8,000 acres in size. Preparation of an Environmental Assessment was initiated in February, 1992, to examine potential timber harvest in this area. The level of concern expressed by the public indicated a high sensitivity level concerning water and wildlife resources, existing road density, and recreation opportunities.

Based on public concerns and field verification, the proposal to examine timber harvest in the Bronco Beauty Resource Area has been withdrawn.

**DATES:** This action is effective May 12, 1994.

**FOR FURTHER INFORMATION CONTACT:** Questions about the cancellation should be directed to Patrick Sheridan, Planning Staff Officer, Fernan Ranger District, Idaho Panhandle National Forests, 2502 East Sherman Avenue, Coeur d'Alene, ID 83814. Phone: (208) 664–2318.

Dated: May 2, 1994.

**Donald J. Bright,**

*District Ranger, Fernan Ranger District, Idaho Panhandle National Forests.*

[FR Doc. 94–11559 Filed 5–11–94; 8:45 am]

BILLING CODE 3410–11–M

## COMMISSION ON CIVIL RIGHTS

### Hearing on Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—New York City; Postponement

Notice was previously given pursuant to the provisions of the United States Commission on Civil Rights Act of 1983, Public Law 98–183, 97 Stat. 1301, as amended, of a public hearing of the U.S. Commission on Civil Rights, to commence on May 16, 1994, beginning at 9 a.m. in the Ceremonial Court of the U.S. Court of International Trade, located at One Federal Plaza, New York, New York 10007, in the March 21, 1994, issue of the **Federal Register** at page 13304.

This is to advise the public that the aforementioned public hearing has been postponed, and will be held at a later date. A future notice will be published in the **Federal Register** by the U.S. Commission on Civil Rights apprising the public of the new hearing date, time, and location.

The Commission on Civil Rights is an independent, bipartisan, factfinding agency authorized by Congress to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information concerning legal developments, with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice.

For additional information, please contact Barbara Brooks, Press and Communications at (202) 376–8312 or Rosalind D. Gray, Acting General Counsel at (202) 376–8351.

Dated at Washington, DC, May 9, 1994.

**Rosalind D. Gray,**

*Acting General Counsel.*

[FR Doc. 94–11604 Filed 5–10–94; 9:08 am]

BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews.

**SUMMARY:** The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with April anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

**EFFECTIVE DATE:** May 12, 1994.

**FOR FURTHER INFORMATION CONTACT:** Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4737.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department of Commerce (the Department) has received timely requests, in accordance with 19 CFR 353.22(a) and 355.22(a) (1993), for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with April anniversary dates.

**Initiation of Reviews**

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than April 30, 1995.

| | Period to be reviewed |
|---|---|
| *Antidumping Duty Proceedings:* | |
| Finland: Rayon Staple Fiber[1], A–405–071, Kemira Oy Sateri | 03/01/93–02/28/94 |
| France: Sorbitol, A–427–001, Roquette Freres | 04/01/93–3/31/94 |
| Japan:. | |
| 3.5″ Microdisks and Coated Media Thereof, A–588–802, Fuji Photo Film Co., Ltd. | 04/01/93–01/31/94 |
| Roller Chain, Other than Bicycle, A–588–028, Daido Kogyo/Daido Corp., Enuma Chain/Daido Corp., Hitachi Metals/ Hitachi Maxco, Izumi, Pulton Chain, RK Excel (Takasago) | 04/01/93–03/31/94 |
| Mexico: Certain Fresh Cut Flowers, A–201–601, Visaflor, Tzitzic Tareta, Rancho Daisy, Rancho Alisitos, Rancho Mision el Descanso, Rancho Las Dos Palmas, Las Flores de Mexico, Rancho del Pacifico, Rancho el Aguaje, Rancho el Toro, Rancho Guacatay, Mexipel, S.A. de CV | 04/01/93–03/31/94 |
| Norway: Fresh and Chilled Atlantic Salmon, A–403–801, A.B.A. A/S, Arctic Group, Arctic Products Norway, Brodene Sirevag A/S, Cocoon Ltd. A/S, Delfa Norge A/S, Delimar A/S, Deli-Nor A/S, Fjord Trading Ltd. A/S, Fresh Marine Company, Grieg Norwegian Salmon, Hallvard Leroy AS, Harald Mowinckel A/S, Imperator de Norvegia, More Codfish Company, Mowi AS, Nils Williksen A/S, North Cape Fish A/S, Norwegian Salmon A/S, Norwegian Taste Company A/S, Olsen & Kvalheim A/S, Sekkingstad A/S, Skaarfish—Mowi A/S, TiMar Seafood A/S, Victoria Seafood A/S, West Fish Ltd., A/S. | |
| The Republic of Korea: Color Television Receivers, A–580–008, Samsung Electronics Co., Ltd., Daewoo Electronics Co., Ltd., Goldstar Co., Ltd., Cosmos Electronics Manufacturing, Ltd., Quantronics Manufacturing, Ltd., Samwon Electronics, Ltd., Tongkook General Electronics, Inc. | |
| The Republic of Korea: Steel Wire Rope, A–580–811, Korea Sangsa Co., Ltd.[2] | 09/30/92–02/28/94 |
| *Countervailing Duty Proceedings:* | |
| Argentina: Cold Rolled Carbon Steel Flat-Rolled Products, C–357–005 | 01/01/93–12/31/93 |
| *Suspension Agreements:* | |
| None. | |

[1] This administrative review was inadvertently omitted from the April 15, 1994 initiation notice.
[2] This firm was inadvertently omitted from the April 15, 1994 initiation notice.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353(c)(1) and 355.22(c)(1).

Dated: May 6, 1994.

**Roland L. MacDonald,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 94–11589 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–412–803]**

## Industrial Nitrocellulose From the United Kingdom; Preliminary Results of Antidumping Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of Antidumping Duty Administrative Review: Industrial Nitrocellulose from the United Kingdom.

**SUMMARY:** In response to a request by one manufacturer/exporter, the Department of Commerce is conducting an administrative review of the antidumping duty order on industrial nitrocellulose from the United Kingdom. The review covers one manufacturer/exporter of the subject merchandise to the United States during the period July 1, 1992 through June 30, 1993. The review indicates the existence of dumping margins during the period.

As a result of this review, we have preliminarily determined to assess antidumping duties equal to the differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** May 12, 1994.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Trainor, Breck Richardson or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 7, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 36391) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom. On July 29, 1993, the respondent, Imperial Chemical Industries PLC (ICI), requested to be reviewed in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Tariff Act), and § 353.22(a) of the Department's regulations (19 CFR 353.22(a)). We published the notice of initiation of the antidumping duty administrative review on August 24, 1993 (58 FR 44653), covering the period July 1, 1992 through June 30, 1993. We have now conducted the review in accordance with section 751 of the Tariff Act.

### Scope of the Review

This review covers shipments of INC from the United Kingdom. INC is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, which is produced from the reaction of cellulose with nitric acid. It is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. INC is currently classifiable under Harmonized Tariff Schedule (HTS) item number 3912.20.00. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive. The scope of the antidumping order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

This review covers sales by ICI of INC from the United Kingdom entered into the United States during the period July 1, 1992 through June 30, 1993.

### Verification

We verified the questionnaire responses of ICI's affiliate, Nobel's Explosives Company Ltd. (Nobel's) from February 7, 1994 to February 11, 1994, at Nobel's manufacturing facility in Stevenston, Scotland. We verified the responses of ICI's U.S. affiliate, ICI Americas Inc. (ICIA) from February 21,

1994 to February 25, 1994 at ICIA's offices in Valley Forge, Pennsylvania.

**United States Price**

The Department used purchase price (PP), as defined in section 772 of the Tariff Act, in calculating U.S. price (USP) when the merchandise was purchased, or agreed to be purchased, prior to the date of importation, from the producer of the merchandise through a related sales agent in the United States by unrelated U.S. purchasers. We determined that PP was the most appropriate determinant of USP for these sales based on the following factors:

(1) The merchandise was shipped directly from the manufacturer to the unrelated buyer without being introduced into the inventory of the respondent's related U.S. selling agent;

(2) This was the customary commercial channel for sales of this merchandise between the parties involved; and

(3) The respondent's related sales agent acted mainly as a processor of sales-related documentation and communication links with the unrelated U.S. customer.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the functions themselves. See *Outokumpu Copper Rolled Products* v. *United States*, 829 F.Supp. 1371, 1378 (CIT 1993).

We calculated purchase price based on packed delivered prices. We made deductions for ocean freight, marine insurance, brokerage and handling, and U.S. Customs duties and fees, in accordance with section 772(d)(2) of the Tariff Act. We adjusted ICI's reported U.S. interest rate to correct a minor error in the interest calculation found at verification.

We used the best information available (BIA) for marine insurance. At verification we discovered that ICI had failed to report that it obtains marine insurance from a related company. Further, company officials did not demonstrate that marine insurance rates were at arm's length. In the absence of a second company involved in either this review or the less-than-fair-value (LTFV) investigation from which, as BIA, marine insurance rates might be selected, we calculated a percentage of unit price based on publicly-available data as reported in the administrative review of INC from Brazil. See Industrial Nitrocellulose from Brazil: Preliminary Results of Antidumping Duty Administrative Review, (58 FR 27537) May 10, 1993.

We made an addition to USP for value-added taxes (VAT) in accordance with section 772(d)(1)(C) of the Tariff Act. In making our adjustment for VAT, we followed the instructions of the United States Court of International Trade (CIT) in *Federal Mogul Corp. and the Torrington Co.* v. *United States*, 834 F.Supp. 1391 (CIT 1993). The Department added to USP the result of multiplying the foreign market tax rate by the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales.

The Department also adjusted the tax amount calculated for USP and the amount of tax included in foreign market value (FMV). We deducted the portions of the foreign market tax and the USP tax that are the result of expenses that are included in the foreign market price used to calculate foreign market tax and in the USP used to calculate the USP tax. Because these expenses are later deducted to calculate FMV and USP, these adjustments are necessary to prevent our new methodology for calculating the USP tax from creating dumping margins where no margins would exist if no taxes were levied upon foreign market sales.

We disagree with ICI's claim that certain sales, that were sold to a related party and further processed in the United States before sale to the first unrelated party, were PP sales.

We used BIA for these exporter's sales price (ESP) sales, because ICI failed to answer the Department's further manufacturing questionnaire for these sales and to provide prices to the first unrelated purchaser. ICI stated that it was either impossible or extremely difficult to answer the questionnaire, and, instead, provided a small amount of financial and manufacturing information for the related company responsible for the ESP sales.

At verification, we explored with ICI the reasons it provided for not responding to the further manufacturing questionnaire. We were told that providing the specific further processing information requested by the Department would take an excessive amount of time. We reviewed documentation that demonstrated that the production of the further processed product involves a series of steps. At each intermediary step, chemicals and compounds are combined to produce new compounds that will be mixed with other compounds in the next step. As a result, to determine the amount of INC used in the final product, and to determine which products use INC, would require a complicated trace back through multiple intermediary steps. (See Report on Verification of Imperial Chemical Industries PLC and ICI Americas Inc., March 24, 1994, 26–27.) However, our verification established that ICI had the documentation needed to fulfill the Department's request for further processing information. ICI's claim appears to be based solely on the time and resources that would be required to provide the requested information. We, therefore, conclude that it would not have been impossible for ICI to have answered the further manufacturing questionnaire, and that doing so would have been no less burdensome for ICI than for respondents in other cases who are asked to answer further manufacturing questionnaires. (See Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom, (59 FR 39729) July 26, 1993.)

Since ICI could have, but did not, provide the data, we have used non-cooperative BIA for these sales. There were no other firms involved in the LTFV investigation or in this first review. We have therefore used ICI's rate from the final determination in the LTFV investigation as BIA for these particular sales.

**Foreign Market Value**

In accordance with section 773(a)(1)(A) of the Tariff Act, we calculated FMV based on home market sales. We did not include sales to related parties in calculating FMV. Under 19 CFR 353.45, the Department may disregard transactions between related parties if the price does not fairly reflect the usual price at which sales are made to unrelated parties. We performed an analysis of related party prices and found that they were not at arm's length. (See Memorandum to the File, April 15, 1994.)

As in the LTFV investigation, product comparisons were made on the basis of the following criteria: nitrogen percentage, viscosity rating, wetting agent type, cellulose source, physical form, and wetting agent percentage. (See Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from the United Kingdom, 55 FR 21055 (May 22, 1990). Where there were no sales of identical

merchandise in the home market with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared on the basis of the characteristics described above. In those instances, we made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Tariff Act.

We calculated FMV based on packed and either delivered or ex-works prices to unrelated customers in the United Kingdom. We made deductions for home market packing, inland freight, and rebates, and added U.S. packing costs in accordance with section 773(a)(1) of the Tariff Act.

When a commission was paid on a PP sale but not on the home market sale, we added the amount of the commission to the FMV and then deducted from FMV the lesser of either total home market indirect selling expenses or the U.S. commission amount, in accordance with 19 CFR 353.56(b)(1).

As a result of verification, we adjusted home market indirect selling expenses, packing, and credit costs which had been incorrectly or inappropriately quantified. Although we were able to verify ICI's home market packing expenses for the period December 1, 1992–June 30, 1993, we were unable to verify ICI's claimed home market packing costs for the July 1, 1992–November 30, 1992 portion of the period of review (POR). (See Report on Verification of Imperial Chemical Industries PLC and ICI Americas Inc., March 24, 1994, 9–12, and Memorandum from Case Analyst to the File, April 15, 1994.) We used BIA for all home market packing expenses for sales made between July 1, 1992 and November 30, 1992. Because respondents claimed that drums were reused once during this five-month period, as BIA we have used the verified packing costs for the latter part of the POR (adjusted as described below) and divided that amount by two, to account for the reuse of packing drums during the first half of the POR.

During the verification of ICI, the Department discovered that the costs of at least some of the drums purchased in May 1993 were overstated. A number of purchases of steel drums were made during that month. At one point during the month, the price of the drums increased. Rather than determining an average price, ICI selected the higher price as representative for the entire month of May. From the information provided at verification, we could not determine how many drums were purchased at the lower price and how many were purchased at the higher price.

Therefore, as BIA for all May 1993 home market sales, we have used the lower price for packing cost.

In comparing home market sales to PP sales, we made a circumstance-of-sale adjustment for differences in credit terms by deducting home market credit expenses and adding U.S. credit expenses, in accordance with 19 CFR 353.56(a)(2). We have used BIA for the home market interest rate for the purposes of calculating credit and inventory carrying expenses. ICI does not incur short-term credit costs associated with INC in either the U.S. or the home market. ICI was unable to satisfactorily support at verification its reported claim of what its home market credit costs would have been if short-term debt had existed during the POR. In the U.S. market, ICI established that, if short-term debt existed, it would have been financed using a particular United Kingdom-based interest rate. For the purposes of calculating home market credit and inventory carrying costs, we have therefore used the same United Kingdom-based interest rate as used for U.S. credit.

**Currency Conversion**

We made currency conversions based on the official exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the following margin exists for the period July 1, 1992 through June 30, 1993:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Imperial Chemical Industries PLC | 5.79 |

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. See 19 CFR 353.38. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of INC from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate established in the final notice of the LTFV investigation of this case, in accordance with the CIT's decisions in *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993), and *Federal Mogul Corporation and the Torrington Company* v. *United States*, 839 F.Supp. 864 (CIT 1993). The all others rate is 11.13 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 5, 1994.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 94–11587 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–805]

## Sodium Thiosulfate From the United Kingdom; Termination of Antidumping Duty Administrative Review

**AGENCY:** Import Administration/ International Trade Administration Department of Commerce.

**ACTION:** Notice of termination of antidumping duty administrative review.

**SUMMARY:** In response to a request from William Blythe & Co., Ltd., the Department of Commerce (the Department) initiated an administrative review of this merchandise on March 14, 1994, for the period February 1, 1993 through January 31, 1994. Based on William Blythe and Co.'s withdrawal of this request, we are not terminating this review.

**EFFECTIVE DATE:** May 12, 1994.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5325/4477.

**SUPPLEMENTARY INFORMATION:**

### Background

In response to a request from William Blythe and Co., Ltd., a producer/ exporter of sodium thiosulfate from the United Kingdom, the Department published in the **Federal Register** on March 14, 1994, (59 FR 11768) a notice of initiation of administrative review of the antidumping duty order on sodium thiosulfate from the United Kingdom. The review covers one manufacturer/ exporter of this merchandise to the United States, William Blythe Co., Ltd., for the period February 1, 1993 through January 31, 1994.

On March 29, 1994, William Blythe Co., Ltd., requested that the Department terminate this review. Since no other interested party has requested an administrative review for this period, we are terminating this review.

This notice of termination, is in accordance with section 751(a)(1) of the Tariff Act and 19 CFR 353.22.

Dated: May 2, 1994.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 94–11588 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–DS–M

[C–223–601]

## Fresh Cut Flowers From Costa Rica; Final Results of Countervailing Duty Administrative Review and Termination of Suspended Investigation

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of final results of countervailing duty administrative review and termination of suspended investigation; fresh cut flowers from Costa Rica.

**SUMMARY:** On February 10, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 6236) the preliminary results of its administrative review of the Suspension of Countervailing Duty Investigation; Certain Fresh Cut Flowers From Costa Rica (52 FR 1356; January 13, 1987) (Agreement). We have now completed that review and have upheld the results of the preliminary results. We have determined for the final results that the signatories have complied with the terms of the agreement during the period January 1, 1991 through December 31, 1991. In addition, we have determined that the signatories of the agreement on fresh cut flowers have met the requirements for termination of the suspended investigation.

**EFFECTIVE DATE:** May 12, 1994.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Patience or Jean Kemp, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Constitution Avenue and 14th Street, NW., Washington, DC 20230; telephone: (202) 482–3793.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 10, 1994, the Department published in the **Federal Register** (59 FR 6236) the preliminary results of its administrative review of the agreement. We have now completed that review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), 19 USC 1675(a) (1988).

### Scope of Review

Imports covered by this review are shipments of miniature (spray) carnations, standard carnations, and pompon chrysanthemums from Costa Rica. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) items 0603.10.30 and 0603.10.70. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1991 through December 31, 1991 and six programs: (1) Tax Credit Certificates; (2) Certificates for Increasing Exports; (3) Income Tax Exemptions for Export Earnings; (4) Exporter Credit for Sales Tax and Consumption Tax on Certain Domestic Purchases; (5) Exporter Exemptions for Taxes and Duties on Imports; and (6) Accelerated Depreciation.

### Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from petitioner and rebuttal comments from respondents (ACOFLOR, the trade association representing the signatories in these proceedings and the Government of Costa Rica (GOCR)).

*Comment 1:* Petitioner argues that all Coast Rican flower producers and exporters covered by the agreement have not established non-use of countervailable programs for a period of at least five years. Since the first administrative review, nine companies have signed on to the agreement. Petitioner notes that § 355.25(a)(2)(i) of the Department's regulations states that a suspended investigation may be terminated if "[a]ll producers and exporters covered at the time of revocation by the order or suspension agreement have not applied for or received any net subsidy on the merchandise for a period of at least five consecutive years." As not all current signatories were covered by the first review, petitioner argues that they have not been found to comply with the terms of the agreement for five consecutive years. Petitioner contends that it is not Department practice to deviate from its regulations without a demonstration that the unusual facts or circumstances of a particular case require special consideration. Petitioner points out that in Ceramic Tile from Mexico; Final Results of Countervailing Duty Administrative Review and Revocation in Part of the Countervailing Duty Order (59 FR 2823, 2824, January 19, 1994) ("Tile from Mexico") the Department found that a company had fulfilled the five-year requirement, even though it had not been reviewed during one review period because it did not ship during that period. The Department

based this determination on the "unusual facts and circumstances" of the case and the lack of a clearly articulated Department policy detailing the requirements of 19 CFR 355.25(a)(3). The Department did revoke the order for this company. Petitioner also notes a Department decision to require that separate administrative reviews be conducted for each of the review periods. (See Lamb Meat from New Zealand; Final Results of Countervailing Duty Administrative Review (58 FR 45,097, August 26, 1993), and the Department's Memorandum in that review Re: Basis for Revocation of Orders and Terminations of Suspension Agreements Under 19 CFR 355.25(a)(1) at 4 (12/14/92) (on file in room B–099, Department of Commerce, Washington, DC).

Respondents argue that the changes to the list of signatories demonstrate the effectiveness and inclusiveness of compliance measures established by respondents to assure fulfillment of their obligations under the agreement. Respondents contend that requiring all those who happen to appear on the list of signatories as of the period of review to demonstrate their compliance with the terms of the agreement for a period of five consecutive years imposes an impossible standard, especially in the case where a company was newly established during the five-year review period. Furthermore, respondents state that the 15 original signatories have accounted for at least 85 percent of Costa Rican exports of subject merchandise to the United States throughout the life of the agreement. Respondents argue that the *Tile from Mexico* case, referred to by petitioner, dealt with partial revocation of a countervailing duty order and is therefore irrelevant to the current case. Respondents contend that the language of § 355.25(a)(2), "at the time of revocation," refers to the current period of review upon which the determination to terminate is based. Respondents argue that following petitioner's interpretation would involve the parties in an endless cycle of ongoing review that the termination provisions are intended to avoid.

*Department's Position:* We disagree with petitioner. We recognize that § 355.25(a)(2)(i) appears to require that, in order for the Department to terminate a suspended investigation, "[a]ll producers or exporters covered at the time of revocation" must not have "applied for or received any net subsidy on the merchandise for a period of at least five consecutive years." As explained below, however, the Department has determined that the strict reading advocated by the petitioner is not required by either the statute or the Department's regulations, and would not be in accordance with the terms of the agreement suspending the investigation in the present proceeding.

Specifically, section 704(b) of the Tariff Act provides that the Department may suspend a countervailing duty investigation "if the government of the country in which the subsidy practice is alleged to occur agrees, or exporters who account for *substantially all of the imports*" of the subject merchandise agree, "to eliminate the subsidy completely or to offset completely the amount of the net subsidy" within the appropriate period of time. 19 U.S.C. 1671c(b) (emphasis added). The statutory language has not been changed since 1987, when the suspension agreement in this case was entered into. By regulation, the Department has defined "substantially all" of the merchandise in this context as meaning "exporters that have accounted for not less than 85 percent by value or volume of the merchandise during the period for which the Department is measuring benefits in the investigation or such other period that the [Department] considers representative." 9 CFR 355.18(c).

The regulations only require the addition of new exporters in the event that the existing signatory exporters no longer account for substantially all of the merchandise. 19 CFR 355.19(c). Consequently, for purposes of terminating a suspended investigation under 355.25(a)(2)(i), all that is required is that the same exporters who have accounted for 85 percent of the merchandise for a period of five consecutive years have not applied for or received any net subsidy on the merchandise during that period.

Although not required by the statute, the Department may require new or additional producers or exporters to become signatories to an agreement, thus raising the coverage above the 85 percent level, in order to permit more effective monitoring of the agreement. In this case, pursuant to the agreement, the GOCR was required to notify the Department whenever new producers or exporters exported subject merchandise to the United States, and whether those producers or exporters had agreed to comply with the terms of the agreement. Agreement, 52 FR at 1361. To ensure that it met this requirement, the GOCR required any new or different producer or exporter which exported a certain volume or value of the subject merchandise to the United States to become a signatory. These new signatories were required to comply with the terms of the agreement during each year they were covered. The new signatories which have been reviewed by the Department provided a further track record of compliance with the suspension agreement. This provided the Department with evidence above and beyond that required under the statute and the Department's regulations for both coverage and termination.

Finally, we agree with respondents that the Tile from Mexico case dealt with partial revocation, *i.e.*, a company-specific revocation, of a countervailing duty order under § 355.25(a)(3) of the Department's regulations. The regulations contain no similar provision permitting partial termination of a suspension agreement. Therefore, the Tile from Mexico determination does not bear on the outcome of this proceeding.

Accordingly, we have determined that section 355.25(a)(2) permits termination of a suspended investigation whenever the Department determines that the exporters or producers that originally signed the suspension agreement have consistently accounted for at least 85 percent of the imports of the subject merchandise for a period of at least five consecutive years, during which time they did not apply for or receive any net subsidy on the subject merchandise. In addition, any new signatories must be found to have complied with the terms of the agreement during the time they are covered.

The Department has determined that throughout the life of the present agreement, including during the current review, the producers and exporters that originally signed the agreement have continued to account for at least 85 percent of the imports, despite the fact that new producers or exporters were added to the agreement. See Memo to the File, dated March 30, 1994, public version on file in room B–099, Department of Commerce, Washington, DC. In addition, we have determined that no producer or exporter covered by the agreement has applied for or received any net subsidy on the subject merchandise during this review or during any of the previous four reviews. Hence, for a period of at least five consecutive years after entry into the agreement, the Department has determined that the producers and exporters that signed the agreement and that consistently have accounted for substantially all of the imports of the subject merchandise into the United States have not applied for or received any net subsidy on the subject merchandise. Also, the signatories that were later added to the agreement have

complied with the terms of the agreement during each review period in which they were covered. Therefore, we determine that the requirements for termination under § 355.25(a)(2)(i) have been met. *Comment 2:* Petitioner argues that the Department should decline to terminate the suspended investigation because all the programs are still in existence and used by the flower producers and exporters for non-subject merchandise. Petitioner asserts that after termination, the former signatories will continue to be eligible to receive benefits for most of the programs, absent active ACOFLOR intervention and monitoring. Moreover, petitioner contends that termination would be inappropriate without updated information covering the 1992 and 1993 review periods.

Petitioner argues that it is not unlikely that the flower producers and exporters will use the six programs covered by the agreement. Specifically, petitioner makes the following arguments regarding the six programs:

(1) Exporter Credit for Sales Tax on Certain Domestic Purchases: Petitioner argues that there will be no incentive for ACOFLOR or the GOCR to continue monitoring receipt of benefits under this program. Petitioner also asserts that there will be incentives for flower producers and exporters to switch equipment used for the production on non-subject merchandise, for which exemptions are allowed, to the production of subject merchandise, for which exemptions are monitored under the agreement.

(2) Exporter Exemptions for Taxes and Duties on Imports: Petitioner makes the same arguments as stated above for the Exporter Credit for Sales Tax on Certain Domestic Purchases.

(3) Accelerated Depreciation: Petitioner argues that, although the Department has found that no signatories have used accelerated depreciation, there is no formal or informal mechanism to stop flower producers and exporters from claiming accelerated depreciation on their tax forms.

(4) Certificates for Increasing Exports (CIEX): Petitioner argues that the CIEX program has not been terminated because some Costa Rican exporters received CIEX benefits in 1991 through a special commission established in 1984 to pay benefits accrued in earlier years. Additionally, petitioner contends that there are no formal or informal measures to render exports of the subject merchandise ineligible for the benefit.

(5) Tax Credit Certificates (Certificados Abono Tributario CATs)): Petitioner contends that it is not clear that the CAT program was terminated as it continues to undergo fundamental changes. Petitioner also urges that although the Central Bank is not granting CATs in new export contracts, it is unclear whether the same or different benefits could be granted without using export contracts which are currently required to obtain CAT benefits.

(6) Income Tax Exemption for Export Earnings: The agreement requires exporters to maintain separate accounting records for subject and non-subject merchandise. Petitioner argues that as only one company, American Flower, maintains separate records of duty and tax exemption benefits received for exports of non-subject merchandise, the Department cannot confirm whether flower producers and exporters have received countervailable benefits on exports of subject merchandise. Petitioner contends that flower producers and exporters were eligible to apply for the income tax exemption if they had tax-exempt export profits and if they segregated domestic and export sales income in calculating income tax. Consequently, petitioner asserts, it is unlikely that new flower producers and exporters not previously subject to the agreement will maintain separate records for the subject merchandise.

Respondents argue that the GOCR and ACOFLOR have pledged to maintain controls to monitor receipt of benefits and that the GOCR is committed to eliminating incentives that distort trade. Respondents argue that it is unlikely that the flower producers and exporters will use the following six programs after termination:

(1) Exporter Credit for Sales Tax on Certain Domestic Purchases: Respondents argue that, in most cases, it will not always be feasible for flower producers and exporters to switch equipment from the production of a product which is non-subject merchandise to subject merchandise product.

(2) Exporter Exemptions for Taxes and Duties on Imports: Respondents made the same arguments as above for the Exporter Credit for Sales Tax on Certain Domestic Purchases.

(3) Accelerated Depreciation: Respondents assert that there are two separate government agencies, Ministry of Finance and CENPRO, which have established government controls to block access to the use of accelerated depreciation.

(4) CIEX: Respondents argue that this program was terminated in 1988. Respondents argue that even if some of the funds authorized for this program in 1988 were not actually distributed until 1991, the GOCR made no CIEX distributions to flower producers and exporters. The respondents also argue that the fact that such funds may have actually been distributed in 1991 does not alter that fact that the CIEX program was effectively terminated in 1984 for lack of funding and officially closed in 1988.

(5) CATs: Respondents argue that the only verified fundamental changes to the CAT program are those reducing or restricting its benefits.

(6) Income Tax Exemption for Export Earnings: Respondents contend that with the continuation of GOCR controls, the GOCR will not grant exemptions unless the claimant can demonstrate that the income for which an exemption is sought is not derived from exports of the subject merchandise. Respondents also note that this program is being phased out.

*Department's Position:* Section 355.25(a)(2) of the Department's regulations provides that the Department may terminate a suspension agreement despite the fact that the subsidy programs have not been abolished, provided the Department concludes that the requirements of this provision are met. As explained in Comment 1, the Department determines that the original signatories have complied with the terms of the agreement and the requirements of § 355.25(a)(2)(i). Regarding § 355.25(a)(2)(ii), ACOFLOR has certified that the signatories are not likely to apply for or receive any countervailable subsidies in the future. The GOCR and ACOFLOR have certified that the control mechanisms to ensure compliance with the agreement will remain in place if the agreement is terminated. Furthermore, government officials stated during verification that Costa Rican subsidies in general were being phased out. In sum, as the Department determined in the preliminary results of review, the record contains no evidence indicating that the signatories will apply for or receive any net subsidy on the subject merchandise in the future. 59 FR at 6238. Petitioner has offered no arguments which would reasonably contradict this determination.

In addition, we disagree with each of the petitioner's program-specific arguments for the following reasons:

(1) Exporter Credit for Sales Tax on Certain Domestic Purchases and (2) Exporter Exemptions for Taxes and Duties on Imports: The GOCR and ACOFLOR have certified that the control mechanisms currently in place

to monitor compliance with the agreement will remain in place so that equipment on which duties or taxes were exempted will not be switched to the production of subject merchandise after termination.

(3) Accelerated Depreciation: We agree with respondents that there are formal mechanisms in place at the Ministry of Finance and CENPRO to prevent flower producers and exporters from claiming accelerated depreciation. At verification, we found that the signatories have not used the accelerated depreciation program.

(4) CIEX: We agree with respondents that this program was terminated in 1988 and that no flower producers or exporters have received benefits from this program during the five years required for termination.

(5) CAT: We agree with respondents that all changes during the period of review to this program have reduced and/or restricted the receipt of benefits.

(6) Income Tax Exemption for Export Earnings: The agreement requires signatories to maintain separate accounting records of exports to receive income tax exemptions for export earnings. Contrary to the argument of petitioner, the Department has verified that the signatories maintained these records. A company must maintain separate accounting records in order to receive an exemption from duties on non-physically incorporated inputs. Only one company, American Flower, maintained these separate accounting records for the exemption from duties on non-physically incorporated inputs, and only American Flower received this exemption on duties. All companies maintained separate records of imports eligible for tax and duty exemptions and domestic purchases eligible for tax credits on inputs physically incorporated into exports of the subject merchandise.

Further, under § 355.25(b)(2) of the Department's regulations, the government of the affected country may request termination of a suspension agreement during the fifth and subsequent annual anniversary months of the suspension of the investigation. In the current proceedings, the fifth anniversary month was January 1992 and the review period for termination is January 1, 1991 through December 31, 1991. Therefore, contrary to petitioner's argument, the fifth anniversary month, January 1992, and the 1991 review period is the "time of revocation" within the meaning of § 355.25(a)(2), and the Department may terminate the agreement without information regarding the 1992 and 1993 review periods.

Based upon the foregoing, in accordance with section § 355.25(a)(2)(ii) of the Department's regulations, we determine that it is not likely that the producers or exporters will in the future apply for or receive a net subsidy on the subject merchandise.

*Comment 3:* Petitioner argues that the ability to export to the U.S. market is essential for Costa Rican flower producers and exporters to remain viable. Petitioner asserts that because Costa Rican flower producers and exporters must compete with hundreds of Colombian flower producers who dominate the U.S. market, the Costa Rican flower producers and exporters continue to have a need for flower subsidies.

Respondents counter that throughout the life of the agreement, Costa Rican flower producers and exporters of the subject merchandise have been able to compete in the U.S. market without receiving subsidies. They also argue that the GOCR is committed to eliminating incentives that distort trade because they are no longer needed to maintain competitiveness, and because they cost too much.

*Department's Position:* We disagree with petitioner. As stated in Comment 1, the original signatories still accounted for substantially all of the exports of the subject merchandise to the United States in 1991, the period of review. The Department has determined that the original signatories have not received subsidies on exports of the subject merchandise to the United States during at least five consecutive years. Hence, there is no evidence that Costa Rican flower producers and exporters continue to need subsidies to compete.

**Final Results of Review**

After considering all of the comments received, we determine that the signatories have complied with the terms of the agreement for the period January 1, 1991 through December 31, 1991. In addition, we determine that the signatories have met the requirements for termination of the agreement. The original signatories have not applied for or received any net subsidy on the subject merchandise for five consecutive years and they have filed the certifications required by 19 CFR § 355.25(b)(2). Based on the foregoing, we determine that there is no likelihood that the signatories will apply for or receive any net subsidy in the future. Therefore, we determine to terminate the Suspension of the Countervailing Duty Investigation on Fresh Cut Flowers from Costa Rica. As a result, we will also terminate the reviews in progress for the agreement covering the 1992 and 1993 periods.

The administrative review and notice are in accordance with section 751(a)(1)(C) and 751(c) of the Tariff Act (19 U.S.C. 1675(a)(1)(C) and 1675(c)) and 19 CFR 355.22 and 355.25.

Dated: May 5, 1994.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 94–11590 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–DS–M

## Applications for Duty-Free Entry of Scientific Instruments

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 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC.

*Docket Number:* 94–044. *Applicant:* Carnegie Institution of Washington, Department of Plant Biology, 290 Panama Street, Stanford, CA 94305. *Instrument:* Mass Spectrometer System, Model Delta S. *Manufacturer:* Finnigan MAT GmbH, Germany. *Intended Use:* The instrument will be used for studies of variations in the abundance of the stable isotopes of carbon, nitrogen and oxygen that occur in association with biological and physical transformations. These measurements will be used to understand the mechanisms of isotope fractionation in biological processes, particularly photosynthesis and respiration. In addition, the instrument will be used in studies of the natural variation of isotope ratio and relative abundance gases in the atmosphere and dissolved in the ocean. Taken together these studies will address scientific questions concerning the operation of the biosphere and the interaction of these with the atmosphere and oceans. *Application Accepted by Commissioner of Customs:* April 6, 1994.

*Docket Number:* 94–054. *Applicant:* University of South Florida, Department

of Marine Science, 140–7th Avenue South, St. Petersburg, FL 33701. *Instrument:* Electron Microscope, Model H–7100. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* The instrument will be used in marine ultrastructural research in the disciplines of biology, chemistry and geology. Specific research objectives will include the following:

(1) the enumeration of viruses in seawater and taxonomic studies on viral isolates,
(2) determination of the significance of viral encapsulated genomes in the dissolved DNA of the oceans,
(3) examination of the effects of anthropogenic activities on reef environments as indicated by viral abundances,
(4) a comparison of the variation of fish mitochondrial DNA among different fish groups,
(5) pinpointing locations and numbers of ion pumps in fish and crustacean specimens,
(6) examination of algal symbiosis in foraminifera including documentation of cytological changes associated with shell bleaching,
(7) studies of the toxicologies in marine mammals to identify heavy metals in manatee tissue,
(8) characterization of the mineralogy and microtextures of diagenetic marine minerals to obtain detailed elemental x-ray sample maps,
(9) characterization of experimentally produced deformation microstructures and
(10) examination of organic/crystal interfaces during picoplankton biomineralization.

In addition the instrument will be used in the course Theory and Techniques of Transmission Electron Microscopy to give students a basic understanding of its operation. *Application Accepted by Commissioner of Customs:* April 19, 1994.

*Docket Number:* 94–055. *Applicant:* Virginia Commonwealth University, Medical College of Virginia Hospitals, MCV Box 980017, Richmond, VA 23298–0024. *Instrument:* Electron Microscope, Model EM 900. *Manufacturer:* Carl Zeiss, Germany. *Intended Use:* The instrument will be used for the examination of tissue from Surgical Pathology for diagnostic purposes. In addition, the instrument will be used for training Pathology Residents. *Application Accepted by Commissioner of Customs:* April 21, 1994.

*Docket Number:* 94–056. *Applicant:* Department of the Interior, U.S. Geological Survey WRD, 450 Main Street, room 525, Hartford, CT 06103. *Instrument:* Borehole Radar System. *Manufacturer:* ABEM AB, Sweden. *Intended Use:* The instrument will be used to study bedrock and unconsolidated overburden conditions in situ, from air- and water-filled boreholes as small as two and one-half inches in diameter in order to conduct research into groundwater flow and contaminant transport in fractured rock. The research objectives include development of methods to detect and quantify the effects of bedrock fractures and lithologic changes on groundwater flow and development of methods to directly detect, quantify, and monitor groundwater contaminants in order to increase the efficiency of future remediation efforts to reduce the hazards of contamination to the public. *Application Accepted by Commissioner of Customs:* April 21, 1994.

*Docket Number:* 94–057. *Applicant:* University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. *Instrument:* Optical Floating Zone System. *Manufacturer:* Vacuum Metallurgical Co., Ltd., Japan. *Intended Use:* The instrument will be used to grow single crystals of high melting point materials, so that the fundamental mechanical properties of these single crystals can then be investigated. *Application Accepted by Commissioner of Customs:* April 21, 1994.

**Pamela Woods,**

*Acting Director, Statutory Import Programs Staff.*

[FR Doc. 94–11591 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–DS–F–M

## Minority Business Development Agency

### Business Development Center Applications: State of Alaska

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Cancellation of notice.

**SUMMARY:** This notice cancels the advertisement as it appeared in the February 2, 1994, issue for the Minority Business Development Agency (MBDA) announcement that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC in the Alaska Geographic Service Area.

**CLOSING DATE:** The closing date for submitting an application was March 21, 1994.

**ADDRESS:** San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, suite 1280, San Francisco, California 94105, 415/744–3001.

**FOR FURTHER INFORMATION CONTACT:** Melda Cabrera, Regional Director, San Francisco Regional Office at 415/744–3001.

**SUPPLEMENTARY INFORMATION:** Questions concerning the preceding information can be obtained by contacting the San Francisco Regional Office

11.800 Minority Business Development. (Catalog of Federal Domestic Assistance).

Dated: May 5, 1994.

**Melda Cabrera,**

*Regional Director, San Francisco Regional Office.*

[FR Doc. 94–11498 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–21–M

## National Oceanic and Atmospheric Administration

### Florida Keys National Marine Sanctuary Advisory Council; Meeting

**AGENCY:** Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Florida Keys National Marine Sanctuary Advisory Council notice of cancellation of open meeting.

**SUMMARY:** The meeting scheduled for May 18, 1994 as published in the **Federal Register** (59 FR 22150) on April 29, 1994, has been cancelled.

**FOR FURTHER INFORMATION CONTACT:** Pamala James at (305) 743–2437 or Ben Haskell at (301) 713–3137.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: May 5, 1994.

**Frank W. Maloney,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 94–11530 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–08–M

### Sea Grant Review Panel Meeting

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will provide and discuss follow-up reports of business transacted at the last Sea Grant Review Panel meeting in the areas of management and organization, budget status, strategic and tactical issues, law

and policy, new technology and research, economic development, outreach for enhancement of Department of Commerce goals, and new business.

**DATES:** The announced meeting is scheduled during 2 days: Tuesday, May 24, 1994, 8 a.m. to 5:30 p.m. and Wednesday, May 25, 1994, 8 a.m. to 4:45 p.m.

**ADDRESSES:** Quality Inn—Silver Spring, 8727 Colesville Road, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Dr. David B. Duane, Director, National Sea Grant College Program, National Oceanic & Atmospheric Administration, 1315 East-West Highway, room 11618, Silver Spring, Maryland 20910, (301) 713–2448.

**SUPPLEMENTARY INFORMATION:** The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128) and advises the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, also the Administrator of NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is:

**Tuesday, May 24, 1994, 8 a.m.–5:30 p.m.**

8 a.m.—Welcome and Introduction of New Members Appreciation of Retiring Member Introduction of Guests
8:15—Logistics
8:30—Approval of Minutes of Last Meeting Overview of Current Meeting
- Objectives and Priority Issues

9—Executive Committee briefings for D. James Baker, Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration, and David Barram, Deputy Secretary of Commerce
9:30—Reauthorization Status
10—Break
10:15—National Research Council Report
11—Reauthorization of Sea Grant Program—Position Paper
11:30—Conflict of Interest—National Office of Sea Grant Ad Hoc Committee Report
12 p.m.—Working Lunch
1—Council of Sea Grant Directors Report
- Challenges and Accomplishments
- Folly Beach Retreat

1:45—National Sea Grant College Program Director's Report
- Status: Strategic Planning, Annapolis Retreat, Modified Procedures, Reauthorization, Recertification

2:45—Break
3—Biennium Reports (Fall '93, Spring '94)
4:15—Site Review Reporting—Position Paper
4:30—Evaluation of Grants & Proposals Committee Report—Position Paper
- Status—New process for Review of Omnibus Proposals

5:30—Adjourn

**Wednesday, May 25, 8 a.m. to 4:45 p.m.**

8 a.m.—Long Range Planning Committee Report—Position Paper—Strategic Planning
8:45—Management Evaluation Criteria—Position Paper
9:15—Management—Position Paper
10—Break
10:15—Business & Economic Development Committee Report
10:45—Multiple Entity—Position Paper
11:45—Working Lunch—Individual Assignment Reports
- Marine Advisory Service
- Communications
- Research, Science & Technology
- Legal

1 p.m.—University of Michigan Sea Grant Strategic Planning
1:30—The Potential Benefits of Large Scale Macro-Algal Farming—Status Report
2:30—Break
2:45—Strategic Planning Initiative
- Aquaculture in the Future

3:45—Panel Discussion, Motions, and Recommendations
- Action Items

4:45—Adjourn.

The meeting will be open to the public.

Dated: May 9, 1994.

**David B. Duane,**

*Deputy Assistant Administrator for Extramural Research.*

[FR Doc. 94–11551 Filed 5–11–94; 8:45 am]

BILLING CODE 3510–12–P

## DEPARTMENT OF DEFENSE

### Government-Owned Invention; Availability for Licensing

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of availability of invention for licensing.

**SUMMARY:** The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Request for copies of patent application cited should be directed to the Office of Naval Research (Code 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number.

**FOR FURTHER INFORMATION CONTACT:** Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent Application 08/186,058: Acoustic Attenuation and Vibration Damping Materials; filed 25 January 1994.

Dated: May 6, 1994.

**Lewis T. Booker, Jr.,**

*LCDR, JAGC, USN Federal Register Liaison Officer.*

[FR Doc. 94–11521 Filed 5–11–94; 8:45 am]

BILLING CODE 3810–AE–M

## Department of the Army

### Deadline for Receipt of Federal Agency Requests for Excess Personal Property at Fort Ord, CA

**AGENCY:** Fort Ord, Directorate of Base Realignment and Closure, DOD.

**ACTION:** Notice.

**SUMMARY:** Fort Ord, California is an installation scheduled for closure by the Department of Defense under provision of Base Realignment and Closure (BRAC) 1991 action. Federal agencies/activities are reminded that they may submit requests for excess personal property at Fort Ord. Personal property is defined as all property other than land, fixed-in-place buildings, ships and Federal records. Federal agency/activity requests must be in accordance with paragraph 91.7(h)(5) guidance in Interim Final Rule, Revitalizing Base Closure Communities and Community Assistance (59 FR 16133), April 6, 1994.

**DATES:** The deadline for receipt of requests at Fort Ord is June 1, 1994.

**ADDRESSES:** Commander, Presidio of Monterey and Fort Ord, ATTN: AFZW–BRAC, Fort Ord, California 93941.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Charles Gomon, Personal Property Coordinator, Directorate of Base Realignment and Closure, Fort Ord, California 93941, telephone: (408) 242–

7092 or DSN 929–7092. FAX number (408) 242–7091.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 94–11644 Filed 5–11–94; 8:45 am]

BILLING CODE 3710–08–M

## Change of Address

**AGENCY:** U.S. Army Information Systems Command-Pentagon, DOD.

**ACTION:** Notice.

1. U.S. Army Information Systems Command-Pentagon, ASQR–OP–F, is officially notifying the general public and other government agencies of a change of address for the Army Freedom of Information/Privacy Act Division.

Old Address: U.S. Army Information Systems Command-Pentagon, USAISC–P (ASQR–OP–F), Room 1146, Hoffman Building I, Alexandria, VA 22331–0301

New Address: USAISC–P (ASQR–OP–F), Crystal Square #2 Suite 201, 1725 Jefferson Davis Highway, Arlington, VA 22202

**DATE:** This change is effective May 12, 1994.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rose Marie Christensen, (703) 670–3452 FAX (703) 607–3450.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 94–11645 Filed 5–11–94; 8:45 am]

BILLING CODE 3710–08–M

## Department of the Navy

### Board of Advisors to the Superintendent, Naval Postgraduate School; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California, will meet on May 25-26, 1994, in Herrman Hall (Bldg 220) at the School. All sessions will be open to the public.

The purpose of the meeting is to elicit the advice of the Board on the Navy's Postgraduate Education Program. The Board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission. To this end, the Board will inquire into the curricula, instruction, physical equipment, administration, state of morale of the student body, faculty, and staff, fiscal affairs, and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent.

For further information concerning this meeting, contact: CDR Wayne A. Wagner, USN (Code 007), Naval Postgraduate School, Monterey, California, 93943-5000, Telephone: (408) 646-2513.

Dated: April 29, 1994

**Lewis T. Booker, Jr.**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 94–11560 Filed 5–11–94; 8:45 am]

BILLING CODE 3810–AE–F

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

### Floodplain and Wetlands Involvement for BPA's Operational Fiber Optics Project

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice of floodplain and wetlands involvement.

**SUMMARY:** BPA proposes to upgrade the existing operational telecommunications equipment throughout their service area (within the states of Oregon, Washington, Idaho, and Montana). This upgrade will involve replacing existing analog radios with digital radios and fiber optic equipment. Fiber optic cable will be strung on existing structures or a new parallel line within BPA's existing transmission line rights-of-way.

A site specific project has been identified for the first segment of this proposed telecommunication upgrade. It includes installing fiber optic cable and related equipment from BPA's Ross Substation near Vancouver, Washington, to Franklin Substation near Pasco, Washington. This distance is approximately 340 kilometers (217 miles). Most of the cable will be installed on existing structures, however, in certain areas additional poles will be needed to carry the cable when existing towers cannot carry the additional load. The line will span both floodplains and wetlands located in the counties of Clark, Skamania, Klickitat, Benton, and Franklin in Washington; and Sherman, Gilliam, Morrow, Wasco, and Umatilla counties in Oregon.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

The floodplains and wetlands assessment will be included in the environmental assessment (EA) being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act (NEPA). A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

**DATES:** Comments are due to the address below no later than May 31, 1994.

**FOR FURTHER INFORMATION, CONTACT:** John M. Taves—EFBG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–4995, fax number 503–230–3984.

**SUPPLEMENTARY INFORMATION:** This EA covers two different levels of environmental analysis: One is the programmatic approach that would describe future telecommunication upgrades throughout BPA's service area and the other is a site specific analysis covering the first segment of a proposed upgrade from BPA's Ross Substation near Vancouver, Washington, to Franklin Substation located near Pasco, Washington. The programmatic EA would cover a discussion of the affected environment and a general overview of potential impacts and possible mitigation. For each segment of BPA's system proposed for telecommunication upgrading, a site-specific analysis would be completed within a separate NEPA process.

The site specific portion of the EA will involve crossing the 100-year floodplain of several major rivers and tributaries. At major river crossings, the fiber optic cable would be placed on existing structures so no new towers would be located in floodplains. The smaller rivers and tributaries would be spanned using either existing towers or new poles. The poles would not be located within a floodplain. Potential impacts to floodplains could occur due to clearing of riparian vegetation and improvement of access roads. However, with mitigation, impacts would be eliminated or minimized to the fullest extent possible. The first segment of this proposed upgrade, from Ross Substation to Franklin Substation, will cross 100-year floodplains associated with the following rivers/creeks (moving west to east): Burnt Bridge Creek, Lacamas Creek, Matney Creek, Little Washougal River, Washougal River, Rock Creek, Wind River, Little White Salmon River, White Salmon River, Klickitat River, Fivemile Creek, Columbia River (crossed three times), Fifteenmile Creek, Deschutes River, Fulton Canyon Creek,

Spanish Hollow Creek, John Day River, Quinton Canyon Creek, Jones Canyon Creek, China Creek, Willow Creek, Sixmile Creek, Umatilla River.

Permanently-flooded wetlands and small seasonal and riparian wetlands occur in the 100-year floodplains of some of the rivers and creeks mentioned above. Several of the larger wetlands occur in sections 3, 9, 10, 16, & 17 in Township 2 North, Range 7 East, in section 31 in Township 5 North, Range 27 East, and in section 15, Township 4 North and Range 25 East. The greatest potential to affect wetlands comes from the installation of new parallel structures or access road improvements. Affects to wetlands could include filling wetlands, alteration of plant communities, alteration of the hydrology, or water quality degradation. These effects can be minimized or eliminated by avoiding disturbance to wetlands through careful planning and construction methods. For more specific information on floodplains and wetlands in the project area contact Ms. Kevin Ward, Environmental Coordinator—EFBG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, (503) 230–5511.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on May 4, 1994.

**John M. Taves,**

*NEPA Compliance Officer, Engineering Services.*

[FR Doc. 94–11557 Filed 5–11–94; 8:45 am]

BILLING CODE 6450–01–P

## Federal Energy Regulatory Commission

**[Project No. 2306]**

## Citizens Utilities Companies; Intention To Prepare an Environmental Impact Statement

May 6, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application for a new license for the Clyde River hydropower project, FERC No. 2306. The hydropower project is located on the Clyde River in Vermont.

The FERC staff has determined that licensing this project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the hydroelectric project in accordance with the National Environmental Policy Act.

The staff's EIS will objectively consider both site specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review by all the interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

### Scoping

The FERC staff prepared a scoping document (Scoping Document 1) and held a scoping meeting on March 9, 1994, in Newport, Vermont, to assist the staff in identifying the scope of environmental issues that should be analyzed. The results of scoping indicated that an EIS should be prepared for this project rather than an Environmental Assessment as staff had initially anticipated.

A revised scoping document (Scoping Document 2) will be prepared and distributed by mail to parties on the FERC service list and mailing list. Scoping document 2 will reflect input received at the scoping meeting and comments on Scoping Document 1, and explain why staff determined that an EIS should be prepared.

For further information please contact Kathleen Sherman at (202) 219–2834.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–11505 Filed 5–11–94; 8:45 am]

BILLING CODE 6717–01–M

**[Project Nos. 11467–000, et al.]**

## Hydroelectric Applications [Fox River Paper Company, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11467–000.

c. *Date Filed:* April 1, 1994.

d. *Applicant:* Fox River Paper Company.

e. *Name of Project:* Risingdale.

f. *Location:* On the Housatonic River, Town of Great Barrington, Berkshire County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mathew Rubin, Spruce Mtn Design, 26 State Street, Montpelier, VT 05602, (802) 223–7141.

i. *FERC Contact:* Charles T. Raabe (dt) (202) 219–2811.

j. *Comment Date:* June 30, 1994.

k. *Description of Project:* The proposed project would consist of: (1) An existing 22-foot-high, 130-foot-long concrete and timber crib dam; (2) a reservoir having a surface area of 40 acres at normal water surface elevation 717 feet NGVD; (3) a gated intake structure having a trash rack; (4) a short 14-foot-diameter penstock; (5) a new powerhouse containing a 1,000-Kw generating unit operated at a 20-foot net head; (6) a tailrace; (7) a transformer; and (8) appurtenant facilities. Applicant estimates that the average annual generation would be 4.000 Kwh and that the cost of the studies under the permit would be $125,000. Power produced from the project would be sold to one or more electric utilities located in Massachusetts. The dam is owned by the applicant.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C & D2.

2a. *Type of Application:* Amending Exemption.

b. *Project No.:* 10610–004.

c. *Dated filed:* August 19, 1993.

d. *Applicant:* Trout Creek, Inc.

e. *Name of Project:* Trout Creek.

f. *Location:* On Trout Creek near the town of Thatcher, in Caribou County, Idaho.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Dick Graves, Director, Trout Creek, Inc., 2082 South 2000 East, Gooding, ID 83330, (208) 934–5180.

i. *FERC Contact:* Buu T. Nguyen, (202) 219–2913.

j. *Comment Date:* June 20, 1994.

k. *Description of Application:* The applicant is proposing to relocate the powerhouse looking downstream, from the left side to the right side of the stream.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

3a. *Type of Application:* Minor License.

b. *Project No.:* 11072–001.

c. *Date filed:* April 13, 1994.

d. *Applicant:* Trenton Falls Hydroelectric Company Inc.

e. *Name of Project:* Boyd Dam Hydroelectric Project.

f. *Location:* On the East Branch of Fish Creek, in Lewis County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Steve C. Samel, P.O. Box 169, Prospect, NY 13435, 315–896–6351.

i. *FERC Contact:* Michael Dees (202) 219–2807.

j. *Comment Date:* 60 days from the filing date in paragraph c.

k. *Description of Project:* The project consists of the following features: (1) An existing dam and 210 acre reservoir; (2) a proposed powerhouse housing a hydropower unit with a capacity of 795 Kw, and (3) appurtenant facilities.

l. With this notice, we are initiating consultation with the *Wisconsin State Historic Preservation Officer (SHPO),* as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to 18 CFR 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

4a. *Type of Application:* Declaration of Intention.

b. *Docket No.:* EL94–41–000.

c. *Date Filed:* March 7, 1994.

d. *Applicant:* Cedarburg Hydroelectric Corporation.

e. *Name of Project:* Cedarburg Milldam Hydroelectric Project (WI).

f. *Location:* Cedar Creek, Tributary to Wisconsin River, in Cedarburg, Wisconsin.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Cedarburg Hydroelectric Corporation c/o Renner Architects, 626 N. Water Street, Milwaukee, WI 53202, (414) 273–6637.

i. *FERC Contact:* Hank Ecton, (202) 219–2678.

j. *Comment Date:* June 20, 1994.

k. *Description of Project:* The proposed Cedarburg Milldam Hydroelectric Project will consist of: (1) A mill pond with a surface area of 3.0 acres; (2) a 28-foot-high, 90-foot-long, timber-crib earth-filled dam, with a concrete face; (3) a 90-foot-long, 8-foot-wide headrace, with a steel trashrack and a steel slidegate; (4) a 3-story stone and mortar powerhouse that will contain a vertical Francis turbine and a vertical Electric Machinery Company generator having a capacity of 125 kilowatts; and (5) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Applicant intends to use all energy produced to off-set purchases from the local utility for an adjacent office building. Project will be connected to the interstate grid.

m. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

**Standard Paragraphs**

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION', "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the

filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

Dated: May 6, 1994, Washington, DC.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–11506 Filed 5–11–94; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. GT94–36–000]**

## Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

May 6, 1994.

Take notice that on May 2, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the below listed tariff sheets to be effective June 1, 1994:

First Revised Sheet Nos. 600 and 601
Second Revised Sheet Nos. 602 through 606
Second Revised Sheet No. 611

Natural states that the purpose of the filing is to update the Index of Purchasers contained in Natural's Tariff in accordance with § 154.41(a) of the Commission's Regulations.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective June 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 13, 1994. 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. 94–11507 Filed 5–11–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP94–232–000]**

## Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

May 6, 1994.

Take notice that on May 4, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet Nos. 147 through 149 and Original Sheet No. 149A, to be effective June 3, 1994.

Natural states that the purpose of the filing is to replace Section 7.2 of Rate Schedule S–1 to provide for interruptible no-notice injection rights in connection with the actual takes from Natural at delivery points.

Natural requested whatever waivers may be necessary to permit the tariff sheets to become effective June 3, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such protests should be filed on or before May 13, 1994. 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. 94–11508 Filed 5–11–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. MG88–35–005]**

## Northern Border Pipeline Co.; Filing

May 6, 1994.

Take notice that on April 19, 1994, Northern Border Pipeline Company (Northern Border) filed revised procedures under Order Nos. 497 *et seq.*[1] *Northern Border's revisions reflect changes instituted in Order No. 497–E and an increase in the number of employees it shares with Northern Plains Natural Gas Company (Northern Plains), its operator. Northern Border's revisions also reflect organizational changes at the company, including the shift of its gas control function to Northern Plains.*

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protests should be filed on or before May 23, 1994. 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. 94–11509 Filed 5–11–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. MG88–7–005]**

## Northern Natural Gas Co.; Filing

May 6, 1994.

Take notice that on April 25, 1994, Northern Natural Gas Company (Northern Natural) filed revised

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,920 (1988); Order No. 497–A (*order on rehearing*), 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 1989); Order No. 497–B (*order extending sunset date*), 55 FR 53291 December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C (*order extending sunset date*), 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D (*order on remand and extending sunset date*), 651 FERC ¶ 61,307 (December 4, 1992), 57 FR 58978 (December 14, 1992); (*Order No. 497–E (order on rehearing and extending sunset date*), 59 FR 243 (January 4, 1994), FERC Stats. & Regs. ¶ 30,987 (December 23, 1993); Order No. 497–F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994).

procedures under Order Nos. 497 *et seq.*[1] Northern Natural's filing is in response to Order No. 497–F which, among other things, required Northern Natural to show cause why it should not be required to remove the operating employee restrictions from its Standards E and F, 18 CFR 161.3 (e) and (f) (1993).[2] Northern Natural filed, under protest, revised standards of conduct procedures that remove the reference to "operating" from its Standards E and F. Northern Natural's filing also reflects its current organizational structure.

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 Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protests should be filed on or before May 23, 1994. 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. 94–11510 Filed 5–11–94; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC States. & Regs. ¶ 30,920 (1988); Order No. 497–A (*order on rehearing*), 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B (*order extending sunset date*), 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C (*order extending sunset date*), 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D (*order on remand and extending sunset date*), 61 FERC ¶ 61,307 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E (*order on rehearing and extending sunset date*), 59 FR 243 (January 4, 1994), FERC Stats. & Regs. ¶ 30,987 (December 23, 1993); Order No. 497–F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994).

[2] Standard E provides that a pipeline may not disclose to its affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper.

Standard F provides that to the extent a pipeline provides to a marketing affiliate information related to transportation of natural gas, it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system.

[Docket No. ES94–23–001]

## Rochester Gas and Electric Co.; Amended Application

May 6, 1994.

Take notice that on May 3, 1994, Rochester Gas and Electric Company (RG&E) filed an amendment to its April 28, 1994, application under § 204 of the Federal Power Act seeking authorization to issue not more than $200 million of notes and other short-term indebtedness from time to time as required, but in any event, not later than December 31, 1996. By its amendment, RG&E requests that the issuance period be revised from not later than December 31, 1996 to not later than May 31, 1996, with a maturity of one year or less.

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 May 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the 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. 94–11511 Filed 5–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–9–007]

## Transwestern Pipeline Co.; Filing

May 6, 1994.

Take notice that on April 25, 1994, Transwestern Pipeline Company (Transwestern) filed revised procedures under Order Nos. 497 *et seq.* [1]

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,920 (1988(; Order No. 497–A (*order on rehearing*), 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B (*order extending sunset date*), 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C (*order extending sunset date*), 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (DC Cir. 1992); Order No. 497–D (*order on remand and extending sunset date*), 61 FERC ¶ 61,307 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E (*order on rehearing and extending sunset date*), 59 FR 243 (January 4, 1994), FERC Stats. & Regs. ¶ 30,987 (December 23, 1993); Order No. 497–F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994).

[2] Standard E provides that a pipeline may not disclose to its affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper.

Standard F provides that to the extent a pipeline provides to a marketing affiliate information related to transportation of natural gas, it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system.

Transwestern's filing is in response to Order No. 497–F which, among other things, required Transwestern to show cause why it should not be required to remove the operating employee restrictions from its Standards E and F, 18 CFR 161.3 (e) and (f) (1993).[2] Transwestern filed, under protest, revised standards of conduct procedures that remove the reference to "operating" from its Standards E and F. Transwestern's filing also reflects that although it occupies office space in the same building as its marketing affiliate, Transwestern personnel are no longer located on the same floor.

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protests should be filed on or before May 23, 1994. 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. 94–11572 Filed 5–11–94; 8:45 am]

BILLING CODE 6717–01–M

## Office of Fossil Energy

[FE Docket No. 94–24–NG]

## Chevron U.S.A. Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and To Mexico

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Chevron U.S.A. Inc. (Chevron) authorization to import up to a

maximum of 100 billion cubic feet (Bcf) and export up to a maximum of 100 Bcf of natural gas from and to Mexico over a two-year term beginning on the date of first import or export.

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, April 25, 1994.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 94–11554 Filed 5–11–94; 8:45 am]

BILLING CODE 6450–01–P

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**[FE Docket No. 94–23–NG]**

## Cmex Energy, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas, From and To Canada and Mexico

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CMEX Energy, Inc. (CMEX) authorization to import and export from and to Canada and Mexico, a combined total of up to 200 Bcf of natural gas, including liquefied natural gas, over a two-year term, beginning on the date of first delivery after April 30, 1994.

CMEX's 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, April 29, 1994.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 94–11555 Filed 5–11–94; 8:45 am]

BILLING CODE 6450–01–P

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**[FE Docket No. 94–28–NG]**

## Universal Resources Corporation; Order Granting Blanket Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of an order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Universal Resources Corporation authorization to import up to a maximum of 50 billion cubic feet of natural gas from Canada over a two-year term beginning on the date of first delivery after June 26, 1994.

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, May 4, 1994.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 94–11556 Filed 5–11–94; 8:45 am]

BILLING CODE 6450–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–59337; FRL–4780–2]**

## Certain Chemicals; Approval of a Test Marketing Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–94–11. The test marketing conditions are described below.

**EFFECTIVE DATES:** May 2, 1994. Written comments will be received until May 27, 1994.

**FOR FURTHER INFORMATION CONTACT:** Shirley Howard, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202) 260–3780.

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–94–11. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently the notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), Rm. NEB–607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–94–11. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

**T–94–11**

*Date of Receipt:* March 29, 1994. The extended comment period will close May 27, 1994.

Applicant: Confidential.

Chemical: (G) Styrene-acrylic resin.

Use: (G) Electrophotographic copier toners.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: One year. Commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

**List of Subjects**

Environmental protection, Test marketing exemptions.

Dated: May 2, 1994.

**Charles M. Auer,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 94–11548 Filed 5–11–94; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 5, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3221 NEOB, Washington, DC 20503, (202) 395–3561.

*OMB Number:* 3060–0463.

*Title:* Telecommunications Service for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (CC Docket No. 90–571).

*Action:* Extension of existing collection.

*Respondents:* Individuals or households, state or local governments, businesses or other for-profit (including small businesses).

*Frequency of Response:* On occasion reporting requirement.

*Estimated Annual Burden:* 72 responses; 112.64 hours per response; 8,110 hours total annual burden.

*Needs and Uses:* Section 64.605 of FCC's rules establishes the certification procedures by which states may apply to assert jurisdiction over the provisions of Intrastate telecommunication relay services (TRS). Section 64.604 establishes procedures for filing complaints. The information will be used to determine whether the state's program is certifiable according to federal requirements, to determine the merits of complaints filed and to attempt resolution.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 94–11537 Filed 5–11–94; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL MARITIME COMMISSION

### 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: Royal Cruise Line Limited and Kloster Cruise Limited, One Maritime Plaza, Suite 1400, San Francisco, California 94111. Vessel: STAR ODYSSEY.

Dated: May 9, 1994.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 94–11538 Filed 5–11–94; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Russell Breeden III, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 1, 1994.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Russell Breeden, III,* Indianapolis, Indiana; to retain 4.00 percent, for a total of 27.73 percent of the voting shares of Community First Financial Group, Inc., English, Indiana, and thereby indirectly acquire English State Bank, English, Indiana, and Peoples Trust Bank Company, Corydon, Indiana.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Dirk L. Gasterland, Jan P. Gasterland, Hans W. Gasterland, and Gretchen K. Gilbertson,* all of LaCrosse, Wisconsin; each to acquire an additional 6.25 percent, for a total of 21.84 percent of the voting shares of Coulee Bancshares, Inc., LaCrosse, Wisconsin, and thereby indirectly acquire The Coulee State Bank, LaCrosse, Wisconsin.

Board of Governors of the Federal Reserve System, May 6, 1994.

**Barbara R. Lowrey,**

*Associate Secretary of the Board.*

[FR Doc. 94–11501 Filed 5–11–94; 8:45 am]

BILLING CODE 6210–01–F

### Kingston Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal

Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 6, 1994.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. Kingston Bancshares, Inc.*, Kingston, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Kingston National Bank, Kingston, Ohio.

*2. McCreary Bancshares, Inc.*, Whitley City, Kentucky; to acquire up to 100 percent, but not less than 80 percent of the voting shares of First Trust and Savings Bank, Onieda, Tennessee.

*3. Peoples Bancorporation of Northern Kentucky, Inc.*, Crestview Hills, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank of Northern Kentucky, Inc., Crestview Hills, Kentucky.

*4. Sewickley Savings Financial Corp., M.H.C.*, Sewickley, Pennsylvania; to become a bank holding company by acquiring 50.100 percent of the voting shares of Sewickley Savings Bank, Sewickley, Pennsylvania.

*5. Williamsburg Bancorp, Inc.*, Corbin, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Williamsburg National Bank, Williamsburg, Kentucky.

**B. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

*1. EverFinancial Corp.*, South Pasadena, California; to become a bank holding company by acquiring 100 percent of the voting shares of EverTrust Bank, City of Industry, California, a *de novo* bank.

Board of Governors of the Federal Reserve System, May 6, 1994.

**Barbara R. Lowrey,**

*Associate Secretary of the Board.*

[FR Doc. 94–11502 Filed 5–11–94; 8:45 am]

BILLING CODE 6210–01–F

## National Penn Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 1, 1994.

**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

*1. National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to engage *de novo* through its subsidiary Investors Trust Company, Wyomissing, Pennsylvania in performing the functions and activities of a trust company (including those of a fiduciary, agency or custodial nature), pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 6, 1994.

**Barbara R. Lowrey,**

*Associate Secretary of the Board.*

[FR Doc. 94–11503 Filed 5–11–94; 8:45 am]

BILLING CODE 6210–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Administration for Children and Families (ACF) is requesting clearance for instruments to implement Executive Order 12862 within the Administration for children and Families (ACF). The purpose of the data collection is to obtain customer satisfaction information from those entities who are funded to be our partners in the delivery of services to the American public. ACF partners are those entities that receive funding to deliver services or assistance from ACF programs. Examples of partners are States and local governments, the territories, service providers, Indian Tribes and tribal organizations, grantees, researchers, or other intermediaries serving target populations identified by and funded directly or indirectly by ACF. The surveys will obtain information about how well ACF is meeting the needs of our partners in operating the ACF programs.

**ADDRESSES:** Copies of the information collection may be obtained from Edward E. Saunders of the Office of Information Systems Management, ACF, by calling (202) 205–7921.

Written comments and questions regarding this information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

**Information on Document**

*Title:* Voluntary Surveys of ACF Program Partners to Implement Executive Order 12862.

*OMB No.:* New Request.

*Description:* Executive Order 12862 directs agencies that provide significant

services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. This request is for the generic clearance for the Administration for Children and Families to implement Executive Order 12864 within the agency in relation to the satisfaction of those entities who are funded to be our partners in the delivery of services to the American public. ACF's partners are those entities that receive services or assistance directly from ACF programs such as State and local governments, the territories, the District of Columbia, Indian Tribes and tribal organizations, grantees, service providers, researchers, and significant other intermediaries serving target populations identified by and funded directly or indirectly by ACF.

ACF will conduct voluntary confidential surveys of our partners to identify strengths and weakness in the administrative management of ACF programs and to determine how we can better serve our partners so together we can better serve the American public.

The generic surveys of our partners will provide descriptive and statistical information on ACF programs across at-least twelve (12) major domains: Welfare, child support enforcement, vulnerable youth, day care, employment training, Head Start, emergency assistance, family violence, foster care, adoption assistance, services to special populations, and refugee resettlement. For each domain, ACF intends to use information provided by out partners to determine the kind and quality of services they want and expect, their level of satisfaction with existing services an to implement improvements where feasible and practical.

The voluntary partnership surveys will focus only on issues of direct concern to our partners regarding their relationship and opinions on the level of efficiency and quality of services provided by ACF. These concerns may include: Partnership arrangements in policy formulation and implantation of program strategies, considerations of Federal, State and local administrative management practices in policy formulation, appropriateness and timeliness of decisionsmaking, timeliness of funding allocations and grant awards, utility of information collection, efficacy of information sharing, the elimination of inoperable internal rules and guidelines, courtesy and cooperation of federal staffs with out partners, assessing the effectiveness of technical assistance provided and the need for additional technical assistance, adequacy of problem resolutions, multi-cultural sensitivity in the decision-making process, and the attainment of goals and outcomes that can be used to measure the efficiency and cost effectiveness of ACF programs in meeting the needs of children, youth and families at the ACF level.

*Estimate of the Burden of Collection of Information*

Estimates of response burden are outlined in the following tables:

| | Annual number respondents | Average annual frequency | Average burden per response | Annual burden hours |
|---|---|---|---|---|
| States gov'ts | 51 | 10 | 1 hour | 510 |

The above figures are based on an estimate of approximately one (1) hour per response to respond and submit the information. The 51 respondents include the 50 States and the District of Columbia. The figure in the annual burden hours column takes into account State supervised, county administered (State supervised), and State administered programs where the county must submit data to the State prior to its aggregation and submission to the Administration for Children and Families.

We propose to select approximately 10 States per year. The ten (10) States will represent both large and small States and county and State administered units.

| | Annual number respondents | Average annual frequency | Average burden per response | Annual burden hours |
|---|---|---|---|---|
| Head Start grantees and delegates | 200 | 1 | .5 hours | 100 |

The above annual figure is based on a sample of 200 Head Start grantees and delegate agencies per year multiplied by .5 hour to respond to a check list of open-ended and closed-ended questions.

| | Annual number respondents | Average annual frequency | Average burden per response | Annual burden hours |
|---|---|---|---|---|
| Other discretionary grant programs | 200 | 10 | .5 hours | 100 |

The above annual figure is based on a representative sample of discretionary grantees by program type, by size and by region per year multiplied by .5 hours to respond to a check list of open-ended and closed-ended questions multiplied by 10 responses per year.

| | | | | |
|---|---|---|---|---|
| Indian tribes and tribal organ | 25 | 10 | .5 hours | 50 |
| Total reporting burden | | | | 1,660 |

The above annual figure is based on a representative sample of Indian grantees including tribal organizations per year multiplied by .5 hours to respond to a check list of open-ended and closed-ended questions multiplied by 10 responses per year.

Dated: May 5, 1994.

**Larry Guerrero,**

*Deputy Director, Office of Information Systems Management.*

[FR Doc. 94–11562 Filed 5–11–94; 8:45 am]

BILLING CODE 4184–01–M

## Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) for clearance data collection instruments and procedures to be used by the Children's Bureau of the Administration for Children and Families (ACF), to conduct the National Study of Protective, Preventive, and Reunification Services Delivered to Children and Families. A pilot study was conducted under OMB clearance number 0980–0233, to develop these data collection instruments. This request for clearance by OMB contains the results of the pilot study and addresses all the concerns raised by OMB as part of the pilot study clearance.

**ADDRESSES:** Copies of the information collection request may be obtained from Edward E. Saunders of the Office of Information Systems Management, ACF, by calling (202) 205–7921. Written comments and questions regarding the requested approval for information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

**Information on Document**

*Title:* National Study of Protective, Preventive, and Reunification Services Delivered to Children and Their Families.

*OMB No.* 0980–0233.

*Description:* The data collection instrument will be used by the Children's Bureau within the Administration for Children, Youth and Families (ACYF) of the Administration for Children and Families (ACF) to conduct the National Study of Protective, Preventive and Reunification of Services to Children and their Families.

The purposes of the study are to: (1) Determine the number and percentage of children and families receiving protective, preventive, reunification/out-of-home services, and after-care services; and (2) obtain national data on the number, types, and dynamics of the services provided to children and their families.

The findings of the study will provide a basis upon which child welfare policy can be developed and refined throughout the next decade. Other benefits derived from the pilot study will provide standardized services definitions for protective, preventive, reunification services and for the target populations eligible to receive them. The study will identify services provided by child welfare agencies across the country and develop standardized service definitions across agencies.

*Annual Number of Respondents:* 625.

*Annual Frequency:* 4.

*Average Burden Hours Per response:* 75.

*Total Burden Hours:* 1,750.

Dated: May 5, 1994.

**Larry Guerrero,**

*Deputy Director, Office of Information Systems Management.*

[FR Doc. 94–11561 Filed 5–11–94; 8:45 am]

BILLING CODE 4184–01–M

## Agency for Health Care Policy and Research

### Public Meeting on the Update of Clinical Practice Guideline on Cataract in Adults: Management of Functional Impairment

The Agency for Health Care Policy and Research (AHCPR) announces a public meeting to receive comments and information pertaining to the update of the clinical practice guideline Cataract in Adults: Management of Functional Impairment (AHCPR Publication No. 93–0542). The AHCPR-supported guideline was developed by a private sector panel of health care experts and consumers, and released in February, 1993.

On August 9, 1993, AHCPR announced that it was inviting the nominations of qualified individuals to serve on a panel as the co-chairpersons and as panel members to update a clinical practice guideline on Cataract in Adults: Management of Functional Impairment. The update panel's tasks will be to assess new research in selected areas previously reviewed, review current literature on new treatments, and assess new research published on the management of functional impairment due to cataract in adults.

A public meeting to address the update and timing of the update of the guideline, Cataract in Adults: Management of Functional Impairment, and to provide an opportunity for interested parties to contribute relevant information and comments, including research in areas relevant to the guideline that was not available at the time the guideline was written, will be held as follows:

*Meeting:* Update of Cataract in Adults: Management of Functional Impairment.

*Date:* June 16, 1994.

*From:* 9 a.m.–12 p.m., Conference Room G, The Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852.

*Phone:* 301–443–2585.

**Background**

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (See 42 U.S.C. 299–299c–6 and 1320b–12.) The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102–410), enacted on October 13, 1992, extended the authorization of AHCPR and amended certain provisions related to the development of clinical practice guidelines.

In keeping with its legislative mandate, AHCPR is arranging for the development, periodic review, and update of clinically relevant guidelines that may be used by physicians, nurses, other health care providers, educators, and consumers to assist in determining how diseases, disorders, and other health care conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed. Based on the guidelines produced, AHCPR oversees development, periodic review, and update of medical review criteria, standards of quality, and performance measures.

Section 912 of the Act (42 U.S.C. 299b–1(b)), as amended by Public Law 102–410, requires that the guidelines:

1. Be based on the best available research and professional judgment;

2. Be presented in formats appropriate for use by physicians, nurses, other health care providers, medical educators, medical review organizations, and consumers;

3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care;

4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and

management of the particular health condition(s); and

5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 914 of the Act (42 U.S.C. 299b–3(a)), as amended by Public Law 102–410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;
2. Improve methods of diagnosis, treatment, and clinical management, and thereby benefit a significant number of individuals;
3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act, the Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

**Arrangements for the June 16, 1994 Public Meeting on Update of Cataract in Adults: Management of Functional Impairment**

Representatives of organizations and other individuals are invited to provide relevant written comments and information, and make a brief (5 minutes or less) oral statement. Individuals and representatives who would like to attend must register with Lynn McQueen, Program Officer, the Office of the Forum for Quality and Effectiveness in Health Care (Forum), at the address set out below by June 1, 1994, and indicate whether they plan to make an oral statement. A written copy of the oral statement should be submitted to the Forum by June 1, 1994. If more requests to make oral statements are received than can be accommodated between 9 a.m. and 12 p.m. on June 16, 1994, time will be allocated in a manner which ensures, to the extent possible, that a range of views of health care professionals, consumers, product manufacturers, and pharmaceutical manufacturers are presented. Those who cannot be granted their requested speaking time because of time constraints are assured that their written comments will be considered when making a decision regarding the update for this guideline.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact the Forum by June 1, 1994, at the address below.

Registration should be made with, and written materials submitted to: Ms. Lynn McQueen, Program Officer, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Blvd, suite 310, Rockville, Maryland, 20852, Phone: (301) 594–4015, Fax: (301) 594–4027.

**For Additional Information**

Additional information on the guideline development process is contained in the AHCPR Program Note, "Clinical Practice Guideline Development," dated August 1993. This document describes AHCPR's activities with respect to clinical practice guidelines including the process and criteria for selecting panels. This document may be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call Toll-Free: 1–800–358–9295.

Information may also be obtained by contacting Carole Hudgings, Ph.D., Acting Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Blvd., Suite 310, Rockville, MD 20852, Phone 301–594–4015, Fax: 301–594–4027.

Dated: May 5, 1994.

**Linda K. Demlo,**

*Acting Administrator.*

[FR Doc. 94–11532 Filed 5–11–94; 8:45 am]

BILLING CODE 4160–90–P

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## Food and Drug Administration

## Cooperative Agreement to Support a National Center for Food Safety and Technology; Notice of Intent to Renew a Cooperative Agreement

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its intention to accept and consider a single source application for the award of a cooperative agreement to the Illinois Institute of Technology (IIT) to support the National Center for Food Safety and Technology (NCFST), which is located on IIT's Moffett Campus in Summit-Argo, IL 60501. Competition is limited to IIT because IIT has: the unique capability of bringing together diverse perspectives on food safety; access to the exceptional combination of scientific expertise, pilot plants, and research facilities necessary to focus those perspectives on cooperative food safety programs; and a cooperative food safety research program and an academic degree program in food safety underway.

**ADDRESSES:**

An application is available from and should be submitted to: Maura Stephanos, State Contracts and Assistance Agreements Branch (HFA–520), Food and Drug Administration, Park Bldg., rm. 3–40, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170.

Applications hand-carried or commercially delivered should be addressed to the Park Bldg., rm. 3–40, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:**

Regarding the administrative and financial management aspects of this notice: Maura Stephanos (address above).

Regarding the programmatic aspects: Karen Carson, Center for Food Safety and Applied Nutrition (HFS–22), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5140.

**SUPPLEMENTARY INFORMATION:** FDA is announcing its intention to accept and consider a single source application from IIT for a cooperative agreement to support NCFST. FDA's authority to enter into grants and cooperative agreements is set out in section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance No. 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits that such agreements will provide to the public.

IIT's application will undergo dual peer review. An external review committee of experts in food science research will review and evaluate the application based on its scientific merit. A second level review will be conducted by the National Advisory Environmental Health Science Council.

**I. Background**

In the **Federal Register** of May 3, 1988 (53 FR 15736), FDA published a request for applications for a cooperative agreement to establish a National Center for Food Safety which joins the resources of government, academia, and industry in a consortium to study questions of food safety. FDA awarded

the cooperative agreement to IIT in September, 1988. Applications received were competitively reviewed by a panel of non-FDA food scientists, and the award was approved by the National Advisory Environmental Health Science Council in September, 1988.

In the **Federal Register** of September 10, 1991 (56 FR 46189), FDA published a notice of its intention to limit consideration for the award of a cooperative agreement to IIT to support NCFST. FDA awarded the cooperative agreement to IIT on September 30, 1991, following competitive review of the application by a panel of non-FDA food scientists. The award was approved by the National Advisory Environmental Health Science Council in September, 1991.

Under the cooperative agreement, IIT has established and staffed the NCFST at IIT's Moffett Campus in Summit-Argo, IL. Other participants in this effort are the IIT Research Institute, the Food Science Department of the University of Illinois, Urbana-Champaign, FDA, and industry. NCFST is structured so that representatives of participating organizations play a role in establishing policy and administrative procedures, as well as identifying long- and short-term research needs. With this organizational structure, NCFST is able to build cooperative programs focused on food safety on a foundation of knowledge about current industrial trends in food processing and packaging technologies, regulatory perspectives from public health organizations, and fundamental scientific expertise from academia.

## II. Mechanism of Support

### *A. Award Instrument*

Support for this program, if granted, will be in the form of a cooperative agreement. In 1994, FDA is providing $2,000,000 for this award. The award will be subject to all policies and requirements that govern the research grant programs of the Public Health Service (PHS), including the provisions of 42 CFR part 52, 45 CFR part 74, and PHS grants policy statement.

### *B. Length of Support*

The length of support will be 1 year with the possibility of an additional 4 years of noncompetitive support. Continuation, beyond the first year, will be based upon performance during the preceding year and the availability of Federal fiscal year appropriations.

## III. Reasons for Single Source Selection

FDA believes that there is compelling evidence that IIT is uniquely qualified to fulfill the objectives of the proposed cooperative agreement. IIT's Moffett Campus, where NCFST is located, is a unique research facility which includes an industrial-size pilot plant and smaller pilot plants for food processing and packaging equipment, a biotechnology laboratory, a packaging laboratory, analytical laboratories, offices, containment facilities, classrooms, and support facilities which permit research from benchtop to industrial-scale. The industrial-size pilot plant is built to accommodate routine food processing and packaging research in a commercial atmosphere. The physical layout of the plant provides maximum versatility in the use and arrangement of equipment of both commercial and pilot size, and in the capability to simultaneously operate several different pieces of equipment without interference with each other. In addition to facilities to conduct routine processing research, there are facilities suitable for more complex research, notably a biotechnology research facility, funded by the State of Illinois, for scale-up and downstream processing and purification research. Other facilities include containment facilities in which research involving use of components that may be potentially hazardous, such as pathogens in pasteurization or modified atmosphere packaging research, may be conducted.

Since 1988, IIT has provided an environment in which scientists from diverse backgrounds, such as academia, government, and industry, have brought their unique perspectives to focus on contemporary issues of food safety. NCFST functions as a neutral ground where scientific exchange about generic food safety issues occurs freely and is channeled into the design of cooperative food safety programs. NCFST recently convened a meeting of its members to identify and discuss the mechanisms and safety aspects of new food processing and packaging technologies that are either now moving into the food manufacturing industry or are expected to be introduced soon, including laser heating, high voltage pulse processing and high pressure processing, and cold sterilization techniques. Ongoing research on recycling plastics for food contact use was initiated from a planning meeting that brought together NCFST participants with expertise and knowledge about plastics recycling, including representatives of government, academia, and industry, to discuss the status of recycling research in the U.S. industry and regulatory perspectives. The cooperative research that was generated by this meeting has recently been expanded to include recycling of paperboard for fatty and aqueous foods, which is a use that is not currently provided for by Federal regulations. This type of research fills existing gaps in knowledge and expertise associated with recycled packaging materials in a time when many States are mandating the recycling of packaging materials, and answers questions about safety and use of these materials.

In addition to research on recycled materials for food container use, the cooperative research program in progress investigates safety aspects of biotechnological and fermentation techniques, validation of critical controls in computerized and automated processing lines, and formation of potentially detrimental compounds during high-temperature processing. This cooperative research will provide fundamental food safety information in the public domain for use by all segments of the food science community in product and process development, regulatory activities, academic programs, and consumer programs. A particular use of this type of data by both industry and public health agencies is in Hazard Analysis Critical Control Point (HACCP) programs. Food manufacturers can use the information in the design of HACCP programs, which prevent food safety hazards before they occur and enhance the safety of the final product, for use in their plants.

An academic degree program in food safety science, which is not part of the cooperative agreement, has been underway for 3 years at IIT. The program will produce graduates with a foundation in food science and technology with specialization in food safety. Graduates from this program will manage quality control, safety assurance, and HACCP programs in industry. They will design equipment and processes for use in the production and packaging of safe food products. In the public sector, these graduates will evaluate the adequacy of processing and packaging parameters to produce safe endproducts, as well as manage regulatory and information programs designed to enhance the safety of the food supply and consumer knowledge about the food supply. Graduate students from IIT and the University of Illinois can gain hands-on experience in food safety by participating in the cooperative food safety research program. Several masters of science degrees, which included research conducted on cooperative projects, have been granted in disciplines such as

engineering by IIT since the inception of NCFST.

Collaboration between the public and the private sector is an efficient means for both to remain current with scientific and technical accomplishments from a food safety perspective. These collaborative programs will produce generic knowledge and expertise that can be used by all segments of the food processing and packaging industry, as well as by public health organizations, regulatory agencies, and academic institutions in the performance of their roles in the food science community. The trend toward use of HACCP in both the domestic and international food industry, as a means of assuring safety of products and as a basis for harmonizing regulatory activities, is but one example of the effects that food safety knowledge and expertise are having. Technology transfer mechanisms, which are developing out of the cooperative food safety programs, will facilitate the movement of advanced food processing and packaging technologies into the marketplace, while ensuring the safety of those products.

**IV. Reporting Requirements**

Program progress reports and financial status reports will be required annually, based on date of award. These reports will be due within 30 days after the end of the budget period. A final program progress report and financial status report will be due 90 days after expiration of the project period of the cooperative agreement.

**V. Delineation of Substantive Involvement**

Substantive involvement by the awarding agency is inherent in the cooperative agreement award. Accordingly, FDA will have substantial involvement in the program activities of the project funded by the cooperative agreement. Substantive involvement includes, but is not limited to, the following:

1. FDA will appoint a project officer or coproject officers who will actively monitor the FDA-supported program under this award.
2. FDA will have prior approval on the appointment of all key administrative and scientific personnel proposed by the grantee.
3. FDA will be directly involved in the guidance and development of the program and of the personnel management structure for the program.
4. FDA scientists will participate, with the grantee, in determining and carrying out the methodological approaches to be used. Collaboration will also include data analysis, interpretation of findings, and where appropriate, coauthorship of publications.

**VI. Use of the Metric System**

In order to be eligible for this FDA grant program, applications must be in compliance with the Metric Conversion Act of 1975 (as amended by the Omnibus Trade and Competitiveness Act of 1988) which requires that the metric system be used in all Federal procurements, grants, and business-related activities. Therefore, all applications submitted under this notice which contain measurement-sensitive information and/or data, must reflect such data using the metric system. During this period of transition, both metric and inch-pound units will be used simultaneously to express measurements. Examples of measurements that should now be reflected in metrics include: (1) Travel (if applicable) in kilometers (km); (2) office or laboratory space (if applicable) in square meters ($m^2$); (3) audio/visual (film) (if applicable) in millimeters (mm); and (4) publications (if applicable) in centimeters (cm). Applications found not to be in compliance will be returned to the applicant without consideration. Written requests for exemption from the requirement will be considered on a case-by-case basis. If additional costs are incurred due to implementation of this requirement, such costs may be considered as allowable if bonafide supporting justification is presented. The grants management officer will determine the allowability of such costs.

**VII. Smoke-Free Workplace**

PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Dated: May 4, 1994.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 94–11595 Filed 5–11–94; 8:45 am]

BILLING CODE 4160–01–F

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## National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the National Institute on Alcohol Abuse and Alcoholism.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notices. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Diana Widner at (301) 443–4376.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6) of title 5, U.S.C. of Public Law 92–463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meetings and the rosters of committee members may be obtained from: Ms. Diana Widner, NIAAA Committee Management Officer, National Institute on Alcohol Abuse and Alcoholism, Willco Building, suite 409, 6000 Executive Blvd., Rockville, MD 20892–7003, Telephone: (301) 443–4376. Other information pertaining to the meetings can be obtained from the Scientific Review Administrator indicated.

*Name of Committee:* Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee.

*Scientific Review Administrator:* Ronald Suddendorf, Ph.D.

*Dates of Meeting:* June 6–8, 1994.

*Place of Meeting:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Open:* June 6, 9 a.m. to 10 a.m.

*Agenda:* Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

*Closed:* June 6, 10 a.m. to recess; June 7, 9 a.m. to recess; June 8, 9 a.m. to adjournment.

*Name of Committee:* Neuroscience and Behavior Subcommittee, Alcohol Biomedical Research Review Committee.

*Scientific Review Administrator:* Antonio Noronha, Ph.D.

*Dates of Meeting:* June 6–8, 1994.

*Place of Meeting:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Open:* June 6, 9 a.m. to 11 a.m.

*Agenda:* Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns

followed by open discussion and review of administrative details.

*Closed:* June 6, 11 a.m. to recess; June 7, 8 a.m. to recess; June 8, 8 a.m. to adjournment.

*Name of Committee:* Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee.

*Scientific Review Administrator:* Thomas D. Sevy, M.S.W.

*Dates of Meeting:* June 9–10, 1994.

*Place of Meeting:* River Inn, 924 25th Street, NW., Washington, DC 20037.

*Open:* June 9, 8:30 a.m. to 9:30 a.m.

*Agenda:* Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

*Closed:* June 9, 9:30 a.m. to recess; June 10, 9:30 a.m. to adjournment.

*Name of Committee:* Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.

*Scientific Review Administrator:* Lenore S. Radloff.

*Dates of Meeting:* June 14–16, 1994.

*Place of Meeting:* River Inn, 924 25th Street, NW., Washington, DC 20037.

*Open:* June 14, 9 a.m. to 10 a.m.

*Agenda:* Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

*Closed:* June 14, 10 a.m. to recess; June 15, 9 a.m. to recess; June 16, 9 a.m. to adjournment.

*Name of Committee:* Immunology and AIDS Subcommittee of the Alcohol Biomedical Research Review Committee.

*Scientific Review Administrator:* Barbara Smothers, Ph.D.

*Dates of Meeting:* July 14–15, 1994.

*Place of Meeting:* Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

*Open:* July 14, 8:30 a.m. to 9:30 a.m.

*Agenda:* Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

*Closed:* July 14, 9:30 a.m. to recess; July 15, 9 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.242, 13.272, 13.273, 13.278, 13.279, 13.282, 93.271, 93.272, 93.273, 93.277, 93.278, 93.281, 93.282, National Institutes of Health.)

Dated: May 5, 1994.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 94–11517 Filed 5–11–94; 8:45 am]

BILLING CODE 4140–01–M

## National Cancer Institute; Meeting of the Board of Scientific Counselors, Division of Cancer Etiology

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on June 9–10, 1994. The meeting will be held in Building 1, 3rd floor, Wilson Hall, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on June 9 and from 9 a.m. to adjournment on June 10 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 9 a.m. to approximately noon on June 9, 1994 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole A. Frank, Committee Management Officer, National Cancer Institute, National Institute of Health, Executive Plaza North, Room 630, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, National Institutes of Health, Building 31, room 11A06, Bethesda, Maryland 20892 (301/496–6927) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other special accommodations, should contact Dr. David McB. Howell, (301) 496–6927, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393. Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: May 5, 1994.

**Susan K. Feldman,**

*Committee Management Office, NIH.*

[FR Doc. 94–11515 Filed 5–11–94; 8:45 am]

BILLING CODE 4140–01–M

## National Cancer Institute; Meeting of the Cancer Research Manpower Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, on June 15–17, 1994, The Wyndham-Bristol Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

This meeting will be open to the public on June 15, 1994 from 7:30 pm to 8:30 pm, to review administrative details and other cancer research manpower review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on June 15 from 8:30 pm to recess, on June 16 from 8 am to recess, and on June 17 from 8 am to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, and disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630E, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Mary Bell, Scientific Review Administrator, Cancer Research Manpower Review Committee, National Cancer Institute, Executive Plaza North, room 611A, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7978) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Mary Bell at (301) 496–7978 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: May 5, 1994.

**Susan Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 94–11514 Filed 5–11–94; 8:45 am]

BILLING CODE 4140–01–M

## National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the review committees of the National Institute on Drug Abuse for June 1994.

These meetings will be open to the public for approximately one-half hour at the beginning of the first day of the meeting for announcements and reports of administrative, legislative, and program development. Attendance by the public will be limited to space available.

As indicated below in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, these meetings will be closed to the public for the review, discussion, and evaluation of individual grant applications on the dates indicated below. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443–2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

*Committee Name:* Pharmacology I Research Subcommittee, Drug Abuse Biomedical Research Review Committee.

*Meeting Date:* June 13–15, 1994.

*Place:* Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

*Open:* June 13, 8:30 a.m. to 9 a.m.

*Closed:* 9 a.m., June 13, to adjournment on June 15.

*Contact:* Syed Husain, Ph.D., room 10–42, Parklawn Building, telephone (301) 443–2620.

*Committee Name:* Pharmacology II Research Subcommittee, Drug Abuse Biomedical Research Review Committee.

*Meeting Date:* June 13–15, 1994.

*Place:* Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

*Open:* June 13, 9 a.m. to 9:30 a.m.

*Closed:* 9:30 a.m., June 13, to adjournment on June 15.

*Contact:* Gamil Debbas, Ph.D., room 10–42, Parklawn Building, telephone (301) 443–2620.

*Committee Name:* Biochemistry Research Subcommittee, Drug Abuse Biomedical Research Review Committee.

*Meeting Date:* June 13–16, 1994.

*Place:* Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

*Open:* June 13, 8:30 a.m. to 9 a.m.

*Closed:* 9 a.m., June 13, to adjournment on June 16.

*Contact:* Rita Liu, Ph.D., room 10–42, Parklawn Building, telephone (301) 443–2620.

*Committee Name:* Drug Abuse Epidemiology and Prevention Research Review Committee.

*Meeting Date:* June 14–17, 1994.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Open:* June 14, 8:30 a.m. to 9 a.m.

*Closed:* 9 a.m., June 14, to adjournment on June 17.

*Contact:* Raquel Crider, Ph.D., room 10–22, Parklawn Building, telephone (301) 443–9042.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact persons named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs.)

Dated: May 5, 1994.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 94–11518 Filed 5–11–94; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Mental Health; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute of Mental Health for June 1994.

The entire meeting of the Extramural Science Advisory Board, NIMH, will be open to the public for discussion of the NIMH grant portfolio.

The meetings of the Board of Scientific Counselors, NIMH, and the review committees will be open to the public as indicated below to discuss administrative details and other issues relating to committee activities.

The review committee meetings and the meeting of the Board of Scientific Counselors, NIMH, will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463. The review committees will meet for the review, discussion and evaluation of individual grant applications. The Board of Scientific Counselors, NIMH, will meet for the review, discussion, and evaluation of staff scientists and individual programs and projects of the National Institute of Mental Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items. These applications, evaluations, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Attendance by the public to all open sessions will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named below in advance of the meeting.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the contact person indicated.

*Committee Name:* Epidemiology and Genetics Review Committee

*Contact:* Tammye M. Cross, Parklawn Building, Room 9C–18, Telephone: 301, 443–1367.

*Meeting Date:* June 1–3, 1994.

*Place:* Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

*Open:* June 1, 1994, 9 a.m.–10 a.m.

*Closed:* June 1, 1994, 10 a.m.–5 p.m., June 2, 1994, 9 a.m.–5 p.m., June 3, 1994, 9 a.m.–adjournment.

*Committee Name:* Social and Group Processes Review Committee.

*Contact:* Bernice R. Cherry, Parklawn Building, Room 9C–26, Telephone: 301, 443–6470.

*Meeting Date:* June 2–4, 1994.

*Place:* Residence Inn by Marriott, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Open:* June 2, 1994, 9 a.m.–10 a.m.

*Closed:* June 2, 1994, 10 a.m.–5 p.m., June 3, 1994, 9 a.m.–5 p.m., June 4, 1994, 9 a.m.–adjournment.

*Committee Name:* Molecular, Cellular, and Developmental Neurobiology Review Committee.

*Contact:* Katie O'Donnell, Parklawn Building, Room 9–101, Telephone: 301, 443–3857.

*Meeting Date:* June 5–7, 1994.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Open:* June 6, 1994, 8 a.m.–9 a.m.
*Closed:* June 5, 1994, 6 p.m.–9 p.m., June 6, 1994, 9 a.m.–5 p.m., June 7, 1994, 8 a.m.–adjournment.

*Committee Name:* Neuropharmacology and Neurochemistry Review Committee.
*Contact:* Wm. Gregory Zimmerman, Parklawn Building, Room 9–101, Telephone: 301, 443–3857.
*Meeting Date:* June 6–8, 1994.
*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Open:* June 6, 1994, 8:30 a.m.–9:30 a.m.
*Closed:* June 6, 1994, 9:30 a.m.–5 p.m., June 7, 1994, 8:30 a.m.–5 p.m., June 8, 1994, 8:30 a.m.–adjournment.

*Committee Name:* Extramural Science Advisory Board, NIMH
*Contact:* Andrea Baruchin, Ph.D., Parklawn Building, Room 17C–26, Telephone: 301, 443–4335.
*Meeting Date:* June 7–8, 1994.
*Place:* Potomac Room, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.
*Open:* June 7, 1994, 8:30 a.m.–5 p.m., June 8, 1994, 8:30 a.m.–adjournment.

*Committee Name:* Clinical Psychopathology Review Committee
*Contact:* Frances H. Smith, Parklawn Building, Room 9C–18, Telephone: 301, 443–4868.
*Meeting Date:* June 8–10, 1994.
*Place:* Barcelo Washington Hotel, 2121 P Street, NW., Washington, DC 20037.
*Open:* June 8, 1994, 9 a.m.–10 a.m.
*Closed:* June 8, 1994, 10 a.m.–5 p.m., June 9, 1994, 9 a.m.–5 p.m., June 10, 1994, 9 a.m.–adjournment.

*Committee Name:* Services Research Review Committee.
*Contact:* Angela L. Redlingshafer, Parklawn Building, Room 9C–18, Telephone: 301, 443–1367.
*Meeting Date:* June 8–10, 1994.
*Place:* The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, D.C. 20036.
*Open:* June 8, 1994, 9 a.m.–9:30 a.m.
*Closed:* June 8, 1994, 9:30 a.m.–5 p.m., June 9, 1994, 9 a.m.–5 p.m., June 10, 1994, 9 a.m.–adjournment.

*Committee Name:* Violence and Traumatic Stress Review Committee.
*Contact:* Sheri L. Schwartzback, Parklawn Building, Room 9C–26, Telephone: 301, 443–4843.
*Meeting Date:* June 8–10, 1994.
*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Open:* June 8, 1994, 8:30 a.m.–9 a.m.
*Closed:* June 8, 1994, 9 a.m.–5 p.m., June 9, 1994, 8:30 a.m.–5 p.m., June 10, 1994, 8:30 a.m.–adjournment.

*Committee Name:* Psychobiology, Behavior, and Neuroscience Review Committee.
*Contact:* William H. Radcliffe, Parklawn Building, Room 9–101, Telephone: 301, 443–3857.
*Meeting Date:* June 9–10, 1994.
*Place:* Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852.
*Open:* June 9, 1994, 9 a.m.–10 a.m.
*Closed:* June 9, 1994, 10 a.m.–5 p.m., June 10, 1994, 9 a.m.–adjournment.

*Committee Name:* Child Psychopathology and Treatment Review Committee.
*Contact:* Tammye M. Cross, Parklawn Building, Room 9C–18, Telephone: 301, 443–1367.
*Meeting Date:* June 15–17, 1994.
*Place:* Wyndham Brystol Hotel, 2430 Pennsylvania Avenue, NW., Washington, D.C. 20037.
*Open:* June 15, 1994, 9 a.m.–10 a.m.
*Closed:* June 15, 1994, 10 a.m.–5 p.m., June 16, 1994, 9 a.m.–5 p.m., June 17, 1994, 9 a.m.–adjournment.

*Committee Name:* Health Behavior and Prevention Review Committee.
*Contact:* Monica F. Woodfork, Parklawn Building, Room 9C–26, Telephone: 301, 443–4843.
*Meeting Date:* June 15–17, 1994.
*Place:* Marriott Suites Bethesda, 6711 Democracy Boulevard, Bethesda, MD 20817.
*Open:* June 15, 1994, 9 a.m.–10 a.m.
*Closed:* June 15, 1994, 10 a.m.–5 p.m., June 16, 1994, 9 a.m.–5 p.m., June 17, 1994, 9 a.m.–adjournment.

*Committee Name:* Mental Disorders of Aging Review Committee.
*Contact:* Phyllis L. Zusman, Parklawn Building, Room 9C–18, Telephone: 301, 443–1340.
*Meeting Date:* June 15–17, 1994.
*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Open:* June 15, 1994, 9 a.m.–10 a.m.
*Closed:* June 15, 1994, 10 a.m.–5 p.m., June 16, 1994, 9 a.m.–5 p.m., June 17, 1994, 9 a.m.–adjournment.

*Committee Name:* Treatment Assessment Review Committee.
*Contact:* Frances H. Smith, Parklawn Building, Room 9C–18, Telephone: 301, 443–4868.
*Meeting Date:* June 16–17, 1994.
*Place:* Barcelo Washington Hotel, 2121 P Street, NW., Washington, D.C. 20037.
*Open:* June 16, 1994, 8:30 a.m.–9 a.m.
*Closed:* June 16, 1994, 9 a.m.–5 p.m., June 17, 1994, 8:30 a.m.–adjournment.

*Committee Name:* Child/Adolescent Development, Risk, and Prevention Review Committee.
*Contact:* Phyllis D. Artis, Parklawn Building, Room 9C–26, Telephone: 301, 443–1177.
*Meeting Date:* June 16–18, 1994.
*Place:* Wyndham Brystol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
*Open:* June 16, 1994, 9 a.m.–10 a.m.
*Closed:* June 16, 1994, 10 a.m.–5 p.m., June 17, 1994, 9 a.m.–5 p.m., June 18, 1994, 9 a.m.–adjournment.

*Committee Name:* Perception and Cognition Review Committee.
*Contact:* Regina M. Thomas, Parklawn Building, Room 9C–26, Telephone: 301, 443–6470.
*Meeting Date:* June 16–18, 1994.
*Place:* Wyndham Brystol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
*Open:* June 16, 1994, 9 a.m.–10 a.m.
*Closed:* June 16, 1994, 10 a.m.–5 p.m., June 17, 1994, 9 a.m.–5 p.m., June 18, 1994, 9 a.m.–adjournment.

*Committee Name:* Cognitive Functional Neuroscience Review Committee.
*Contact:* Shirley H. Maltz, Parklawn Building, Room 9–101, Telephone: 301, 433–3936.
*Meeting Date:* June 20–21, 1994.
*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
*Open:* June 20, 1994, 9 a.m.–10 a.m.
*Closed:* June 20, 1994, 10 a.m.–5 p.m., June 21, 1994, 9 a.m.–adjournment.

*Committee Name:* Board of Scientific Counselors, NIMH.
*Contact:* Jack D. Maser, Ph.D., Building 10, Room 4N224, Telephone: 301, 496–4183.
*Meeting Date:* June 21–22, 1994.
*Place:* Building 36, Room 1B07, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
*Open:* June 21, 8:30 a.m. to 9 a.m.
*Closed:* June 21, 9 a.m. to 5 p.m., June 22, 8:30 a.m. to adjournment.

*Committee Name:* Clinical Neuroscience and Biological Psychopathology Review Committee.
*Contact:* Maurine L. Eister, Parklawn Building, Room 9–101, Telephone: 301, 443–3936.
*Meeting Date:* June 22–24, 1994.
*Place:* The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, DC 20036.
*Open:* June 22, 1994, 9 a.m.–10 a.m.
*Closed:* June 22, 1994, 10 a.m.–5 p.m., June 23, 1994, 9 a.m.–5 p.m., June 24, 1994, 9 a.m.–adjournment.

*Committee Name:* Mental Health Small Business Research Review Committee.
*Contact:* Angela L. Redlingshafer, Parklawn Building, Room 9C–18, Telephone: 301, 443–1367.
*Meeting Date:* June 27–29, 1994.
*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
*Open:* June 27, 1994, 9 a.m.–10 a.m.
*Closed:* June 27, 1994, 10 a.m.–5 p.m., June 28, 1994, 9 a.m.–5 p.m., June 29, 1994, 9 a.m.–adjournment.

*Committee Name:* Behavioral, Clinical, and Psychosocial Subcommittee, Mental Health AIDS and Immunology Review Committee.
*Contact:* Regina M. Thomas, Parklawn Building, Room 9C–26, Telephone: 301, 443–6470.
*Meeting Date:* June 30–July 1, 1994.
*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
*Open:* June 30, 1994, 8:30 a.m.–9 a.m.
*Closed:* June 30, 1994, 9 a.m.–5 p.m., July 1, 1994, 8:30 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: May 5, 1994.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 94–11516 Filed 5–11–94; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–962–4230–05; 4–00163; Notice for Publication AA–8482–A]**

### Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), and Section 1427(e) of the Alaska National Interest Lands Conservation Act of December 2, 1980, Public Law 96–487, 94 Stat. 2371, 2525, 2526, will be issued to Ayakulik, Inc., for approximately 147 acres. The lands involved are in the vicinity of Ayakulik, Alaska.

**U.S. Survey No. 4655, Alaska**

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until June 13, 1994 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**Terry R. Hassett,**

*Chief, Branch of Gulf Rim Adjudication.*

[FR Doc. 94–11566 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–JA–P

**[NM–940–4110; NMNM 77023]**

### Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease NMNM 77023, Eddy County, New Mexico was timely filed and was accompanied by all required rentals and royalties accruing from October 1, 1993, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the Lease effective October 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Dolores L. Vigil, BLM, New Mexico State Office, (505) 438–7580.

Dated: May 4, 1994.

**Dolores L. Vigil,**

*Chief, Adjudication Section.*

[FR Doc. 94–11567 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–FB–M

**[WY–920–41–5700; WYW130421]**

### Proposed Reinstatement of Terminated Oil and Gas Lease

May 4, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW130421 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of the **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW130421 effective October 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Pamela J. Lewis,**

*Supervisory Land Law Examiner.*

[FR Doc. 94–11568 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–22–M

**[UT–942–04–5700–11; UTU–71889]**

### Realty Action, Disposal by Public Land Sale, Land Exchange, or Recreation and Public Purposes Patent of Public Land in Grand County, Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action, UTU–71889, Proposed Disposal by Public Land Sale, Land Exchange, or Recreation and Public Purposes Patent of Public Land in Grand County, Utah; segregation of land from appropriation and operation under the public land laws, including the mining laws, excepting the mineral leasing laws.

**SUMMARY:** The following described land is being evaluated for Disposal by Public Land Sale, Land Exchange, under the authority of Sections 203 and 206 of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA) (90 Stat. 2750 and 2756; 43 U.S.C. 1713 and 1716) and under the Recreation and Public Purposes Act of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869 et. seq.):

**Salt Lake Meridian, Utah**

T. 23 S., R. 19 E.,
Sec. 14, All.
Sec. 15, All.
Sec. 22, All.
Sec. 23, All.

The above described land aggregates 2560.00 acres more or less.

The land described above is hereby segregated from appropriation and operation of the public land laws and the mining laws, excepting the mineral leasing laws, pending disposition of this action, or two (2) years from the date of publication of this notice in the **Federal Register**, whichever occurs first.

This notice will cancel and replace the segregative effects of all previously published notices on the public lands described herein.

**FOR FURTHER INFORMATION CONTACT:** Mary von Koch, Area Realty Specialist, Grand Resource Area, 885 South Sand Flats Road, Moab, Utah 84532, (801) 259–8193, or Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood Drive, P.O. Box 970, Moab, Utah 84532, (801) 259–6111.

Dated: April 29, 1994.

**Roger Zortman,**

*District Manager.*

[FR Doc. 94–11569 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–DQ–P

[CO–930–4210–06; COC 56609]

## Proposed Withdrawal; Opportunity for Public Meeting; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 1.57 acres of National Forest System land for 20 years. This withdrawal would allow the Forest Service to maintain administrative alternatives to management of the land while completing the reports necessary for final determination on land use. This notice closes this land to location and entry under the mining laws for up to two years. The land remains open to mineral leasing and to Forest Service management.

**DATES:** Comments on this proposed withdrawal or requests for public meeting must be received on or before August 10, 1994.

**ADDRESSES:** Comments and requests for a meeting should be sent to the Colorado State Director, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

**FOR FURTHER INFORMATION CONTACT:** Alexa Watson, 303–239–3796.

**SUPPLEMENTARY INFORMATION:** On April 25, 1994, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws (30 U.S.C. Ch. 2), subject to valid existing rights:

**White River National Forest**

*Sixth Principal Meridian*

T. 10 S., R. 84 W.,

Sec. 7, lot 33.

The area described contains approximately 1.57 acres of National Forest System land in Pitkin County.

The purpose of this withdrawal is to allow the Forest Service to maintain administrative alternatives to management of the land while completing various reports relative to the resources on the land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal or to request a public meeting may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication in the **Federal Register**, the land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage the lands.

May 3, 1994.

**Robert S. Schmidt,**

*Chief, Branch of Realty Programs.*

[FR Doc. 94–11570 Filed 5–11–94; 8:45 am]

BILLING CODE 4310–JB–P

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32453 [1]]

## CBEC Railway, Inc.—Acquisition and Operation Exemption—Great Western Railway Company of Iowa, Inc.

CBEC Railway, Inc.[2] (CBEC), a non-carrier, has filed a notice of exemption to acquire and operate approximately 5 miles of rail line from Great Western Railway Company of Iowa, Inc. (Great Western), extending from the eastern terminus of the line and yards of the Union Pacific Railroad Company, Inc., in Council Bluffs, IA, to a point at or near milepost 407.7.[3] The parties expected to consummate the transaction on or after January 28, 1994. Any comments must be filed with the Commission and served on Nicholas J. DiMichael, Donelan, Cleary, Wood & Maser, P.C., suite 850, 1275 K Street, NW., Washington, DC 20005–4078.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

*Decided:* March 14, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 94–11578 Filed 5–11–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32433]

## Chicago and North Western Transportation Company—Construction and Operation Exemption—City of Superior, Douglas County, WI

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** Under 49 U.S.C. 10505, the Commission conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 Chicago and North Western Transportation Company's (CNW) construction and operation of a 2,900-foot line of railroad, subject to the results of the Commission's environmental review and further

[1] This transaction is related to a number of proceedings that involved Iowa Power, Inc. (Iowa Power), formerly Iowa Power and Light Company. Iowa Power was authorized to construct a new, alternative rail line to serve its Council Bluffs Energy Center (Energy Center). The proposal to develop this alternative rail line grew out of the complaint proceeding filed and subsequently dismissed in Iowa Power and Light Company v. Burlington Northern Railroad Company, No. 40224 (ICC served Nov. 1, 1991). Iowa Power has since merged with the Iowa Public Service Company to form Midwest Power Systems, Inc. (Systems). Systems' electric division is now known as Midwest Power.

[2] CBEC was originally created as a rail subsidiary of Iowa Power. It is now a wholly owned subsidiary of Systems.

[3] One component of the original construction plan called for Iowa Power to acquire and CBEC to operate the line segment at issue here, plus an additional 0.7-mile segment between mileposts 407.7 and 407.0. Iowa Power, Inc. and CBEC Railway Inc.—Acquisition and Operation Exemption—Iowa Southern Railroad Company Line near Council Bluffs, IA, Finance Docket No. 31718 (ICC served Aug. 17, 1990). In a related proceeding, Iowa Power was granted an exemption to construct a connecting 1.8-mile rail line extending from milepost 407.0 to the Energy Center, subject to further consideration of the anticipated environmental impacts. Iowa Power—Const Exempt.—Council Bluffs, IA, 8 I.C.C.2d 858 (1990) (Iowa Power).

The acquisition transaction in Finance Docket No. 31718 was never consummated. Instead, the line segment, less the 0.7-mile segment between mileposts 407.7 and 407.0, was subsequently acquired by Great Western in Great Western Railway Company of Iowa, Inc.—Acquisition and Operation Exemption—Council Bluffs and Ottumwa Railway, Inc., Finance Docket No. 31873 (ICC served May 24, 1991).

By acquiring this line segment from Great Western, CBEC will be able to finalize its plans to construct the alternative rail line. A draft environmental assessment of the construction proposal, modified to reflect that the new line will connect with the line being acquired here at milepost 407.7, instead of at milepost 407.0 as originally authorized, is being considered by the Commission in Iowa Power. There the parties also requested that CBEC be substituted for Iowa Power as the party authorized to construct and operate the new line.

decision. The proposed line, located in the City of Superior, Douglas County, WI, will serve a transloading coal dock owned by Midwest Energy Resources Company (MERC). The track will extend from CNW's Superior rail yard, crossing Lake Superior Terminal and Transfer Railway Company (LST&T) property, Burlington Northern Transportation Company (BN) property, LST&T property again, BN property leased to Union Oil Co. of California, BN rail property, BN-leased (to Union Oil) property, BN rail property, and then the MERC coal dock.

**DATES:** This exemption will not be effective until completion of the Commission's environmental review and further decision. Petitions to reopen must be filed by June 1, 1994.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 32433 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Chicago and North Western Transportation Company, Stuart F. Gassner, Associate General Counsel, One North Western Center, Chicago, IL 60606.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired (202) 927–5721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. *Telephone:* (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

*Decided:* April 26, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin. Vice Chairman Phillips commented with a separate expression. Commissioner Philbin did not participate in the disposition of this proceeding.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 94–11579 Filed 5–11–94; 8:45 am]

BILLING CODE 7035–01–P

## DEPARTMENT OF JUSTICE

### Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, DOJ Clearance Officer, SPS/JMD, WCTR Suite 850, Department of Justice, Washington, DC 20530.

This notice contains a collection for which an expedited review has been requested from the Office of Management and Budget. This collection is entitled Nondiscrimination on the Basis of Disability in State and Local Government Services. In an effort to fully inform the reporting public, this entry is printed in full, including instructions, at the end of this notice. Written comments concerning this collection should be sent to the Acting Director, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington DC 20035–6118, within 15 days after the date of publication (May 15, 1994) of this notice in the **Federal Register.**

*Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection*

An expedited review has been requested for this entry.

(1) Nondiscrimination on the Basis of Disability in State and Local Government Services.

(2) Civil Rights Division.

(3) Recordkeeping.

(4) State and local governments. Under the Americans with Disabilities Act, State and local governments cannot discriminate against individuals with disabilities in operating services, programs, and activities. If physical changes are required, certain of such entities must prepare a transition plan and make it available for public inspection.

(5) 6,000 recordkeepers will use on average eight hours each to develop a transition plan, therefore the total recordkeeping will result in 48,000 hours per year.

(6) 48,000 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: May 5, 1994.

**Robert B. Briggs,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 94–11390 Filed 5–11–94; 8:45 am]

BILLING CODE 4410–13–M

## Antitrust Division

### United States v. Electronic Payment Services, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Stipulation, Final Judgment, and a Competitive Impact Statement have been filed in the United States District Court for the District of Delaware in *United States of America* v. *Electronic Payment Services, Inc.*, Civ. No. 94–208.

The Complaint alleges that the defendant, Electronic Payment Services, Inc. ("EPS"), the owner of the MAC automatic teller machine network, has forced MAC member institutions to purchase ATM processing from EPS and that this is a per se unlawful tying arrangement between regional ATM network access and ATM processing. The Complaint also alleges that the tying arrangement is a means by which EPS has maintained a monopoly in regional ATM network access in Pennsylvania, New Jersey, Delaware,

West Virginia and New Hampshire, and in substantial portions of Ohio.

The proposed Final Judgment enjoins EPS from requiring MAC members to purchase ATM processing from EPS, requires EPS to ensure that independent providers of ATM processing can obtain communication links to the MAC network, and enjoins EPS from forbidding MAC members to join other regional ATM networks.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Richard Rosen, Chief, Communications and Finance Section, room 8104, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Washington, DC 20001.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

**Complaint**

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant named herein and complains and alleges as follows:

*Nature of This Action*

1. The United States brings this civil antitrust action to obtain permanent injunctive relief against an anticompetitive practice of defendant Electronic Payment Services, Inc. ("EPS") that constitutes a tying arrangement that is *per se* unlawful under Sherman Act section 1, 15 U.S.C. 1, and that constitutes a means whereby EPS unlawfully has maintained a monopoly in access to regional automatic teller machine ("ATM") networks in the Commonwealth of Pennsylvania and the States of New Jersey, Delaware, West Virginia and New Hampshire, and in substantial portions of the State of Ohio (collectively the "affected states"), all in violation of Sherman Act section 2, 15 U.S.C. 2.

2. EPS owns and operates the Money Access Service ("MAC") ATM network, which has market power or monopoly power in the market for regional ATM network access in the affected states. EPS generally prohibits its customers—banks, savings and loan associations and credit unions (collectively "banks") that seek to make ATM network services available to their depositors—from obtaining ATM processing services (described at paragraph 6 below) from independent data processing firms who seek to compete for that business. Instead EPS requires MAC customers either to obtain those services from EPS or to provide them in-house, at a cost that is prohibitive for many smaller banks.

3. As more fully described below, EPS's tying practice not only serves to raise the cost to banks of processing services, but also prevents banks from participating in more than one regional ATM network. Defendant thereby has maintained its monopoly in the affected states.

4. The United States seeks a permanent injunction, pursuant to Sherman Act section 4, 15 U.S.C. 4, prohibiting EPS from refusing to allow its customers to obtain ATM processing from third party processors; requiring EPS to connect to those third party processors on nondiscriminatory terms; and other and further relief appropriate to remedy these violations.

*Definitions*

5. "ATM network" means an arrangement whereby more than one ATM and more than one depository institution (or the deposit records of such depository institutions) are interconnected by electronic or telecommunications means, to one or more computers, processors or switches for the purpose of providing ATM services to the retail customers of depository institutions.

6. "ATM processing" means providing the data processing services and telecommunications facilities and services used:

1. To operate, monitor and support the operation of ATMs deployed by a depository institution;

2. To connect the ATMs deployed by a depository institution to that institution's deposit authorization records, for authorization and confirmation of "on-us transactions," and the record-keeping and other functions related to such transactions; and

3. To connect the ATMs deployed by a depository institution to one or more branded ATM networks for authorization and confirmation of "on-others transactions," and the record-keeping and other functions related to such transactions.

ATM processing can be provided as a service distinct from branded ATM network access, and can be performed in the facilities of the ATM switch, a depository institution's own facilities, or in the facilities of a data processing service organization.

7. "ATM switch" means a telecommunications and data processing facility used to receive and route transactions from ATMs or ATM processors to data processing facilities used by depository institutions to authorize ATM transactions. A "MAC switch" is an ATM switch operated by or on behalf of, or providing such functionality for branded ATM network access to, MAC or any successor branded ATM network controlled by defendant.

8. "Interceptor processor" means a depository institution that provides ATM processing for itself.

9. "MAC" means Money Access Service, the branded ATM network owned, controlled and operated by EPS, or any successor brand to "MAC."

10. "Third party processor" means any person that currently or in the future offers ATM processing services to depository institutions. Third party processors may include both depository institutions providing ATM processing for other depository institutions and firms unaffiliated with depository institutions that provide such services.

*Party Defendant, Jurisdiction and Venue*

11. EPS is made a defendant in this action. EPS has its principal place of business at 1100 Carr Road, Wilmington, Delaware 19809. EPS is owned by four bank holding companies: CoreStates Financial Corp., Philadelphia, Pa.; PNC Financial Corp., Pittsburgh, Pa; Banc One Corp., Columbus, Ohio; and KeyCorp, Albany, New York. EPS owns and operates MAC, a regional ATM network, and other businesses. "EPS" and "MAC" are used interchangeably in this Complaint.

12. This Court has jurisdiction over the subject matter of this civil antitrust action pursuant to Section 4 of the Sherman Act, 15 U.S.C. 4. This Court has jurisdiction over EPS pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22.

13. EPS is a Delaware corporation, and is found and transacts business in the District of Delaware. Venue is proper in the District of Delaware pursuant to 15 U.S.C. 12 and 28 U.S.C. 1491.

*Interstate Commerce*

14. Defendant's MAC ATM network is the largest ATM network in the United States by transaction volume. In 1992, the MAC network handled 92 million transactions monthly for 1,455 depository institutions deploying 13 thousand ATMs.

15. The MAC network operates in interstate commerce, and defendant's practices affect interstate commerce.

*The MAC ATM Network and Its Practices*

16. ATMs permit a depositor, using an ATM card and personal identification number, to obtain cash, monitor account balances, and transfer money or make payments. Some ATMs also permit customers to make deposits, and some dispense items of value other than cash (such as travelers checks, railroad tickets, etc.) ATMs usually are owned and maintained by individual banks, and are deployed by banks on premises and at other public locations convenient to their customers.

17. ATMs typically are connected by telephone wires to a computer that provides processing, also known as driving, for several ATMs. That computer often is connected to a network switch, such as the MAC switch, for interchange of transactions among otherwise unaffiliated banks. An ATM network typically charges a switch fee per transaction, and may also charge various monthly or annual membership fees. The processor charges a separate fee for its services. Outside the MAC network, the driving computer might be operated by the bank, by a network, or by an independent data processing firm, and driving computer might connect those ATMs to several different networks. MAC's rules and practices, however, constrain interconnection of different ATM networks.

18. Banks seek to participate in shared ATM networks, such as MAC, in order to give their depositors ubiquitous access to their accounts. While a bank can deploy its own ATMs, the advantage to a shared ATM network is that a bank's depositors will be able to use ATMs at many more locations than one bank alone could practicably support. The areas a bank seeks to serve through a shared ATM network include the areas in which its depositors live, work and ship, and the broader areas in which they move regularly. A bank's ability to offer its depositors access to other bank's ATMs, and thereby to offer its depositors convenient access to their accounts, is in most bankers' view necessary to attract and retain deposits. A bank—particularly a small bank, thrift or credit union with one or only a few offices—would be at a competitive disadvantage if it could not offer its depositors access to many conveniently located ATMs. Because no other service constitutes a reasonably close substitute for regional ATM network access, regional ATM networks constitutes a product market and a line of commerce within the meaning of the antitrust laws.

19. The MAC network is the dominant ATM network in the affected states. In Pennsylvania, New Jersey and Delaware, more than 90% of the ATMs are connected to MAC; in New Hampshire, approximately 80% of the ATMs are connected to MAC. No other regional network has a significant presence in Pennsylvania, Delaware, West Virginia or New Hampshire. Although the New York Cash Exchange ("NYCE") ATM network has a presence in New Jersey, for reasons set forth below, EPS's MAC network nonetheless has monopoly or market power in New Jersey.

20. Nearly all banks in the affected states believe they have no choice but to participate in the MAC network. Banks in the affected states affiliate with MAC because MAC is the only ATM network that provides ubiquitous ATM network access throughout all or most of the contiguous affected states. Banks that do not seek to provide regional ATM network access in areas smaller than these States do not have significantly greater alternatives than do statewide banks.

21. Banks in the affected states often obtain ATM network access from MAC even though defendant's switching and processing fees, and other costs of doing business with MAC, are higher than those charged by other networks and by independent processors. Defendant has market power in the market for regional ATM network access in the affected states. That market power is of sufficient size and durability to constitute monopoly power.

22. Until 1992, MAC generally did not permit its customers to participate in rival ATM networks while also participating in MAC. While the rule against multiple affiliations was formally dropped in 1992, MAC engages in practices that make it impractical for many participating banks—particularly smaller banks—to belong to a rival network while belonging to MAC. In particular, MAC requires banks either to obtain ATM driving from defendant or to provide ATM driving in-house as intercept processors, which is prohibitively expensive for many smaller banks, thrifts and credit unions. MAC generally forbids its network customers from obtaining ATM driving from any of the several data processing firms that provide that service in a national market.

23. There are several regional and national firms in the business of ATM processing that could and would seek to compete to provide ATM driving services to MAC network members. Absent MAC's prohibition, many MAC customers would seek to obtain ATM processing from these or other firms. Defendant's rules and practices thus prevent willing buyers and sellers from conducting business at competitively determined prices and terms.

24. Once defendant drives a bank's ATM, defendant can prevent that bank from connecting its ATM to another network. To connect to a network other than MAC, *MAC* must establish the connection. MAC generally has not provided connections to the ATM networks that would be its strongest competitors.

25. The anticompetitive effects of MAC's "no-third-party-processing" rule are twofold.

a. First, it excludes competitors from the market for ATM processing in areas where MAC has market power in the market for ATM network access, extending the exercise of that market power into the processing market and permitting MAC to charge higher prices—which it does both directly and indirectly; and

b. Second, by preventing many banks from participating in networks other than MAC, the rule makes it substantially more difficult for other networks to enter into MAC's areas of dominance to compete with MAC. The rule therefore serves to exclude competitors and maintain MAC's monopoly power.

26. The rule against third party processing is not necessary to obtain any efficiencies or quality control assurances that could not reasonably be obtained through less anticompetitive means. MAC allows some of its largest members to use third party processors, and permits those third party processors to connect to MAC, but will not allow those same third party processors to prove ATM driving services to other smaller MAC customers.

*First Violation Alleged*

27. The United States repeats and realleges the allegations of paragraphs 1 to 26 herein.

28. The provision by defendant of ATM network access and processing services pursuant to MAC's rules, constitute an agreement or agreements within the meaning of Section 1 of the Sherman Act.

29. Regional ATM network access and ATM processing are separate products.

30. Defendant has market power in the market for regional ATM network access in the affected states.

31. The amount of commerce affected in the market for ATM processing in the affected states is substantial.

32. Defendant's rules and practices act to force many of its ATM network access customers to purchase ATM processing from defendant, rather than

from other firms of the customer's choosing.

33. Defendant's tying arrangement unreasonably restrains trade and is unlawful *per se* under Section 1 of the Sherman Act.

*Second Violation Alleged*

34. The United States repeats and realleges the allegations of paragraphs 1 to 33 herein.

35. Defendant possesses substantial monopoly power in the market for regional ATM network access in the affected states.

36. Defendant willfully has maintained its monopoly power in the market for regional ATM network access in the affected states through exclusionary practices.

37. Defendant's actions and practices constitute unlawful monopolization under Section 2 of the Sherman Act.

*Prayer for Relief*

Wherefore, plaintiff the United States prays that:

a. Defendant be enjoined from requiring any depository institution that obtains ATM network access from defendant to obtain any ATM processing from defendant; from selling or contracting to see access to, membership in, or switching of transactions by the MAC network, on the condition, agreement, or understanding that the purchaser thereof shall not use or purchase ATM processing services from any other person; or from restricting in any manner, directly or indirectly, the ability of a depository institution to obtain ATM processing for access to the MAC ATM network from any person other than defendant;

b. Defendant be enjoined to provide third party processors with nondiscriminatory access to the MAC switch that is at least equal in type and quality to the access MAC provides to intercept processors;

c. Defendant be enjoined from discriminating in the pricing of access to the MAC network;

d. The United States be granted such other structural, injunctive or further relief as this Court may deem just and proper; and

e. The United States recover the costs in this action.

Dated: April 21, 1994.

Anne K. Bingaman,
*Assistant Attorney General.*

Robert E. Litan,
*Deputy Assistant Attorney General.*

Mark C. Schechter,
*Deputy Director of Operations, Antitrust Division, U.S. Department of Justice, Washington, DC 20530.*

Richard L. Rosen,
*Chief, Communications and Finance Section, Antitrust Division, 555 Fourth Street, NW., Washington, DC.*

Richard Liebeskind,
*Assistant Chief, Communications & Finance Section.*

Don Allen Resnikoff,
*Attorney, Communications & Finance Section.*

John J. Sciortino,
*Attorney, Communications & Finance Section.*

Kevin C. Quin,
*Attorney, Communications & Finance Section, Antitrust Division, 555 Fourth Street, NW., Washington, DC 20001, (202) 514–5628.*

Richard G. Andrews,
*United States Attorney.*

Nina A. Pala,
*Assistant United States Attorney, Delaware Bar No. 2622, District of Delaware, 1201 Market Street, Wilmington, Delaware 19801, (302) 573–6277.*

**Stipulation**

It is hereby stipulated and agreed, by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. The parties shall abide by and comply with paragraphs IV.J.4 and IV.J.5 of the proposed Final Judgment pending entry of the Final Judgment. The parties likewise shall abide by and comply with all other paragraphs of Section IV of the proposed Final Judgment pending its entry, provided that, not later than September 1, 1994, the public comment period provided for in 15 U.S.C. 16 shall have expired and the Department of Justice shall have filed with the district court its motion for entry of the proposed Final Judgment in its entirety and without modification.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

4. This Stipulation and the Final Judgment to which it relates are for settlement purposes only and do not constitute an admission by defendant in this or any other proceedings that Section 1 or 2 of the Sherman Act, 15 U.S.C. 1, 2, or any other provision of law, has been violated.

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Dated: April 21, 1994.

**Final Judgment**

Whereas Plaintiff, United States of America, having filed its Complaint in this action on April 21, 1994, and

plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law;

And whereas defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, adjudged and decreed as follows:

I

*Jurisdiction*

This Court has jurisdiction of the subject matter of this action and of the person of the defendant. The Complaint states a claim upon which relief may be granted against the defendant under Sections 1 and 2 of the Sherman Act, 15 U.S.C. § 1, 2.

II

*Definitions*

As used in this Final Judgment:

A. "Defendant" and "EPS" means defendant Electronic Payment Services, Inc., its divisions, subsidiaries, affiliates, agents, officers, employees, successors and assigns, and without restriction means the business currently known as "Money Access Service" or "MAC," its employees, agents, officers, and any successor or assign of that business or any significant portion of the assets of that business. "Defendant" also includes all persons made subject to this Final Judgment pursuant to Section III hereof.

B. "ATM" means automatic teller machine, a machine typically owned and deployed by a depository institution, and used by depositors of that institution and others to withdraw cash and, in certain configurations, to perform one or more of the following additional functions: account inquiry, payment authorization, transfer or deposit.

C. "ATM network" means an arrangement whereby more than one ATM and more than one depository institution (or the deposit records of such depository institutions) are interconnected by electronic or telecommunications means, to one or more computers, processors or switches for the purpose of providing ATM services to the retail customers of depository institutions.

D. "ATM processing" means providing the data processing services and telecommunications facilities and services used:

1. To operate, monitor and support the operation of ATMs deployed by a depository institution;

2. To connect the ATMs deployed by a depository institution to that institution's deposit authorization records, for authorization and confirmation of "on-us transactions," and the recordkeeping and other functions related to such transactions; and

3. To connect the ATMs deployed by a depository institution to one or more branded ATM networks for authorization and confirmation of "on-others transactions," and the recordkeeping and other functions related to such transactions.

ATM processing can be provided as a service distinct from branded ATM network access, and can be performed in the facilities of the ATM switch, a depository institution's own facilities, or in the facilities of a data processing service organization.

E. "ATM switch" means a telecommunications and data processing facility used to receive and route transactions from ATMs or ATM processors to data processing facilities used by depository institutions to authorize ATM transactions. A "MAC switch" is an ATM switch operated by or on behalf of, or providing such functionality for branded ATM network access to, the MAC or any successor branded ATM network controlled by defendant.

F. "Authorization processing" means providing the data processing services and telecommunications facilities and services used to connect a branded ATM network to a depository institution's deposit authorization records, for authorization and confirmation of ATM transactions, and the recordkeeping and other functions related to such transactions.

G. "Branded ATM network access" means access to an ATM network identified by a common trademark or logo displayed on ATMs and ATM cards, and includes the offering for sale of the ability for an ATM card holder with an account at one member depository institution to request withdrawal, deposit, payment authorization, transfer or account inquiry transactions at an ATM identified by a network's trademark or logo owned by another member depository institution; transaction switching by an ATM switch; and the right to brand ATMs or ATM cards with the trademark or logo of an ATM network.

H. "Depository institution" means a bank, savings bank, savings and loan association, credit union or other institution authorized by federal or state law to take deposits. For the purpose of this Final Judgment, "depository institution" also includes any other member of a branded ATM network operated by defendant that also deploys ATMs within that network.

I. "Intercept processor" means a depository institution that provides ATM processing for itself.

J. "MAC" means Money Access Service, the branded ATM network owned, controlled and operated by EPS, or any successor brand to "MAC."

K. "MAC Midwest Platform" means MAC's data facility (or facilities) that on October 1, 1994, provides branded ATM network access to depository institutions located in the States of Illinois, Indiana, Kentucky, Michigan, Ohio and Tennessee, and at least the greater number of the depository institutions in the State of West Virginia that are branded ATM network customers of defendant.

L. "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, association, institute, governmental unit, or other legal entity.

M. "Third party processor" means any person that currently or in the future offers ATM processing services to depository institutions. Third party processors may include both depository institutions providing ATM processing for other depository institutions and firms unaffiliated with depository institutions that provide such services. A third party processor is "qualified" within the meaning of this Final Judgment if it is qualified within the meaning of Section IV.E below.

III

*Applicability*

The Final Judgment shall apply to defendant and each of its affiliates, subsidiaries, officers, directors, employees, agents, successors, and assigns; to any successor to any substantial part of the MAC business; to any entity that controls defendant as control currently is defined under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and its implementing regulations (see 16 CFR 801.1(b)); and to all persons acting in concert with defendant and having actual notice of this Final Judgment.

IV

*Prohibited Conduct*

Defendant is permanently enjoined and restrained as follows:

A. Defendant shall not require any depository institution that obtains branded ATM network access from defendant to obtain any ATM processing or authorization processing from defendant. Defendant shall not maintain or enforce any rule, policy, contract, agreement or arrangement pursuant to which defendant requires any depository institution to obtain ATM processing or authorization processing from defendant; that prohibits or purports to prohibit a depository institution from obtaining ATM processing or authorization processing from any third party processor; or that conditions MAC membership or availability of MAC or any successor branded ATM network access on any depository institution's obtaining ATM processing or authorization processing from defendant or not obtaining ATM processing or authorization processing from a qualified third party processor.

B. Defendant shall not sell or contract to sell access to, membership in, or switching of transactions by the MAC or any successor branded ATM network controlled by defendant, on the condition, agreement, or understanding that the purchaser thereof shall not use or purchase ATM processing or authorization processing services from any other person.

C. Defendant shall not establish as any condition, agreement, or understanding with respect to access to, membership in, or switching of transactions by the MAC or any successor branded ATM network controlled by defendant, or the price or terms of such access, membership, or switching, that the purchaser thereof shall not use or purchase ATM processing or authorization processing services from any other person. Defendant shall not impose any additional fees on any depository institution based on its obtaining ATM processing or authorization processing from any person other than defendant, except that defendant may impose additional fees for set-up and establishment of the network. Defendant will not require an unreasonable amount of set-up and establishment testing and certification. The aggregate of set-up and/or establishment fees charged to a depository institution, as allowed by this paragraph, and/or its third party processor, as allowed by paragraph IV.E.2 of this Final Judgment, shall not exceed $100 per person hour expended by Defendant up to a maximum of $1,000 unless significant difficulties that require additional work are caused by the third party processor or the depository institution. In such case, Defendant will charge $100 per hour for the next 40 person hours and $250 per hour for each additional hour that it expends. The hourly rates and maximum fees set forth in this paragraph may be adjusted over the term of this Final Judgment in accordance with the Consumer Price Index.

D. Defendant shall not restrict in any manner, directly or indirectly, the ability of a depository institution to obtain ATM processing or authorization processing for access to the MAC or any successor branded ATM network controlled by defendant from any qualified third party processor. Defendant shall not require any depository institution that obtains ATM processing or authorization processing from a third party processor to obtain any other service that is not required to provide such ATM or authorization processing from that processor or from any other person.

E. Defendant shall provide qualified third party processors with nondiscriminatory branded ATM network access to the MAC or any successor branded ATM network controlled by defendant that is at least equal in type and quality to the access defendant: (a) Provides to intercept processors, and (b) provided to intercept processors as of the date of the commencement of this action. Defendant shall not deny any qualified third party processor access to telecommunications ports or links necessary for the third party processor to provide ATM processing or authorization processing for depository institutions obtaining ATM network access from defendant. Defendant shall permit qualified third party processors to aggregate transactions of multiple banks over one or several telecommunications links and ports as technically reasonable, and defendant shall not require third party processors to obtain a separate link or port for each of its depository institution customers. A third party processor is qualified, within the meaning of this Final Judgment, if it completes defendant's certification process and meets:

1. The technical, financial and operating criteria for intercept processors and third party processors that provide services to only one depository institution established by defendant and in effect as of the date of commencement of this action, or such other reasonable and nondiscriminatory technical, financial and operating criteria for intercept processors and third party processors hereafter established by defendant; and

2. Such additional technical criteria regarding transaction information transmitted and the format for transmission of such information as is reasonably appropriate for third party ATM processing for unaffiliated multiple banks. No such criteria shall distinguish or discriminate between intercept processors and third party processors, except that volume discounts may be offered in a nondiscriminatory manner as provided in paragraph IV.G of this Final Judgment. Defendant shall not require any third party processor to satisfy additional certification requirements, or pay additional certification fees (other than reasonable set-up fees), by reason of its seeking or obtaining the business of additional customers as long as the processor elects to employ for these additional customers a message format/communications protocol combination for which defendant already has certified the processor.

Notwithstanding the foregoing, Defendant is not required to certify as a qualified processor any branded ATM network that is dominant on a state-wide basis or a subsidiary of such network that seeks to become a qualified processor in the MAC or any successor branded ATM network controlled by Defendant unless reciprocal access to become a processor in that network is available on a substantially similar basis as to pricing and terms to all qualified third party processors including other branded ATM networks that offer third party ATM or authorization processing to depository institutions.

F. Defendant shall not terminate any third party processor's access to the MAC or any successor branded ATM network controlled by defendant except on written notice to the processor thirty (30) days before such termination, except that Defendant can terminate any processor immediately if that processor: (1) Fails to pay at any time specified fees, charges or other amounts due and owed to defendant or any participant in defendant's branded ATM network; (2) violates any law or government regulation applicable to it that has adverse effect upon the MAC or any successor branded ATM network controlled by defendant; (3) has a bankruptcy or insolvency proceeding filed against it; or (4) appoints or has appointed by court order a trustee or receiver for any substantial part of its property. Defendant shall provide a copy of any notice of termination to the

Antitrust Division of the Department of Justice, to the attention of counsel of record or their named successors. Any termination in violation of this Final Judgment shall constitute a contempt of this Court and be punishable thereby.

G. Defendant shall not discriminate in the pricing of branded ATM network access to the MAC or any successor branded ATM network controlled by defendant on the basis of a customer's choice of ATM processor, but shall offer branded ATM network access on a nondiscriminatory basis, except that:

1. Defendant may offer volume discounts on branded ATM network access fees on a nondiscriminatory basis, provided that defendant shall permit any depository institution or third party processor for a depository institution to aggregate that institution's transaction volume delivered to a MAC switch, and any such depository institution shall be entitled to any such nondiscriminatory volume discount. Defendant shall not offer volume discounts to a depository institution operating as an intercept processor that are more favorable than those offer to a depository institution that obtains ATM or authorization processing from a qualified third party processor.

2. Defendant shall be permitted to offer depository institutions the option of obtaining transaction switching between member depository institutions by third party processors at nondiscriminatory royalties that shall not be greater than the price for switched transactions.

3. Defendant shall provide branded ATM network access pursuant to a nondiscriminatory price schedule applicable at least to depository institutions located in the States of Pennsylvania, New Jersey, and Delaware. Defendant's provision of branded ATM network access in States other than Pennsylvania, New Jersey, and Delaware, pursuant to a nondiscriminatory price schedule in one State, shall not be deemed to be discriminatory by reason of the use of a different price schedule in another State.

H. Defendant shall not restrict in any manner the ability of a depository institution to obtain branded ATM network access through qualified third party processors or through their own intercept processor facilities to multiple providers of branded ATM network access. Defendant shall not condition its provision of branded ATM network access on a depository institution's not obtaining branded ATM network access from any other person. Defendant shall not sell or contract to sell access to, membership in, or switching of transactions by any branded ATM network controlled by defendant, on the condition, agreement, or understanding that the purchaser thereof shall not use or purchase branded ATM network access from any other person, or establish a price for, discount from, or rebate upon access to, membership in, or switching of transactions by the MAC or any successor branded ATM network controlled by defendant, on the condition, agreement, or understanding that the purchaser thereof shall not use or purchase branded ATM network access from any other person. Defendant shall in no manner restrict any depository institution ATM deployer that chooses to be affiliated with multiple ATM networks from displaying multiple ATM network logos on its ATMs. Defendant shall not prohibit any depository institution ATM card issuer located in the States of Pennsylvania, New Jersey, Delaware, Indiana or Ohio that chooses to be affiliated with multiple ATM networks from issuing cards that display multiple ATM network logos. Notwithstanding the preceding, Defendant may require that its ATM network logo be displayed on ATMs and ATM cards in equal frequency and prominence as the logos of any other ATM networks and may restrict the branding of access cards that contain an integrated circuit computer chip with a stored value function. Defendant shall in no manner restrict any depository institution ATM deployer from enabling ATMs to function in multiple ATM networks.

I. Notwithstanding the preceding, defendant is not enjoined from entering into an agreement, not inconsistent with the terms of this Final Judgment, for the provision of ATM processing or authorization processing to any depository institution to which defendant has provided actual notice of, and a true copy of, this Final Judgment. Any such agreement shall be severable from any agreement to provide branded ATM network access to the MAC or any successor branded ATM network controlled by defendant.

J. The injunctions specified in Sections IV.A through IV.E of this Final Judgment shall become effective as provided by the terms of this paragraph:

1. Defendant shall commence certification of third party processors not later than January 1, 1995, except that defendant shall commence certification of processors in the MAC Midwest Platform not later than October 1, 1994.

2. Each third party processor who seeks certification shall be allowed to complete certification in a reasonably prompt manner and within the range of time common in the industry, and shall not be denied such resources under the control of defendant (e.g., test time) as are necessary for certification. Upon a third party processor's completion of certification, such processor shall be permitted to act as a qualified third party processor in the MAC network, except that defendant is not required by this paragraph IV.J.2, prior to January 1, 1995, to permit a third party processor that completes certification in the MAC Midwest Platform to act as a qualified third party processor for depository institutions not located in the States of Illinois, Indiana, Kentucky, Michigan, West Virginia or Ohio, or depository institutions located in the State of West Virginia but not served by defendant through the MAC Midwest Platform as of the date of commencement of this action.

3. Sections IV.A through IV.E of this Final Judgment shall be effective and in force, as to any third party processor and the depository institution customers of such processor, as of the date upon which such third party processor becomes a qualified third part processor.

4. Sections IV.A through IV.E of this Final Judgment shall be effective and in force as of the date of entry of this Final Judgment in any portion of the MAC or any successor ATM network controlled by defendant in which depository institutions had the option of using third party multi-bank ATM processors as of January 1, 1993. Defendant shall not renounce or deny any right that it previously granted to depository institutions to obtain ATM processing or authorization processing from third party processors.

5. Defendant shall not take steps to prevent or discontinue any existing arrangements whereby third party processors provide ATM processing or authorization processing in connection with branded ATM network access as of January 1, 1993.

## V

*Sanctions*

Nothing in this Final Judgment shall bar the United States from seeking, or the Court from imposing, against any defendant or person any relief available under any applicable provision of law.

## VI

*Plaintiff Access*

A. To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the

Antitrust Division, and on reasonable notice to the defendant, be permitted:

1. access during the defendant's office hours to inspect and copy all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

2. to interview the defendant's officers, employees, trustees, or agents, who may have counsel present, regarding such matters. The interviews shall be subject to the defendant's reasonable convenience and without restraint or interference from defendant.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, a defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be reasonably requested.

C. No information or documents obtained by the means provided in this Section VI shall be divulged by the plaintiff to any person other than a duly authorized representative of the executive branch of the United States, except in the court of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VII

*Further Elements of Decree*

A. Defendant shall provide actual notice and a true copy of this Final Judgment to each depository institution to which it provides branded ATM network access as of the date of this Final Judgment.

B. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

C. This Final Judgment shall terminate ten years from the date of entry.

D. Entry of this Final Judgment is in the public interest.

Dated: Wilmington, Delaware

U.S.D.J.

**Competitive Impact Statement**

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

*Nature and Purpose of the Proceedings*

On April 21, 1994, the United States filed a civil antitrust complaint pursuant to Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, against defendant Electronic Payment Services, Inc. ("EPS"), owner of the Money Access Service ("MAC") regional automatic teller machine ("ATM") network.[1] The complaint alleges that EPS's refusal to allow the MAC network's bank customers[2] to obtain ATM processing services from providers other than EPS violates the antitrust laws.

The complaint's two counts allege: (1) That a business practice of EPS is a tying arrangement that is *per se* unlawful under Section 1 of the Sherman Act, as amended, 15 U.S.C. 1, and (2) that this typing arrangement is a means by which EPS has maintained a monopoly in regional ATM network access in the States of Pennsylvania, New Jersey, Delaware, West Virginia and New Hampshire, and in substantial portions of the State of Ohio (the "affected states"), in violation of Section 2 of the Sherman Act, as amended, 15 U.S.C. 2.

The effect of this practice is to foreclose competition from competing data processing companies in the affected states. Furthermore, because those competing data processing companies would otherwise provide means by which MAC member banks could access competing regional ATM networks, this practice has the effect of excluding those networks and maintaining EPS's monopoly in regional ATM network access in the affected states. The complaint seeks an injunction prohibiting EPS from continuing the tying arrangement, and other relief.

On April 21, 1994, the United States and EPS filed a Stipulation by which the parties consented to entry of the attached proposed Final Judgment. This Final Judgment, as explained more fully below, enjoins EPS from requiring any of its regional ATM network customers to purchase ATM processing from EPS.

The United States and EPS have stipulated that the proposed Final Judgment may be entered after compliance with the Tunney Act, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II

*Facts Giving Rise to the Alleged Violation*

The Antitrust Division of the United States Department of Justice has conducted an extensive investigation of EPS's business practices. That investigation shows the following:

A. Background

1. *ATMs and ATM Networks.* ATMs are machines typically owned and deployed by banks and used by their depositors with ATM cards most frequently to withdraw cash, but also to accomplish balance inquiries, deposits, payment authorizations, and transfers. An ATM network is an electronic telecommunications systems connecting various banks, their ATMs, and data processing companies, which allows an account holder of one bank to accomplish transactions at ATMs not owned by that bank.[3]

Most ATM networks are "regional," operating in areas encompassing a state or several contiguous states. ATMs and ATM cards within the regional ATM network display a mark or brand identifying the network, so that depositors can identify the ATMs from which they may access their accounts. National ATM networks exist, but these are by design networks of last resort, used only where the two banks involved in a transaction do not both belong to any one regional ATM network. National ATM network transactions are typically more expensive, and those

[1] EPS is a Delaware corporation owned by four bank holding companies: CoreStates Financial Corporation, Philadelphia, Pennsylvania; PNC Financial Corporation, Pittsburgh, Pennsylvania; Banc One Corporation, Columbus, Ohio; and KeyCorp, Albany, New York (successor to Society Corporation, Cleveland, Ohio). These four bank holding companies consolidated their various ATM networks (MAC, Owl, Jubilee and Green Machine) into EPS. MAC had previously been owned entirely by CoreStates. EPS plans to add two other equity owners: Mellon Bank Corporation and National City Corporation.

[2] The customers of an ATM network are the depository institutions (banks, savings banks, savings and loan associations and credit unions) that seek to give their depositors access to an ATM network. These depository institutions are referred to collectively as "banks" in this Competitive Impact Statement.

[3] Some banks and bank holding companies operate switches connecting only the ATMs deployed by branches of their own bank or their subsidiary banks, rather than connecting to non-affiliated banks. These networks are also generally referred to as ATM networks. However, in this Competitive Impact Statement, the term "network" is used to refer to what is sometimes called a "shared network," in that it connects multiple non-affiliated banks.

networks provide only a subset of the transactions available through regional ATM networks.

An ATM network allows banks to provide their depositors with ubiquitous, 24-hour access to their accounts. A bank that becomes a member of a regional ATM network can offer its depositors access to their accounts not just at the bank's own ATMs, but also at other banks' ATMs. Bankers believe that the ability to offer depositors the convenience of access to their accounts at other banks' ATMs is necessary to attract and retain deposits. A bank—especially a small bank, thrift or credit union with one or only a few offices, and that deploys few, if any, ATMs—would be at a significant competitive disadvantage without the ability to offer its depositors access to many conveniently located ATMs. No other service is a close substitute for regional ATM network access, and regional ATM network access constitutes a product market within the meaning of the antitrust laws.

2. *ATM processing.* "ATM processing" consists of the data processing services and telecommunications facilities and services used to operate, monitor and support the operation of ATMs deployed by a bank. ATM processing also involves the connection of the ATMs deployed by a bank to that bank's deposit records, for authorization and confirmation of that bank's depositors' transactions, and the connection of the ATMs deployed by a bank to one or more ATM networks for authorization and confirmation of other banks' depositors' transactions. Finally, ATM processing connects ATMs to an ATM network or to several ATM networks.

A bank can purchase this ATM processing service from a regional ATM network or from an independent data processing company ("third party processor"), or can provide this processing service to itself (as an "intercept processor"). However, a bank must deploy a large number of ATMs before it becomes economical to provide ATM processing internally. Accordingly, small banks, thrifts, and credit unions very rarely act as intercept processors.

3. *Competitive effects of third party processors.* Third party processors provide banks, especially smaller ones, with a competitive source for ATM processing. Equally important, third party processors offer a channel for the entry of competing regional ATM networks. Third party processors typically maintain connections to several regional ATM networks, and those networks therefore can reach all of the banks connected to a third party processor. Accordingly, the cost of and barriers to entry of regional ATM networks fall dramatically.

In addition, third party processors themselves are potential entrants. Because a third party processor could switch transactions among its customer banks itself (a process known as "subswitching") rather than passing those transactions to the network switch, it is a potential "unbranded" ATM network. To become a competitor to the existing branded regional ATM networks, the third party processor need only put its brand on the ATMs and ATM cards of its customer banks and begin switching transactions.

B. EPS and Its Actions

The complaint alleges that EPS has monopoly power in ATM network access in the affected states, and that EPS has illegally tied the sale of access to its MAC regional ATM network to the sale of the ATM processing for many of EPS's bank customers. The complaint also alleges that this illegal tying arrangement has worked to maintain EPS's monopoly power in the market for regional ATM network access in the affected states. This section, discusses EPS's actions and their anticompetitive effects in more detail.

1. *Elimination of ATM processing competition.* EPS requires its member banks to purchase ATM processing services from EPS or provide it themselves as intercept processors.[4] The effect of this rule is that small banks, thrifts, and credit unions—banks that cannot economically become intercept processors—are forced to purchase ATM processing from EPS. This rule has foreclosed third party processors from competing for banks' ATM processing business within the MAC regional ATM network.

EPS's exclusion of third party processor competition from the MAC network has allowed EPS to exact very high profits from small banks, thrifts and credit unions. EPS has done so via two sorts of fees. *First*, and most directly, EPS charges much more per ATM for ATM processing than third party processors typically charge. *Second*, EPS increases its own switching volume and revenues by prohibiting third party processing. Where EPS drives a bank's ATMs, every transaction at those ATMs passes through the MAC switch and is charged to the bank as a switched transaction, including those transactions by the bank's own depositors (its "on-us" transactions). In contrast, intercept processors and banks that use third party processors do not send on-us transactions to a network switch. If banks could use third party processors, MAC would not process, or collect switch fees, for those on-us transactions. Without third party processors, EPS's switch volume and switch fee revenues are commensurately higher.

EPS's switch fees hit hardest those MAC banks with the fewest ATM processing options. EPS banks large enough to be intercept processors escape the EPS charge for "on-us" transactions, and only pay MAC switch fees when their depositors use other banks' ATMs. The smaller banks that cannot afford to be intercept processors pay switch fees for a much higher proportion of their depositors' transactions. EPS takes advantage of this by imposing on its membership the steepest switch fee schedule in the industry.[5] The result is that the small banks that are forced—by EPS's third party processing restriction—to send all their ATM transactions to the MAC switch must also pay very high fees for the switching of those transactions.

2. *Deterrence of entry by competitor regional ATM networks.* The complaint alleges that a further anticompetitive effect of the illegal tying arrangement is to maintain EPS's market power in the market for regional ATM network access in the affected states. EPS's third party processor prohibition has insulated the MAC regional ATM network from the competitive influences of third party processors. This subsection gives a history of the MAC network's largely successful efforts to keep competitors out of its core areas, and explains how EPS's current practice of excluding third party processors from the MAC network deters entry today.

a. *A History of anticompetitive practices.* For most of its existence and until 1992, the MAC network explicitly prohibited its bank customers from belonging to other regional ATM networks. MAC combined this practice with a number of strategic purchases of adjacent regional ATM networks. These acquisitions, the prohibition on

[4] Under MAC's rules, only those banks which have previously been intercept processors can obtain ATM processing from third party processors.

[5] MAC switch fees range from a low of 5¢ (what large member banks with a large number of ATMs and transactions pay) to a high of 25¢ (what the smaller banks with fewer ATMs and transactions–the ones effected by EPS's third party processing restriction—usually must pay). No other major regional ATM network excludes third party processors, and all have much flatter switch fee schedules: e.g. Star, 3.5¢ to 8¢; NYCE, 6¢ to 13¢; Honor, 2¢ to 10¢; Most, 3.5¢ to 14¢; Pulse 6¢; Accel/Exchange, 12¢; Yankee 24, 12¢; and Magic Line, 12¢. "EFT Switch Fee Slide May Be Nearing Its End," *Bank Network News* (Jan. 27, 1993).

multiple regional ATM network affiliation, and the third party processor prohibition together proved to be a formidable force for keeping the affected states free from competition.

b. *Effect of the third party processor prohibition.* EPS's third party processing prohibition forces small banks that cannot economically provide their own ATM processing to purchase the service from EPS. Because EPS effectively controls the communications links of their ATMs, these banks cannot connect their ATMs to other regional ATM networks without the assistance—and approval—of EPS. EPS therefore exercises an effective veto over these banks' access to other networks in the affected states, and conversely, other networks' access to these banks. Third party processors, on the other hand, often offer access to several regional ATM networks. If these banks were able to utilize third party processors, other regional networks would be much more likely to seek and obtain their business. EPS's control over access to other regional ATM networks prevents these networks from entering the affected states.[6]

EPS's exclusion of third party processors also prevents the establishment of new networks. As discussed above, if third party processing were allowed in the affected states, a third party processor could almost instantly form a new network simply by placing a new "brand" on the ATMs and cards of its customer banks. The third party processor would then switch these banks' transactions itself. The MAC network would switch transactions in only two cases: (1) When a depositor of a bank connected to the third party processor used an ATM owned by a bank not connected to the third party processor; or (2) when a depositor of a bank not connected to the third party processor used an ATM owned by a bank connected to the third party processor.

While EPS excludes third party processors from the MAC network, would-be entrant regional ATM networks are substantially unable to enter. The small banks that wish to join another network (which might offer ATM network access at lower prices) will not be able to do so unless the other network has enough of a presence to provide small banks' depositors with sufficient ubiquity and convenience. The entrant network, of course, cannot achieve the critical mass necessary to attract banks. Accordingly, EPS's third party processing restriction creates what economists call a "collective action problem," and EPS's monopoly persists.

C. The Alleged Violations

1. *First claim for relief—tying.* The actions and policies of EPS described above constitute a tying arrangement that is per se unlawful under Section 1 of the Sherman Act. An unlawful tying arrangement is one in which two separate products are sold together, the seller forces buyers to purchase these products together, the seller has market power in the tying product, and the tying arrangement prevents what would otherwise be a substantial amount of commerce in the tied product. *Eastman Kodak Co.* v. *Image Technical Services, Inc.*, 112 S.Ct. 2072 (1992); *Jefferson Parish Hospital District No. 2* v. *Hyde, 466 U.S. 2 (1984).*

The two products in this case are regional ATM network access and ATM processing, which outside of MAC can be, and often are, purchased separately. As described above, however, EPS's practices force banks wishing to obtain membership in MAC, and thereby access to its regional ATM network, to also purchase ATM processing from MAC. Because MAC is the only ubiquitous regional ATM network in the affected states and banks will not forego access to such a network, EPS has market power in this tying product. Evidence gathered in the investigation indicates that there is substantial commerce in the tied product.

2. *Second claim for relief-monopolization.* EPS's actions and practices also constitute monopolization in violation of Section 2 of the Sherman Act. An unlawful monopoly involves both the possession of monopoly power in the relevant market and the willful acquisition or maintenance of that power. Willful acquisition or maintenance of a monopoly is shown by conduct that excludes rivals on some basis other than efficiency, superior skill, foresight or industry. *Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985); *United States* v. *Grinnell Corp.*, 384 U.S. 563 (1966).

As described above, EPS's MAC network is the only ubiquitous regional ATM network available to banks in the affected states, and banks cannot forego access to such a network. EPS's prohibition of third party processing and other practices prevents many banks from using competing regional ATM networks, and results in the exclusion of those networks. EPS's conduct therefore constitutes unlawful monopolization.

III

*Explanation of the Proposed Final Judgments*

The proposed Final Judgment will end unlawful practices that substantially reduce competition in the markets for regional ATM network access and ATM processing. The injunctions of the proposed Final Judgment do so by removing substantial barriers to the entry of competition in the affected states. Removal of these barriers is the most effective means of providing current and future MAC member banks with additional options for the purchase of these services.

These practices are enjoined, and these barriers are removed, by the injunctions of Section IV of the proposed Final Judgment, which require EPS to terminate its restrictions on the use of third party processors by MAC members, to ensure that qualified third party processors can obtain access to the MAC network, and to enable MAC members to join other regional ATM networks.

Paragraphs A through D of Section IV require EPS to terminate its restrictions on the use of third party processors by MAC members. EPS is enjoined from requiring its members to purchase ATM processing from MAC, from forbidding the use of third party processors, from conditioning the price or other terms of MAC membership on the use or non-use of third party processors, and from restricting the ability of MAC members to obtain third party processing. EPA is also enjoined from charging any additional fees to MAC members for the use of third party processors.[7]

Paragrahs E and F of Section IV ensure that qualified third party processors will be able to access the MAC network in order to forward network transactions of their MAC member customers. To ensure that qualified third party processors will obtain adequate communications links to MAC, the links provided to third party processors must be provided on the same terms as the links MAC provides to its intercept processor customers.[8] So that qualified third party

[6] EPS offers its members "gateways" through MAC to a few regional ATM networks, but controls the price and terms of this route of access. EPS does not offer gateways to most regional ATM networks operating in areas adjacent to the affected states, which would offer the greatest competition to MAC. Gateways therefore do not remove the entry barrier to regional ATM networks created by EPS's restrictions on third party processing.

[7] The proposed Final Judgment permits EPS to charge an hourly fee for reasonably necessary work performed by its personnel in connection with a bank becoming the customer of a third party processor. The total charge may not exceed $1000 unless significant difficulties arise at the processor's or bank customer's end.

[8] As explained in Section II.A.2 of this Competitive Impact Statement, intercept processors are generally the larger banks and therefore those

processors can operate in the most efficient manner, EPS must, to the extent feasible, permit transactions from multiple banks to pass over a single communications link rather than requiring a separate link for each bank. Except under specified circumstances where immediate termination would be appropriate, EPS may not terminate a third party processor without providing 30 days notice, and it must provide a copy of the notice to the United States. This will give the United States an opportunity to examine the competitive consequences of any such termination.

To allow EPS to ensure the quality of the MAC network, the proposed Final Judgment requires EPS to provide MAC network access only to qualified third party processors. As with the quality of communications links, the standards for qualification of third party processors are tied to MAC's qualification standards for intercept processors. A third party processor is qualified if it meets MAC's technical, financial and operating criteria for intercept processors and third party processors providing services to only one bank, and whatever additional technical criteria concerning the format and content of transmissions are appropriate for third party processors processing for multiple banks. These criteria may not discriminate between intercept and third party processors, nor may EPS charge additional fees to third party processors for certification.[9]

Paragraph G of Section IV prevents EPS from discriminating in the price of ATM network access against MAC members that choose to utilize third party processors. The volume discounts available to members using third party processors must be the same as the volume discounts available to intercept processors. Also, EPS must use a single price schedule for banks in Pennsylvania, New Jersey and Delaware, the areas in which the MAC network has historically had the greatest monopoly power, and in which two of its principal owners (CoreStates and PNC) are located. By drawing this larger area, EPS may not favor its own stockholders in Pennsylvania without giving similar volume discounts to large banks in New Jersey and Delaware. EPS may use different price schedules in other states.

The preceding injunctions will remove the restrictions EPS has imposed on MAC member banks in their choice of ATM processors, and thereby break the unlawful tie EPS has established between purchase of MAC ATM network services and purchase of ATM processing. The direct consequence will be to make the purchase of third party processing a realistic option for MAC members. This should bring about the entry of competitors to MAC for ATM processing. As discussed in Section II.A.3 of this Competitive Impact Statement, third party processors often have links to many regional ATM networks, and so use of a third party processor by a bank can facilitate its joining of multiple ATM networks. Therefore, an indirect consequence of breaking the unlawful tie between MAC ATM network services and processing services will likely be an increase in competition in the markets for regional ATM network access in the affected states.

To ensure that competition for ATM network services is in fact enhanced, Paragraph H of Section IV of the proposed Final Judgment enjoins EPS from restricting the ability of MAC members to access other networks through their own facilities or those of third party processors. While MAC itself is not required to establish gateways to competing networks, it may not hinder its members form joining other networks. EPS also may not condition the price or terms of MAC membership upon not joining another network. EPS must permit MAC members to display multiple network marks on ATMs and ATM cards, except for electronic stored value cards.[10] The injunction against prohibiting multiple branding of ATMs applies in all areas where MAC operates; the injunction against prohibiting multiple branding of ATM cards applies only in the States of Pennsylvania, New Jersey, Delaware, Ohio and Indiana, areas in which MAC historically had monopoly power, or in which there is a dangerous probability that MAC might soon gain monopoly power.[11]

Portions of the proposed Final Judgment, including the section lifting EPS restrictions on the participation of MAC members in competing ATM networks, will take effect immediately upon entry. Paragraphs A through E of Section IV, which lift EPS restrictions concerning the use of third party processors, will take effect in two stages. On October 1, 1994, EPS must begin the certification process for third party processors in the MAC Midwest Platform. It must allow third party processors to complete certification in a reasonably prompt manner, after which these processors will be able to act as third party processors for banks in MAC's midwest region. On January 1, 1995, EPS must allow certified third party processors to act as third party processors for all banks in the MAC network, and it must begin the process of certifying third party processors in any remaining region. The delay between entry of the proposed Final Judgment and the effective dates of the injunctions provides EPS sufficient time to undertake the technical steps necessary to ensure that all regions of the MAC network will be able to accommodate third party processors.

These provisions take effect immediately in any area where banks were permitted to use third party processors as of January 1, 1993. This prevents EPS from banning third party processing in recently acquired or soon to be acquired networks where third party processing has not been restricted. Also, EPS may not discontinue existing arrangements whereby MAC members use third party processors.

The United States and EPS have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment constitutes no admission by either party as to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

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that have the largest ATM transaction volumes. Accordingly, they provide the most revenue per bank to EPS, giving EPS a strong incentive to provide them adequate services, including communications links. Because EPS has an incentive to deal fairly with its intercept processor customers, several provisions of the decree concerning treatment by EPS of third party processors (and MAC members that use third party processors) are tied to EPS's treatment of intercept processors in similar circumstances. By using the treatment of intercept processors as a benchmark, the proposed Final Judgment avoids a detailed regulatory approach to these issues.

[9] As discussed in footnote 7, EPS may charge a one-time fee for reasonably necessary work it performs when a third party processor adds another bank. This charge, whether directed to the bank or the third party processor, may not exceed $1000.

[10] Permitting EPS to restrict the multiple branding of electronic stored value cards will not lessen the procompetitive impact of the proposed Final Judgment, because the branding of ordinary ATM cards, which are by far more common, is not restricted. EPS maintains that allowing restrictive branding of electronic stored value cards will encourage innovation and competition in services among firms marketing such cards.

[11] The United States believes that MAC also has monopoly power in New Hampshire and West Virginia. However, the United States believes that the proposed Final Judgment contains sufficient guarantees to open up those States to competition since there is substantial commerce between those States (or portions of them) and other regions in which MAC is not a significant competitor.

IV

*Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action under the Clayton Act. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendant.

V

*Procedures Available for Modification of the Proposed Final Judgment*

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgments within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and response(s) of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to Richard Liebeskind, Assistant Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., room 8104, Washington, DC 20001.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation or enforcement.

VI

*Alternatives to the Proposed Final Judgment*

As an alternative to the proposed Final Judgment, the United States considered litigation seeking structural relief, including division of the MAC network. The United States rejected that alternative because the termination of MAC's restrictive practices concerning use of third party processors and membership in multiple regional ATM networks will effectively break the unlawful tie established by EPS between ATM network access and ATM processing. Breaking this tie will encourage the entry of competitors in the affected states in the markets for ATM network services and ATM processing more efficiently than division of the MAC network. In addition, division of the MAC network was likely to involve the Court and the parties in a complex and time-consuming process of reorganizing the network, delaying the desired improvement in competition.

The United States also recognized that such litigation would require determination of several disputed issues of law and fact, and that there could be no assurance that the position of the United States would prevail.

VII

*Standard of Review Under the Tunney Act for Proposed Final Judgment*

The APPA requires that proposed consent judgments in antitrust cases brought by the United States are subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed final judgment "is in the public interest." In making that determination, the court *may* consider—

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). The courts have recognized that the term "public interest" "take[s] meaning from the purposes of the regulatory legislation." *NAACP* v. *Federal Power Comm'n*, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to "preserv[e] free and unfettered competition as the rule of trade," *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the Tunney Act is whether the proposed final judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.*, 1985–2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[12] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making the public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

It is also unnecessary for the district court to "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981). Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[13]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

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[12] 119 Cong. Rec. 24598 (1973). See *United States* v. *Gillette Co.*, 406 F.Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[13] *United States* v. *Bechtel*, 648 F.2d at 666 (citations omitted); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d at 565.

waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

*United States* v. *Armour & Co.*, 402 U.S. 673, 681 (1971).

The proposed consent decree, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)." [14]

VIII

*Determinative Documents*

No documents were determinative in the formulation of the proposed Final Judgments. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Respectfully submitted,

Dated: April 21, 1994.

Anne K. Bingaman,

*Assistant Attorney General.*

Robert E. Litan,

*Deputy Assistant Attorney General.*

Mark C. Schechter,

*Deputy Director of Operations.*

Antitrust Division,

*U.S. Department of Justice, Washington, DC 20530.*

Richard L. Rosen,

*Chief, Communications & Finance Section, U.S. Department of Justice, Antitrust Division, Communications and Finance Section, 555 Fourth Street, NY., Washington, DC 20001.*

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*Assistant Chief.*

John J. Sciortino,

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U.S. Department of Justice,

*Antitrust Division, Communications and Finance Section, 555 Fourth Street, NW., Washington, DC 20001, (202) 514–5628.*

Richard G. Andrews,

*United States Attorney, District of Delaware.*

Nina A. Pala,

*Assistant United States Attorney, Delaware Bar No. 2622, District of Delaware, 1201 Market Street, Wilmington, Delaware 19801, (302) 573–6277.*

*Certificate of Service*

I hereby certify that a true and correct copy of the foregoing Competitive Impact Statement was served upon counsel for defendant Electronic Payment Services, Inc. by enclosing same in a postage pre-paid envelope addressed to:

Stephen Paul Mahinka, Morgan, Lewis & Bockius, 1800 M St., NW., Washington, DC 20036

Brett D. Fallon, Smith, Katzenstein & Furlow, 1220 Market Street, 5th Floor, Wilmington, Delaware 19801.

and mailed this 20th day of April, 1994.

Kevin C. Quin.

[FR Doc. 94–11571 Filed 5–11–94; 8:45 am]

BILLING CODE 4410–01–M

[14] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C.), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1982) quoting *United States* v. *Gillette Co., supra*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

## U.S. v. Tele-Communications, Inc. and Liberty Media Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16 (b) through (h), that a proposed Final Judgment, a Stipulation and a Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Tele-Communications, Inc. and Liberty Media Corporation*, Civil No. 94–0948.

The Complaint in the case alleges that the effect of the proposed merger between the two defendants, Tele-Communications, Inc. and Liberty Media Corporation, may be substantially to lessen competition among multichannel subscription television providers and video programming providers.

The proposed Final Judgment enjoins the defendants from (A) discriminating against unaffiliated video programming offered by such providers, where the effect of such discrimination is unreasonably to restrain competition; and (B) discriminating against unaffiliated multichannel subscription television providers in the sale or license of video programming, where the effect of such discrimination is unreasonably to restrain competition. These injunctions apply with respect to the conduct of organizations under the defendants' control. With interest not amounting to control, the proposed Final Judgment enjoins defendants from seeking or supporting conduct that would violate (A) or (B) above is engaged in directly by defendants.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Richard L. Rosen, Chief, Communications and Finance Section, Antitrust Division, Department of Justice, 555 4th Street NW., room 8104, Washington, DC 20001 (telephone: 202/514–5621).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

### Stipulation

United States of America, Plaintiff, v. Tele-Communications, Inc. and Liberty Media Corporation, Defendants.

Civil Action No. 94–0948, Judge Richey, Filed: 4/28/94.

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties to this Stipulation consent that a Final Judgment in the form attached may be filed and entered by the Court, upon any party's or the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed

Final Judgment by serving notice on the defendants and by filing that notice with the Court;

2. If plaintiff withdraws its consent or the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and its making shall be without prejudice to any party in this or any other proceeding;

3. This Stipulation and the Final Judgment to which it relates are for settlement purposes only and do not constitute an admission by defendants in this or any other proceeding that section 7 of the Clayton Act, 15 U.S.C. 18, or any other provision of law, has been violated.

Dated: April 26, 1994.

**Anne K. Bingaman,**

*Assistant Attorney General.*

**Steven C. Sunshine,**

*Deputy Assistant Attorney General.*

**Constance K. Robinson,**

*Director of Operations.*

**Richard L. Rosen,**

*Chief, Communications and Finance Section.*

**Joe Sims,**

*Counsel for Defendants, Jones, Day, Reavis & Pogue, Metropolitan Square Building.*

**N. Scott Sacks, Patricia A. Shapiro, Kevin C. Quin, Nancy Dickinson, Susannah M. Zwerling,**

*Counsel for Plaintiff, Antitrust Division, U.S. Department of Justice.*

**Final Judgment**

Plaintiff, United States of America, filed its Complaint on April 26, 1994. Plaintiff and Defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence or admission by any party with respect to any issue of fact or law. Therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, Adjudged and Decreed:

*I*

Jurisdiction

This Court had jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against Defendants under section 7 of the Clayton Act, 15 U.S.C. 18.

*II*

Definitions

As used in this Final Judgment:

A. *Affiliated* means an ownership interest (other than a de minimis interest) in, or the right to direct the management decisions of, an entity.

B. *Control* means (i) the right, contractual or otherwise, to direct the management decisions of an entity, or (ii) an ownership interest of 50% or greater, unless Defendants do not have the right to direct the management decisions of such entity.

C. *Financial interest* means any economic interest, including, but not limited to, any ownership interest or right to any portion of current or future revenues.

D. *Multichannel subscription television distributor* means a person providing multiple channels of video programming to consumers fro which a fee is charged, by any of various methods including, but not limited to, cable, satellite master antenna television, multichannel multipoint distribution, direct-to-home satellite (C-band, Ku-band, or broadcast satellite), or the facilities of common carrier telephone companies or their affiliates.

E. *Video programming provider* means a person engaged in the wholesale distribution for sale of video programming.

*III*

Applicability

This Final Judgment shall apply to Defendants and each of their affiliates, subsidiaries, officers, directors, employees, agents, successors, and assigns:

*IV*

Prohibited Conduct

A. Defendants are restrained and enjointed, with respect to each multichannel subscription television distributor they control, from discriminating against any video programming provider not affiliated with Defendants in the selection, terms or conditions of carriage of video programming offered by such distributors, where the effect of such discrimination is to unreasonably restrain competition. Nothing in this paragraph is intended to create any automatic right of access for any individual video programming provider to any individual multichannel subscription television distributor controlled by Defendants.

B. Defendants are restrained and enjoined, with respect to any video programming provider they control, from refusing to sell or license, or from selling or licensing only on a discriminatory basis, any video programming service for distribution by any competing multichannel subscription television distributor, where the effect of such conduct is to unreasonably restrain competition. Differences in price or terms reasonably based on ordinary commercial factors, including but not limited to those factors currently set forth in 47 CFR 76.1002 (b), shall not constitute discrimination.

C. Defendants are restrained and enjoined, with respect to any multichannel subscription television distributor or video programming provider in which they have any financial interest but do not control, from seeking or supporting any conduct that would be prohibited by (A) and (B), above, if engaged in by Defendants.

*V*

Sanctions

Nothing in this Final Judgment shall bar the United States from seeking, or the Court from imposing, against Defendants or any person any relief available under any applicable provision of law.

*VI*

Plaintiff Access

A. To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

1. Access during Defendants' office hours to inspect and copy all records and documents in their possession or control relating to any matters contained in this Final Judgment; and

2. To interview Defendants' officers, employees, trustees, or agents, who may have counsel present, regarding such matters. The interviews shall be subject to Defendants' reasonable convenience and without restraint or interference from Defendants.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit such written reports, under oath if requested, relating to any or the matters contained in this Final Judgment as may be reasonably requested.

C. No information or documents obtained by the means provided in this section VI shall be divulged by the Plaintiff to any person other than a duly authorized representative of the executive branch of the United States, except in the course of legal proceeding to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

*VII*

Further Elements of Decree

A. This Final Judgment shall expire five years from the date of entry.

B. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provision. Any party to this Final Judgment may seek modification of its substantive terms and obligations, and neither the absence of specific reference to a particular event in the Final Judgment, nor the foreseeability of such an event at the time this Final Judgment was entered, shall preclude this Court's consideration of any modification request. The common law applicable to modification of final judgments is not otherwise altered.

C. Entry of this Final Judgment is in the public interest.

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United States District Judge.

**Competitive Impact Statement**

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA or "Tunney Act"), 15 U.S.C. 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Tele-Communications, Inc. and Liberty Media Corp. in this civil antitrust proceeding.

*I*

Nature and Purpose of the Proceeding

On April 26, 1994, the United States filed a civil antitrust complaint, under section 15 of the Clayton Act, as amended, 15 U.S.C. 25, against Tele-Communications, Inc. ("TCI"), and Liberty Media Corporation ("Liberty") (collectively "Defendants"), alleging that the proposed merger of Defendants violates section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

TCI is the largest cable multiple systems operator ("MSO") in the United States in terms of subscribers, and Liberty is one of the largest MSOs. Pursuant to an agreement dated January 27, 1994, TCI and Liberty agreed to merge. Combined, TCI and Liberty would have financial interests in cable systems accounting for more than 13 million subscribers, or approximately one-fourth of the nation's cable subscribers. The combined firms would also have substantial financial interests in a large number of providers of video programming to multichannel subscription television distributors. The Complaint alleges that the effect of such combination may be substantially to lessen competition in violation of section 7 of the Clayton Act, 15 U.S.C. 18, by:

1. Decreasing actual and potential competition among video programming providers, because the combined TCI-Liberty may have the increased ability and incentive to discriminate with respect to access to its cable systems, or the terms and conditions of such access, in favor of its affiliated video programming providers and against unaffiliated video programming providers.

2. Decreasing actual and potential competition among multichannel subscription television distributors, because the combined TCI-Liberty may have the increased ability and incentive to deny to competing multichannel subscription television distributors access to its affiliated video programming services, or to provide such access only on unreasonable terms.

On April 26, 1994, the United States and Defendants filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the proposed merger. The proposed Final Judgment, as explained more fully below, would enjoin Defendants from discriminating against unaffiliated video programmers with respect to access to its cable systems and other multichannel subscription television distributors ("MSTDs"), and from discriminating against other MSTDs with respect to its programming providers, where such discrimination results in an unreasonable restraint on competition.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify and enforce the Final Judgment, and to punish violations of the Final Judgment.

*II*

Events Giving Rise to the Alleged Violation

A. *Description of the parties and the proposed transaction.* TCI is the largest cable multiple systems operator ("MSO") in the United States, with financial and management interests in cable systems serving more than 10.2 million subscribers. TCI also has substantial interests in direct-to-home satellite delivery of multichannel subscription television service, with both a substantial C-band satellite business and a partnership interest in Primestar Partners, L.P., a Ku-band satellite multichannel subscription television service. TCI also has financial and management interests in programming services such as The Discovery Channel, The Learning Channel, E! Entertainment Television, Request Television (pay-per-view), Home Shopping Network Inc., QVC Network Inc., Starz, Rocky Mountain Prime Sports Network, and Turner Broadcasting Systems, Inc. (which provides Cable News Network (CNN), Headline News, The Cartoon Network, TBS and Turner Network Television (TNT)).

Liberty is a large cable MSO, with financial and management interests in cable systems serving 2.9 million subscribers. Liberty also has financial and management interests in a wide range of programming services, including Black Entertainment Television (BET), The Box, Courtroom Television Network, Encore, Starz, Family Channel, Home Shopping Network Inc., QVC Network Inc., Prime Sports Network and more than a dozen regional sports channels.

TCI and Liberty intend to merge pursuant to an agreement dated January 27, 1994. Together TCI and Liberty will serve more than 13 million subscribers, or about a quarter of the nation's cable subscribers, and have financial interests in a wide range of programming services, including a number of the most popular and widely-carried services.

B. *Historical relationship between TCI and Liberty.* In 1990, TCI created Liberty, a new public company, through a rights offering to TCI shareholders and moved certain TCI assets into Liberty. According to TCI, the new company was created for two reasons. First, the company anticipated that possible federal legislation or regulation might force such divestiture later under unfavorable circumstances; a voluntary separation allowed TCI to retain ties to the new company. Second, in a smaller company, management would be able to devote greater attention to maximizing the value of Liberty assets and have greater freedom to pursue growth opportunities in the cable industry. TCI management also felt that capital and financial markets had not given appropriate recognition to certain TCI interests and assets, particularly in the cable programming area, because they were difficult for security analysts and others to identify, value and track; TCI hoped that, in a smaller company, the actual and potential value of those interests and assets would be appropriately recognized.

Although Liberty was organized as a separate company, it shared stockholders and directors with TCI. Five shareholders maintained voting control of both firms, and Bob Magness has simultaneously served as Chairman of the Board of TCI and a director of Liberty, and John Malone has simultaneously served as President, Chief Executive Officer, and a director of TCI and Chairman of the Board of Liberty. TCI acknowledges that the two companies have cooperated closely since Liberty was formed, and are partners in a number of ventures.

In 1992, Congress passed the Cable Television Consumer Protection and Competition Act, Public Law No. 102–385, 106 Stat. 106 (1992) ("1992 Cable Act"), which, combined with implementing FCC regulation, established a legal framework regarding, among other things, the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest, and delineating the extent to which multichannel video programming distributors may engage in the creation or production of video programming. TCI claims that the cable system and programming assets of TCI and Liberty can be recombined under this regulatory framework, and that appropriate market valuation for Liberty's assets has been achieved, thus obviating the principal reasons for separating the companies. According to TCI the recombination will eliminate certain inefficiencies and costs of separation, as well as eliminate confusion and conflicts that may have resulted from the separation.

While not indifferent to the cooperative relationship between the firms and the commonality of control in five shareholders and common managers and directors, the Department has analyzed the proposed merger as a transaction involving two separate entities, since separate legal and fiduciary obligations exist for each of the firms that require each firm to operate in its distinct interest.

C. *Effects on competition.* A multichannel subscription television distributor ("MSTD") is an entity that provides multiple channels of video programming to consumers on a subscription or fee basis, as differentiated from local broadcast television stations which individually provide a single channel at no charge within their broadcast areas. MSTDs deliver programming to consumers utilizing various methods, including cable, multichannel multipoint distribution ("MMDS"), satellite master antenna television ("SMATV"), direct-to-home satellite, or the facilities of common carrier telephone companies or their affiliates.

The United States filed its complaint because the effects of the proposed merger may be substantially to lessen competition (i) among providers of video programming to MSTDs in the United States, and (ii) among MSTDs in the areas in the United States in which TCI and Liberty control cable system.[1] The merger of TCI and Liberty would result in a vertically integrated firm with (1) substantial interests in widely distributed and popular video programming and (2) control of approximately one-quarter of the nation's cable subscribers. Accordingly, the merged firm may have both the ability and incentive to lessen competition by discriminating against non-affiliated programmers in terms of access to its MSTDs and by denying to competing MSTDs access to its video programming on reasonable terms.

The market for multichannel subscription television distribution today is overwhelmingly dominated by local cable systems. Cable television service is available in nearly all urban ad suburban areas in the United States as well as many rural areas, passing more than 95% of the nation's estimated 92 million television households. Cable television systems currently serve more than 55 million subscribers in more than 11,300 cable systems located in all 50 states, or about 60% of households passed. Nearly all communities are served by a single cable system; fewer than 0.5% of the more than 10,000 cable franchise areas have more than one cable system available to local cable subscribers. Today, cable television systems face very limited competition from other types of distribution systems, including MMDS, SMATV, and direct-to-home satellite, and may face competition in the future from video dialtone services.

MMDS delivers programming over microwave channels received by subscribers with special antennae. There are currently fewer than 150 MMDS systems in operation, serving an estimated 600,000 subscribers. MMDS has recently obtained regulatory approval to deploy systems that are considered technologically superior, which may increase its availability and attractiveness as an alternative to cable television service.

SMATV is essentially a private cable system, typically used in apartment buildings or other high-density housing. SMATV is estimated to have fewer than 1 million subscribers.

Home satellite dishes are used to receive programming from communications satellites. More than two and one-half million satellite dishes have been sold in the United States. C-band satellite service, which is provided by low-power satellites, requires consumers to install satellite receiving dishes eight to twelve feet in diameter at an installed cost of $1,500 or more. Because of its high installed cost and the size of the receiving dish required, C-band satellite is a poor alternative to cable television service for most current or potential cable subscribers. Medium-power Ku-band satellite service, provided by TCI and its partners in a joint venture called Primestar Partners, L.P., uses dishes three feet in diameter and has approximately 70,000 subscribers. High-power DBS is expected to become operational and available within a few months using a dish 18 inches in diameter, and may by virtue of its smaller dish size be more attractive to consumers so that it ultimately may offer greater competition to cable service than the other satellite services.

Video dialtone is a multichannel subscription television service recently authorized by Federal Communications Commission regulation and being developed by common carrier telephone companies. Using the telephone network, telephone companies plan to offer distribution of programming provided by third parties. As the telephone companies improve the capabilities and capacity of their networks, they are expected to be able to offer greatly expanded channel capacity and services such as "video-on-demand." At present, there are a small number of pilot projects demonstrating the service. Widespread development of video dialtone services in the future may present a substantial competitor to cable systems. Common carrier telephone companies also have announced their interest in providing cable service directly to subscribers in the event that legal restrictions on their offering such services within their operating regions are removed.

As discussed above, both TCI and Liberty, in addition to operating cable systems, each have substantial financial interests in video programming services provided to cable systems and other MSTDs. The merger of TCI and Liberty creates a vertically integrated firm with

[1] These product and geographic markets are appropriate markets in which to assess the possible competitive effects of this proposed merger. Whether or not these markets will be appropriate markets in which to analyze other transactions or conduct within the industry will, of course, depend on the particular circumstances presented in each individual case.

substantial power both as a MSTD and as a video programming provider. TCI and Liberty together will effectively control access to about one-fourth of cable subscribers and will be affiliated with eight of the twenty most widely distributed cable programming services. This substantial integration is likely to increase abilities and incentives to restrain competition in two ways. First, the merged firm could discriminate against competitive video programmers in favor of its affiliated programmers by refusing to carry programs or by denying similar terms or conditions thereby making it significantly more difficult for such competitive programmers to operate profitably or to compete effectively against the merged firm's programming services. Second, the merged firm could deny access to or discriminate in terms of access to its programming to competing MSTDs, making it more difficult for competitive distribution systems to obtain programming necessary to compete effectively against the merged firm's MSTDs.

*III*

Explanation of the Proposed Final Judgment

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA. The stipulation provides that entry of the Final Judgment does not constitute any evidence or admission by any party with respect to any issue of fact or law. Under the provisions of the APPA, the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. The Department believes that the proposed Final Judgment provides an adequate remedy for the alleged violation and is in the public interest. The term of the proposed Final Judgment is five (5) years. The length of this term reflects the Department's recognition that this industry is one that has experienced major changes in MSTD technologies that are on-going, and the effects of the 1992 Cable Act and its implementing FCC regulations.

Section IV(A) of the proposed Final Judgment enjoins Defendants' cable systems and other MSTDs from discriminating against non-affiliated video programmers in the selection, terms, or conditions, where the effect of such conduct is unreasonably to restrain competition. This provision does not create an automatic right of access for any individual video programmer to any of Defendants' individual MSTDs, nor is it intended to inhibit good faith negotiations between Defendants and unaffiliated programmers regarding the terms and conditions of carriage. However, where the effect of discrimination by Defendants is to restrain competition, such conduct is prohibited. Discriminatory conduct can take a variety of forms depending on individual circumstances, and may include, but is not limited to, discrimination in: (i) Pricing; (ii) channel assignment; (iii) tiering or packaging of programming services; (iv) promotional activities; and (v) signal quality.

By section IV(B), Defendants are enjoined from refusing to sell or license, or from selling or licensing only on a discriminatory basis, video programming in which they have an interest to any competing MSTD, where the effect of such conduct is unreasonably to restrain competition. Differences in price or terms that are reasonably based on ordinary commercial factors, including but not limited to the factors currently set forth in 47 CFR 76.1002(b), will not constitute prohibited discrimination. This section therefore does not prevent defendants from engaging in good faith business negotiations or from imposing reasonable requirements for the creditworthiness or service quality of a distributor, or from establishing prices, terms, and conditions that reasonably reflect actual differences in the distributor's costs of providing such video programming or economies of scale or other economic benefits reasonably attributable to the number of subscribers served by such distributor. This provision does assure that Defendants may not refuse to license their video programming to competing MSTDs where the effect would be to inhibit the ability of such MSTDs to compete against Defendants.

Section IV(C) extends the prohibitions set forth in sections IV (A) and (B) to prevent Defendants from seeking or supporting, with respect to any MSTD or video programming provider in which Defendants have any financial interest but do not control, conduct that would violate sections IV (A) or (B) if engaged in by Defendants. For example, should Defendants urge Turner Broadcasting, Inc. to deny programming to a competing MSTD under circumstances that would result in an unreasonable restraint on competition, such conduct by Defendants would violate this section.

By prohibiting conduct by Defendants that might restrain competition in the provision of video programming or multichannel subscription television distribution, the Department believes that the anticompetitive effects of the proposed merger alleged in the Complaint will be fully remedied. In addition, by expressly including common carrier telephone companies and their video dialtone customers in the definition of MSTDs, the proposed Final Judgment will make clear the defendants' obligation to refrain from anticompetitive discrimination against these potential competitors. The Department's view as to the sufficiency of this relief also rests on the existence of sections 12 and 19 of the 1992 Cable Act, and their implementing FCC regulations, as well as the judgments recently entered in *U.S.* v. *Primestar Partners, L.P., et al.*[2] and *State of New York, et al.* v. *Primestar Partners, L.P., et al.*[3] ("Primestar cases").

*IV*

Remedies Available to Potential Litigants

Section 4 of the Clayton Act, U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust actions under the Clayton Act. Under the provisions of section 5(a) of the Clayton act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendants.

*V*

Procedures Available for Modification of the Proposed Final Judgment

As provided by the APPA, any person believing that the proposed Final Judgment should be modified may submit written comments within the sixty (60) day period from the date of publication in the **Federal Register** to Richard L. Rosen, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., room 8104, Washington, DC 20001. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent at any time prior to entry. The proposed Final Judgment provides that the Court retains jurisdiction over

[2] No. 93 Civ. 3913 (S.D.N.Y. April 4, 1994).

[3] 1993–2 Trade Cas. (CCH) ¶¶ 70,403–4 (S.D.N.Y. Sept. 14, 1993).

these actions, and any party may apply to the Court for any order necessary or appropriate for their modification, interpretation or enforcement.

*VI*

Alternatives To the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, litigation to enjoin the merger. The United States rejected that alternative because the relief in the proposed Final Judgment should prevent the possible occurrence of conduct the effect of which may be substantially to lessen competition in the provision of video programming to MSTDs in the United States or competition among MSTDs in the geographic areas in which Defendants have cable systems. Moreover, the terms of the proposed Final Judgment are supplemented by the provisions of the 1992 Cable Act and its implementing FCC regulations, as well as the judgments in the Primestar cases. Under these circumstances, seeking to enjoin the merger would only prevent the two firms from achieving the economic efficiencies that may result from vertical integration and, given their history and present circumstances, eliminating the cost imposed by their legal separation into separate firms.

*VII*

Determinative Documents

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such document to the proposed Final Judgment.

**N. Scott Sacks, Patricia A. Shapiro, Kevin C. Quin, Nancy Dickinson, Susanna M. Zwerling,**

*Trial Attorneys, Antitrust Division, U.S. Department of Justice.*

[FR Doc. 94–11572 Filed 5–11–94; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. Little Rock Coal Company**

[Docket No. M–94–43–C]

Little Rock Coal Company, RD #2, Box 40, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4) and (5) (weekly examination) to its Lykens Valley #1 Vein Slope (I.D. No. 36–08320) located in Schuylkill County, Pennsylvania. Due to hazardous conditions, daily or weekly traveling of the intake air course significantly increases the fall potential. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**2. K & L Coal Company**

[Docket No. M–94–44–C]

K & L Coal Company, RD #1, Box 266, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1200(i) (mine map) to its No. 1 Slope (I.D. No. 36–06649) located in Northumberland County, Pennsylvania. The petitioner proposes to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**3. K & L Coal Company**

[Docket No. M–94–45–C]

K & L Coal Company, RD #1, Box 266, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (quantity and location of firefighting equipment) to its No. 1 Slope (I.D. No. 36–06649) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**4. K & L Coal Company**

[Docket No. M–94–46–C]

K & L Coal Company, RD #1, Box 266, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its No. 1 Slope (I.D. No. 36–06649) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**5. K & L Coal Company**

[Docket No. M–94–47–C]

K & L Coal Company, RD #1, Box 266, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 1 Slope (I.D. No. 36–06649) located in Northumberland County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the pre-shift examination after an air quantity reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**6. K & L Coal Company**

[Docket No. M–94–48–C]

K & L Coal Company, RD #1, Box 266, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4) and (5) (weekly examination) to its No. 1 Slope (I.D. No. 36–06649) located in Northumberland County, Pennsylvania. Due to hazardous conditions, daily or weekly traveling of the intake air course significantly increases the fall potential. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**7. Harman Mining Corporation**

[Docket No. M–94–49–C]

Harman Mining Corporation, P.O. Box 60, Harman, Virginia 24628 has filed a petition to modify the application of 30 CFR 77.215(j) (refuse piles; construction

requirements) to its Coal Preparation Plant (I.D. No. 44–02714) located in Buchanan County, Virginia. The petitioner proposes to continue monitoring the refuse pile, I.D. No. 1211–VA5–0005.05 by subsurface investigation and thermal monitoring instead of extinguishing the refuse pile fire. The petitioner states that application of the standard would result in a diminution of safety for the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**8. Consolidation Coal Company**

[Docket No. M–94–50–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(1)(weekly examination) to its Robinson Run No. 95 Mine (I.D. No. 46–01318) located in Harrison County, West Virginia. Due to deteriorating roof and rib conditions, the Shaft Circle air course located near the intersection of 94 block, Main North to Oakdale Shaft, cannot be traveled safely. The petitioner proposes to establish check points CP #1, CP #2, and CP #3 to monitor the quantity of air ventilating the affected area; and to have a certified person test for methane and the quantity of air on a weekly basis and record the results in a record book kept on the surface and made available to all interested persons. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**9. Consolidation Coal Company**

[Docket No. M–94–51–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b) (weekly examination) to its Loveridge No. 22 Mine (I.D. No. 46–01433) located in Marion County, West Virginia. Due to deteriorating roof and rib conditions in the air course along the West Side of the Main North entries that flow south from 1 North (adjacent to 3 North Crossover Seals) to the junction with the 1 West entries, the entire area cannot be traveled safely. The petitioner proposes to establish check points to monitor the quantity of air; and to have a certified person test for methane and the quantity of air on a weekly basis and record the results in a record book kept on the surface and made available to all interested persons. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**10. Consolidation Coal Company**

[Docket No. M–94–52–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b) (2), (4) and (c)(3) (weekly examination) to its Ireland Mine (I.D. No. 46–01438) located in Marshall County, West Virginia. Due to deteriorating roof and rib conditions in the 4 South seals and certain air courses from the 4 South seals to the No. 2 Fan, the area cannot be traveled safely. The petitioner proposes to change the location of air measuring stations "C" and "D" and to continue evaluating daily air measuring stations "A" and "B" that were established in Decision and Order dated July 17, 1989, Docket No. M–88–252–C; to post a sign in the adjacent travel entry designating the location of these measuring stations in the adjacent travel entry; to establish an air measuring station "F" on the surface at Ireland Mine No. 2 Fan in lieu of air measuring stations "C" and "D"; and to have a certified person monitor each air measuring station daily and record the results in a book that would be provided at each air measuring station and on the surface and made available to all interested persons. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**11. Kerr-McGee Coal Corporation**

[Docket No. M–94–53–C]

Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Galatia Mine (I.D. No. 11–02752) located in Saline County, Illinois. The petitioner proposes to use electric motor-driven mine equipment in a longwall recovery room. This equipment would serve as a power center (transformer) in intake air to furnish power to roofbolters with a 1200 foot long, Number 2, G–GC, 2KV trail cable, protected for a short circuit fault with an instantaneous circuit breaker set at not more than 600 amperes at all points of the recovery room. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**12. Buck Mountain Coal Company No. 2**

[Docket No. M–94–54–C]

Buck Mountain Coal Company No. 2, R.D. #2, Box 425–B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.332 (b)(1) and (b)(2) (working sections and working places) to its Buck Mountain Slope (I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during pre-shift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**13. Eighty-Four Mining Company**

[Docket No. M–94–55–C]

Eighty-Four Mining Company, P.O. Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.1101–8(a) (water sprinkler systems; arrangement of sprinklers) to its Mine 84 (I.D. No. 36–00958) located in Washington County, Pennsylvania. The petitioner proposes to install a thermostat device on the electrical control side of the belt so that when it is activated it would de-energize the belt control side of the Combination Box and trigger an audible and visual alarm to miner's working in the immediate area; to have a qualified person examine, test, and properly maintain on a weekly basis each Combination Box to assure safe operating conditions; and to record the results of each examination in a book. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**14. Soldier Creek Coal Company**

[Docket No. M–94–56–C]

Soldier Creek Coal Company, P.O. Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.380(d)(4) (escapeways; bituminous and lignite mines) to its Soldier Canyon Mine (I.D. No. 42–00077) located in Carbon County, Utah. The petitioner requests a modification of the standard to allow

the 4 foot wide stairway at overcasts installed prior to November 16, 1992 to be used as an underground escapeway instead of using a 6 foot wide escapeway. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**15. Cyprus Sierrita Corporation**

[Docket No. M–94–01–M]

Cyprus Sierrita Corporation, 9100 E. Mineral Circle, Englewood, California 80112 has filed a petition to modify the application of 30 CFR 56.6309 (fuel oil requirements for ANFO) to its Sierrita Mine (I.D. No. 02–00144) located in Pima County, Arizona. The petitioner proposes to blend recycled oil with fuel oil to create a blasting agent. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**Request for Comments**

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 13, 1994. Copies of these petitions are available for inspection at that address.

Dated: May 5, 1994.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 94–11573 Filed 5–11–94; 8:45 am]

BILLING CODE 4510–43–P

## Pension and Welfare Benefits Administration

**[Application No. L–9412, et al.]**

## Proposed Exemptions; Beaumont Area Pipefitters Joint Apprenticeship Committee, et al.

**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**

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing 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.

**Beaumont Area Pipefitters Joint Apprenticeship Committee (the Plan) Located in Beaumont, Texas; Proposed Exemption**

[Application No. L–9412]

The Department is considering granting an exemption under the authority of section 408(a) of the Act 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 shall not apply to the purchase of certain real property (the Property) by the Plan from Pipefitters Local 195 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry (the Union), a party in interest with respect to the Plan, provided that the following conditions are met:

1. An independent fiduciary determines that the proposed transaction is in the best interests of the Plan;

2. The fair market value of the Property is established by an appraiser unrelated to the Plan or the Union;

3. The Plan pays no more than the lesser of $462,800 or the fair market value of the Property as determined at the time of purchase;

4. The purchase is a one-time transaction for cash; and

5. The Plan pays no fees or commissions in regard to the transaction.

**Summary of Facts and Representations**

1. The Plan is an apprenticeship training plan established and administered pursuant to the provisions of section 302 of the Labor Management Relations Act of 1947. As of January 31, 1994, the Plan had 580 participants and total assets of $1,248,499. On the same date, the number of employers contributing to the Plan totaled 21.

2. The Property consists of 2.74 acres of land and improvements located adjacent to property of the Union. The improvements include three one and

two-story buildings, constructed by the Union in 1968 and 1978, designed for use as classroom and apprenticeship training facilities for the Plan and its participants. From 1968 to 1988 the Plan operated an apprenticeship program on the Property pursuant to a lease of the Property by the Union to the Plan.[1] In August 1988 the Union sold the Property to the Plan. The Plan partially financed this purchase by obtaining a loan from the Sabine Area Pipefitters Local 195 Pension Trust Fund (Local 195 Pension Plan). The Local 195 Pension Plan, which was later merged into the Plumbers and Pipefitters National Pension Fund, had interlocking trustees with the Plan and the Plan made some contributions to the Local 195 Pension Plan on behalf of its participants. The loan was repaid in June 1991.

In September 1990 the Department commenced an investigation of the Plan regarding the sale of the Property by the Union to the Plan and the loan between the Plan and the Local 195 Pension Plan.[2] Also, an application for exemption for retroactive relief from the prohibited transaction provisions of the Act was submitted to the Department for these transactions. In a letter in January 1992, the Department cited as reasons for denying the exemption application, among other factors, the lack of the review and prior approval of the transactions by an independent fiduciary. Following this exemption denial, an agreement was reached with the Department which required that the Property be sold back by the Plan to the Union. Such sale occurred in December 1992. Since that date, the Plan has utilized the Property as a training facility without charge from the Union. However, the applicant represents that because of an economic downturn in the area, the Union considers it a hardship to continue this arrangement.

3. The applicant obtained an appraisal on the Property on January 14, 1994, from Donnie M. Jones, MAI (Jones), a real estate appraiser located in Port Arthur, Texas. Jones represents that he is not related in any way to the Plan or the Union. Utilizing the income, cost and sales comparison approaches to value, Jones estimated that the Property had a fair market value of $462,800 as of the date of the appraisal. By letter dated March 1, 1994, Jones stated that he was aware, in preparing the appraisal, that the Plan was the prospective buyer of the Property and that this knowledge had no influence on his calculation of value.

4. The Plan now proposes to purchase the Property from the Union so that the Plan itself will own the training and educational facilities used to train journeymen and apprentices. Plan fiduciaries note that ownership of the Property will give the Plan full control of the buildings, grounds and parking lots and will enable the Plan to make improvements to the Property as needed. The Plan will pay no more than current fair market value for the Property, as established by an updated independent appraisal. The purchase will be a one-time transaction for cash and the Plan will pay no fees or commissions in regard to the purchase. The applicant represents that, after the purchase of the Property, the Plan will have more than enough funds for operational purposes of the training program.

5. The Plan and the Union have selected Joseph P. Connors, Sr. (Connors), an attorney with the firm of Connors Associates, Inc. in Washington, DC to serve as independent fiduciary in regard to the proposed transaction. The applicant represents that Connors is independent of the Plan and the Union. Connors states that he has had extensive experience working with Taft-Hartley plans, including serving as chairman of funds of the United Mine Workers. Connors further states that he is well aware that while acting as independent fiduciary he assumes personal liability and he must act solely in the interest of the Plan and its participants.

Connors maintains that the proposed transaction is definitely in the best interests of the Plan. In this regard, Connors has met with officers of the Union and trustees of the Plan and has made an inspection of the Property with Russell Allen, the training director for the Plan. The Plan has operated an apprenticeship program utilizing the Property since the initial time of construction in 1968. As independent fiduciary, Connors will make certain that the Plan pays no more than fair market value for the Property and will enforce all rights of the Plan in regard to the proposed transaction.

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 purchase of the Property will give the Plan ownership of the facilities it uses for its apprenticeship training program; (2) an independent fiduciary has determined that the proposed transaction is in the best interests of the Plan and its participants; (3) the Plan will pay no more than fair market value for the Property, based on an updated independent appraisal; (4) the purchase will be a one-time transaction for cash; and (5) the Plan will pay no fees or commissions in regard to the transaction.

**FOR FURTHER INFORMATION CONTACT:** Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

**Hartford Life Insurance Company (Hartford Life) and Hartford Investment Management Company (HIMCO) Located in Hartford, Connecticut; Proposed Exemption**

[Application Nos. D–9458 and D–9459]

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), 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 sales and transfers of assets of employee benefit plans (the Plans) to Hartford Life pursuant to the terms of a synthetic guaranteed investment contract (Synthetic GIC) entered into by the Plan with Hartford Life and HIMCO, provided the following conditions have been met: (a) Prior to the execution of such Synthetic GIC, an independent fiduciary of such Plan receives a full and detailed written disclosure of all material features of the Synthetic GIC, including all applicable fees and charges; (b) following receipt of such disclosure, the Plan's independent fiduciary approves in writing the execution of the Synthetic GIC on behalf of the Plan; (c) all fees and charges imposed under such Synthetic GIC are reasonable; (d) each Synthetic GIC will specifically provide for an objective means for determining the fair market value of the securities owned by the Plan pursuant to the Synthetic GIC; (e) Hartford Life will maintain books and records of all transactions which will be subject to annual audit by independent certified public accountants selected by

[1] Prohibited transaction exemption (PTE) 78–5 (43 FR 23024, May 30, 1978) permits, under certain conditions, the leasing of real property by an apprenticeship plan from a sponsoring employee organization. The Department expresses no opinion as to whether the above lease satisfied the conditions of PTE 78–5 nor is any relief provided herein.

[2] The above described transactions may have constituted prohibited transactions under section 406 of the Act. Such section prohibits, in part, a sale or exchange of property between a plan and a party in interest, a use of plan assets for the benefit of a party in interest, and the acting of a fiduciary in a plan transaction on behalf of a party whose interests are adverse to those of the plan or its participants.

and responsible solely to the Plan; and (f) the Synthetic GIC will be offered only in principal amounts of $50 million or more.

**Summary of Facts and Representations**

1. Hartford Life is a stock life insurance company organized under the laws of the State of Connecticut. As of December 31, 1992, Hartford Life had assets of approximately $20.8 billion and insurance in force of approximately $93.5 billion. Hartford Life is currently rated as follows: A.M. Best—A++; Standard & Poor's—AAA; Duff & Phelps—AAA; and Moody's—Aa2. Hartford Life is a wholly owned subsidiary of Hartford Life and Accident Company, which is in turn a subsidiary of Hartford Fire Insurance Company. Hartford Fire Insurance Company is owned by the ITT Corporation. A significant portion of Hartford Life's business consists of writing insurance and annuity contracts, guaranteed investment contracts, and other types of funding agreements for numerous pension plans, most of which are subject to title I of the Act.

2. HIMCO, a wholly owned subsidiary of Hartford Life, is an investment management company registered as an investment adviser under the Investment Advisers Act of 1940. As of March 31, 1993, HIMCO had $3.06 billion in assets under management. HIMCO manages assets in various Hartford Life separate accounts and other portfolios.

3. For many years, Hartford Life has offered various guaranteed investment contracts (GICs) for sale in the qualified plan market. A GIC is a type of contract under which an insurance company, in exchange for a sum of money, guarantees that it will return that sum to the contractholder on a specified maturity date, with interest at the specified rate. In anticipation of its obligation, the insurance company invests the funds received from the contractholder primarily in fixed-income instruments, in order to achieve a return that will enable the company to meet its guarantee at maturity. Typically, these fixed-income investments are held in the company's general asset account, although under some type of GIC products, the investments are held in a separate account.

4. Recently, many pension fund investment managers have expressed interest in achieving an even higher degree of security for plan investments than that afforded by conventional GICs. In response, some insurance companies have begun to offer Synthetic GICs. Under some Synthetic GICs, instead of paying a premium to the insurance company on the effective date of the contract, the plan places assets in a custodial bank account owned by the plan. The assets are held in that account by the bank custodian and are managed exclusively by the insurance company or an affiliate until the contract's maturity. If the market value of the assets in the custodial account at maturity is less than the amount initially placed in the account plus guaranteed interest, the insurer must make the plan whole for the difference. The assets in the account are never owned by the insurance company, however, and the plan's investment is therefore not affected by risks to which the insurer's own assets may be subject.

5. Hartford Life now intends to offer a Synthetic GIC product to Plans. Hartford Life's Synthetic GIC will be offered in principal amounts of $50 million or more. Thus, Hartford Life intends to offer its Synthetic GICs only to large Plans.

6. Essentially, the Synthetic GIC will consist of an investment management agreement under which HIMCO, acting in a fiduciary capacity, will manage assets of a Plan placed in the custody of a bank (the Bank) selected by the Plan (with the approval of Hartford Life). The Synthetic GICs offered by Hartford Life will differ from conventional management agreements, however, in that Hartford Life will guarantee that the amounts placed in the bank custodial account for management by HIMCO will be released to the Plan, with interest at a specified rate, on certain specified dates. The Synthetic GIC will be benefit responsive in that it may be tailored to meet the Plan's predictable benefit obligations by establishing Scheduled Account Distribution Dates (see rep. 10, below) at appropriate times. In addition, unscheduled interim distributions, referred to as Benefit Sensitivity Advances (see rep. 22, below), will also be available under certain circumstances. At all times, the Plan, not Hartford Life, will remain the legal owner of the account.

7. The decision to enter into a Synthetic GIC will be made on behalf of a Plan by a Plan fiduciary who is independent of Hartford Life and HIMCO. The applicants represent that due to the large size of the Plans involved, the independent fiduciaries authorizing Plans to enter into the Synthetic GICs can be expected to be (or to retain) sophisticated professional asset managers with specialized expertise in the area of GICs and similar investments. Prior to the Plan's investment, Hartford Life will furnish the Plan's independent fiduciary full and detailed disclosure of all features of the Synthetic GIC, including all applicable fees (see rep. 24, below) and charges (see reps. 16 and 23, below). There is no additional fee or charge for the guarantee.

8. When a Plan enters into a Synthetic GIC with Hartford Life, an account (the Account) will be established for the Plan. Contributions made by the Plan to the Account on the "Account Commencement Date" and on any subsequent dates specified in the Synthetic GIC will be delivered to the Bank and credited to the Account. The assets in the Account will be held in the Bank's custody and subject to management by HIMCO. Contributions placed into the Account will be invested immediately; there will be no time lag between the time the contributions are put in the Account and the time they are invested.

9. The Synthetic GICs will not be offered on a pooled basis; in other words, a separate custodial Account will be established for each Plan that enters into a Synthetic GIC with Hartford Life and the assets in that Account will be managed separately from any assets subject to a Synthetic GIC with another Plan.

10. Hartford Life's guarantee as to principal and interest under a Synthetic GIC will come into play on certain specified dates, namely, the "Scheduled Account Termination Date" and any "Scheduled Account Distribution Date(s)" provided for prior to the Scheduled Account Termination Date. On those dates, as described in greater detail below (see reps. 15 and 16, below), the Plan will be entitled to distributions from the Account of the "Adjusted Book Value" of contributions previously made to the Account. (Specific amounts will be distributed on the Scheduled Account Distribution Date(s), if any, and the balance of the Account's Adjusted Book Value will be distributed on the Scheduled Account Termination Date, at which time the Synthetic GIC will terminate.) Adjusted Book Value is defined as the net asset balance of the Account derived from contributions plus interest at a specified "Guaranteed Rate of Interest" determined by mutual agreement between Hartford Life and the Plan, less prior withdrawals. (The Guaranteed Rate of Interest that Hartford Life will be willing to offer under a particular Synthetic GIC will be based on yields on securities of various durations currently available in the marketplace at the time the Synthetic GIC is executed.) In other words, Hartford Life will guarantee that on the Scheduled Account Distribution Date(s) (if any) and on the Scheduled

Account Termination Date, distributions will be made to the Plan in amounts at least equal to contributions previously made to the Account, plus interest at the Guaranteed Rate of Interest, with appropriate adjustments for withdrawals (i.e., Scheduled Account Distributions, and Benefit Sensitivity Advances as described in rep. 22, below).

11. The applicants represent that the Guaranteed Rate of Interest for a particular Synthetic GIC will be established by arm's-length negotiation between the Plan and Hartford Life in advance of entering into the contract, and will be set forth in writing in the Synthetic GIC instrument. Once established, the Guaranteed Rate of Interest will not be modified for the term of the agreement. The considerations that will be taken into account in the negotiation process will be essentially the same as those that affect guaranteed interest rates offered under conventional GICs. Under its Synthetic GIC, Hartford Life will be willing to offer a Guaranteed Rate of Interest that takes into account the rate of return it believes it will be able to achieve in managing the assets in the Account, based on currently available investments that are consistent with the investment guidelines imposed by the Plan, and with allowance for Hartford Life's quarterly management fees (see rep. 24, below). The applicants further represent that they and the Plans will be aware of the rates that other companies are offering for similar products. Hartford Life represents that this, together with the Plans' ability to negotiate the investment guidelines (and thus the level of risk) applicable to the Account, will avoid any realistic potential for abuse.

12. HIMCO will acknowledge in writing that it will be a fiduciary of each Plan and will be subject to the Act's fiduciary standards in managing the assets in each such Plan's Account. The general investment objectives of the Account will be current income with stability of principal. The agreement governing each Synthetic GIC will instruct HIMCO to manage the Account to achieve a total return over the holding period to maturity which is sufficient to produce the Synthetic GIC's Guaranteed Rate of Interest.

13. Each Synthetic GIC will provide investment guidelines for achieving these investment objectives. While there will be some flexibility in the investment guidelines to allow each Synthetic GIC portfolio to be customized to meet the unique needs of the particular Plan, the guidelines will essentially call for HIMCO to apply the same investment techniques that Hartford Life and other life insurance companies use in investing their own general account assets so as to meet guaranteed benefit obligations under life insurance and annuity contracts. A central feature of these techniques is the selection of a portfolio of securities matching contractual obligations as to timing and amount.

14. Under the guidelines, the Account will be required to be primarily invested in fixed income securities, while maintaining a level of liquidity sufficient to provide for anticipated benefit payments by investing partly in traditional money market securities. As a means of achieving a higher guaranteed return than would be possible by investing exclusively in fixed income and money market securities, the guidelines will allow limited and properly hedged investment in riskier securities such as common stocks, but they will not permit direct investment in real estate. The applicants represent that limited investment in riskier securities will benefit the Plan by allowing Hartford Life to offer a slightly higher Guaranteed Rate of Return than would be possible if the Account supporting the Synthetic GIC were invested exclusively in fixed income and money market investments. Any investment in employer securities (within the meaning of section 407(d) of the Act) will be subject to guidelines established by the Plan.

15. Distributions prior to the Scheduled Account Termination Date which are subject to Hartford Life's guarantee as to principal and interest (Scheduled Account Distributions) will occur on Scheduled Account Distribution Dates (see rep. 10, above) and in amounts which will be agreed upon between a Plan and Hartford Life prior to the execution of a Synthetic GIC and will be specified in writing. On each Scheduled Account Distribution date, HIMCO will be required to liquidate securities sufficient to meet the Scheduled Account Distribution. In most instances, the assets will be liquidated by a sale in the open market. However, Hartford Life reserves the right to purchase the assets to be liquidated. When it elects to do so, Hartford Life must pay the fair market value of the asset as of the close of business on the date of the sale, determined as set forth in rep. 21, below. Hartford Life will then distribute to the Plan an amount equal to the Adjusted Book Value of the Scheduled Account Distribution. The Adjusted Book Value of the Account will then be reduced by the amount of the Scheduled Account Distribution. To the extent that the market value of the assets liquidated on a Scheduled Account Distribution Date exceeds the amount of the Scheduled Account Distribution, the excess will be retained in the Account and reinvested.

16. On the Scheduled Account Termination Date, the Bank will distribute to Hartford Life all of the assets in the Account, and Hartford Life will simultaneously distribute to the Plan an amount which will not be less than the aggregate Adjusted Book Value of the Account. As noted above, (see rep. 10, above), the Adjusted Book Value will generally be equal to contributions plus the applicable Guaranteed Rate of Interest, with adjustments for previous withdrawals. If the aggregate market value of the assets in the Account (determined as described in rep. 21, below) exceeds their Adjusted Book Value on the Scheduled Account Termination Date, Hartford Life will be entitled to a portion of such excess, the amount of which will be determined as a specified percentage of the Adjusted Book Value of the Account determined by agreement between the Plan and Hartford Life and specified in the Synthetic GIC (the Book Value Assurance Charge), and will be required to pay the remaining balance to the Plan. The Book Value Assurance Charge will be equal to a specified percentage of the Adjusted Book Value of the Account, but will not exceed the market value of the Account less the Adjusted Book Value of the Account, or be less than zero. To summarize, if the proceeds of the liquidated assets exceed the sum of the Adjusted Book Value of the Account on that date and the Book Value Assurance Charge, such remainder will be distributed to the Plan, thus allowing the Plan to receive a rate of return which is in excess of the Guaranteed Rate of Interest.

17. Hartford Life's guarantee will be implemented on Scheduled Account Distribution Dates and on Scheduled Account Termination Dates in the following manner: (1) On Scheduled Account Distribution Dates, HIMCO will liquidate assets in the Account with a fair market value equal to the Scheduled Account Distribution. The assets liquidated will be sold either on the securities market or to Hartford Life (the asset liquidation procedure is described in detail in rep. 18, below). The proceeds will then be distributed to the Plan; and (2) On the Scheduled Account Termination Date, HIMCO will liquidate the remaining assets in the Account. The assets liquidated will again be sold either on the securities market or to Hartford Life. The Adjusted Book Value of the Account will be distributed from

the Account to the Plan. To the extent that the proceeds of the assets in the Account exceed the Adjusted Book Value of the Account, Hartford Life will be entitled to the Book Value Assurance Charge (see rep. 16, above). The balance, if any, of the proceeds of the asset liquidation will be paid to the Plan. HIMCO will select the assets that are sold to Hartford Life (instead of being sold on the open market) on those dates (see reps 18 and 19, below).

As a result, some of the investments in the Account may end up in Hartford Life's hands. The applicants represent that this is an essential feature of the Synthetic GICs that will materially (and favorably) affect the Guaranteed Rate of Interest that Hartford Life will be able to offer to a Plan. If assets trading at a discount from their face amount on the Scheduled Account Termination Date had to be disposed of or simply distributed to the Plan from the Account on that date, Hartford Life would be compelled to realize an immediate loss with respect to those assets in meeting its contractual guarantee. By allowing these assets to be transferred to Hartford Life on the Scheduled Account Distribution Dates and the Scheduled Account Termination Date, the foregoing procedures for implementing the contractual guarantees will make it possible for Hartford Life to hold such assets to maturity or until market conditions warrant disposing of them. This in turn will enable Hartford Life to guarantee a higher rate of return than it would otherwise be able to guarantee.

18. The applicants have made the following representations with respect to how securities to be sold to Hartford Life on Scheduled Account Distribution Dates and the Scheduled Account Termination Date will be selected by HIMCO. The applicants state that the management of assets pursuant to an agreement to provide a guaranteed return calls for the use of complex and sophisticated management techniques to make certain that cash flows will be available when needed. In particular, fixed-income assets must be selected with maturities and yields that will enable the insurer to match the maturity and yield of the guaranteed return agreement. To this end, securities are purchased in the expectation that they will be liquidated on a particular date in order to provide the cash necessary to satisfy the insurer's obligation to the contractholder on that date.

Under the terms of Hartford Life's Synthetic GIC, the assets of the Account will be managed in accordance with these risk management techniques. There will be a specific, identifiable pool of assets that will be internally designated from the establishment of the Account for liquidation on each Scheduled Account Distribution Date (as well as on the Scheduled Account Termination Date, when all of the remaining assets will be liquidated). In general, the securities designated to be disposed of on a particular date will have maturities on or relatively soon after that date. From time to time, depending on prevailing market conditions, the assets in an Account may be "rebalanced"—i.e., reallocated among the Scheduled Account Distribution Dates and the Scheduled Account Termination Date. (The applicants represent that the flexibility to reallocate the assets among the Synthetic GIC's maturity dates in the face of changing market conditions is essential to the effective management of investment risks under a guaranteed return contract.) At all times, however, all the assets in the Account will be designated for liquidation on a particular Scheduled Account Distribution Date or the Scheduled Account Termination Date. The assets that will be disposed of on each Scheduled Account Distribution Date and the Scheduled Account Termination Date will thus be those assets designated to be disposed of on the relevant date, and in most cases, this designation will have been made at the time of acquisition.

Regardless of whether they are sold to Hartford Life or on the open market, the assets designated for disposition on each Scheduled Account Distribution Date and the Scheduled Account Termination Date will be disposed of on the relevant date at fair market value. The securities that will be sold to Hartford Life on the Scheduled Account Distribution Dates and the Scheduled Account Termination Date will be selected by HIMCO from among the securities designated to be disposed of on those dates, based on Hartford Life's needs for securities with specific cash-flow patterns and maturities for its general account portfolio.

19. The applicants represent that they recognize that HIMCO's "rebalancing" of Account securities could be viewed as involving a conflict of interest, in that HIMCO would be in a position to deprive the Plan of any return in excess of the Guaranteed Rate of Interest by targeting assets expected to appreciate for sale to Hartford Life on Scheduled Account Distribution Dates.[3] However, the applicants represent that there will be no realistic opportunity for abuse in the subject transactions for the following reasons:

(a) The likelihood that the fair market value of the assets in the Account on the Scheduled Account Termination Date will exceed the sum of the Adjusted Book Value of the Account and the Book Value Assurance Charge will be negligible. The securities that will be purchased for the Account will consist primarily of fixed-income securities with limited potential for capital appreciation, and will generally be targeted to mature on or near the Scheduled Account Distribution Dates and the Scheduled Account Termination Date. Plans will not purchase the Synthetic GIC in the expectation of a return in excess of the Guaranteed Rate of Interest; instead, they will purchase it in order to receive a guaranteed return with the additional security that direct ownership of the underlying assets will afford.

(b) Any potential for abuse will be offset by a countervailing interest on the part of Hartford Life in making certain that the value of the Account is adequate to meet its contractual guarantee on the Scheduled Account Termination Date. As noted above, any excess return to the Plan will be unanticipated and unlikely. Hartford Life, on the other hand, will bear the risk that the assets in the Account will be inadequate to provide the amount guaranteed on the Scheduled Account Termination Date. This risk will be minimized if the Account retains assets which are expected to appreciate.

(c) As a practical matter, abuses on a scale sufficient to materially benefit Hartford Life and adversely affect a Plan will simply not be feasible. The need to manage the assets in the Account to achieve the Guaranteed Rate of Interest will severely constrict HIMCO's flexibility to manipulate the assets disposed of on Scheduled Account Distribution Dates. To systematically pick and choose those assets with a view to selling desirable assets to Hartford Life would seriously upset the predictability of cash flows available to meet subsequent guarantees, imposing unacceptable risks on Hartford Life that would far outweigh any potential benefit of such a scheme.

(d) The Plan will have complete records of all transactions of the Account (see rep. 25, below) and will be able to discontinue the Synthetic GIC (see rep. 23, below) if it discovers that HIMCO has engaged in abusive conduct.

20. The applicants represent that no brokerage costs will be imposed with respect to the sale of the assets in an

[3] The applicants represent that this concern will not be present in connection with sales of assets to Hartford Life on the Scheduled Account Termination Date because on that date all of the assets in the Account will be disposed of in any event.

Account to Hartford Life or an affiliate pursuant to these provisions. With brokerage costs eliminated, the only transaction costs that will be incurred in selling the assets in question will be the costs of recording the change in ownership of these assets. The ability to minimize transaction costs will run to the benefit of the Plan by enabling Hartford Life to provide a higher Guaranteed Rate of Interest to the Plan.

21. The applicants represent that the assets in which the Account has invested (which are expected to be primarily fixed-income securities, and to a lesser extent common stocks and other assets) will be valued as follows:

(a) In the case of a security traded on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, Hartford Life will pay the closing price on the exchange on the date of the transaction; and

(b) In the case of a security other than one traded on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, HIMCO will obtain quotations in U.S. dollars (regardless of whether the security in question is denominated in a foreign currency) from at least three unaffiliated financial institutions that serve as market makers for the security, and Hartford Life will pay a price equal to the highest of the three quotations. The three quotations will be obtained on the date of the transaction (i.e., a Scheduled Account Distribution Date or the Scheduled Account Termination Date). Each quotation will represent the bid price offered by the financial institution in question as of the time of the quotation, which will be simultaneous with the processing of the distribution to the Plan.

In no event will Hartford Life or HIMCO make valuations themselves. The role of Hartford Life and HIMCO in the valuation process will be limited to ministerial functions and the selection of the independent financial institutions from which valuations will be obtained.

22. The Synthetic GICs will be designed to provide adequate liquidity to enable Plans to meet their benefit obligations. Thus, a Synthetic GIC will allow for unscheduled withdrawals from the Account (Benefit Sensitivity Advances) prior to the Scheduled Account Termination Date under certain circumstances. A Plan will be able to make Benefit Sensitivity Advances on ten days' notice for the purpose of providing the necessary funds to meet the Plan's benefit obligations as they fall due. A Plan fiduciary may be required by Hartford Life to furnish documentation demonstrating that the benefit payment is in fact required under the terms of the Plan. There is no charge or fee for Benefit Sensitivity Advances. Benefit Sensitivity Advances will consist of cash distributions from the Account. When a Benefit Sensitivity Advance is requested, HIMCO will be required to liquidate securities in the Account on the open securities market with an aggregate fair market value equal to the amount necessary to meet the Plan's request. The proceeds will then be distributed to the Plan, and the amount distributed will be subtracted from the Adjusted Book Value of the Account.

23. A Plan will be allowed to discontinue its Account on 15 days' notice at any time, effective as of the last trading day of the month, except on the Scheduled Account Termination Date or a Scheduled Account Distribution Date.[4] On discontinuance, the market value of the Account will be distributed to the Plan, subject to a "Discontinuance Charge". Like the Book Value Assurance Charge (see rep. 16, above), the Discontinuance Charge will be equal to a specified percentage of the Adjusted Book Value of the Account determined by agreement between Hartford Life and the Plan and specified in the Synthetic GIC, but will not be greater than the excess of the market value of the Account over the Adjusted Book Value on the date of discontinuance nor less than zero.

Accordingly, a Plan will be free to give notice of discontinuance of the arrangement and realize its investment return from its Account (subject to the Discontinuance Charge) at any time up to 45 days before the Scheduled Account Termination Date. For example, if the Plan determines that the return generated by HIMCO's investment management net of the Discontinuance Charge is more valuable than Hartford Life's guarantee, the Plan will be able to realize that return through the discontinuance provision.

24. Under its Synthetic GICs, Hartford Life will be entitled to a quarterly fee based on a percentage of the average Adjusted Book Value of the assets in the Account for the current quarter. This percentage will be established by agreement with each Plan and will be specified in writing. Out of its quarterly fee, Hartford Life will pay HIMCO a quarterly management fee which will also be specified in writing. No separate fee will be paid directly to HIMCO. HIMCO will have the right to withdraw from the Account certain expenses incurred directly in the investment management of the Account. Any such expenses withdrawn directly from the Account by HIMCO are not subtracted from the adjusted book value of the Account.

25. Hartford Life will keep full and complete records and books of account reflecting all transactions of each Plan's Account and will make them available on an annual basis for audit by independent certified public accountants selected by and responsible to the Plan. Hartford Life will also furnish annual reports of the operations of the Account containing a list of the investments of the Account to an independent fiduciary of the Plan.

26. To summarize, the applicants represent that the Synthetic GIC is fundamentally a guaranteed investment contract. A Plan will place specified assets in the Account, and on the Scheduled Account Distribution Dates and the Scheduled Account Termination Date, Hartford Life will repay the Plan its principal plus interest at a guaranteed rate, in exchange for the asset value of the Account (in cash or in kind). Thus, the fundamental nature of the Synthetic GIC is equivalent to that of the conventional GICs which have funded employee benefit plans for many years. With the Synthetic GIC, the Plan is afforded a higher degree of security because the assets underlying the Synthetic GIC will be held in a custodial bank account owned by the Plan and will not become part of the insurance company's assets. In addition, the Synthetic GIC will offer the Plan a limited opportunity to realize a return in excess of the Guaranteed Rate of Interest. This will occur if the market value of the Account on the Scheduled Account Termination Date exceeds the sum of the Adjusted Book Value of the Account and the Book Value Assurance Charge. The Plan will also have the option of discontinuing the arrangement if it believes that the market value of the assets in the Account (less the Discontinuance Charge) is more valuable than Hartford Life's guarantee. The applicants represent that it is not very likely that such an excess return will occur, because the assets in the

[4] Hartford Life determined not to provide for discontinuance of its Synthetic GIC as of a Scheduled Account Distribution Date for administrative reasons. If discontinuance were permitted as of Scheduled Account Distribution Dates, it would be necessary to allocate the assets liquidated on that date between the assets supporting the Scheduled Account Distribution, with respect to which the Plan would be entitled to Adjusted Book Value, and other assets, as to which the Plan would be entitled to fair market value. Hartford Life concluded that this would be unduly burdensome. Allowing the Plan to discontinue the Synthetic GIC on Scheduled Account Distribution Dates seems unnecessary, since the Synthetic GIC can be discontinued at the end of the previous month or at the end of the following month if appropriate.

Account will be managed with the intention of achieving the guaranteed return. In this regard, the applicants represent that on the Scheduled Account Termination Date, the assets will consist primarily of fixed-income securities at or near maturity with predictable values. Nevertheless, the Plan enjoys downside protection through Hartford Life's guarantee, and also has an opportunity to realize a return in excess of the Guaranteed Rate of Return.

27. In summary, the applicants represent that the proposed transactions will satisfy the criteria contained in section 408(a) of the Act for the following reasons: (a) the decision to enter into a Synthetic GIC will be made on behalf of a Plan by a fiduciary of the Plan who is independent of Hartford Life and HIMCO, after receipt of full and detailed disclosure of all material features of the contract, including all applicable fees and charges; (b) the guaranteed return to the Plan cannot be modified by the proposed transactions; (c) all fees and charges imposed under the Synthetic GIC will be reasonable; (d) each Synthetic GIC will specifically provide for determinations of the market value of the securities by an objective means of valuation; (e) Hartford Life will maintain books and records of all transactions which will be subject to annual audit by independent certified public accountants selected by and responsible solely to the Plan; and (f) the Synthetic GIC will be offered only in principal amounts of $50 million or more, so that the Plan fiduciaries can be expected to be knowledgeable, sophisticated professional asset managers.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**Radiation Medical Group Inc. Profit Sharing—401(k) Salary Savings Plan (the Original Plan), and Radiology Medical Group, Inc. 401(k) Salary Savings Plan (the New Plan; Together, the Plans) Located in San Diego, California; Proposed Exemption**

[Application Nos. D–9343 & D–9344]

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 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 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 (1) the proposed transfer by the Original Plan of a 57 percent interest (the Interest) in certain real property (the Property), including a 57 percent lessor's interest, to the New Plan; and (2) the proposed leases of the Property (the New Leases) by the Original Plan and the New Plan to Radiology Medical Group, Inc., and Radiation Medical Group, Inc. (together, the Employers), the sponsors of the Plans; provided the following conditions are satisfied:

(A) All terms of the transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties;

(B) The interests of the Plans under the New Leases are represented by an independent fiduciary, the Union Bank of San Diego, California (the Fiduciary), which will monitor the Employers' performance of obligations under the New Leases and compliance with the conditions of this exemption, including all actions necessary to enforce such obligations and conditions;

(C) At all times under the New Leases, the Plans receive rent which is no less than the fair market rental value of the Property and which is net of all real estate taxes and costs of repair, maintenance and insurance;

(D) At all times under the New Leases, each Plan's interest in the Property constitutes less than twenty-five percent of the total value of all assets held by the Plan; and

(E) Any extension or renewal of the New Leases beyond the initial terms is expressly approved by the Fiduciary.

**Summary of Facts and Representations**

1. The Original Plan is a 401(k) profit sharing plan formerly named "Radiology Medical Group Profit Sharing Plan", which was established by Radiology Medical Group, Inc. (the Original Employer), a California professional corporation engaged in the general practice of radiological medicine in San Diego, California. Effective January 1, 1990, the Original Employer underwent a corporate reorganization, resulting in the creation of an additional professional corporation, Radiation Medical Group, Inc. (the New Employer), to assume the radiation therapy portion of the medical practice previously performed by the Original Employer. The employees performing the radiation therapy services were transferred to the New Employer. The Employers are separate entities, with no common shareholders or employees. The Original Plan was amended to change its name to its current name and to enable the New Employer to adopt the Original Plan for its employees.

Effective January 1, 1992, the boards of directors of the Original Employer and the New Employer (together, the Employers) determined that the Employers should maintain separate retirement plans. The New Employer continued as the sponsor of the Original Plan, and the Original Employer adopted the New Plan as a 401(k) profit sharing plan for its employees. The assets of both Plans are maintained under one trust, the trustee of which is the Union Bank in San Diego, California (the Trustee), which was formerly named California First Bank.

2. Among the assets in the Original Plan is the Property, a parcel of real property located at 2466 First Avenue in San Diego, California. The Original Employer owns a medical office building and other improvements on the Property which are maintained as the Employers' principal place of business. The Original Employer leases the Property from the Original Plan (the Original Lease) pursuant to an individual administrative exemption granted by the Department, Prohibited Transaction Exemption 84–175 (PTE 84–175, 49 FR 48834, December 14, 1984). Pursuant to PTE 84–175, the interests of the Original Plan under the Original Lease are represented by the Trustee. Since the corporate reorganization, the Employers share the use of the Property, and the Original Employer continues as lessee under the Original Lease. The Original Plan, sponsored by the New Employer, continues to hold title to the Property. The participant accounts of employees of the Original Employer, now participating in the New Plan, constitute 57 percent of the assets of the Original Plan. The participant accounts of employees of the New Employer, now participating in the Original Plan, constitute 43 percent of the assets of the Original Plan.

The Employers have determined that each Plan should own a proportionate interest in the Property, in direct relation to each Plan's proportionate interests in the assets of the Original Plan. Accordingly, the Employers propose to direct the Trustee to transfer a 57 percent interest in the Property (the Interest) from the Original Plan to the New Plan, representing the ownership interest of the New Plan participants in the Property. Additionally, the Employers propose that the Plans lease their respective interests in the Property to the Employers pursuant to a modification and continuation of the Original Lease in the form of two

separate leases. The Employers are requesting an exemption for such transactions under the terms and conditions described herein.

3. To effect the transfer of the Interest from the Original Plan to the New Plan, the Employers will direct the Trustee to establish separate trusts for each of the Plans, and to transfer from the existing Original Plan trust a 57 percent ownership interest in the Property to a new trust established exclusively for assets of the New Plan. The Original Plan will retain the remaining 43 percent interest in the Property. The Interest will be transferred subject to the Original Lease, and the Employers will direct the Trustee to transfer to the New Plan a 57 percent lessor's interest in the Original Lease, while the Original Plan will continue to own a 43 percent lessor's interest in the Original Lease. The Property had a fair market value of $1,050,000 as of December 16, 1992, according to Steven L. Bowen, MAI (Bowen), an independent professional real estate appraiser in San Diego, California. The Employers represent that total assets in the Original Plan were valued at $13,177,499.29 as of December 31, 1992, including account balances of all participants in both Plans.

4. It is proposed that each Employer, as lessee, will execute a separate lease with both Plans, as lessors (the New Leases), to enable the Employers' lease of the Property from the Plans under the same terms and conditions as the Original Lease (except for provisions relating to rental review, described below). Under each New Lease, the Plans will be co-lessors of the Property, and each Employer will be a lessee. Based upon their proportionate uses of the Property and the improvements thereon, the Employers have determined that the Original Employer will execute a New Lease with respect to 58 percent of the Property, while the New Employer will execute a New Lease with respect to the remaining 42 percent, and each Employer will be responsible for the corresponding percentage of the Property's total rent and all other expenses relating to taxes, insurance, maintenance, and repair of the Property.

The Trustee will continue to act as an independent fiduciary and will represent the interests of the Plans under the New Leases by overseeing and enforcing the Employers' performance of lease obligations and by securing compliance with the conditions of this exemption, if granted. The Trustee represents that at all times under the Original Lease, the Original Employer has been in compliance with all lease terms and all conditions of PTE 84–175.

5. The proposed New Leases are triple net leases with initial terms ending April 30, 2004, the same termination date of the Original Lease initial term. Rent is payable monthly under the New Leases, which provide for a review of the annual rent every two years on February 1, commencing as soon after February 1, 1994 as the Department publishes the exemption proposed herein, if granted. Such review will be conducted by an independent, unrelated professional real estate appraiser selected by the Trustee. Any adjustment of rent resulting from such review shall be upward only, and any decrease in the fair market rental value of the Property shall not result in any decrease in the rent under the New Leases. In accordance with this procedure, initial rent under the New Leases will be no less than the greater of (a) $13,750 per month, which is the current rent under the Original Lease, or (b) the fair market rental value of the Property as determined as of the initial date of the New Leases by the appraiser selected by the Trustee.

The New Leases require the Employers to pay all repair and maintenance costs of the Property, to pay all real estate taxes on the Property, and to carry fire, extended coverage and public liability insurance on the Property to the full extent of the insurable value of the Property, with the Plans as the named insured. Under the New Leases, the Employers agree to indemnify the Plans and hold the Plans harmless from all claims, demands, liens, losses and liabilities of any nature arising from the Employers' use of the Property.

Each New Lease will provide that upon the expiration of its initial term, with the approval of the Trustee, the Employers may extend the New Lease for up to two additional terms of five years each upon written notice to the Trustee at least six months prior to the expiration of the initial term or the expiration of the first five-year renewal term, whichever is applicable. Rental under such extended five-year term(s) will be payable pursuant to the same procedures required by the New Leases during the initial term, including rental review every two years.

6. The Trustee represents that after a review and analysis, it has approved the proposed transactions on behalf of the participants and beneficiaries of the Plans. In this regard, the Trustee engaged the services of two independent advisers (the Advisers) to serve in fiduciary capacities on behalf of the Plans in determining whether the retention of a 43 percent interest in the Property by the Original Plan and the receipt of a 57 percent interest in the Property by the New Plan are prudent investments for the Plans and in the best interests of their participants and beneficiaries. The Advisers were also engaged to determine whether the New Leases constitute prudent investments for the Plans and whether their terms and conditions are protective of the Plans' participants and beneficiaries.

7. One of the Advisers is Moody, Nation and Smith (Moody), a financial consulting firm located in San Diego, which was retained by the Trustee to make determinations as a fiduciary on behalf of the Original Plan with respect to the proposed transactions. Moody, which represents that it is independent of and unrelated to the Employers, represents that it undertook a complete analysis of the real estate market in which the Property is situated as part of its evaluation of the Property and the New Leases as an investment for the Original Plan. In a written report to the Trustee, Moody concluded that the Original Plan's 43 percent interest in the Property, and its lease to the Employers under the New Leases, will constitute a prudent investment which features adequate protections and safeguards for the participants and beneficiaries of the Original Plan. Moody states that it has determined that the Property provides a favorable and secure rate of return and will remain a stable real estate investment well into the future. Moody represents that its research reveals that the Property is located in a stable and well-established market area which fared better than other areas in San Diego during the protracted city-wide real estate market declines between 1980 and 1990. Moody represents that other factors involved in and supporting its recommendation included the following findings:

(A) The Original Plan's assets will remain adequately diversified, in that its interest in the Property constitutes approximately 10.6 percent of all assets of the Original Plan's participants as of February 1994; (B) The Original Plan's return on its investment in the Property, the rental under the New Leases, is net of real estate taxes and all expenses related to repair, maintenance and insurance of the Property; (C) Any extension of the New Leases after the expiration of the initial term on April 30, 2004 will require the approval of the Trustee and will be limited to no more than two terms of five years each; (D) Rental under the New Leases will always be at least the fair market value of the Property, due to provisions requiring periodic rental review, and rent is adjustable only upward, never reduced, in the event of changes in the

Property's fair market value as the New Leases proceed. Moody states that it determined that the fair market rental for comparable land leases in the same market as the Property is a 10 percent annual return on the fair market value of the subject land, and the current rental under the Original Lease, which can not be reduced under the New Lease, provides an annual return of approximately 15 percent; (E) The provisions of the New Leases further protect the Original Plan's investment in the Property by requiring the Employers to indemnify and hold harmless the Plans, including costs and attorneys fees, with respect to all claims, demands, liens, losses and liabilities arising from the lessees' use and occupancy of the Property; and (F) The interests of the Original Plan under the New Leases will continue to be represented and protected by the Trustee, an independent fiduciary which will monitor and enforce the Employers' performance of obligations under the New Leases.

Moody also represents that it has analyzed the proposed transactions in the context of other alternatives available to the Original Plan with respect to its interest in the Property. Moody states that alternative investments returning a comparable rate are not available to the Original Plan in the marketplace without a material attendant risk or large losses of principal. Moody represents that market conditions are unfavorable for any attempt to sell the Property, and additionally, that it would be disadvantageous for the Original Plan to accept cash in lieu of its undivided 43 percent ownership interest in the Property, because the alternative investments available will provide significantly lower returns than those provided by the Property and the New Leases. Moody states that its market research demonstrates that the area in which the Property is situated will continue to experience stability and attractiveness to both tenants and owners, due to the proximity to major medical and commercial centers and the lack of vacant land for new developments. Moody contends that these conditions present a realistic potential for increases in the rent under the New Leases over the next ten years.

8. The other Adviser is Ernst & Young (E&Y) a financial consulting firm located in San Diego, which was retained by the Trustee to make determinations as a fiduciary on behalf of the New Plan with respect to the proposed transactions. E&Y represents that it is independent of and unrelated to the Employers, and that it undertook a thorough evaluation of the proposed transactions which included an investigation of the decline in commercial real property values in San Diego over the past several years, an overview of current and historical market conditions specific to medical office properties, an overview of the currently local economy and real estate market conditions, and an evaluation of the Property's rate of return and long term potential. In a written report to the Trustee, E&Y concluded that the New Plan's receipt of a 57 percent interest in the Property, and its lease to the Employers under the New Leases, will constitute a prudent investment which features adequate protections and safeguards for the participants and beneficiaries of the New Plan. E&Y states that it determined that the Property offers the Plan a secure rate of return above market rates, with a likelihood of continuing stability well into the future. E&Y represents that through market research it has determined that the Property is located in a market area which has achieved stability after the declines in San Diego real estate markets during the 1980's. E&Y states that the Property has good long-term potential as a plan investment and that the New Leases provide a protected, favorable rate of return on the investment in the Property. E&Y represents that factors involved in and supporting its recommendation included the following findings:

(A) Rental under the New Leases will always be no less than the Property's fair market rental value, as determined every two years, and may not be decreased, so that the rate of return of approximately 15 percent is assured and is substantially higher than the prevailing market rate of approximately 10 percent; (B) The New Plan is protected by the Employers' indemnification of the Plans for all claims, demands, and liabilities arising from the Employers' occupancy of the Property; (C) The triple net provisions of the New Leases will protect the New Plan's return on the Property from all costs and expenses associated with the Property; and (D) The interests of the New Plan under the New Leases will continue to be represented and protected by the Trustee, an independent fiduciary which will monitor and enforce the Employers' performance of obligations under the New Leases.

E&Y also represents that it determined that the New Plan's 57 percent interest in the Property constituted approximately 6.25 percent of the value of all assets held by the New Plan as of February 1994, and that this low composition of real estate investments minimizes risk to the Plan's investment portfolio. E&Y represents that its evaluation of the proposed transactions also included consideration of alternatives available to the New Plan with respect to its interest in the Property. E&Y states that the investments that would be available for the New Plan's investment of cash, in the amount of and in lieu of its interest in the Property, would provide returns significantly reduced from the return offered by the Property. E&Y also states that any prospective sale of the Property would be unlikely to generate cash equal to the fair market value of the Property, due to the costs involved and the lengthy, aggressive marketing required by current economic conditions. E&Y concludes its report with its finding that its "de novo" analysis of the proposed transactions indicates that it is in the best interests and protective of the New Plan's participants and beneficiaries to accept the interest in the Property and proceed with the New Leases of the Property to the Employers.

9. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The transactions enable the participants of both Plans to continue to share interests in the Property and its lease to the Employers pursuant to the New Leases, under the same material terms and conditions of the Original Lease; (2) The interests of the Plans will be represented under the New Leases by the Trustee, an independent fiduciary which has represented the Original Plan under the Original Lease and which will continue to monitor performance of the terms and conditions of the New Leases on behalf of the Plans; (3) The New Leases, under which rent may not be reduced, will provide a favorable return, net of all costs and expenses, of no less than the Property's fair market rental value; (4) The New Leases, with initial terms expiring April 30, 2004, may be renewed only with the approval of the Trustee and for no more than two terms of five years each; and (5) The Trustee has approved the proposed transactions on the basis of the evaluations and analyses performed by the Advisers.

**FOR FURTHER INFORMATION CONTACT:** Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**Knoxville Surgical Group Profit Sharing Plan (the Plan) Located in Knoxville, Tennessee, Proposed Exemption**

[Application No. D–9486]

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), 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: (1) The proposed lease (the Lease) of certain real property (the Condominium) by the Plan to Knoxville Surgical Group, P.C. (the Employer), the Plan sponsor and a party in interest with respect to the Plan, following the exchange (the Swap) of real property owned by the Plan for the Condominium owned by Fort Sanders Medical Center, an unrelated party; and (2) a future exercise of (a) a certain indemnity agreement (the Indemnity Agreement) between the Employer and the Plan; and (b) a certain guarantee (the Guarantee) of Lease payments to the Plan by the principals of the Employer; provided that the following conditions are satisfied:

(1) All terms and conditions of the Swap, the Lease, the Indemnity Agreement, and the Guarantee are at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party;

(2) The fair market value of the Condominium will be determined by an independent qualified appraiser at the time the Swap transaction is consummated;

(3) With respect to the Lease, the fair market rental amount (the Rental Amount) has been determined by an independent qualified appraiser, and will never be below the initial fair market annual rental amount of $75,000;

(4) The Condominium will be appraised by an independent qualified appraiser each time that the Renewal option (the Renewal) on the Lease is exercised.

(5) The fair market value of the Condominium will at no time exceed 25% of the Plan's total assets;

(6) The Lease is a triple net lease under which the Employer is obligated for all costs of maintenance and repair, and all taxes, insurance, utilities and condominium fees related to the Condominium;

(7) The fees received by the independent fiduciary for serving in such capacity, combined with any other fees derived from the Employer or related parties, will not exceed 1% of his annual income for each fiscal year that he continues to serve in the independent fiduciary capacity with respect to the transactions described herein;

(8) The independent fiduciary evaluated the proposed transactions described herein and deemed them to be administratively feasible, protective and in the interest of the Plan;

(9) The independent fiduciary will monitor the terms and the conditions of the exemption and the Lease throughout its initial term plus the two Renewal terms and will take whatever action is necessary to protect the Plan's rights;

(10) The Plan will bear no costs or expenses with respect to the proposed transactions described herein; and

(11) The Employer will file form 5330 and pay the appropriate excise taxes for the period beginning June 9, 1989, to the date this proposed exemption, if granted, is published in the **Federal Register**, within ninety (90) days of the publication date.

**Summary of Facts and Representations**

1. In 1991, a pension plan (the Pension Plan) sponsored by the Employer was terminated, and a form 5310 (Application for Determination upon Termination) was filed with the Internal Revenue Service (IRS), and a favorable IRS determination was received. At that time the assets of the Pension Plan were merged into the Plan, including the ½ interest in the property located at 1831 West Clinch Avenue, Knoxville, Tennessee (the Clinch Property). The Plan is a profit sharing plan, currently with 16 participants. As of February 18, 1994, the Plan had total assets of $3,716,331. The Employer is a Tennessee subchapter "C" corporation engaged in the practice of medicine. The owners and officers of the Employer are the following doctors: Dr. Richard A. Brinner, Dr. Randal O. Graham, Dr. Hugh C. Hyatt, Dr. Michael D. Kropilak and Dr. P. Kevin Zirkle. The Trust Company of Knoxville is the trustee and the named fiduciary for the Plan.

2. The Employer was granted an individual exemption by the Department in 1982 (PTE 82–162), for the Plan and the Pension Plan to purchase (the Past Purchase) the Clinch Property from a certain partnership which was a party in interest with respect to the Plans, and for a subsequent lease (the Past Lease) of the Clinch Property by the Plans to the Employer. The Past Lease was for a term of five years with an option to renew for an additional five years. PTE 82–162 also required an annual appraisal of the Clinch Property, and for the rentals to be adjusted to reflect the fair market rental value of the Clinch Property. Valley Fidelity Bank and Trust Company (Valley Bank) of Knoxville, Tennessee was the independent fiduciary which monitored the Past Purchase and the Past Lease for the Plans. PTE 82–162 also provided for an Employer guarantee that if the Clinch Property was ever sold during the initial five year term of the Lease and the five year renewal of the Lease for below the original purchase price, the Employer would indemnify the Plans for the difference between the original purchase price of the Property and the selling price.

3. In 1988 Valley Bank was replaced by a new independent fiduciary, the Trust Company of Knoxville (the Trust Company). Also, in July, 1988, significant improvements of a capital nature were made to the Clinch Property. The applicant represented that these improvements cost approximately $102,685.76, and were paid for by the Plan.[5] The applicant also represented that immediately after the improvements were installed, the Clinch Property was appraised. The appraisal did not result in an increase in value of the Clinch Property, and therefore, in accordance with the Past Lease, no rental increase was made. Nevertheless, it is represented that the Trust Company demanded an increase in rent from the Employer, in order to amortize the expenses sustained by the Plan. A rental increase of $2,000 per month was agreed to in May, 1989, and by letter of agreement dated June 9, 1989, between the Trust Company and the Employer, a new rental rate was set for the next five years until May, 1994.[6] This modification of the Past Lease by the applicant caused the Past Lease to extend beyond the original ten (10) year term specified under PTE 82–162. Under PTE 82–162, the Past Lease was to expire October 15, 1992.[7]

[5] In addition to these improvements, the Employer has made additional improvements to the Building at their own expense.

[6] The applicant represents that as of September, 1993, the expenses sustained by the Plan for the improvements made to the Clinch Property, have been fully amortized.

[7] The above-referenced changes to the Past Lease were outside the scope of exemptive relief provided by PTE 82–162, and, as a result, as of June 9, 1989, that exemption was no longer effective. In this regard, the applicant has agreed to file forms 5330 with the Internal Revenue Service and pay the appropriate excise taxes for the period beginning June 9, 1989, to the date when this proposed exemption, if granted, is published in the Federal

Continued

4. The applicant now proposes the following transactions. Initially, the Plan desires to swap (the Swap) the Clinch Property, currently appraised at $425,000, for a certain condominium (the Condominium), projected to have a fair market value of $750,000, once it is completed.[8] The Condominium is Unit 501 in the Professional Office Building III located at 501 Nineteenth Street, Knoxville, Tennessee. Neither the Clinch Property nor the Condominium are encumbered by debt. The Swap will be an even exchange and will not involve any cash payments or other consideration by the involved parties. The Condominium will represent approximately 20% of the Plan's total assets.

5. The Plan will be acquiring the Condominium from Fort Sanders Medical Center (the Center), formerly known as Fort Sanders Presbyterian Hospital (the Hospital). The applicant represented that the Center is not a related party with respect to the Plan and the Employer.[9] It is represented that the Center is desirous of proceeding with the Swap primarily because it owns all the properties surrounding it with the exception of the Clinch Property. It is further represented that the Clinch Property is more valuable to the Center for its raw land than to another party as a free standing building.

6. The Clinch Property and the Condominium were appraised by Richard E. Wallace, MAI, SRA (Mr. Wallace), an independent qualified appraiser. The Clinch Property was appraised by Mr. Wallace (the Appraisal) on November 4, 1991, at a fair market value of $425,000. The Clinch Property is located at the northeast corner of Clinch Avenue and 19th Street in Knoxville, Tennessee. The Clinch Property is a one story masonry office building with a finished basement. Mr. Wallace maintains that properties similar to the Clinch Property are most often bought and sold based on their income producing ability, and, as such, he gives the income approach the most emphasis. The income approach as it is utilized herein is based on market derived income and expense estimates as well as general investor demands for this type of an investment. On June 30, 1993, in an update to the Appraisal, Mr. Wallace restated his opinion that the Clinch Property has a fair market value of $425,000.

7. On July 2, 1992, Mr. Wallace also determined the fair market value of the Condominium. Because the Condominium office space was unfinished, Mr. Wallace prepared a consultation report (the Report), rather than an appraisal. Mr. Wallace represents that a fully documented appraisal would yield the same value as a consultation report that was prepared. In determining the fair market value of the Condominium, Mr. Wallace considered sales of other medical condominiums in Knoxville. In the Report, Mr. Wallace determined that as of July 2, 1992, the fair market value of the Condominium, which consists of 6,000 square feet, was $125 per square foot for finished space. On June 30, 1993, in an update to the Report, Mr. Wallace estimated the fair market value of the Condominium to be $750,000. In establishing the fair rental value of the Condominium, Mr. Wallace examined rentals of medical facilities in the Knoxville area, and determined that as of July 2, 1992, the fair market rental rate for the Condominium is estimated at $12.50 per square foot for a triple net lease, increasing at 3% annually.

8. Once the Plan acquires the Condominium from the Center, it is proposed that the Plan lease (the Lease) the Condominium to the Employer. The Lease will be a triple net lease and will be net of maintenance, repairs, insurance, taxes, utilities and condominium fees. The Lease will have a term of three years, with two renewal options (Renewal) of three years each. Renewals will occur upon the Employer, as the Lessee, notifying the Plan, as the Lessor, in writing at least 60 days before the end of the expiring term. The rental rate will be determined by an independent qualified appraiser at each Renewal. In this regard, Mr. Wallace determined the rental rate for the Condominium as of July 2, 1992, to be $12.50 per square foot. The rental rate will be $75,000 per year for the first year, payable in equal monthly installments of $6,250 per month. For the second year, the rental rate will be $77,250 per year payable at the rate of $6,437.50 per month, and for the third year the rental rate will be $79,567.50 per year, payable at the rate of $6,630.63 per month. The Employer will obtain a fire and hazard/casualty insurance policy for the Condominium. The Plan as the Lessee will be the beneficiary and loss payee with respect to the hazard and liability insurance on the Condominium.

9. The Employer has also represented that if the Condominium is sold during the initial term of the Lease plus the two Renewal terms for less than $425,000 (the fair market value of the Clinch Property), the Employer will indemnify the Plan for the difference between the price received by the Plan and $425,000 (the Indemnity Agreement), in cash within six months after notice and verification of sale. It is represented that if it is contemplated that the Condominium be sold to a party in interest with respect to the Plan, as defined by section 3(14) of the Act, the applicant will seek exemptive relief from the Department prior to the consummation of the sale.

In addition to the Indemnity Agreement, in the event the Employer defaults on the Lease, the principals of the Employer (the Principals) have guaranteed (the Guarantee) the rental payments to the Plan for the duration of the Lease, including the Renewals. It is represented that as of September 2, 1993, the Principals had minimum net worth of approximately $2,600,000.

10. The independent fiduciary for the Swap, the Lease, the Indemnity Agreement and the Guarantee will be Earl W. Johnson (Mr. Johnson), a certified public accountant and an executive vice president over tax and financial planning with Lawhorn Johnson and Company, P.C. Mr. Johnson represents that he is independent of all parties to these transactions, and that he had no prior professional or personal association with any of the parties. Mr. Johnson also maintains that the fees received by him for serving in the independent fiduciary capacity in these transactions, combined with any other fees derived from the Employer or related parties will not exceed 1% of his annual income for each fiscal year that he continues to serve in the independent fiduciary capacity with respect to the transactions described herein.

11. Mr. Johnson states that he is qualified to serve in the independent fiduciary capacity for the Plan because of his professional experience which includes providing administrative services to qualified retirement plans, and handling real estate transactions. Specifically, with respect to his clients, Mr. Johnson has prepared retirement plan calculations, made investment projections and reviewed investment alternatives. Mr. Johnson has also reviewed audits of retirement plans.

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Register, within ninety (90) days of the publication date.

[8] In this regard, it is represented that all interior construction and remodeling of the Condominium will be done by the Employer as the lessee, and will be in accordance with the Lease and the Condominium documents. The applicant further represents that the Condominium documents provide a certain allowance for this purpose, and that any overhead will be paid for by the Employer.

[9] In this regard, the applicant stated that Dr. Hugh C. Hyatt, one of the owners of the Employer, was Chief of Staff at the Hospital in 1990, and that the doctors of the Employer also have staff privileges at the Center. Otherwise, there is no relationship between the Employer and the Center, which is the developer of the Condominium.

12. Mr. Johnson represents that he has consulted with legal counsel regarding his ERISA fiduciary responsibilities and accepts and acknowledges these responsibilities as they relate to the proposed Plan transactions. Mr. Johnson also maintains that he has knowledge of ERISA and understands the fiduciary responsibilities under the law associated with qualified retirement plans. In his capacity as the independent fiduciary, he reviewed the Plan's assets with respect to the Swap and the Lease, and concluded that the Swap offers a significant premium to the Plan, and is in the best interest of the Plan participants. Mr. Johnson also states that the Lease offers a fair rental value to the Plan. According to Mr. Johnson, under the Lease terms, the Plan has the option to renew the Lease pursuant to the two Renewal options. As required by the Lease, the Condominium will be appraised every time that the Lease is renewed. Mr. Johnson represents that the Condominium will be appraised at the time it is finished and the Swap is completed. He further represents that as an additional safeguard the Condominium will also be appraised annually by an independent qualified appraiser. With respect to the Indemnity Agreement, Mr. Johnson represents that the Principals of the Employer have sufficient financial net worth to indemnify the Plan. Also, Mr. Johnson states that the Guarantee by the Principals of the Lease payments to the Plan during the initial Lease and the Renewal periods, is additional security for the Plan. As such, Mr. Johnson represents that the Swap and the Lease are also protective of the Plan and administratively feasible. The Condominium will be considered part of the fixed income portion of the Plan's portfolio, and when the value of the Condominium increases, there will be an offsetting reduction in existing fixed assets to maintain the proper asset allocation. The remaining Plan assets are represented by stocks and bonds. There are participant loans in the Plan, but these loans represent a very small percentage of the Plan's assets.

13. Mr. Johnson represents that the proposed transactions are administratively feasible, in the interest and protective of the Plan. Mr. Johnson states that the Swap is in the best interest and protective of the Plan because the Condominium has been appraised by an independent qualified appraiser at $750,000, and the acquisition of the Condominium will result in a significant premium to the Plan. Subsequently, the Plan will lease the Condominium to the Employer. The fair market value of the Condominium represents approximately 20% of the Plan's total assets. Mr. Johnson will monitor the Lease throughout its initial term of three years and during the two year Renewal terms. The Condominium will be appraised annually and at every Renewal, and the fair market rental will be determined by an independent qualified appraiser at each Renewal. The annual rental amounts will never be below $75,000, which is the annual rental amount for the initial year of the Lease. Furthermore, the rental payments have been personally guaranteed by the Principals for the initial term of the Lease plus the two Renewal terms. The Principals have also indemnified the Plan in the event that the Condominium is sold for an amount less than $425,000 during the initial term of the Lease and during the two Renewal terms. The Plan will incur no expenses as a result of the proposed transactions described herein.

14. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(1) All terms and conditions of the Swap, the Lease, the Indemnity Agreement and the Guarantee are at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party;

(2) The fair market value of the Condominium will be determined by an independent qualified appraiser at the time the Swap transaction is consummated;

(3) With respect to the Lease, the Rental Amount has been determined by an independent qualified appraiser, and will never be below $75,000, which is the fair market rental amount for the initial year of the Lease;

(4) The Condominium will be appraised by an independent qualified appraiser each time that the Renewal option on the Lease is exercised;

(5) The fair market value of the Condominium will at no time exceed 25% of the Plan's total assets;

(6) The Lease is a triple net lease under which the Employer is obligated for all costs of maintenance and repair, and all taxes, insurance, utilities and condominium fees related to the Condominium;

(7) The fees received by the independent fiduciary for serving in such capacity, combined with any other fees derived from the Employer or related parties, will not exceed 1% of his annual income for each fiscal year that he continues to serve in the independent fiduciary capacity with respect to the transactions described herein;

(8) The independent fiduciary evaluated the proposed transactions described herein and deemed them to be administratively feasible, protective and in the interest of the Plan;

(9) The independent fiduciary will monitor the terms and the conditions of the exemption and the Lease throughout its initial term plus the two Renewal terms and will take whatever action is necessary to protect the Plan's rights;

(10) The Plan will bear no costs or expenses with respect to the proposed transactions; and

(11) The Employer will file form 5330 and pay the appropriate excise taxes for the period beginning June 9, 1989, to the date this proposed exemption, if granted, is published in the **Federal Register**, within ninety (90) days of the publication date.

**FOR FURTHER INFORMATION CONTACT:** Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219–8883. (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;

(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; and

(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 accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 6th day of May, 1994.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 94–11528 Filed 5–11–94; 8:45 am]

BILLING CODE 4510–29–P

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**[Prohibited Transaction Exemption 94–38; Exemption Application No. D–9601, et al.]**

## Grant of Individual Exemptions; Genelabs Technologies, Inc. Section 401(k) 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.

### Genelabs Technologies, Inc. Section 401(k) Plan (the Plan) Located in Redwood City, CA; Exemption

[Prohibited Transaction Exemption 94–38; Exemption Application No. D–9601]

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of Group Annuity Contract Number 7410 (GA–7410) issued by Mutual Benefit Life Insurance Company, located in Newark, New Jersey to Genelabs Technologies, Inc., located in Redwood City, California, the sponsoring employer and a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not experience any loss nor incur any expenses from the transaction; (3) the Plan receives no less than the fair market value of GA–7410 as determined at the time of the Sale; and (4) the independent trustee for the Plan determines the fair market value of GA–7410 and also determines that the Sale is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and represents supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 16, 1994, at 59 FR 12349.

**FOR FURTHER INFORMATION CONTACT:** Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

### Potter Law Firm Retirement Plan (the Plan) Located in Tyler, Texas; Exemption

[Proposed Transaction Exemption 94–39; Exemption Application No. D–9617]

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of a certain one-half undivided interest in real property (the Property) by the Plan to Potter, Minton, Roberts, Davis & Jones, P.C. (the Employer), a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not suffer any loss nor incur any expenses in the transaction; (3) the Plan receives as consideration the greater of either the fair market value of the Property as determined by an independent appraiser on the date of the Sale, or receives all the funds expended by the Plan in acquiring and maintaining the Property; and (4) the trustee of the Plan has determined that the Sale is appropriate for the Plan and is in the best interests of the Plan and its participants and beneficiaries.

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 March 8, 1994, at 59 FR 10839.

**FOR FURTHER INFORMATION CONTACT:** Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

### Southern Union Company Southern Union Savings Plan (the Plan) Located in Austin, Texas; Exemption

[Prohibited Transaction Exemption 94–40; Application No. D–9594]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the past acquisition by the Plan of certain transferable stock rights (the Rights) pursuant to a stock rights offering (the Offering) by Southern Union Company (the Employer), the sponsor of the Plan; (2) the past holding

of the Rights by the Plan during the subscription period of the Offering; and (3) the disposition or exercise of the Rights by the Plan; provided that the following conditions are satisfied:

(A) The Plan's acquisition and holding of the Rights occurred in connection with the Offering made available to all shareholders of common stock of the Employer;

(B) The Plan's acquisition and holding of the Rights resulted from an independent act of the Employer as a corporate entity, and all holders of the common stock of the Employer, including the Plan, were treated in the same manner with respect to the Offering; and

(C) All decisions regarding the holding and disposition of the Rights by the Plan were made, in accordance with Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Rights in connection with the Offering, including all determinations regarding the exercise or sale of the Rights received through the Offering (except for those participants who failed to file timely and valid instructions concerning the Rights, in which case the Rights were sold).

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 March 16, 1994 at 59 FR 12351.

**EFFECTIVE DATE:** This exemption is effective November 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (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 these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 6th day of May, 1994.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 94–11529 Filed 5–11–94; 8:45 am]

BILLING CODE 4510–29–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Humanities Panel; Meeting

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public law 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 C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

**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 the Humanities Act of 1965, as amended, including disucssion of information given in confidence to the agency by the 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 July 19, 1993, 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:* June 1, 1994.
*Time:* 8 a.m. to 5:30 p.m.
*Room:* 415.
*Program:* This meeting will review Summer Seminars for School Teachers applications for directing seminars in 1995 in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

2. *Date:* June 2, 1994.
*Time:* 8 a.m. to 5:30 p.m.
*Room:* 415.
*Program:* This meeting will review Summer Seminars for School Teachers applications for directing seminars in 1995 History, Politics, and Society, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

3. *Date:* June 3, 1994.
*Time:* 8 a.m. to 5:30 p.m.
*Room:* 415.
*Program:* This meeting will review Summer Seminars for School Teachers applications for directing Literature in 1995 British and American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

4. *Date:* June 6, 1994.
*Time:* 8 a.m. to 5:30 p.m.
*Room:* 415.
*Program:* This meeting will review Summer Seminars for School Teachers applications for directing seminars in 1995 in American Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

5. *Date:* June 7, 1994.
*Time:* 8 a.m. to 5:30 p.m.
*Room:* 415.
*Program:* This meeting will review Summer Seminars for School Teachers applications for directing seminars in 1995 in Foreign Literature and Culture, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

6. *Date:* June 8, 1994.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review Summer Seminars for School Teachers applications for directing seminars in 1995 in Philosophy and Religion, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

7. *Date:* June 13, 1994.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review Biennial/Triennial applications submitted by state humanities councils to the Division of State Programs, for projects beginning after November 1994.

8. *Date:* June 17, 1994.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review Biennial/Triennial applications submitted by state humanities councils to the Division of State Programs, for projects beginning after November 1994.

9. *Date:* June 20, 1994.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review Biennial/Triennial applications submitted by state humanities councils to the Division of State Programs, for projects beginning after September 1994.

**David C. Fisher,**

*Advisory Committee Management Officer.*

[FR Doc. 94–11485 Filed 5–11–94; 8:45 am]

BILLING CODE 7536–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Biological and Critical Systems Division: Meeting

*Name:* Special Emphasis Panel, Biological and Critical Systems.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* May 23, 1994 8:30 a.m.—5 p.m.

*Place:* Conference Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Fred G. Heineken, Program Director, BES, room 565, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1319.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals for RIA and Equipment in Bioengineering and Environmental Systems proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

*Reason for Late Notice:* Difficulty in obtaining a suitable meeting date for all members.

Dated: May 9, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–11580 Filed 5–11–94; 8:45 am]

BILLING CODE 7555–01–M

### Special Emphasis Panel in Electrical and Communication Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Electrical and Communication Systems.

*Date and Time:* May 31, 1994, 8 a.m.–5 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., room 310, Arlington, Virginia 22230.

*Contact Person:* Dr. Deborah Crawford, Program Director, Neuroengineering, ECS, room 675, National Science Foundation, 4201 Wilson Blvd.

*Telephone:* 703/306–1340.

*Type of Meeting:* Closed.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* 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 and confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 9, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–11581 Filed 5–11–94; 8:45 am]

BILLING CODE 7555–01–M

### Special Emphasis Panel in Electrical and Communication Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Electrical and Communication Systems.

*Date and Time:* June 1, 1994, 8 a.m.–5 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., room 530, Arlington, Virginia 22230.

*Contact Person:* Dr. Deborah Crawford, Program Director, Neuroengineering, ECS, room 675, National Science Foundation, 4201 Wilson Blvd.,

*Telephone:* 703/306–1340.

*Type of Meeting:* Closed.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* 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 and confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 9, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–11582 Filed 5–11–94; 8:45 am]

BILLING CODE 7555–01–M

### Special Emphasis Panel in Elementary, Secondary and Informal Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name of Committee:* Special Emphasis Panel in Elementary, Secondary and Informal Education.

*Date and Time:* June 2, 1994, 8 a.m. to 5 p.m.; June 3, 1994, 8 a.m. to 5 p.m.; June 4, 1994, 8 a.m. to 5 p.m.

*Place:* Arlington Renaissance, 950 N. Stafford Street, Arlington, VA 22203.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Joyce Evans, Program Director, Division of Elementary, Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1613.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 9, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–11583 Filed 5–11–94; 8:45 am]

BILLING CODE 7555–01–M

## Special Emphasis Panel in Networking and Communications Research and Infrastructure (NCRI); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Networking and Communications Research (#1207).

*Date and Time:* June 1–3, 1994; 8:30 a.m. to 5 p.m.

*Place:* Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Darleen Fisher, NCRI, National Science Foundation, Room 1175, Arlington, VA 22230 (703 306–1950).

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review & evaluate proposals submitted for Networking and Communications Research Program.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 9, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–11584 Filed 5–11–94; 8:45 am]

BILLING CODE 7555–01–M

## Special Emphasis Panel in Research, Evaluation and Dissemination; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Research, Evaluation and Dissemination.

*Date and Time:* May 31, 1994 to June 2, 1994; 8:30 a.m. to 9:00 p.m., May 31, 1994; 8:30 a.m. to 9:00 p.m., June 1, 1994; 8:30 a.m. to noon, June 2, 1994.

*Place:* Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Nora Sabelli, Program Director, 4201 Wilson Boulevard, room 855, Arlington, VA 22230. Telephone (703) 306–1651.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Networking Infrastructure for Education Program.

*Reason for Closing:* Because the proposals 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.

Dated: May 9, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–11585 Filed 5–11–94; 8:45 am]

BILLING CODE 7555–01–M

## Special Emphasis Panel in Research, Evaluation and Dissemination; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Research, Evaluation and Dissemination.

*Date and Time:* June 2 to June 4, 1994; 1:30 p.m. to 9 p.m., June 2, 1994; 8:30 a.m. to 9 p.m., June 3, 1994; 8:30 a.m. to 4:30 p.m., June 4, 1994.

*Place:* Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Nora Sabelli, Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Networking Infrastructure for Education Program.

*Reason for Closing:* Because the proposals 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.

Dated: May 9, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–11586 Filed 5–11–94; 8:45 am]

BILLING CODE 7555–01–M

# NUCLEAR REGULATORY COMMISSION

## Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 18, 1994, through April 29, 1994. The last biweekly notice was published on April 28, 1994 (59 FR 22000).

### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any

accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11555 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 10, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory

Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

*Commonwealth Edison Company, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois*

*Date of amendment request:* March 30, 1994.

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) 3/4.4.9, Pressure/Temperature Limits, and its associated Bases, by changing the Unit 1 heatup and cooldown curves to incorporate a newly determined reactor vessel reference nil-ductility temperature, $RT_{NDT}$, and by updating the removal schedule of vessel surveillance capsules for both units in accordance with ASTM E185–82. Changes would also be made to the Unit 1 Low Temperature Overpressure Protection System (LTOPS) setpoint curve in TS 3.4.9.3 to reflect the new pressure/temperature limits.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The use of new pressure-temperature limit curves and low temperature overpressure protection curves will not change any postulated accident scenarios. The revised curves were developed using industry standards and regulations which are recognized as being inherently conservative. The pressure-temperature low temperature overpressure curves provide reactor coolant system (RCS) limits to protect the reactor pressure vessel from brittle fracture by clearly separating the region of normal operations from the region where the vessel is subject to brittle fracture. The heatup and cooldown limits are designed to ensure that the 10 CFR 50 Appendix G Pressure Temperature limits for the RCS are not exceeded during any condition of normal operation including anticipated operational occurrences.

General Design Criterion 32 of 10 CFR 50 Appendix A requires that the reactor coolant boundary shall be designed with sufficient margin to assure that when stressed under operating, maintenance, testing, and postulated accident condition[s], (1) the boundary behaves in a nonbrittle manner and (2) the probability of rapidly propagating fracture is minimized.

10 CFR 50 Appendix G, "Fracture Toughness Requirements," requires that the effects of changes in the fracture toughness of reactor vessel materials caused by neutron radiation throughout the service life of [a] nuclear reactor be considered in the pressure-temperature limits. The change is used in conjunction with the material initial reference temperature ($RT_{NDT}$) to establish the limiting pressure-temperature curves. Regulatory Guide 1.99, Rev. 2, contains procedures for calculating the effects of neutron radiation embrittlement of the low-alloy steels currently used for light-water-cooled reactor vessels.

Using the Regulatory Guide 1.99, Revision 2, Braidwood Unit 1 Surveillance Capsule U results, and Appendix G to 10 CFR 50, new Pressure-Temperature curves [were] prepared for the projected reactor vessel exposure at 32 EFPY of operation. These new curves, in conjunction with the heatup and cooldown ranges and the revised Low-Temperature Overpressure Protection System setpoints, provide the required assurance that the reactor pressure vessel is protected from brittle fracture up 32 EFPY of operation. No changes to the design of the facility have been made and no new equipment has been added or removed. The revised analysis and resultant adjustment of the operating limitations provide assurance that the Reactor Coolant System is protected from brittle fracture.

Revising the Reactor Vessel Material Surveillance Program Withdrawal Schedule does not result in the addition or removal of any equipment, or any design changes to the facility. Capsule lead times are revised and, for Braidwood Unit 2, Capsule X will be removed next vice Capsule W. The proposed removal schedules remain consistent with ASTM 185–82.

Therefore, the proposed amendment to the pressure temperature limitations does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the new pressure-temperature operating limits and the new low temperature overpressure protection curve does not change any postulated accident scenarios. The new curves do not represent any appreciable change in the current methodologies; they merely provide assurance that the Reactor Coolant System is protected from brittle fracture. No new accident or malfunction mechanism is introduced by the amendment and no physical plant changes will result from this amendment.

Revision of the Reactor Vessel Material Surveillance Program Withdrawal Schedule does not introduce a new accident or malfunction mechanism. Capsule lead times are revised, and, other than changing the order of specimen removal, consistent with ASME 185–82, no physical plant changes will result from this revised schedule.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed change does not involve a significant reduction in a margin of safety.

The new pressure-temperature operating limits low temperature overpressure protection curves were generated with the currently accepted conservative methodology using capsule surveillance data. The new pressure-temperature curves were developed using industry standards and regulations (ASME Code Section III, and NRC Regulatory Guide 1.99, Revision 2) which are recognized as being inherently conservative. The use of the new pressure- temperature operating limits and low temperature overpressure protection limits would not change postulated accident scenarios.

The proposed revision to the Reactor Vessel Material Surveillance Program Withdrawal Schedule would not change postulated accident scenarios. Capsule lead times are revised, and, other than changing the order of specimen removal, consistent with ASTM 185- 82, no physical plant changes will result from this revised schedule. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

*Attorney for licensee:* Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

*NRC Project Director:* James E. Dyer.

*Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois*

*Date of amendment request:* March 31, 1994.

*Description of amendment request:* The proposed amendment would change the Technical Specifications (TS) to provide allowable outage times for automatic actuation channel surveillance testing and restoration time for an inoperable engineered safety feature actuation system automatic actuation channel.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation is provided for the three categories of the significant hazards consideration standards:

a. Proposed changes to allow 8 hours for master relay and logic testing, 12 hours for slave relay testing and 6 hours to restore an inoperable ESFAS Automatic Actuation Channel prior to entering the shutdown action clock.

(1) The determination that these changes are within all acceptable criteria was established in the NRC's SER prepared for WCAP–10271, Supplement 2, Revision 1. The Technical Specification changes proposed by this license amendment request conform to NRC guidance contained in the SER. The NRC found that implementation of the proposed changes is expected to result in a small and acceptable increase in ESFAS unavailability. This increase in probability results in a small increase in calculated core damage frequency and public risk. The calculated increase in core damage frequency was judged to be acceptable since the increase was small and well within the range of uncertainty associated with the analysis. The values presented in WCAP–10271 Supplement 2 Revision 1 for increase in core damage frequency were verified by Brookhaven National Laboratory as part of an audit and sensitivity analyses performed for the NRC Staff.

Based on the small increase in core damage frequency as compared with the range of uncertainty in the analysis, the NRC agreed that the calculated increase is acceptable. This conclusion was documented in the NRC's SER dated February 22, 1989. The applicability of these conclusions has been verified through a plant specific review of the generic analysis in WCAP–10271, Supplement 2, Revision 1. The ESFAS Automatic Actuation Channel allowed outage and restoration times included in this license amendment request are consistent with the generic analysis. In addition, the NRC stated that the majority of the increase in unavailability was due to the decrease in frequency of surveillance testing vice the changes in allowed outage and restoration times. Therefore, considering the above information, the proposed allowed outage and restoration time changes do not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

(2) The proposed changes do not involve the physical alteration of any plant system and do not result in a change in the manner in which the ESFAS system performs its function. The increases in allowed outage and restoration times only affects the probability of the ESFAS Automatic Actuation Channel functioning properly as described above. Therefore, the allowed outage and restoration time changes proposed in this license amendment request do not create a new or different type of accident from any previously evaluated.

(3) The proposed allowed outage time and restoration time changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined. The impact of the revised ESFAS Automatic Actuation Channel allowed outage and restoration times is addressed above. Implementation of the proposed changes is expected to result in an overall improvement in safety by allowing adequate time for required ESFAS testing and quality repairs leading to improved equipment reliability due to a more appropriate restoration time. Therefore, it may be concluded that the proposed allowed outage and restoration time changes do not involve a significant reduction in margin of safety.

b. Proposed change to the minimum required degree of redundancy for the High-High Containment Pressure channels in Table 3.4–1.

(1) Changing the minimum required degree of redundancy in Table 3.4–1 for the High-High Containment Pressure Channels (Table 3.4–1 items II.3, III.B.3, and IV.3) provides consistency with Technical Specification 3.4.2.c which allows an inoperable High-High Containment Pressure channel to be placed in bypass. Placement of an inoperable High-High Containment Pressure Channel in bypass is preferred to reduce the probability of an inadvertent containment spray event. Also, these channels are designed with a two out of four logic so that the failed channel may be bypassed rather than tripped. With the failed channel bypassed, single failure criterion is still met because the logic is now a two out of three. Furthermore, with the one channel bypassed, a single channel failure will not inadvertently initiate a containment spray. Therefore, this change can be considered an administrative change to correct Table 3.4–1 to agree with the Action requirements of Technical Specification 3.4.2.c. As such this proposed change does not involve an increase in the probability of occurrence or consequences of an accident previously evaluated.

(2) Correcting the minimum required degree of redundancy in Table 3.4–1 for the High-High Containment Pressure channels is an administrative change which does not involve the physical alteration of any plant system and does not result in a change in the manner in which the ESFAS system performs its function. Therefore, the proposed correction to Table 3.4–1 does not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Correcting the minimum required degree of redundancy in Table 3.4–1 to be consistent with the Actions of Technical Specification 3.4.2.c is an administrative change and as such does not involve any reduction in a margin of safety.

c. Proposed change to the delete footnote +++ from Table 3.4–1.

(1) Deleting footnote +++ from Table 3.4–1 removes the inconsistency between it and Technical Specification 3.4.2.c which states that channels other than the High-High Containment Pressure channels shall be placed in trip during testing. The change does not affect the manner in which ESFAS provides plant protection. In addition the change does not affect the functioning of ESFAS or the way Zion

Station conducts channel testing. Instrument channel testing will continue to be conducted in the tripped mode with the exception of the High-High Containment Pressure channels, which can be tested in bypass because of the risk of a spurious Containment Spray event. Automatic Actuation Channel testing will be performed in accordance with the allowed outage times of new Specification 3.4.2.d. As such this proposed change does not involve any significant increase in the probability of occurrence or consequences of an accident previously evaluated.

(2) Deleting footnote +++ from Table 3.4–1 does not involve the physical alteration of any plant system and does not result in a change in the manner in which ESFAS performs its function. Therefore this change does not involve the physical alteration of any plant system and does not result in a change in the manner in which the ESFAS system performs its function. Therefore, the proposed correction to Table 3.4–1 does not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Deleting footnote +++ from Table 3.4–1 does not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined. Implementation of this change will not alter ESFAS testing. Therefore implementation of this change does not involve any reduction in a margin of safety.

d. Proposed editorial change to Technical Specification 3.4.2.c.

The editorial change to Technical Specification 3.4.2.c to change "Containment Hi-Hi pressure channels" to "High-High Containment Pressure channels" is purely an administrative change which has no affect on plant safety.

e. Summary.

The foregoing analyses demonstrate that the proposed License Amendment to the Zion Station Technical Specifications does not involve a significant increase in the probability of occurrence or consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident and does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

*Attorney for licensee:* Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

*NRC Project Director:* James E. Dyer.

*Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan*

*Date of amendment request:* April 22, 1994.

*Description of amendment request:* The proposed change revises the reactor vessel pressure-temperature limits in the Technical Specifications. The change insures that the vessel fracture toughness requirements of Section V of 10 CFR Part 50, Appendix G, are satisfied through the end of life.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The margin above Nil Ductility Transition Temperature (NDTT) is governed by 10 CFR 50 Appendix G and remains unchanged. The proposed change will not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. Will the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The predicted shifts in NDTT are based on a revised reference temperature consistent with Regulatory Guide 1.99, Revision 2, dated May 1988. This method of revising temperature-pressure limits is the same as in the past (ASME Code Section III, Appendix G).

3. Will the proposed change involve a significant reduction in the margin of safety?

The proposed curves were generated for an End of Licensed Life (May 31, 2000) Effective Full Power Year exposure and are conservative in nature until that time. The margin of safety [is] unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770

*Attorney for licensee:* Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

*NRC Project Director:* L. B. Marsh.

*Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois*

*Date of amendment request:* April 18, 1994.

*Description of amendment request:* License Amendment No. 81, issued on July 15, 1993, changed the numbering of surveillance requirements for Technical Specifications 3/4.3.1, "Control Rod Operability," 3/4.3.2, "Control Rod Maximum Scram," and 3/4.10.2, "Rod Pattern Control System." However, Action Statements referencing these surveillance requirements were overlooked and were not appropriately renumbered. The purpose of the proposed technical specification change would be to renumber the overlooked references.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) These changes do not affect the intent or implementation of the applicable Technical Specifications. The changes simply make the affected Technical Specifications consistent. Since these are only editorial changes which do not impact the plant design or operations, they cannot increase the probability or the consequences of any accident previously evaluated.

(2) The proposed changes are editorial only and do not affect the plant design or operation. No new failure modes are introduced by such changes and, therefore, the request will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes merely correct an editorial oversight. These changes do not alter or delete any technical requirements and, therefore, do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

*Attorney for licensee:* Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

*NRC Project Director:* John N. Hannon.

*Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois*

*Date of amendment request:* April 18, 1994.

*Description of amendment request:* Test methods for carbon adsorber filters specified in Technical Specification Sections 3/4.6.6.3, "Standby Gas Treatment System," and 3/4.7.2, "Control Room Ventilation System," specify the 1979 version of ASTM D3803. The proposed change would delete the year of the standard so that more recent versions of the standard could be used.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes to the Technical Specification surveillance requirements for determining the methyl iodide penetration of carbon samples would not involve a significant increase in the probability or the consequences of any accident previously evaluated because the proposed change merely allows Illinois Power (IP) to utilize a more up-to-date version of the same test method currently specified. More recent versions of the test method are more effective at detecting unsatisfactory charcoal performance because they include equilibration periods to ensure that all samples have a common starting point before being challenged with radioactive gas. The proposed change would not affect the quality of the charcoal or the reliability of the filter subsystems as it only relates to testing and involves no changes to the design or operation of the ventilation subsystems themselves. The updated standards provide more accurate and repeatable test results and do not change the properties or acceptance criteria for these properties. As a result, the performance capabilities of the associated filter subsystems would not be adversely impacted by the proposed change.

(2) The proposed change would not involve a change in the design or operation of any plant system or component. In addition, the proposed change would not reduce the level of filter train subsystem reliability nor would it create an initiating event for any accident. Because the performance, function, and redundancy of the original design remain unchanged, the proposed change would not create the potential for a new event. Furthermore, since no new types of equipment would be introduced into the plant design and the proposed change would not adversely impact existing equipment, no potential for a different type of malfunction is created by the proposed change. Therefore, this proposed change cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The margin of safety for the charcoal filter subsystems as defined in the Bases to the Technical Specifications associated with the proposed change refers to the ability of the filters to remove radioiodines. The proposed change would allow IP to upgrade the currently specified test for determining charcoal adsorber performance with one which utilizes the same type of methodology, but provides greater accuracy and repeatability. The newer versions of the test method are more effective at detecting unsatisfactory charcoal performance because they include equilibration periods to ensure that all samples have a common starting point before being challenged with radioactive gas. Thus, the proposed change would not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

*Attorney for licensee:* Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

*NRC Project Director:* John N. Hannon.

*Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota*

*Date of amendment request:* March 28, 1994.

*Description of amendment request:* The proposed amendment would revise technical specifications Tables 3.2.4 and 4.2.1, to change one of the initiating parameters of the reactor building ventilation isolation system and standby gas treatment system (SGTS) from Low Reactor Water Level to Low Low Reactor Water Level. This revision is being made in order to improve plant performance by reducing the potential for unnecessary secondary containment isolation and SGTS initiations.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The function of the Standby Gas Treatment System and secondary containment is to mitigate the consequences of a loss of coolant accident and fuel handling accidents. The proposed changes maintain this capability. The revised Standby Gas Treatment System initiation and secondary containment isolation parameter of low low reactor water level provides the required detection of loss of coolant accidents and is consistent [with] ECCS actuation to mitigate the consequences of this accident. The low low reactor water level instrumentation is set to trip when reactor water level is 6'6" above the top of the active fuel. This trip currently initiates closure of the Group 1 Primary containment isolation valves, activates the Emergency Core Cooling systems and starts the emergency diesel generator. This trip setting level was chosen to be low enough to prevent spurious operation but high enough to initiate Emergency Core Cooling system operation and primary system isolation so that no melting of the fuel cladding will occur, post accident cooling can be accomplished, and the guidelines of the 10 CFR 100 will not be violated. Therefore, this amendment will not cause a significant increase in the probability or consequences of an accident previously evaluated for the Monticello plant.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed. The proposed changes to Technical Specifications for the standby gas treatment system and secondary containment do not alter the function 8 of the systems or its interrelationships

with other systems. An adverse interaction which could be postulated to occur is the initiation of the Standby Gas Treatment System without a coordinated trip of the Mechanical Vacuum Pump. The Mechanical Vacuum Pump is operated during plant startups to draw a vacuum on the main condenser prior to admission of steam. The Mechanical vacuum discharges to the offgas stack and thus can create a back pressure on the Standby Gas Treatment System, reducing initiation of Standby Gas Treatment System flow below required values. The proposed initiation of Standby Gas Treatment System on low low reactor water level maintains the necessary coordination by having the Standby Gas Treatment System initiate subsequent to isolation or tripping of the Mechanical Vacuum Pump on a low reactor water level signal from the primary containment isolation logic. Therefore, this amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed amendment changes the initiation of the Standby Gas Treatment System and secondary containment isolation from being concurrent with the low reactor water signal (which is indicative that the reactor core is in danger of being inadequately cooled) to being concurrent with reactor low low water level (which is also an indicator that the capability to cool the core is threatened and assures that no melting of the fuel cladding will occur, post accident cooling can be accomplished, and the guidelines of 10 CFR 100 will not be violated). A review of the accident analyses provided in Section 14 of the USAR has determined that these analyses did not specifically credit initiation of the Standby Gas Treatment Systems and secondary containment isolation at the accident precursor reactor water level of low level. Furthermore, this review determined that the low low reactor water level setpoint has no adverse impact on the ability of the Standby Gas treatment System and secondary containment to perform its design basis function as credited in the accident analyses.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

*NRC Project Director:* Ledyard B. Marsh.

*Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania*

*Date of amendment request:* March 24, 1994.

*Description of amendment request:* The proposed modification to Technical Specification (TS) Sections 3.11.1.4, 6.9.1.8, and 6.14.1 would change the frequency for submitting the Semiannual Radioactive Effluent Release Report to the NRC from semiannually to annually.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes are administrative in nature. The proposed changes simply involve revising the frequency for submitting the Semiannual Radioactive Effluent Release Report to the NRC from semiannually to annually in order to implement the amended reporting requirements of 10 CFR 50.36a as promulgated in Final Rule 57 FR 39353. Since the information contained in this report is reviewed and evaluated after the effluents are released, no accidents previously evaluated are impacted by the proposed TS changes. Radiological effluent releases from the station will continue to be controlled as required by the TS, including those requirements specified in the Offsite Dose Calculation Manual (ODCM) and Process Control Program (PCP). The proposed TS changes do not involve any changes to the operation or physical configuration of any plant systems or equipment. The proposed changes do not impact any initial or final accident conditions or assumptions previously evaluated. The radiological consequences of these previously evaluated accidents are not affected by the proposed changes.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes are administrative in nature. The proposed changes simply involve revising the frequency for submitting the Semiannual Radioactive Effluent Release Report to the NRC from semiannually to annually in order to implement the amended reporting requirements of 10 CFR 50.36a as promulgated in Final Rule 57 FR 39353. Radiological effluent releases from the station will continue to be controlled as required by the TS, including those requirements specified in the ODCM and PCP. The proposed TS changes do not involve any modifications to plant systems or equipment.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed TS changes are administrative in nature, and will only involve revising the frequency for submitting the Semiannual Radioactive Effluent Release Report to the NRC from semiannually to annually as currently stipulated in 10 CFR 50.36a. The specific radiological effluent release information contained in this report will continue to be provided as required. The station radiological effluent releases will continue to be controlled as required by TS, including those requirements specified in the ODCM and PCP.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

*Attorney for licensee:* J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

*NRC Project Director:* Charles L. Miller.

*South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina*

*Date of amendment request:* February 25, 1994.

*Description of amendment request:* The proposed Technical Specification (TS) changes would permit the submittal of the Radioactive Effluents Release Report on an annual rather than a semiannual basis; allow changes to the Offsite Dose Calculation Manual (ODCM) to be submitted in the Radioactive Effluent Release Report rather than in the monthly operating report; remove the title of Executive Vice President—Operations from the TS; remove the list of audit frequencies from the TS and place them under Quality Systems management; change the title of Associate Manager, Health Physics to Radiation Protection Manager; remove references to specific letters; remove TS 6.4 on training; and correct various typographical errors.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the administrative change does not affect plant operations in any manner.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

3. The proposed license amendment does not involve a significant reduction in a margin of safety. The change is only administrative.

The NRC staff has reviewed the licensee's analysis and based on this review it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

*Attorney for licensee:* Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

*NRC Project Director:* William H. Bateman.

*South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina*

*Date of amendment request:* March 11, 1994.

*Description of amendment request:* The proposed Technical Specification (TS) changes would delete surveillance requirement 4.8.1.4.a.3, which requires periodic testing of penetration protection fuses, and its associated Basis.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability or consequences of an accident previously evaluated is not significantly increased.

Fuses are simple protection devices and can only degrade by being more resistive which is in the conservative direction. The proper type and size fuse is assured as part of design, procurement, and initial installation. The testing provides no additional assurance of operability. Therefore, the deletion of periodic retesting of these fuses will not increase the probability or consequences of an accident previously evaluated.

2. [The proposed amendment will not] [c]reate the possibility of a new or different kind of accident from any previously analyzed.

The design of the penetration protection and the installation of the fuses has not changed in any way. Any undetected failure of a fuse would fall under single failure criteria. A current limiting fuse must have high electrical current in order to perform its intended function. Any fuse which has opened the circuit through the penetration would be detected. (This is not a concern of the Technical Specifications.) Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety. Deletion of this surveillance requirement will not minimize the intent of this Technical Specification. This TS is to assure continued operability of the containment penetration conductor overcurrent protection which helps to ensure containment integrity. Testing, however, may introduce the potential for damage to the fuses and fuse clips. Therefore, the deletion of this TS requirement will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

*Attorney for licensee:* Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

*NRC Project Director:* William H. Bateman.

*The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio*

*Date of amendment request:* November 22, 1993.

*Description of amendment request:* The proposed amendment would result in the replacement of most of the analog Riley temperature instrumentation associated with leak detection with digital equipment from the General Electric Company NUMAC product line. Technical Specification changes would be made to instrumentation surveillance requirements for temperature instruments associated with main steam line isolation, reactor water cleanup system isolation, reactor core isolation cooling system isolation, and residual heat removal system isolation.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Technical specifications are proposed to be revised to perform a Channel Functional Test on a semiannual frequency versus the current monthly frequency for both ambient and differential temperature and for the MSL tunnel temperature timer functions, for the above listed piping lines. Additionally, this evaluation addressees the potential for, and implications of, common mode failures due to software, hardware and/

or electromagnetic and radio-frequency interference (EMI/RFI).

The NUMAC instrumentation has certain design features which contribute to its reliability. The replacement NUMAC LDMs are digital instruments that use a microcomputer to monitor the ambient and differential temperatures (also the MSL tunnel temperature timer) and provide outputs and automatic self-testing and calibration. A description of the major design features include: a) isolation of the essential microcomputer by a serial data link from the front panel display (and display microcomputer), b) a self-test system feature that provides automatic testing of internal circuits and reports failures, c) thermocouple failure detection, d) provisions to test the output relays without the use of jumpers (reducing the threat of spurious isolation), and e) two independent built-in instrument power supplies (that automatically switchover to the other supply in the event of failure). Also, several features have been included, among these, a) a hardware "watchdog" timer to monitor against software cycling in continuous loops, and b) software structured with the safety-related essential tasks running at the highest priority in the system. These capabilities increase the reliability of the collected data, reduce the possibility of inadvertent isolation and plant shutdowns, reduce the need for frequent calibrations, and reduce the likelihood of common mode failures.

The NUMAC Leak Detection Monitors will maintain the same environmental and electrical physical independence criteria (qualifications) as the existing Leak Detection System components. The LDMs, the associated thermocouple input units (TCIUs), and relay output units (ROUs) will be mounted seismically such that qualification of these components and the Control Room panels will be maintained. The LDMs are qualified for the PNPP Control Room environment. The LDMs (one per division) will be physically and electrically independent of each other and do not share power supplies, thermocouple inputs, output relays, microcomputer logic units, display units or enclosures and mounting locations. A postulated gross failure of any one NUMAC LDM, such as gross malfunction of the input unit, microcomputer logic unit or the relay output unit, will not propagate to the other NUMAC LDM, such as gross malfunction of the input unit, microcomputer logic unit or the relay output unit, will not propagate to the other NUMAC LDM. Thus, a failure within one NUMAC LDM will not prevent or disable the function of the other NUMAC LDM. A failure within one NUMAC LDM may cause the loss of one division of the isolation trip logic. However, since the other redundant division (the MSLs have three other divisions) will not be affected by this failure, the Leak Detection System will still be able to perform its designed safety-related function and provide the necessary system isolation. This is the same as the current Leak Detection System design basis.

The possibility of a common mode failure of both NUMAC LDM divisions is minimized by the design of the NUMAC hardware and software, the verification and validation (V&V) of the software to reduce the likelihood of errors, the testing of the software (to discover and eliminate errors), and the design of and testing of the hardware to demonstrate its resistance to EMI/RFI. The NUMAC instrument design features, by effectively eliminating the potential for common mode failures, maintain the Leak Detection System within its current licensing basis. (A discussion of common mode failure protection is presented in more detail in the answer to question two.) Therefore, the design, isolation and separation criteria remain the same.

Additionally, as described within Chapter 7 of the Updated Safety Analysis Report (USAR), diversity is provided to the ambient and differential temperature monitoring trip functions for the various systems by alternative leak detection methods (such as measuring steam line flow or pressure) that provide backup in the event of the loss of both divisions of the NUMAC Leak Detection Monitors. These alternative leak detection methods are physically separate from those being performed by the NUMAC LDM and constitute a diverse, redundant, safety related backup capable of responding to a design basis line break for the various systems. Therefore, a common mode failure of both LDM divisions would not prevent any of the necessary system isolation from occurring.

No changes are being made to the isolation logic of the Leak Detection System. No accident initiators or precursors are affected by the proposed changes to the Channel Functional Test surveillance intervals for the various trip functions. One purpose of a Channel Functional Test is to check the instrument setpoints. The NUMAC instrument setpoints are set digitally and do not drift. An engineering evaluation has established that the Channel Functional Test surveillance interval can be extended from one to six months. The potential for common mode failures has been accounted for in the design and measures have been taken to lower the probability of this to an acceptable level (see the answer to question two). Also, alternative leak detection methods exist for this eventuality. Since the NUMAC Leak Detection Monitoring equipment meets or exceeds the design and licensing criteria specified for the Leak Detection System, the proposed upgrade cannot increase the probability of occurrence of any accident previously evaluated.

A portion of the Leak Detection System logic causes a closure of the Main Steam Isolation Valves on a steam leak signal. This transient, described in Chapter 15 of the USAR, may also occur due to a LDS equipment malfunction. Since this modification replaces some of the existing Riley temperature monitoring instrumentation with more reliable instrumentation the probability of this transient is reduced (no radiological consequences are associated with this event). The LDS is also used to mitigate the consequences of a pipe break outside primary containment by isolating the affected system connected to the Reactor Coolant Pressure Boundary (RCPB). The replacement of the Riley instrumentation with NUMAC LDMs will not change, degrade, or prevent the Leak Detection System response to mitigate the radiological consequences of an accident. Therefore, replacement of the Riley temperature modules with NUMAC Leak Detection Monitors will not significantly increase the consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The single failure criterion requires that any single failure within a safety-related system not prevent proper protective action of the overall system when the system is required to function. The Leak Detection System design is such that a failure of one division will not prevent the system from performing its safety function. Common mode failure protection provisions have been addressed in the NUMAC LDM design.

The comprehensive General Electric software V&V and configuration management control programs minimize, although they cannot entirely eliminate, the likelihood of a common mode NUMAC instrument failure due to software problems. The hardware (firmware) and software for the PNPP NUMAC Leak Detection Monitors will undergo a formal software verification and validation (V&V) process by General Electric, that is to be completed by the end of the year, equivalent to the one

reviewed and approved by the NRC for the safety-related Wide Range Neutron Monitor.

The NUMAC instruments are designed to minimize both their susceptibility to, and generation of, electromagnetic and radio-frequency interference (EMI/RFI) to prevent spurious operations and allow their use in safety-related systems. As part of a broader plan by GE to improve the testing has been performed by GE on the Leak Detection Monitor configuration in order to both expand the overall qualification region, and to obtain test data specific to this application. This testing ensures the qualification of the Thermocouple Input Unit (TCIU), a NUMAC circuit board which is unique to the LDM application, and also extends the NUMAC EMI/RFI qualification region to include both higher and lower frequencies than previously tested.

The NUMAC instrument design concept has undergone review by the NRC, and the initial instruments of the NUMAC product line (the Logarithmic Radiation Monitor and Wide Range Neutron Monitoring System) have received NRC approval via Safety Evaluation of the associated GE Licensing Topical Reports. The various types of NUMAC equipment in operation at other nuclear power plants have components and software modules which are similar to and in some instance identical to the NUMAC LDMs. Therefore, based on the NRC reviewed and approved NUMAC software and hardware control programs instituted by GE, the design features to minimize software/hardware (or their interface) problems, design features to minimize susceptibility to EMI/RFI, and testing to demonstrate resistance to EMI/RFI, installation of NUMAC Leak Detection Monitors at the PNPP does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The replacement of the analog Riley temperature modules with the microcomputer based NUMAC Leak Detection Monitors will not affect any design conditions or impact the margins of safety for the various Leak Detection System monitored parameters in the Technical Specification Table 3.3.2–2 will not be changed or affected by this modification. Only the CHANNEL FUNCTIONAL test interval is being extended.

The NUMAC Leak Detection Monitor design, with the attention paid towards minimizing the potential for, and the effect of, software/hardware and/or EMI/RFI related problem or common mode failures and resulting operational experience has demonstrated that replacement of the existing Riley temperature modules with NUMAC Leak Detection Monitors would not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC 20037.

*NRC Project Director:* John N. Hannon.

*Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington*

*Date of amendment request:* February 8, 1994, as supplemented March 25, 1994.

*Description of amendment request:* The amendment would revise the WNP–2 Technical Specifications. Specifically, the amendment would increase the stroke time, as specified in Table 3.6.3–1, for reactor core isolation cooling (RCIC) valve RCIC–V–8, from 13 seconds to 26 seconds and the note (j) reference would be deleted from RCIC–V–8 and RCIC–V–63. The note (j) indicates that the stroke time specified in the Table reflects the requirement for containment isolation only.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This proposed action does not involve a significant increase in the probability or consequences of an accident previously evaluated. RCIC–V–8 and V–63 are containment isolation valves and are normally open. Failure of the valves to open or close cannot cause an accident. The mitigating capability of RCIC–V–8 and V–63 is not changed in that the valves will continue to be closed within the established time limits. This ensures protection of the safety related equipment necessary for continued compliance with the requirements of General Design Criterion 4. In those accidents which involve a source term and potential adverse dose release consequences, no credit is taken for the closing of the valves; therefore the increase in the allowable time for closing does not increase the consequences of those accidents.

2. This proposed action does not create the possibility of a new or different kind of accident from any accident previously evaluated. The requested Technical Specifications change does not represent a change in modes of operation. It does not, in itself, require physical modification to the plant, although it will be used to allow a gear change in RCIC–MO–8. The new gears represent a standard configuration for Limitorque motor operators and will require a routine design change. The required Technical Specification change maintains the licensing basis for the plant as discussed in response to question 1. Hence, no new or different kind of accident is possible as a result of implementing this change.

3. This proposed action does not involve a significant reduction in a margin of safety. The increase in stroke time will increase the peak temperature in the HELB profiles and thereby decrease the margin available from the equipment qualification limits. However, sufficient margin remains to assure the equipment operability is maintained and there is no reduction in the margin of safety. Additionally, there is no reduction in the margin of safety because increasing the stroke time will not change the postulated radiological releases.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

*Attorney for licensee:* M.H. Philips, Jr., Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

*NRC Project Director:* Theodore R. Quay.

**Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The following notices were previously published as separate individual

notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

*Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina*

*Date of amendments request:* April 14, 1994.

*Description of amendments request:* The proposed change would relocate the instrument response time tables 3.3.1–2, Reactor Protection System (RPS) Response Times; 3.3.2–3, Isolation System Instrumentation (ISI) Response Time; and 3.3.3–3, Emergency Core Cooling System (ECCS) Response Times, from the Technical Specifications to the Updated Final Safety Analysis Report. The RPS, ISI, and ECCS instrument limiting conditions for operation (LCO) will be revised to read that the instruments "shall be operable" without a reference to a specific response time table in these LCOs. The references to the response time tables will also be deleted from the Surveillance Requirements.

*Date of publication of individual notice in* **Federal Register**: April 26, 1994 (59 FR 21785).

*Expiration date of individual notice:* May 26, 1994.

*Local Public Document Room location:* University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

*Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana*

*Date of application for amendment:* January 14, 1994.

*Brief description of amendment request:* The proposed amendment would revise various instrumentation technical specifications by extending the allowable outage times (AOTs) of the instruments, and by increasing their channel functional surveillance test intervals (STIs) to quarterly. The amendment also revises certain technical specification actions to address loss-of-function concerns associated with the AOT and STI changes.

*Date of individual notice in* **Federal Register**: April 26, 1994(59 FR 21787).

*Expiration date of individual notice:* May 26, 1994.

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

*Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana*

*Date of application for amendment:* February 22, 1994.

*Brief description of amendment request:* The proposed amendment would revise the technical specifications (TS) for the main steam-positive leakage control system (MS–PLCS) and the penetration valve leakage control system (PVLCS) to be consistent with the requirements contained in NUREG–1434, "Standard Technical Specifications, General Electric Plants (BWR/6)."

*Date of individual notice in* **Federal Register**: March 10, 1994 (59 FR 11331).

*Expiration date of individual notice:* April 11, 1994.

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

*Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana*

*Date of application for amendment:* March 3, 1994.

*Brief description of amendment request:* The amendment would revise the technical specifications in accordance with the guidance provided by Generic Letter 93–08, "Relocation of Technical Specification Tables of Instrument Response Time Limits." Generic Letter 93–08 recommends the removal and subsequent relocation of various technical specification tables which denote instrument and system response time limits.

*Date of individual notice in* **Federal Register**: March 16, 1994 (59 FR 12380).

*Expiration date of individual notice:* April 15, 1994.

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

**Notice of Issuance of Amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

*Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona*

*Date of application for amendments:* October 26, 1993, as supplemented March 28, 1994.

*Brief description of amendments:* The licensee is requesting a revision to TS 5.3.1 for Palo Verde Nuclear Generating Station Units 1, 2, and 3 that will increase the maximum allowable fuel enrichment from 4.05 weight percent U–235 to 4.30 weight percent U–235. There was no change requested to the current

52,000 MWD/MTU burnup. The licensee provided a supplemental letter dated March 28, 1994, at the request of the NRC to bring TS 5.3.1 into conformance with Generic Letter 90–02, Supplement 1 and to clarify assumptions used in the Fuel Handling Accident Analysis.

*Date of issuance:* April 19, 1994.

*Effective date:* April 19, 1994, to be implemented within 45 days of issuance.

*Amendment Nos.:* 74, 60 and 46.

*Facility Operating License Nos. NPF–41, NPF–51, and NPF–74:* The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: January 19, 1994 (59 FR 2860) The additional information contained in the supplemental letter dated March 28, 1994, was clarifying in nature and thus within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 1994. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

*Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland*

*Date of application for amendments:* September 1, 1992.

*Brief description of amendments:* The amendments revise Technical Specification (TS) 3/4.4.3, "Relief Valves," to improve the reliability of the reactor coolant system's power-operated relief valves (PORVs) and their associated block valves for overpressure protection during normal operation and anticipated transients. The amendments also revise TS 3/4.4.9, "Pressure/Temperature Limits," to improve the availability of the PORVs for low temperature overpressure protection. Accompanying changes are also made to the associated TS Bases. These revisions were made in response to Generic Letter 90–06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability,' and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light-Water Reactors,' pursuant to 10 CFR 50.54 (f)."

*Date of issuance:* April 20, 1994.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment Nos.:* 188 and 165.

*Facility Operating License Nos. DPR–53 and DPR–69:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: September 30, 1992 (57 FR 45076).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated April 20, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Calvert County Library, Prince Frederick, Maryland 20678.

*Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina*

*Date of application for amendment:* February 4, 1994.

*Brief description of amendment:* The amendment revises TS Surveillance Requirement 4.6.4.1 to delete the 12-hour channel check, thereby eliminating the need for continuous operation of the hydrogen monitors.

*Date of issuance:* April 26, 1994.

*Effective date:* April 26, 1994.

*Amendment No. 47.*

*Facility Operating License No. NPF–63.* Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register**: March 2, 1994 (59 FR 10001) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

*Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois*

*Date of application for amendments:* March 21, 1994, as supplemented March 24, 1994.

*Brief description of amendments:* The amendments add a one-time revision to Technical Specification (TS) 3/4.7.1.1 to permit continued activities at all four units with main steam Code safety valve lift setpoint tolerances of ±3%. The duration of this amendment is until May 9, 1994, at which time the tolerances will be reset to ±1%. A statement has also been added to TS 4.7.1.1 for Braidwood stating that the provisions of TS 4.0.4 are not applicable to Braidwood, Unit 1, Cycle 5 until initial entry into Mode 2 from its refueling outage.

*Date of issuance:* April 18, 1994.

*Effective date:* April 18, 1994.

*Amendment Nos.:* 61, 61, 49, and 49.

*Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77:* Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (59 FR 14685 dated March 29, 1994). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination within 15 days. No comments have been received. The notice also provided an opportunity to request a hearing by April 29, 1994, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment and final no significant hazards consideration determination is contained in a Safety Evaluation dated April 18, 1994.

*Local Public Document Room location:* For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

*Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York*

*Date of application for amendment:* September 29, 1993, as supplemented by letter dated April 8, 1994.

*Brief description of amendment:* The amendment revises Technical Specification Section 3.9.A.5 and Tables 3.9–1 and 4.10–2 to delete controls for the 21, 22, and 23 Boron Monitor Tanks, which are no longer in service.

*Date of issuance:* April 28, 1994.

*Effective date:* As of the date of issuance to be implemented after the inlet and outlet lines of the 21, 22, and 23 Boron Monitor Tanks have been cut and capped.

*Amendment No.:* 169.

*Facility Operating License No. DPR–26:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: November 24, 1993 (58 FR 62154)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* White Plains Public Library,

100 Martine Avenue, White Plains, New York 10610.

*Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan*

*Date of application for amendment:* May 23, 1993.

*Brief description of amendment:* The amendment revises Technical Specification (TS) 3.4.3.2.d and related Table 3.4.3.2–1 by changing the allowable leakage for certain low pressure coolant injection (LPCI) line pressure isolation valves and revises Table 3.6.3–1 to remove the designation as containment isolation valves from the LPCI injection reverse flow check and bypass valves. The related Bases are also changed. Concurrently, the Commission granted an exemption from the requirements of 10 CFR Part 50, Appendix J, III.C. for performing Type C containment integrated leak rate tests of the containment isolation valves in the low pressure coolant injection lines of the residual heat removal system and to perform alternative testing.

*Date of issuance:* April 22, 1994.

*Effective date:* April 22, 1994, with full implementation within 45 days.

*Amendment No.:* 98.

*Facility Operating License No. NPF–43.* Amendment revises the Technical Specifications

*Date of initial notice in* **Federal Register**: September 1, 1993 (58 FR 46227) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

*Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas*

*Date of amendment request:* February 24, 1993.

*Brief description of amendment:* The amendment corrected typographical errors in the plant technical specifications (TSs). These errors were introduced in the original ANO–1 TS, and in subsequent amendments. These changes are administrative in nature and are intended to improve the readability of the plant technical specifications without changing the meaning or intent of any specifications.

*Date of issuance:* April 26, 1994.

*Effective date:* April 26, 1994.

*Amendment No.:* 171.

*Facility Operating License No.* DPR–51. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: December 22, 1993 (58 FR 67843)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

*Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* November 16, 1993, as supplemented by letter dated April 5, 1994.

*Brief description of amendment:* The amendment revised the Technical Specifications to provide acceptable conditions for operation when the core operating limit supervisory system (COLSS) is out of service and either or both control element assembly calculators (CEACs) are operable.

*Date of issuance:* April 22, 1994.

*Effective date:* April 22, 1994.

*Amendment No.:* 93.

*Facility Operating License No. NPF–38.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: January 5, 1994 (59 FR 620) The additional information contained in the supplemental letter dated April 5, 1994, withdrew a portion of the original application and thus, was within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

*Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* February 14, 1994.

*Brief description of amendment:* The amendment revised the Technical Specifications in response to Generic Letter 93–08 issued by the NRC and dated December 29, 1993, by relocating the reactor trip system and engineered safety features actuation system response time limits to the updated final safety analysis report.

*Date of issuance:* April 22, 1994.

*Effective date:* April 22, 1994.

*Amendment No.:* 94.

*Facility Operating License No. NPF–38.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: March 16, 1994 (59 FR 12360) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

*Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida*

*Date of application for amendments:* February 25, 1992.

*Brief description of amendments:* The amendments relate to your application dated February 25, 1992, which requested a 40-year operating license commencing from the date of issuance of the operating license and, accordingly, would extend the operating license expiration date for Turkey Point Units 3 and 4 to July 19, 2012 and April 10, 2013, respectively.

*Date of issuance:* April 20, 1994.

*Effective date:* April 20, 1994.

*Amendment Nos.* 162 and 156.

*Facility Operating Licenses Nos. DPR–31 and DPR–41:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: April 15, 1992 (57 FR 13130) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 20, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Florida International University, University Park, Miami, Florida 33199.

*Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida*

*Date of application for amendments:* December 28, 1993.

*Brief description of amendments:* These amendments include steam generator overfill protection in the Technical Specifications in response to Generic Letter 89–19, Request for Action Related to Resolution of Unresolved Safety Issue A–47 "Safety Implications of Control Systems in LWR Nuclear Power Plants."

*Date of issuance:* April 28, 1994.

*Effective date:* April 28, 1994.

*Amendment Nos.* 163 and 157.

*Facility Operating Licenses Nos. DPR–31 and DPR–41:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: March 2, 1994 (59 FR 10007) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 28, 1994. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Florida International University, University Park, Miami, Florida 33199.

*Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut*

*Date of application for amendment:* March 14, 1994.

*Brief description of amendment:* The amendment changes the Millstone Unit 2 Technical Specifications (TS) to provide a one-time extension of the surveillance frequency from the required 18-month to the next refueling outage but no later than September 30, 1994, of the power operated valves in the service water system (TS 4.7.4.1.b) and in the boron injection flowpath (TS 4.1.2.2.c). This extends the surveillance for these valves approximately 5 months.

*Date of issuance:* April 22, 1994.

*Effective date:* April 22, 1994.

*Amendment No.:* 173.

*Facility Operating License No. DPR–65.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: March 23, 1994 (59 FR 13751). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

*Northeast Nuclear Energy Company, Docket Nos. 50–245, 50–336, and 50–423, Millstone Nuclear Power Station, Units 1, 2 and 3, New London County, Connecticut*

*Date of application for amendment:* December 22, 1993.

*Brief description of amendment:* The amendments revise the Technical Specifications (TS) as follows:

1. Change the title of the Nuclear Station Director to Senior Vice President—Millstone Station.

2. Remove the requirement to provide a copy of Plant Operations Review Committee (PORC) and Site Operations Review Committee (SORC) meeting minutes to the Executive Vice President—Nuclear. The Senior Vice President—Millstone Station replaces the Executive Vice President—Nuclear for receipt of PORC and SORC meeting minutes.

3. Make editorial changes to the Millstone Unit No. 1 TS Index.

4. Correct a typographical error in Section 6.2.1.d of the Millstone Unit No. 1 TS.

5. Correct a typographical error in Section 6.5.3.1.a of the Millstone Unit No. 3 TS.

*Date of issuance: April 26, 1994.*

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment Nos.:* 74, 174, and 90.

*Facility Operating License No. DPR–21, DPR–65, AND NPF–49.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: February 16, 1994 (59 FR 7693) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 26, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

*Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania*

*Date of application for amendments:* April 19, 1993, as supplemented by letter dated April 18, 1994.

*Brief description of amendments:* These amendments extend surveillance test interval and allowed outage times for the containment isolation actuation instrumentation.

*Date of issuance: April 26, 1994.*

*Effective date:* April 26, 1994.

*Amendment Nos.* 69 and 32.

*Facility Operating License Nos. NPF–39 and NPF–85.* The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: June 23, 1993 (58 FR 34086) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 26, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

*Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania*

*Date of application for amendments:* May 6, 1993, as supplemented by letter dated April 18, 1994.

*Brief description of amendments:* These amendments extend surveillance test interval and allowed outage times for selected actuation instrumentation and makes editorial changes.

*Date of issuance:* April 26, 1994.

*Effective date:* April 26, 1994.

*Amendment Nos.* 70 and 33.

*Facility Operating License Nos. NPF–39 and NPF–85.* The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: June 23, 1993 (58 FR 34087) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 26, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

*Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania*

*Date of application for amendments:* November 19, 1993.

*Brief description of amendments:* These amendments eliminate the listing of specific position titles for the Plant Operations Review Committee (PORC) composition in favor of allowing the Plant Manager to appoint PORC members. This revision eliminates the need to change the TS in the future whenever a position title is changed.

*Date of issuance:* April 26, 1994.

*Effective date:* April 26, 1994.

*Amendments Nos.:* 190 and 195.

*Facility Operating License Nos. DPR–44 and DPR–56:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: January 5, 1994 (59 FR 628) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 26, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

*Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York*

*Date of application for amendment:* January 31, 1994.

*Brief description of amendment:* This amendment to the Appendix B Technical Specifications (TSs), the Radiological Effluent TSs, revised Section 3.5, and the associated Bases, to establish a threshold level below which there will be no requirement to perform grab samples and isotopic analyses of steam jet-air ejector (SJAE) effluent and revised TS Table 3.10–1 to change the actions required when entering an SJAE limiting condition for operation. Additionally, the amendment revised the TSs to clarify instructions and make editorial corrections which are administrative in nature.

*Date of issuance:* April 25, 1994.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 211.

*Facility Operating License No. DPR–59:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: March 2, 1994 (59 FR 10014).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York*

*Date of application for amendment:* March 12, 1993.

*Brief description of amendment:* The amendment revised the Technical Specifications (TS) to incorporate the changes listed below:

(1) The frequency of high pressure water fire protection system testing (specified in TS Section 4.12.A.1) was changed to accommodate operation on a 24-month cycle.

(2) The frequency of fire pump diesel engine testing (specified in TS Section 4.12.A.2) was changed to accommodate operation on a 24-month cycle.

(3) The frequency of electrical tunnel, diesel generator building, and containment fan cooler fire protection spray and/or sprinkler system testing (specified in TS Section 4.12.B.1) was changed to accommodate operation on a 24-month cycle.

(4) The frequency of fire barrier penetration seal inspection (specified in TS Section 4.12.C.1) was changed to accommodate operation on a 24- month cycle.

(5) The frequency of fire detection system testing (specified in TS Section 4.12.D.1) was changed to accommodate operation on a 24-month cycle.

(6) The frequency of fire hose station testing (specified in TS Section 4.12.E.1) was changed to accommodate operation on a 24-month cycle.

(7) The frequency of $CO_2$ fire protection system testing (specified in TS Section 4.12.G.1) was changed to accommodate operation on a 24-month cycle. A new requirement was also added to exercise the fire dampers on an annual basis.

These changes followed the guidance provided in Generic Letter 91–04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24–Month Fuel Cycle," as applicable.

In addition, TS Section 4.12 was reformatted, in its entirety, and several administrative changes were made to improve clarity.

*Date of issuance:* April 20, 1994.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 146.

*Facility Operating License No. DPR–64:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: April 28, 1993 (58 FR 25862) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

*Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey*

*Date of application for amendment:* March 4, 1994.

*Brief description of amendment:* This amendment adds a new TS 3/4.10.8, "Inservice Leak and Hydrostatic Testing," to the Hope Creek Generating Station TSs. The amendment also includes corresponding changes to the TS Index, Table 1.2, "OPERATIONAL CONDITIONS," and provides Bases for TS 3/4.10.8. The added TS 3/4.10.8 permits the unit to remain in OPERATIONAL CONDITION 4 with the average reactor coolant temperature being increased above 200°F, but not to exceed 212°F, and certain OPERATIONAL CONDITION 3 Limiting Conditions for Operation for secondary containment isolation, secondary containment integrity and filtration, recirculation and ventilation system (FRVS) operability being met.

*Date of issuance:* April 18, 1994.

*Effective date:* April 18, 1994.

*Amendment No.:* 69.

*Facility Operating License No. NPF–57:* This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: March 16, 1994 (59 FR 12384).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1994.

No significant hazards consideration comments received: None.

*Local Public Document Room location:* Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

*Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama*

*Date of application for amendments:* December 23, 1992, as supplemented August 12, 1993 and January 21, 1994 (TS 328).

*Brief description of amendments:* The amendments modify the operability requirements for the low pressure coolant injection (LPCI) mode of the residual heat removal (RHR) system while the reactor is shut down. The amendments permit the RHR system to be considered operable for LPCI when aligned for shutdown cooling if it can be manually realigned and is not otherwise inoperable.

*Date of issuance:* April 19, 1994.

*Effective date:* April 19, 1994.

*Amendment Nos.:* 204, 223, and 177.

*Facility Operating License Nos. DPR–33, DPR–52 and DPR–68:*

*Date of initial notice in* **Federal Register**: March 31, 1993 (58 FR 16873).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 1994.

No significant hazards consideration comments received: None.

*Local Public Document Room location:* Athens Public Library, South Street, Athens, Alabama 35611.

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* February 7, 1994 (TS 93–11).

*Brief description of amendments:* The amendments replace the wording in Surveillance Requirement 4.7.9.i, "Snubber Service Life Program," with

that from the Westinghouse Electric Corporation Standard TS, Revision 4a. In addition, the amendments delete the wording in SR 4.7.9.c, "Snubber Visual Inspection Performance and Evaluation," that is inconsistent with Generic Letter 90–09.

*Date of issuance:* April 18, 1994.

*Effective date:* April 18, 1994.

*Amendment Nos.:* 179—Unit 1 171—Unit 2.

*Facility Operating License Nos. DPR–77 and DPR–79:* Amendments revise the technical specifications.

*Date of initial notice in* **Federal Register**: February 7, 1994.

The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated April 18, 1994.

No significant hazards consideration comments received: None.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* February 7, 1994 (TS 93–19).

*Brief description of amendments:* The amendments revise Technical Specification 5.3.1 to allow the substitution of filler rods for fuel rods in fuel assemblies by incorporating the guidance in Generic Letter 90–02, Supplement 1.

*Date of issuance:* April 18, 1994.

*Effective date:* April 18, 1994.

*Amendment Nos.:* 180—Unit 1 172—Unit 2.

*Facility Operating License Nos. DPR–77 and DPR–79:* Amendments revise the technical specifications.

*Date of initial notice in* **Federal Register**: March 16, 1994 (59 FR 12367) The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated April 18, 1994.

No significant hazards consideration comments received: None.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

*The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio*

*Date of application for amendment:* September 28, 1992.

*Brief description of amendment:* The amendment revised Technical Specification (TS) 2.2, Limiting Safety System Settings, TS 3.3.1, Reactor Protection System Instrumentation, and TS 3.3.2, Isolation Actuation Instrumentation by removing the functions associated with the main steam line radiation monitors.

*Date of issuance:* April 22, 1994.

*Effective date:* April 22, 1994.

*Amendment No.* 58.

*Facility Operating License No. NPF–58.* This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: January 6, 1993 (58 FR 598) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Perry Public Library, 3753 Main Street, Perry, Ohio 44081

*Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio*

*Date of application for amendment:* July 28, 1992, as supplemented on February 17, 1993.

*Brief description of amendment:* The proposed amendment would delete Technical Specification (TS) 3/4.9.9, "Refueling Operations—Containment Purge and Exhaust Isolation System," and its bases, because of its redundancy to other TSs that address the operability requirements of the containment purge and exhaust isolation system. Also, the proposed amendment would revise TS 3/4.3.2, "Safety System Instrumentation—Safety Features Actuation System Instrumentation," and TS 3.4.9.4, "Refueling Operations—Containment Penetrations," and its bases. The effect of this proposed change would be to allow the bypass of the safety features actuation system in Mode 6, "Refueling," by the use of the containment purge and exhaust system noble gas monitor in conjunction with manual closure of the containment purge and exhaust isolation valves instead of automatic closure.

*Date of issuance:* April 15, 1994.

*Effective date:* April 15, 1994.

*Amendment No.* 186.

*Facility Operating License No. NPF–3.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: January 6, 1993 (58 FR 599) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

*Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia*

*Date of application for amendments:* October 8, 1993.

*Brief description of amendments:* The amendments revise the technical specifications (TS) by deleting tables listing certain components from the TS and relocating the lists to plant procedures in accordance with the guidance provided in NRC Generic Letter 91–08, "Removal of Component Lists from Technical Specifications."

*Date of issuance:* April 22, 1994.

*Effective date:* April 22, 1994.

*Amendment Nos.:* 181 and 162.

*Facility Operating License Nos. NPF–4 and NPF–7.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: October 27, 1993 (58 FR 57860) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

*Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington*

*Date of application for amendment:* July 29, 1993, as supplemented by letters dated March 11 and 17, 1994.

*Brief description of amendment:* The amendment modifies the Technical Specifications (TS) to reflect a new refueling mast. Specifically, the amendment adds new values for protective features in the TS to reflect the new refueling mast. Values for the old refueling mast are retained in the TS.

*Date of issuance:* April 29, 1994.

*Effective date:* April 29, 1994.

*Amendment No.:* 121.

*Facility Operating License No. NPF–21:* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: March 30, 1994 (59 FR 14900) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 1994.

Public comments on proposed no significant hazards consideration comments received: No.

*Local Public Document Room location:* Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

*Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301 Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks Manitowoc County, Wisconsin*

*Date of application for amendments:* February 26, 1993.

*Brief description of amendments:* The amendments adding operating conditions and limiting conditions for operation for the atmospheric steam dump valves, the crossover steam dump system, the turbine stop and governor valves, and the various turbine overspeed protection features installed at the Point Beach Nuclear Plant. Additionally, the amendments revised the surveillance requirements for the auxiliary feedwater system, and added explanatory text to the bases for Sections 15.3.4 and 15.4.8.

*Date of issuance:* April 20, 1994.

*Effective date:* April 20, 1994.

Amendment Nos.: 147 and 151.

*Facility Operating License Nos. DPR–24 and DPR–27.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 18, 1993 (58 FR 43939) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 20, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

*Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas*

*Date of amendment request:* October 21, 1993, as supplemented by letters dated March 14, 1994, and April 18, 1994.

*Brief description of amendment:* The amendment revises Technical Specification Sections 6.5.1, Plant Safety Review Committee (PSRC) and 6.8, Procedures and Programs, in order to allow implementation of a Qualified Reviewer Program for the review and approval of new procedures and procedure changes. Technical Specification 6.5.1.6, PSRC Responsibilities, has also been revised in accordance with Generic Letter 93–07, "Modification of Technical Specification Administrative Control Requirements for Emergency and Security Plans," to delete requirements for PSRC review of the Emergency Plan and Security Plan and related implementing procedures.

*Date of Issuance:* April 28, 1994.

*Effective date:* April 28, 1994, to be implemented within 120 days of issuance.

*Amendment No.:* Amendment No. 73.

*Facility Operating License No. NPF–42.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 24, 1993 (58 FR 62159) The March 14, 1994, and April 18, 1994, supplemental letters provided additional clarifying information and revised the implementation period and did not change the initial no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1994.

No significant hazards consideration comments received: No.

*Local Public Document Room Locations:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 4th day of May 1994.

For the Nuclear Regulatory Commission.

**Jack W. Roe,**

*Director Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.*

[FR Doc. 94–11226 Filed 5–11–94; 8:45 am]

BILLING CODE 7590–01–P

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**[Docket Nos. 030–05260, 070–00314, 040–08188, License Nos. 29–01442–01, SMC–1181, SNM–296; EA 94–043]**

## Ledoux and Co., Teaneck, NJ; Order Suspending Licenses

I

Ledoux and Company (Licensee) is the holder of Byproduct, Source Material, and Special Nuclear Material Licenses Nos. 29–01442–01, SMC–1181, and SNM–296 (Licenses), respectively, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30, 40, and 70.

Byproduct material License No. 29–01442–01 authorizes the Licensee to possess byproduct material for use in the analysis of fission products and neutron-induced radionuclides in various materials, and to possess byproduct material to be used in the calibration of radioassay equipment, including the development of analytical chemical procedures. Byproduct material License No. 29–01442–01 was originally issued on November 20, 1956, was most recently renewed on March 8, 1989, and was due to expire on March 31, 1994, but has remained in effect pursuant to 10 CFR 30.37 and a timely request for renewal by the Licensee in accordance with a Licensee letter dated February 24, 1994.

Source Material License No. SMC–1181 authorizes the Licensee to possess source material for analysis of samples and preparation and use of working standards.

Source Material License No. SMC–1181 was originally issued on December 14, 1973, was most recently renewed on January 10, 1991, and is due to expire on January 31, 1996.

Special Nuclear Material License No. SNM–296 authorizes the Licensee to possess plutonium and uranium-235 for use in laboratory sample analysis and calibration of instruments. Special Nuclear Material License SNM–296 was originally issued on April 1, 1959. This license was most recently renewed on March 13, 1989, and was due to expire on March 31, 1994, but has remained in effect pursuant to 10 CFR 303.37 and a timely request for renewal by the Licensee in accordance with a Licensee letter dated February 24, 1994.

II

As of July 27, 1990, the Licensee was required to comply with the regulations set forth in 10 CFR 30.35, 10 CFR 40.36, and 10 CFR 70.25. These regulations require that licensees authorized to possess licensed material in the amounts listed in the above-listed Licenses, must submit a certification of financial assurance or a decommissioning funding plan to the NRC. These regulations have been established to assure that licensees demonstrate adequate financial responsibility that funds necessary for a safe decommissioning are available and planned, thus providing adequate assurance that the facility will be decommissioned prior to terminating licensed activities.

On August 18, 1992, the NRC issued a Demand for Information to the Licensee since the NRC had not, as of that date, received financial assurance from the Licensee. The Demand for Information was issued to determine whether the Licenses should be modified, suspended or revoked. NRC sent letters dated October 21, 1992, and November 16, 1993 to the Licensee, and telephone conversations were held with the Licensee on September 28, 1990, January 13, 1992, December 14, 1993, and January 5, 1994, emphasizing the importance of providing the NRC the required financial assurance. Furthermore, an NRC inspection was conducted on October 18–19, 1993 (during which the Licensee committed

to provide the required financial assurance by the end of 1993), and an enforcement conference was held with the Licensee on March 15, 1994, to emphasize the significance with which the NRC viewed the failure to provide financial assurance.

In response to the NRC Demand for Information, dated August 18, 1992, Ledoux and Company provided, by letter dated September 10, 1992, a decommissioning cost estimate of $113,013. However, a financial assurance mechanism to cover the estimated amount was not provided. On November 5, 1993, the Licensee informed the NRC by letter that it intended to establish an escrow account in the amount of $125,000 as its financial assurance mechanism by January 1, 1994. On December 28, 1993, the Licensee informed the NRC by letter that it needed more time to provide a suitable financial assurance mechanism due to unforeseen circumstances. During the enforcement conference on March 15, 1994, Ledoux and Company representatives indicated that a financial assurance mechanism would not be provided in the next month. On April 5, 1994, the Licensee stated in a letter that it was planning to provide 2 "letters of credit * * *" and that it would need some time. However, to date no financial assurance mechanism has been provided to the NRC.

III

As described in Section I, the Licensee is authorized to receive, possess, use, and transfer a wide range of byproduct material, special nuclear material, and source material in quantities set forth in its Licenses. The regulations specified in 10 CFR 30.35, 10 CFR 40.36, and 10 CFR 70.25 require licensees to provide financial assurance such that licensed facilities will be decommissioned in a safe and timely manner, and that adequate funds will be available for decommissioning to ensure that the health and safety of the public is protected. The Licensee has continually failed to provide to the NRC the required financial assurance contrary to the requirements in 10 CFR 30.35, 10 CFR 40.36, and 10 CFR 70.25, yet continues to perform NRC-licensed activities. The Licensee is either unwilling or unable to comply with the financial assurance requirements. The public health and safety require the Licensee to have adequate funds and financial assurance for decommissioning to ensure that decommissioning of the Licensee's facilities can be completed in a safe and timely manner.

Consequently, I lack the requisite reasonable assurance that sufficient funding will be available for decommissioning of the facility in compliance with Commission requirements, and that the health and safety of the public, including the Licensee's employees, will be protected in connection with the decommissioning of the Licensee's facilities. This is significant should the Licensee discontinue operations without appropriate financial assurance for the decommissioning. Therefore, the public health, safety, and interest require that License Nos. 29–01442–01, SMC–1181, and SNM–296 be suspended.

IV

Accordingly, pursuant to sections 51, 62, 63, 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 parts 30, 40, and 70, it is hereby ordered that License Nos. 29–01442–01, SMC–1181, and SWM–296, are suspended pending the submittal to NRC by the licensee of appropriate financial assurance in the amount of $125,000.00 for its licensees in accordance with 10 CFR 30.35, 10 CFR 40.36, and 10 CFR 70.25, and the NRC's written acceptance of the licensee's submittal(s) to satisfy these regulatory requirements. While the Licenses are suspended, the Licensee shall not receive, use, manufacture, distribute, or transfer radioactice material and shall place all licensed material in locked storage.

The Regional Administrator, Region I, may, in writing, relax or rescind this Order upon demonstrator by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents of this Order, the answer shall, in writing and under oath or affirmiation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued.

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 of the hearing request also should 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 I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, and to the Licensee if the hearing request is by a person other than the Licensee. If a person other than the Licensee 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 or a person whose interest is adversely affected, the Commission will issue on 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 hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings.

Dated at Rockville, Maryland, this 4th day of May 1994.

For the Nuclear Regulatory Commission.

**James Lieberman,**

*Director, Office of Enforcement.*

[FR Doc. 94–1153 Filed 5–11–94; 8:45am]

BILLING CODE 7590–01–M

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[Docket No. 50–397]

## Washington Public Power Supply System; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an amendment to Facility Operating License No. NPF–21 issued to Washington Public Power Supply System (the licensee) for operation of its Nuclear Project No. 2 (WNP–2) plant, located in Benton County, Washington.

The proposed amendment changes the plant operating license to rename three primary containment isolation check valves listed in the technical specifications. The licensee is making an administrative change to rename valve PI–EFC–X29d to make its number consistent with other similar valves in the technical specifications. The license is renaming excess flow check valves PI–EFCX–72f and PI–EFCX–73e because they are replacing them with swing

check valves that have a different numbering nomenclature.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the license has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Supply System has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and concluded that the change does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

Revising the equipment piece number (EPN) for PI–EFC–X29d to PI–EFC–X29b in Technical Specification Table 3.6.3–1 is an administrative change and provides consistency between the Technical Specifications and approved design bases. PI–EFC–X29d provides instrument line break (ILB) mitigation as analyzed in FSAR Section 15.6.2. Renaming PI–EFC–X29d has no impact on FSAR accident analyses.

Replacing existing excess flow check valves PI–EFCX–72f and PI–EFCX–73e with swing check valves and changing the EPNs has no impact on the containment isolation design basis described in FSAR Section 6.2.4.3.2.2.3.3. This plant modification will conform the plant to the FSAR design basis. The FSAR describes the drywell and suppression chamber air sampling lines and indicates that "the return lines are equipped with * * * a reverse-oriented excess flow check valve used as a simple check valve inside of containment." Replacement of the spring loaded excess flow check valve with a simple check valve (without a spring) meets plant design bases and 10CFR50 Appendix A, General Design Criterion (GDC) 56 criteria for containment isolation. The valve change and resulting EPN change do not impact the FSAR design analyses.

Therefore, this change does not increase the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated:

No new mode of operation of any equipment results from the valve design change or EPN change for the three excess flow check valves. Renaming valve PI–EFC–X29d is an administrative change.

The replacement, and subsequent EPN change, of inboard containment isolation excess flow check valves PI–EFCX–72f and PI–EFCX–73e with swing check valves brings the plant into conformance with the analyzed design bases. Operation and maintenance of these valves in accordance with design and Technical Specification requirements provide assurance that primary containment will be maintained for the design basis LOCA event. The EPN change is required to conform to standard nomenclature for identification of penetration isolation valves.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety:

The administrative name change for PI–EFC–X29d is made to ensure consistency between Technical Specification Table 3.6.3–1 and existing plant design documentation. Renaming this excess flow check valve provides consistency to the nomenclature of other excess flow check valves which use a dual tube method of draining condensate.

The replacement and subsequent EPN change of inboard containment isolation valves PI–EFCX–72f and PI–EFCX–73e brings the plant into conformance with the analyzed design bases. Maintenance and operation requirements are not modified in any manner. Adherence to the analyzed design bases will not affect the margin of safety for the design bases analysis.

Therefore, this change does not involve a significant reduction in a margin of safety.

In preparing this request the Technical Specification Bases were reviewed for impact. No changes are necessary to address the EPN changes or the replacement of two excess flow check valves with swing check valves.

Based on this review, the Supply System has determined that the three standards of 50.92(c) are satisfied. Accordingly, the Supply System has determined that this amendment request involves no significant hazards consideration.

The NRC reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the 30-day notice period expires. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room 6D22, Two White Flint North, 11555 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 13, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the

Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplemental to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Theodore R. Quay, Director, Project Directorate IV–3: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street NW., Washington, D.C. 20005–3502, the licensee's attorney.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 5, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 9th day of May 1994.

For the Nuclear Regulatory Commission.

**L. Mark Padovan,**

*Acting Project Manager Project Directorate IV–3 Division of Reactor Projects III/IV Office of Nuclear Reactor Regulation.*

[FR Doc. 94–11647 Filed 5–11–94; 8:45 am]

BILLING CODE 7590–01–M

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**Summary of Proposal(s)**

(1) *Collection title*: Investigation of Claim for Possible Days of Employment or State Benefits Received.

(2) *Form(s) submitted*: ID–5I, ID–5R (SUP), ID–49R, ID–49S and UI–48.

(3) *OMB Number*: 3220–0049.

(4) *Expiration date of current OMB clearance*: Three years from date of OMB approval.

(5) *Type of request*: Extension of the expiration date of a currently approved collection without any change in the

substance or in the method of collection.

(6) *Frequency of response*: On occasion.

(7) *Respondents*: Individuals or households, State or local governments, Businesses or other for-profit, Small businesses or organizations.

(8) *Estimated annual number of respondents*: 10,500.

(9) *Total annual responses*: 10,600.

(10) *Average time per response*: .13254 hours.

(11) *Total annual reporting hours*: 1,405.

(12) *Collection description*: Under the RUIA, unemployment or sickness benefits are not payable for any day in which renumeration is payable or accrues to the claimant. The collection obtains information from the claimant, railroad and non-railroad employers and state agencies about work performed and/or benefits received during the same period as benefits are claimed.

**Additional Information or Comments**

Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

**Dennis Eagan,**

*Clearance Officer.*

[FR Doc. 94–11574 Filed 5–11–94; 8:45 am]

BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–34019; File No. SR–NYSE–93–49]**

## Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Bond Listing Standards

May 5, 1994.

### I. Introduction

On December 22, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise its standards for the listing and delisting of debt securities. On April 1, 1994, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change in order to clarify its interpretation of certain provisions of the original filing.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33531 (January 27, 1994), 59 FR 4960 (February 2, 1994). No comments were received on the proposal. This order approves the proposed rule change, including Amendment No. 1 on an accelerated basis.

### II. Description of the Proposal

Paragraphs 102.03 and 103.05 of the NYSE's Listed Company Manual set forth the current standards for listing debt securities of domestic and foreign issuers, respectively, on that Exchange. Under either paragraph, the NYSE uses the following minimum criteria to determine whether a debt security is eligible to be listed: The bond issue must have an aggregate market value or principal amount of $5 million; the anticipated distribution must be "sufficient for trading on the Exchange"; and the company must be in a position to cover interest charges on all debts issued by it for a subsidiary. In this regard, the NYSE deems interest coverage to be inadequate if the interest charges on all debt issued by the company, its parent or a subsidiary exceed earnings, before or after taxes, as reported in a filing to the Commission.[3] Finally, Paragraphs 102.03 and 103.05 allow the Exchange to list convertible debt only if the underlying common stock also is listed on the NYSE.

The delisting standards for debt securities are set forth in paragraphs 801.00 and 802.00 of the Listed Company Manual. The NYSE normally gives consideration to delisting a bond issue if the aggregate market value or principal amount falls below $1 million, or if the company's interest coverage is deemed to be inadequate.[4] The NYSE also can review the continued listing of a debt security pursuant to certain other criteria in paragraph 802.00 (*e.g.*, "authoritative advice received that security is without value," "inability to meet current debt obligations or to adequately finance operations"). In terms of convertible bonds, paragraph 801.00 states that it is the NYSE's customary policy to delist a convertible security if the related common stock is delisted.

The NYSE proposes to simplify and relax its standards for the listing and delisting of debt securities, in order to make the Exchange's trading and disclosure systems more accessible to bond issuers. Specifically, the proposed amendments to paragraphs 102.03 and 103.05 will eliminate the requirement that the Exchange evaluate the anticipated distribution of a bond issue,[5] and will replace the current definition of adequate interest coverage with a new standard based on issuer or bond rating status.[6] In addition, the NYSE proposal will permit the Exchange to list convertible debt whenever the underlying equity security is subject to real-time sale reporting in the United States.[7] Only the requirement that the bond issues have an aggregate market value or principal amount of no less than $5 million will remain unchanged.

As noted above, the NYSE proposal contains a new standard for evaluating whether a debt issuer has the ability to meet its interest obligations. Rather than using an earnings deficit, or the lack thereof, as the basis for making that determination,[8] the Exchange will rely instead on either (1) its own initial and continued listing standards for equity securities or (2) the analysis of a nationally recognized securities rating organization ("NRSRO").

Specifically, if an issuer of NYSE listed equity is in "good standing" with the Exchange,[9] the NYSE normally will list that company's debt securities so long as they have an aggregate market value or principal amount of at least $5 million. This standard also will apply to an issuer owned by, or under common control with, an issuer of NYSE listed equity; and to an issuer whose debt securities are guaranteed by an issuer of NYSE listed equity. According to the NYSE, because debt enjoys seniority over equity, the "good standing" test warrants listing an "affiliated" issuer's bonds.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See Paragraph 802.00 of the Listed Company Manual.

[4] See *supra*, note 4 and accompanying text.

[5] The proposed rule change also will delete a reference to the distribution requirement from paragraph 703.06 of the Listed Company Manual, which governs the procedures an issuer must follow to list its debt securities on the NYSE.

[6] See *infra*, notes 9–13 and accompanying text.

[7] Amendment No. 1, *supra* note 3, clarifies that, for both domestic and foreign issuers, the underlying equity security must be subject to real-time reporting in the United States.

[8] See *supra*, note 4 and accompanying text.

[9] See *infra*, note 24.

In contrast, debt securities of an "unaffiliated" issuer [10] will not be eligible for initial listing on the NYSE unless an NRSRO has assigned a certain minimum rating to the bonds (or to other bonds issued by the same company). Thus, the NYSE will be able to list such a debt issue only if it has received a rating no lower than a Standard and Poor's ("S&P") Corporation "B" rating (or another NRSRO's equivalent thereof). If the issue proposed to be listed has not been rated, those bonds must be either senior to, or *pari passu* with,[11] an issue that has received at least an S&P Corporation "B" rating (or another NRSRO's equivalent thereof). Alternatively, the proposed rule change will allow the NYSE to list unrated bonds that are junior to an investment grade issue.[12]

As under current Paragraph 802.00, the NYSE will give consideration to delisting a bond issue if its aggregate market value or principal amount falls below $1 million, or if the issuer is unable to meet its obligations on the listed debt securities.[13] The NYSE also will retain the discretion to remove a bond from listing if, among other things, "authoritative advice [is] received that [the] security is without value." As a practical matter, the NYSE has indicated that it normally will not delist debt where there is value in the security and continued exchange trading is in the best interests of investors.[14] The Exchange, however, has committed to give serious consideration to delisting a bond issue if the debt security has minimal or no value and the issuer is unable to meet its financial obligations.[15]

In addition, the NYSE will amend Paragraph 801.00 to specify that convertible bonds will be reviewed for continued listing when the underlying equity security is delisted,[16] and will be delisted when the related security is no longer subject to real-time last sale reporting in the United States. Further, if the common stock is delisted due to a violation of the NYSE's "corporate responsibility" criteria (including, but not limited to, the outside director, audit committee and shareholder voting requirements),[17] then the Exchange will delist all debt securities convertible into that common stock.

Finally, the NYSE has indicated that the listing and delisting standards for "unaffiliated" corporate issuers [18] also will apply to certain non-corporate issuers. In particular, the proposed rule change specifies that sovereign issues will be evaluated on a case-by-case basis. The NYSE proposal also will codify the Exchange's current policy that only term/dollar municipal bonds may be listed.[19]

The Exchange states that the basis under the Act for the proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

## III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[20] Specifically, the Commission believes the proposal is consistent with section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for a self-regulatory organization to screen issuers and to provide listed status only to bona fide companies with sufficient float, investor base and trading interest to maintain fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity. For the reasons set forth below, the Commission believes that the proposed rule change will provide the NYSE with greater flexibility in determining which debt securities warrant inclusion in its bond trading and disclosure systems, without compromising the benefits that the Exchange's listing standards offer to investors.

After careful review, the Commission has concluded that the initial listing standards in paragraphs 102.03 (for domestic issuers) and 103.05 (for foreign issuers), as amended, should ensure that only substantial companies capable of meeting their financial obligations are eligible to have their bonds listed on the NYSE. As before, the proposed rule change will require that the NYSE evaluate an issuer's ability to cover the interest charges on its debt securities. Although the Exchange currently makes this interest coverage determination itself,[21] the amended standards will rely instead on either the issuer's relationship with the NYSE or the bonds' NRSRO rating.

The Commission agrees that, to the extent the NYSE has adequate listing standards for common stock, the Exchange reasonably may assume that NYSE listed companies (and certain affiliates thereof) [22] in "good standing" with the Exchange [23] are in solid

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[10] As defined in the NYSE proposal, "an 'unaffiliated' issuer is one that has no equity securities listed on the Exchange; is not, directly or indirectly, majority-owned by, nor under common control with, an issuer of Exchange-listed equity securities; and is not issuing a debt security that an issuer of Exchange-listed equity securities is guaranteeing."

[11] A *pari passu* issue has equal standing with the debt issue proposed to be listed.

[12] To be investment grade, an issue must be assigned a rating no lower than an S&P Corporation rating of "BBB" (or another NRSRO's equivalent thereof). The NYSE has indicated that it will apply this standard only to unrated bonds which are immediately junior to another rated class of securities issued by the same company. Telephone conversation between Michael J. Simon, Milbank, Tweed, Hadley & McCloy; Fred Siesel, Director, Fixed Income Markets, NYSE; Sharon Lawson, Assistant Director, Division of Market Regulation, SEC; and Beth Stekler, Attorney, Division of Market Regulation, SEC, on February 4, 1994.

[13] See Amendment No. 1, *supra*, note 3. The standard will replace the current definition of inadequate interest coverage. See *supra*, note 4 and accompanying text.

[14] See Amendment No. 1, *supra*, note 3.

[15] *Id.* Amendment No. 1 provides the following example of a situation where the continued exchange trading of a debt security normally would not be considered to be in the best interests of investors: the issuer is in bankruptcy and files a plan of reorganization with no recovery for bond holders.

[16] Under Paragraph 801.00, other convertible securities will continue to be delisted when the related common stock is delisted.

[17] See Section 3 of the Listed Company Manual. On a related matter, Amendment No. 1, see *supra* note 3, clarifies that, if the NYSE delists the equity securities of a company which is the majority owner of an issuer of NYSE listed debt or the guarantor thereof, the Exchange will review the listing of the formerly "affiliated" issuer's bonds, convertible or otherwise.

[18] See *supra*, notes 11–13 and accompanying text.

[19] A term/dollar municipal bond is issued with a single maturity date (as opposed to a serial bond), and is quoted in dollars or as a percentage of its par value (rather than by yield). As such, it resembles a corporate bond. Telephone conversation between Fred Siesel, Director, Fixed Income Markets, NYSE, and Beth Stekler, Attorney, Division of Marketing Regulation, SEC, on January 7, 1994.

[20] 15 U.S.C. 78f(b) (1988).

[21] See *supra*, note 4 and accompanying text.

[22] See *supra*, text accompanying note 10.

[23] According to the NYSE, a company is in "good standing" if it is above the relevant continued

financial condition and do not pose a significant risk of defaulting on their obligations. Moreover, as the NYSE correctly notes, debt securities enjoy seniority over equity securities. Because the NYSE presumably would not have listed the junior equity issue unless it was satisfied with the quality of the company, the Commission is unable to conclude that the NYSE has no basis for its assumption that the senior debt issue also warrants listed status.

For "unaffiliated" issuers, the Commission finds that it is not unreasonable for the Exchange to defer to the expertise of an NRSRO, rather than conducting its own analysis of the company's financial condition, as is presently the case.[24] Although the Commission would be concerned by any potential misuse of NRSRO ratings, the Commission notes that the NRSROs routinely evaluate interest coverage, among other things, when they rate bonds. In addition, their methodology, unlike the NYSE's, incorporates even more extrinsic factors, such as characteristics of the issuer's industry group.[25] The Commission therefore agrees with the Exchange that, under these circumstances, NRSRO ratings can be relied upon for determinations about the creditworthiness of the issuer.

Moreover, the Commission is satisfied that the distinctions in NRSRO ratings drawn by the NYSE are valid. According to the S&P Corporation's debt rating definitions,[26] bonds rated "B" (or higher) currently have the capacity to meet interest payments and principal repayments, whereas bonds rated "CCC" (or lower) are dependent upon favorable business, financial or economic conditions to meet timely payments of interest and repayment of principal. The Commission also believes that it is logical for the NYSE to assume that an unrated debt issue which is *pari passu* with (or senior to) an issue with at least a "B" rating would, if rated, receive an equal (or higher) rating. Finally, to permit the NYSE to list unrated bonds that are immediately junior to an investment grade issue is appropriate because those bonds generally would be rated no more than one rating category lower (*i.e.*, a S&P Corporation "BB" rating).[27]

As for the other provisions in Paragraphs 102.03 and 103.05, the Commission finds that they strike an appropriate balance between protecting investors and enhancing the flexibility of the debt listing process. For instance, the proposed rule change retains the current requirement that, to be eligible for listing, a bond issue must have an aggregate market value or principal amount of at least $5 million. This should enable the NYSE to deny listed status to companies whose securities do not have sufficient liquidity for a fair and orderly market, without infringing upon *bona fide* issuers' access to the Exchange's bond trading and disclosure systems.

Conversely, the Commission does not believe that eliminating the distribution requirement will have a significant adverse effect on investors in the bond market. The NYSE currently evaluates distribution of debt securities in an ad hoc fashion. The NYSE does not specify a mandatory minimum threshold for the number of bonds outstanding and/or the number of holders thereof but only requires a distribution "sufficient for trading on the Exchange." In the past, the Commission has recognized that such information may be difficult to estimate accurately and may be relatively less pertinent than other factors.[28] From the Commission's perspective, the benefits of streamlining the Exchange's substantive review is appropriate, especially since the NYSE has discretion not to list an otherwise eligible debt issue if such status would be unwarranted.

In terms of the delisting criteria in Paragraph 802.00, the Commission has concluded that the revised standards should enable the NYSE to identify listed companies that may have insufficient resources to meet their financial obligations or whose debt securities may lack adequate trading depth and liquidity. This, in turn, will allow the Exchange to take appropriate action to protect bondholders. In this regard, the NYSE has indicated that it normally will not delist a debt security if it has value and if continued exchange trading is in the best interests of investors; however, the NYSE has pledged to give serious consideration to delisting bonds which, based on their market price,[29] have minimal or no value. In applying this standard, the Commission expects the NYSE to consider carefully the propriety of continued exchange trading of the securities of bankrupt or distressed companies,[30] and expects bonds with minimal value to be delisted.

The Commission also is satisfied with the NYSE's framework for the listing and delisting of convertible debt securities. By authorizing the Exchange to list and trade bonds that are convertible into any equity security subject to real-time last sale reporting in the United States (rather than merely NYSE listed common stock), the proposed rule change should help the NYSE adapt to today's rapidly changing market environment.[31] The Commission notes that, like the NYSE, the other national securities exchanges and the National Association of Securities Dealers, Inc. ("NASD") make quote and trade information publicly available on a "real-time" basis. As a result, the Commission believes that the NYSE proposal should ensure that investors have information necessary to price convertible bonds.

In the Commission's opinion, the above goals also will be furthered by the requirement that convertible bonds be delisted whenever the underlying equity security is no longer subject to a reporting obligation. If the related equity merely moves from the NYSE to another market, it is not inconsistent with the Act for the Exchange to have discretion to continue listing the convertible debt, unless the underlying security is delisted because the issuer has violated one of the NYSE's corporate responsibility criteria. As a general matter, the Commission would have serious concerns about any proposal that does not provide for the delisting of convertible bonds where a company acts to disadvantage its shareholders. The NYSE addresses this concern by committing to delist convertible bonds when the issuer has violated corporate governance listing standards.

Finally, at this time, the Commission believes that it is reasonable for the

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listing criteria. See, *e.g.*, Paragraph 703.19 of the Listed Company Manual. Telephone conversation between Michael J. Simon, Milbank, Tweed, Hadley & McCloy; Fred Siesel, Director, Fixed Income Markets, NYSE; and Beth Stekler, Attorney, Division of Market Regulation, SEC, on April 11, 1994.

[24] See supra, note 4 and accompanying text. The NYSE's definition of the term "unaffiliated issuer" is set forth above, see supra note 11.

[25] Telephone conversation between Fred Siesel, Director, Fixed Income Markets, NYSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC.

[26] See Standard & Poor's High Yield Directions, January 1994.

[27] *Id.*

[28] *See* Securities Exchange Act Release No. 32909 (September 15, 1993), 58 FR 49537 (September 23, 1993) (File No. SR–NYSE–93–21) (approving amendments to Paragraph 703.06 of the Listed Company Manual to eliminate requirement that distribution information be submitted as supporting document to debt listing application).

[29] Telephone conversation between Michael J. Simon, Milbank, Tweed, Hadley & McCloy; Fred Siesel, Director, Fixed Income Markets, NYSE; Sharon Lawson, Assistant Director, Division of Market Regulation, SEC; and Beth Stekler, Attorney, Division of Market Regulation, SEC.

[30] For example, debt of companies in bankruptcy that file a plan of reorganization that provides no recovery for debt holders should be delisted.

[31] In addition, the proposed rule change will conform the NYSE's listing standards with the framework used by other markets, including the American Stock Exchange.

NYSE to treat the debt of certain noncorporate issuers (*i.e.*, foreign governments, American states and localities, government agencies) like the debt of "unaffiliated" corporate issuers. As such, non-corporate debt would have to meet certain rating requirements before listing.[32] Nevertheless, as the NYSE gains experience with listing and trading sovereign and municipal bonds, the Commission expects the Exchange to monitor the adequacy of its existing standards and to develop more narrowly tailored ones where appropriate.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 1 clarifies and codifies the intent of certain language used in the original filing. Finally, the Commission did not receive any comments on the original proposal, which was noticed for the full statutory period.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. 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 rules change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–49 and should be submitted by June 2, 1994.

**IV. Conclusion**

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act,[33] that the proposed rule change (SR–NYSE–93–49), including Amendment No. 1 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

[32] See *supra*, notes 11–13 and accompanying text. In addition, such debt would have to comply with the applicable registration requirements of Section 12 of the Act.

[33] 15 U.S.C. 78s(b)(2) (1988).

[34] 17 CFR 200.30–3(a)(12) (1991).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–11558 Filed 5–11–94; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area #2706; Amdt. No. 1]**

### Alabama; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective April 11, 1994 to close the incident period for this disaster effective April 10, 1994.

All other information remains the same, i.e., the termination date for filing applications for physical damage is May 28, 1994 and for economic injury the deadline is December 30, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: May 5, 1994.

**Bernard Kulik,**

*Assistant Administrator for Disaster Assistance.*

[FR Doc. 94–11534 Filed 5–11–94; 8:45 am]

BILLING CODE 8025–01–M

**[Declaration of Disaster Loan Area #2706; Amdt. No. 1]**

### Georgia; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective April 25, 1994 to close the incident period for this disaster effective April 10, 1994.

All other information remains the same, i.e., the termination date for filing applications for physical damage is May 28, 1994 and for economic injury the deadline is December 30, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: May 5, 1994.

**Bernard Kulik,**

*Assistant Administrator for Disaster Assistance.*

[FR Doc. 94–11535 Filed 5–11–94; 8:45 am]

BILLING CODE 8025–01–M

### Honolulu District Advisory Council; Public Meeting

The U.S. Small Business Administration Honolulu District Advisory Council will hold a public meeting at 9:30 a.m. on Thursday, May 26, 1994, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii 96850 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Andrew K. Poepoe, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, room 2314, (808) 541–2965.

Dated: April 26, 1994.

**Dorothy A. Overal,**

*Acting Assistant Administrator, Office of Advisory Councils.*

[FR Doc. 94–11536 Filed 5–11–94; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Application of Southeast Express Airlines, Inc., for Issuance of New Certificate Authority

**AGENCY:** Department of Transportation

**ACTION:** Notice of order to show cause (Order 94–5–9) docket 48877.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Southeast Express Airlines, Inc., fit, willing, and able, and (2) awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

**DATES:** Persons wishing to file objections should do so no later than May 23, 1994.

**ADDRESSES:** Objections and answers to objections should be filed in Docket 48877 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janet A. Davis, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–9721.

Dated: May 6, 1994.

**Patrick V. Murphy,**

*Acting Assistant Secretary for Policy and International Affairs.*

[FR Doc. 94–11539 Filed 5–11–94; 8:45 am]

BILLING CODE 4910–62–P

## Federal Highway Administration

### Environmental Impact Statement: Utah County, Utah

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Revised notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will not be prepared for the proposed highway project in Utah County. Utah.

**FOR FURTHER INFORMATION CONTACT:** Bill Gedris, U.S. Department of Transportation, Federal Highway Administration, 2520 West 4700 South, Salt Lake City, Utah 84118, Telephone (801) 963–0183; or David W. Berg, Utah Department of Transportation, 4501 S. 2700 W., Salt Lake City, Utah 84119, Telephone (801) 965–4327; or Alan Mecham, Utah Department of Transportation, District Six Office, 825 N. 900 W., Orem, Utah 84057, Telephone (801) 227–8001.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Utah Department of Transportation, have determined that an EIS will not be prepared for the proposed project located in Provo, Utah which includes: (a) The widening of I–15 from the State Highway 75 interchange to north of the Center Street interchange (approximately 4.5 miles), (b) reconstruction of the I–15/University Avenue interchange, (c) the addition of a new connector road which will connect 1860 South to U.S. Highway 89 (approximately 0.9 miles), (d) any needed modifications to 1860 South, from University Avenue to U.S. Highway 89, and University Avenue, from I–15 to East Bay Boulevard, to accommodate present and future traffic needs.

Improvements being considered will have no significant impact on the environment. An environmental assessment is being prepared to evaluate the project impacts.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction is used. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

**Donald P. Steinke,**

*Division Administrator, FHWA, Salt Lake City, Utah.*

[FR Doc. 94–11527 Filed 5–11–94; 8:45 am]

BILLING CODE 4910–22–M

# Sunshine Act Meetings

Federal Register
Vol. 59, No. 91
Thursday, May 12, 1994

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).

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 59 FR 22216, April 29, 1994.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 2:00 p.m. (Eastern Time) Tuesday, May 10, 1994.

**CHANGE IN THE MEETING:**

**Open Session**

The Open Session of the meeting has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: May 10, 1994.

**Frances M. Hart,**

*Executive Officer, Executive Secretariat.*

[FR Doc. 94–11705 Filed 5–10–94; 2:29 pm]

**BILLING CODE 6750–06–M**

**FEDERAL ELECTION COMMISSION**

**FEDERAL REGISTER NUMBER:** 94–10991.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Wednesday, May 11, 1994, 10:00 a.m., Meeting Open to the Public.

**THE FOLLOWING ITEMS WERE ADDED TO THE AGENDA:**

Advisory Opinion 1994–6: Frances Morgan on behalf of Political Action Coors Employees ("PACE") (continued from meeting of May 5, 1994)
Advisory Opinion 1994–7: Woodrow W. Ban on behalf of GEON PAC (continued from meeting of May 5, 1994)
Advisory Opinion 1994–8: Liz Herring on behalf of Friends of Mike Parker for Congress Committee (continued from meeting of May 5, 1994)
Convention Regulations (continued from meeting of May 5, 1994)

**DATE AND TIME:** Tuesday, May 17, 1994 at 10:00 a.m.

**PLACE:** 999 E Street, N.W. Washington, D.C. (Ninth Floor.)

**STATUS:** This meeting Will Be Closed to the Public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

**DATE AND TIME:** Thursday, May 19, 1994 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C.

**STATUS:** This Meeting Will Be Open to the Public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes
Conversion of Campaign Funds to Personal Use; Draft Final Rules
Advisory Opinion 1994–9: Grant S. Cowan for Armo
Advisory Opinion 1994–10: Robert F. Bauer on behalf of Franklin National Bank
Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:** Ron Harris, Press Officer, Telephone: (202) 219–4155.

**Delores Hardy,**

*Administrative Assistant.*

[FR Doc. 94–11734 Filed 5–10–94; 2:42 pm]

**BILLING CODE 6715–01–M**

**SECURITIES AND EXCHANGE COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** [59 FR 23928, May 9, 1994].

**STATUS:** Closed meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** May 9, 1994.

**CHANGE IN THE MEETING:** Change of Time—Additional Item.

The time of the closed meeting scheduled for Monday, May 9, 1994, at 10 a.m. was changed from 10 a.m. to 11 a.m. The following additional item was considered at a closed meeting held on Monday, May 9, 1994, at 11 a.m.

Regulatory matter bearing enforcement implications.

Commissioner Beese, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Walsh at (202) 942–0100.

Dated: May 9, 1994.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 94–11691 Filed 5–10–94; 2:28 pm]

**BILLING CODE 8010–01–M**

federal register

Thursday
May 12, 1994

Part II

# Department of Health and Human Services

## Administration for Children and Families

Runaway and Homeless Youth Program; FY 1994 Final Program Priorities, Availability of Financial Assistance for FY 1994, and Request for Applications; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[Program Announcement No. ACF/ACYF/RHYP 94–1]**

### Runaway and Homeless Youth Program (RHYP): Fiscal Year (FY) 1994 Final Program Priorities, Availability of Financial Assistance for Fiscal Year 1994, and Request for Applications

**AGENCY:** Family and Youth Services Bureau (FYSB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Notice of Fiscal Year 1994 Final Runaway and Homeless Youth (RHY) Program Priorities, announcement of availability of financial assistance, and request for applications for the following programs and activities: Basic Center Program for Runaway and Homeless Youth (BCP), Drug Abuse Education and Prevention Program for Runaway and Homeless Youth (DAPP), Transitional Living Program for Homeless Youth (TLP), and Training and Technical Assistance (T&TA) Grants.

**SUMMARY:** The Family and Youth Services Bureau of the Administration on Children, Youth and Families is publishing final program priorities and announcing the availability of funds for the following:

1. Basic Center Program for Runaway and Homeless Youth (BCP): The purpose of the BCP is to provide financial assistance to establish or strengthen locally-controlled centers that address the immediate needs (e.g., outreach, temporary shelter, food, clothing, counseling, and aftercare services) of runaway and homeless youth and their families.

2. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth (DAPP): The purpose of the DAPP is to improve and expand drug abuse prevention, education and information services to runaway and homeless youth and their families.

3. Transitional Living Program for Homeless Youth (TLP): The purpose of the TLP is to support projects in local communities that provide long term shelter, skill training and support services to homeless youth; to assist homeless youth in making smooth transitions to self-sufficiency; and to prevent long-term dependency on social services.

4. Training and Technical Assistance (T&TA) Grants: The purpose of this T&TA is to improve the programmatic and administrative capacities of public and private agencies serving runaway and homeless youth.

This single announcement for all runaway and homeless youth programs has been developed in order to save both the field and the Federal government significant resources. Also, the single announcement provides the field with the application due dates for all the programs, providing interested agencies the means to forecast the workload and resources needed to apply for these grants.

This announcement contains all the necessary information and application materials to apply for funds under these grant programs. The estimated funds available by fiscal year and the approximate number of new grants to be awarded under this program announcement are as follows:

| Program | Fiscal year | Funds available | New grants |
|---|---|---|---|
| BCP ..... | FY 1994 | $14,000,000 | 145 |
| DAPP ... | FY 1994 | 2,000,000 | 20 |
| T&TA .... | FY 1994 | 1,500,000 | 10 |
| TLP ..... | FY 1995 | 5,000,000 | 25 |

New BCP, DAPP, and T&TA grants will be awarded out of FY 1994 funds. New TLP grants will be awarded out of FY 1995 funds, subject to the appropriation of funds by the Congress.

In addition to new grants, the Family and Youth Services Bureau of the Administration on Children, Youth and Families anticipates providing FY 1994 continuation funds to current grantees, including Demonstration Projects (DEMOS), as follows:

| Program | Funds available | Number of continuation grants |
|---|---|---|
| BCP ..... | $23,231,452 | 205 |
| DAPP ..... | 9,780,702 | 105 |
| TLP ..... | 5,095,648 | 41 |
| DEMOS ..... | 1,288,000 | 8 |

Grantees eligible for these continuation grants will receive a letter to that effect from the appropriate Regional grants management office and should not submit their continuation applications in response to this announcement. Only applications for new grants are solicited through this announcement.

**DATES:** The deadlines or closing dates for receipt of applications for new grants under this announcement are as follows:

| Programs | Closing dates |
|---|---|
| BCP ..... | June 15, 1994 |
| TLP ..... | June 28, 1994. |
| DAPP ..... | July 12, 1994. |
| T&TA ..... | July 12, 1994. |

**ADDRESSES:** Application receipt point: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Aerospace Building, 6th Floor, Washington, DC 20447. Attn: Maiso Bryant, ACF–94–ACYF/RHYP.

Envelopes containing applications must clearly indicate the specific program that the application is addressing: Basic Center Program (BCP), Drug Abuse Prevention Program (DAPP), Transitional Living Program (TLP), or Training and Technical Assistance Grants (T&TA).

**FOR FURTHER INFORMATION CONTACT:** Administration on Children, Youth and Families, Family and Youth Services Bureau, PO Box 1182, Washington, DC 20013; Telephone: 1–800–351–2293.

**SUPPLEMENTARY INFORMATION:** This program announcement consists of six parts. Part I provides general information for potential applicants who wish to apply to operate programs serving runaway and homeless youth. Part II contains the evaluation criteria against which all applications will be competitively reviewed, evaluated and rated. Part III contains specific information necessary to apply for funds under each of the three service programs and the Training and Technical Assistance grants. Part IV describes the application process. Part V provides instructions on the assembly and submission of applications. Part VI contains appendices to be consulted in preparation of applications. All forms needed to prepare applications for any of the programs are found in Part VI, Appendix I, of this announcement.

The following outline is provided to assist in the review of this **Federal Register** announcement:

Part I: General Information
- A. Background on Runaway and Homeless Youth
- B. Legislative Authority
- C. Program Purpose, Goals, and Objectives of the Federal Runaway and Homeless Youth Grant Programs
  1. Basic Center Program for Runaway and Homeless Youth
  2. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth
  3. Transitional Living Program for Homeless Youth
  4. Training and Technical Assistance Grants
- D. Definitions

E. Final Priorities
1. Public Comments in Response to the Proposed Priorities
2. Final Program Priorities for Fiscal Year 1994
a. Direct Service Grants for Runaway and Homeless Youth
(1) Basic Center Program Grants
(2) Transitional Living Program Grants
b. National Communications System
c. Program Support
(1) Training and Technical Assistance Grants
(2) National Clearinghouse on Runaway and Homeless Youth
(3) Management Information System (MIS)
(4) Monitoring Support for FYSB Programs
d. Research and Demonstration Initiatives
e. Evaluation Studies
(1) Evaluation of the Transitional Living Program for Homeless Youth
(2) Development of Evaluation Manuals for Use in ACYF Programs
F. Eligible Applicants
G. Availability of Funds
1. Basic Center Program for Runaway and Homeless Youth
2. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth
3. Transitional Living Program for Homeless Youth
4. Training and Technical Assistance Grants
H. Duration of Projects
I. Maximum Federal Share and Grantee Share of the Project
Part II: Evaluation Criteria
Part III: Priority Areas
A. Basic Center Program for Runaway and Homeless Youth
B. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth
C. Transitional Living Program for Homeless Youth
D. Training and Technical Assistance Grants
Part IV: Application Process
A. Assistance to Prospective Grantees
B. Application Requirements
C. Paperwork Reduction Act of 1980
D. Notification Under Executive Order 12372
E. Availability of Forms and Other Materials
F. Application Consideration
Part V: Application Assembly and Submission
Part VI: Appendices
A. Basic Center Program Performance Standards
B. National Runaway Switchboard
C. National Clearinghouse on Runaway and Homeless Youth
D. Runaway and Homeless Youth Continuation Grantees
1. Basic Center Program for Runaway and Homeless Youth
2. Transitional Living Program for Homeless Youth
3. Drug Abuse Prevention Program for Runaway and Homeless Youth
E. Basic Center Program Allocations by State
F. Administration for Children and Families Regional Office Youth Contacts
G. Training and Technical Assistance Providers
H. State Single Points of Contact
I. Forms and Instructions

## Part I. General Information

### *A. Background on Runaway and Homeless Youth*

The Family and Youth Services Bureau (FYSB), within the Administration on Children, Youth and Families (ACYF), administers programs that support services to an adolescent population of approximately 1.3 million runaway and homeless youth. Many of these youth have left home to escape abusive situations, or because their parents could not provide them with the basic needs of food, shelter and a safe supportive environment. Many live on the streets.

While living on the streets or away from home without parental supervision, these youth are highly vulnerable. They may become victims of street violence, or may be exploited by dealers of illegal drugs. Usually lacking marketable skills, they may be drawn into shoplifting, prostitution, and dealing drugs in order to earn money for food, clothing, and other daily expenses. Without a fixed address or regular place to sleep, they often drop out of school, forfeiting their opportunities to learn and to become independent, self-sufficient, contributing members of society. As street people, they may try to survive with little or no contact with medical professionals, the result being that their health problems may go untreated and may worsen. Without the support of family, schools, and other community institutions, they may not acquire the personal values and work skills that will enable them to enter or advance in the world of work at other than the most minimal levels. Finally, as street people, they may create substantial law enforcement problems, endangering both themselves and the communities in which they are located. All these problems, real and potential, call for a nationwide, community-based program to address the needs of runaway and homeless youth.

### *B. Legislative Authority*

Grants for the Basic Center Program for Runaway and Homeless Youth are authorized by Part A of the Runaway and Homeless Youth Act (RHY Act), 42 U.S.C. 5701 *et seq.* The RHY Act was enacted as Title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93–415), and amended by the Juvenile Justice Amendments of 1977 (Pub. L. 95–115), the Juvenile Justice Amendments of 1980 (Pub. L.96–509), the Juvenile Justice Amendments of 1984 (Pub. L. 98–473), the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690), and the Juvenile Justice and Delinquency Prevention Act Amendments of 1992 (Pub. L. 102–586).

Grants for the Transitional Living Program for Homeless Youth are authorized under Part B of the Runaway and Homeless Youth Act. Part B was established in 1988 as part of Public Law 100–690.

Grants for the Drug Abuse Education and Prevention Program for Runaway and Homeless Youth are authorized under section 3511 of Public Law 100–690, the Anti-Drug Abuse Act of 1988 (Anti-Drug Abuse Act), which established the Drug Abuse Education and Prevention Program for Runaway and Homeless Youth, as amended by Public Law 102–132.

Grants for Training and Technical Assistance are authorized under section 342 of the Runaway and Homeless Youth Act, as amended, and section 3511 of the Anti-Drug Abuse Act of 1988, as amended.

### *C. Purpose, Goals and Objectives of the Federal Runaway and Homeless Youth Grant Programs*

1. Basic Center Programs for Runaway and Homeless Youth

The overall purpose of the BCP is to provide financial assistance to establish or strengthen community-based centers that address the immediate needs (e.g., outreach, temporary shelter, food, clothing, counseling, and aftercare services) of runaway and homeless youth and their families. Services supported by this program are to be outside the law enforcement, the child welfare, the mental health, and the juvenile justice systems. The program goals and objectives of Part A of the RHY Act are to:

a. Alleviate problems of runaway and homeless youth,

b. Reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services,

c. Strengthen family relationships and encourage stable living conditions for youth, and

d. Help youth decide upon constructive courses of action.

2. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth

The overall purpose of the DAPP is to help communities address the problem of drug abuse among runaway and homeless youth through the prevention, early intervention, and reduction of drug dependency. The specific goals

and objectives of the program, as set forth in section 3511 of the Act, are to:

a. Provide individual, family, and group counseling to runaway youth and their families and to homeless youth for the purpose of preventing or reducing the illicit use of drugs by such youth;

b. Develop and support peer counseling programs related to the illicit use of drugs by runaway and homeless youth;

c. Develop and support community education activities related to the illicit use of drugs by runaway and homeless youth, including outreach to individual youth;

d. Provide runaway and homeless youth in rural areas with assistance (including the development of community support groups) related to the illicit use of drugs;

e. Provide information and training regarding issues related to the illicit use of drugs by runaway and homeless youth to individuals providing services to these youth;

f. Support research on illicit drug use by runaway and homeless youth, the effects on such youth of drug abuse by family members, and any correlation between such use and attempts at suicide; and

g. Improve the availability and coordination of local services related to drug abuse for runaway and homeless youth.

3. Transitional Living Program for Homeless Youth

The overall purpose of the TLP is to support programs which assist older homeless youth in making a successful transition to self-sufficient living and to prevent long-term dependency on social services. The specific goals and objectives of the program, as set forth in Part B of the Act, are to:

a. Provide stable, safe living accommodations while a homeless youth is a program participant;

b. Provide the services necessary to assist homeless youth in developing both the skills and personal characteristics needed to enable them to live independently;

c. Provide education, information and counseling aimed at preventing, treating and reducing substance abuse among homeless youth;

d. Provide homeless youth with appropriate referrals and access to medical and mental health treatment; and

e. Provide the services and referrals necessary to assist youth in preparing for and obtaining employment.

The Administration on Children, Youth and Families will award grants for these programs to support direct services to runaway and homeless youth. Specifics regarding each of these grant programs are found in Part III, Sections A–C, of this announcement.

4. Training and Technical Assistance Grants

The overall purpose of the T&TA grants is to improve the programmatic and administrative capacities of public and private agencies to serve runaway and homeless youth. Specifics regarding these grants are found in Part III, Section D, of this announcement.

*D. Definitions*

1. The term homeless youth is defined differently for different programs.

Under Part A of the RHY Act, which authorizes the BCP, the term homeless youth means a person under 18 years of age who is in need of services and without a place of shelter where he or she receives supervision and care. This definition applies to all Basic Center projects and can be found in 45 CFR 1351.1(f).

Under Part B of the RHY Act, which authorizes the TLP, homeless youth means an individual who is not less than 16 years of age and not more than 21 years of age; for whom it is not possible to live in a safe environment with a relative; and who has no other safe alternative living arrangement. This definition applies to all TLP projects and can be found in section 321(b)(1) of the RHY Act.

2. The term public agency means any State, unit of local government, combination of such States or units, or any agency, department, or instrumentality of any of the foregoing. This definition applies to all runaway and homeless youth programs and can be found in section 3601(8) of the Anti-Drug Abuse Act, incorporating by reference section 103(11) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

3. The term runaway youth means a person under 18 years of age who absents himself or herself from home or place of legal residence without the permission of parents or legal guardian. This definition applies to all Basic Center programs and can be found in 45 CFR 1351.1(k).

4. The term shelter includes host homes, group homes and supervised apartments. This definition applies to all TLP programs and is referenced in section 322(1) of the RHY Act. As currently understood in the field:

Host homes are facilities providing shelter, usually in the home of a family, under contract to accept runaway and/or homeless youth assigned by the TLP service provider, and are licensed according to State or local laws.

Group home are single-site residential facilities designed to house TLP clients who may be new to the program and/or require a higher level of supervision. These dwellings operate in accordance with State or local housing codes and licensure.

Supervised apartments are single-unit dwellings or multiple-unit apartment houses operated under the auspices of the TLP service provider for the purpose of housing program participants.

5. The term State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands (Palau). This definition applies to all runaway and homeless youth programs and can be found in section 3601(10) of the Anti-Drug Abuse Act, incorporating by reference section 103(7) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

6. The term temporary shelter means the provision of short-term (maximum of 15 days) room and board and core crisis intervention services on a 24 hour basis. This definition applies to all Basic Center Program grantees and can be found in 45 CFR 1351.1(o).

7. The term transitional living youth project means a project that provides shelter and services designed to promote transition to self-sufficient living and to prevent long-term dependency on social services. This definition applies to all TLP program grantees and is found in section 321(b)(2) of the RHY Act.

*E. Final Priorities*

Section 364 of the Runaway and Homeless Youth Act (RHY Act) requires the Department to publish annually for public comment a proposed plan specifying priorities the Department will follow in awarding grants and contracts under the RHY Act. The proposed plan for FY 1994 was published in the **Federal Register** on January 28, 1994 and requested comments and recommendations from the field.

1. Public Comments in Response to the Proposed Priorities

The Family and Youth Services Bureau (FYSB) received 13 written responses from a number of sources, including Runaway and Homeless Youth Program grantees in seven different States. The responses were generally supportive and the following summarizes the major issues raised:

a. A number of respondents suggested that applicants with demonstrated experience in providing quality direct services to runaway and homeless youth be awarded extra points in the evaluation and ranking of their grant applications. The Administration for Children, Youth and Families agrees with this suggestion. Accordingly, applicants documenting such experience may receive up to five (5) extra points beginning with the current (FY 1994) reviews.

b. A number of respondents supported the proposal to increase the project periods of the new Training and Technical Assistance (T&TA) awards from three to five years. The five-year project period will be adopted.

c. A number of respondents suggested that the proposed focus of T&TA activities on findings resulting from the monitoring of runaway and homeless youth grantees might be too narrow. They suggested that T&TA activities should also address the perceived needs of local grantees, such as services to special populations and adherence to local and State licensing requirements. The Administration on Children, Youth and Families recognizes that T&TA providers may take into account such justified training needs, so long as a major emphasis is placed on assisting grantees in program improvement efforts, especially those efforts related to the findings from program monitoring activities.

d. A number of respondents expressed concern that budget limitations on travel for Federal staff might lead to peer reviewers making site visits unaccompanied by Federal staff, and that negative evaluations by the peers might undercut Federal support for the affected grantees. The Administration on Children, Youth and Families recognizes that peer reviewers can assess program operations from a professional point of view, identifying areas of strength and areas for improvement, but that only Federal staff can be responsible for identifying and evaluating compliance issues that may affect funding.

e. Several respondents expressed concern about the potential for consolidation of the three current, categorical programs for runaway and homeless youth (BCP, DAPP, and TLP) into a single program. Specific concerns included the negative effects of limited funding, the possible neglect of RHY services in rural areas, and the difficulties of a single grantee being required to address the entire range of youth problems. The Administration on Children, Youth and Families is aware of these and a number of other concerns and issues regarding consolidation, and any effort to consolidate these programs would include consultation with the field regarding implementation.

f. A number of respondents requested that they be sent information about applying for runaway and homeless youth grants. All respondents will be entered into the mailing list to receive announcements of grant solicitations.

To the extent feasible, ACYF addressed these and all other public comments in preparing the final priorities. The final program priorities below reflect the changes made in the proposed priorities in light of the comments received.

2. Final Program Priorities for Fiscal Year 1994

a. Direct Service Grants for Runaway and Homeless Youth.

(1) Basic Center Program Grants.

Part A, section 311 of the Runaway and Homeless Youth Act, as amended, authorizes grants to public and private entities, (State, Territorial, county, and local governments; agencies and subagencies of these governments; private for-profit and private non-profit organizations; American Indian Tribes) and to combinations of such entities, to establish and operate Basic Centers for Runaway and Homeless Youth.

Approximately 350 new and continuation Basic Center Program grants will be funded in FY 1994 to support organizations which provide emergency services to runaway and homeless youth that include temporary shelter, food, clothing, counseling, aftercare, and related services which are provided outside the law enforcement, child welfare, mental health and juvenile justice systems.

Part III, section A of this publication announces the availability of funds for these grants, and includes the minimum requirements that applicants must address in their applications for Basic Center Program funds.

In FY 1994, approximately two-thirds of the current Basic Center grantees (those whose grant periods expire in FY 1995 or FY 1996) will be awarded noncompetitive continuation funds. The remaining grantees (those whose grant periods expire in FY 1994) will have the opportunity to compete for new grant awards by submitting new competitive applications. All other eligible youth-serving agencies not holding current awards may also apply for these new competitive funds.

(2) Transitional Living Program Grants.

Part B, section 321 of the Runaway and Homeless Youth Act, as amended, authorizes grants to establish and operate transitional living projects for homeless youth. This program is structured to help older, homeless youth achieve self-sufficiency and avoid long-term dependency on social services. Transitional living projects provide shelter, skills training, and support services to homeless youth ages 16 through 21 for a continuous period not exceeding 18 months.

A competition for new-start TLP awards was held in the summer of 1993 (in the last quarter of FY 1993) and successful applicants were awarded a total of $5,966,650 in FY 1994 funds, beginning on October 1, 1993 (the first quarter of FY 1994). The remaining FY 1994 program funds will be awarded in the form of continuations to ongoing grants.

This announcement solicits applications for new Transitional Living Program grant awards to be supported with FY 1995 funds, subject to the appropriation of these funds by Congress. Project periods for these new awards will begin when FY 1995 funds are appropriated and made available to ACYF, but in no case will they begin prior to October 1, 1994. By soliciting applications and making funding decisions during 1994, we will enable current grantees not eligible for FY 1994 continuation funds to compete for new grants to be funded early in FY 1995 and to continue their existing projects with a minimal disruption of services, if successful in the competition.

Part III, section C of this publication announces the anticipated availability of funds for these FY 1995 grants, and includes the minimum requirements that applicants must address in their grant proposals.

b. National Communications System.

Part C, section 331 of the Runaway and Homeless Youth Act, as amended, mandates support for a national communications system to assist runaway and homeless youth in communicating with their families and with service providers.

In FY 1991, a three-year grant was awarded to the National Runaway Switchboard, Inc., in Chicago, Illinois, to operate the system. This grant expired in FY 1994.

An announcement soliciting grant applications to operate the system for five years was published in the Federal Register on December 27, 1993.

c. *Program Support.*

(1) Training and Technical Assistance Grants.

Part D, section 342 of the RHY Act authorizes the Department to make grants to statewide and regional nonprofit organizations to provide training and technical assistance

(T&TA) to organizations that are eligible to receive service grants under the Act. Organizations eligible to receive this T&TA include the Basic Centers authorized under Part A of the Act and the Transitional Living grantees authorized under Part B. In addition, section 3511 of the Anti-Drug Abuse Act of 1988, which authorized the Drug Abuse Education and Prevention Program for Runaway and Homeless Youth (DAPP), authorizes support for T&TA to runaway and homeless youth service providers. The purpose of this T&TA is to strengthen the programs and to enhance the knowledge and skills of youth service workers.

In FY 1991, the Family and Youth Services Bureau awarded ten Cooperative Agreements, one in each of the ten Federal Regions, to provide T&TA to agencies funded under the three Federal programs for runaway and homeless youth (the Basic Center Program, the Transitional Living Program, and the Drug Abuse Prevention Program). Each Cooperative Agreement was unique, being based on the characteristics and different T&TA needs in the respective Regions. Each of the Cooperative Agreements has a three-year project period that will expire in FY 1994.

This announcement solicits applications for new five-year Cooperative Agreements to be supported with FY 1994 funds. Specific application information and evaluation criteria are addressed in Part III, Section D.

(2) National Clearinghouse on Runaway and Homeless Youth.

In June 1992, a five-year contract was awarded to establish and operate the National Clearinghouse on Runaway and Homeless Youth to serve as a central information point for professionals and agencies involved in the development and implementation of services to runaway and homeless youth.

The Clearinghouse is in full operation and is currently collecting materials and responding to requests for information. Non-competitive continuation funding will be awarded to sustain the Clearinghouse in FY 1994.

(3) Management Information System (MIS).

In FY 1992, a three-year contract was awarded to implement the Runaway and Homeless Youth Management Information System (MIS) across three FYSB programs: The Runaway and Homeless Youth Basic Center Program, the Transitional Living Program, and the Drug Abuse Prevention Program. The MIS, now a mandatory data collection system, is designed to be used as a management tool for individual programs. In addition, FYSB uses the data generated by the system to produce reports, to conduct analyses regarding the programs, and to provide information for required reports to Congress on efforts to serve runaway and homeless youth.

Non-competitive continuation funding will be awarded to sustain the MIS in FY 1994.

(4) Monitoring Support for FYSB Programs.

In FY 1993, FYSB developed a comprehensive monitoring instrument and set of site visit protocols, including a peer-monitoring component, for the Runaway and Homeless Youth Basic Center Program, the Transitional Living Program, and the Drug Abuse Prevention Program. Additionally in FY 1993, a contract to provide logistical support for the peer monitoring system was awarded.

The new peer monitoring system will improve Federal oversight of the RHY programs and will identify program innovations along with program strengths and weaknesses. The findings will be used to direct the provision of technical assistance and to inform policy development.

Continuation funding for the logistical contractor will be provided in FY 1994.

d. Research and Demonstration Initiatives.

Section 343 of the Act authorizes the Department to make grants to States, localities, and private entities to carry out research, demonstration, and service projects designed to increase knowledge concerning and to improve services for runaway and homeless youth. These activities are important in order to identify emerging issues and to develop and test models which address such issues.

In FY 1993, first-year funding was awarded to eight grantees to develop models of services to youth in rural areas. These grants are expected to produce written descriptions of the proposed service models, to identify issues related to model implementation, and to generate information on youth and program outcomes. The models will also incorporate formal collaboration with other major youth-serving agencies in the rural areas.

Continuation funding of these eight grants will be provided in FY 1994.

e. Evaluation Study.

Continuation funding will be awarded to an ongoing evaluation study entitled "Development of Manuals for ACYF to Use in Evaluating Demonstration Projects" (FY 1993–present). This project is developing general and specific manuals to assist ACYF grantees in the design and implementation of their internal program evaluations. One of the specific manuals will be designed for FYSB grantees.

*F. Eligible Applicants*

The legislation authorizing the runaway and homeless youth programs addressed in this **Federal Register** announcement identifies "eligible applicants" differently. Accordingly, the definition appropriate to each individual program is found in Part III of this announcement as a part of each priority area description.

Organizations that have current Basic Center and/or Drug Abuse Prevention Program grants with project periods ending in FY 1994 and all remaining eligible applicants may apply for new grants for either or both of these two programs. Basic Center and DAPP grantees with one or two years remaining on their current awards and the expectation of continuation funding in FY 1994 may not apply for new grants under that particular grant program.

Organizations that have current Transitional Living Program grants with project periods ending in FY 1994 and all remaining eligible applicants may apply for new Transitional Living Program grants. Transitional Living Program grantees with one or two years remaining on their current awards and the expectation of continuation funding in FY 1994 may not apply for new grants under that particular grant program.

Statewide and Regional nonprofit organizations, and/or combinations of such organizations, with demonstrated experience in providing services to runaway and homeless youth service providers are eligible to apply for T&TA grants.

Applicants may refer to Part VI, Appendix D for a listing of current grantees that are ineligible to apply for one or more of these grant programs.

Non-profit applicants which have not previously received financial support from the Administration on Children, Youth and Families must submit proof of their non-profit status with their grant application. This can be done either by making reference to the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or by submitting a copy of its letter from the IRS (IRS Code, sections 501(c)(3) and 501(c)(6)). Non-profit applicants cannot be funded without acceptable proof of this status. Failure to provide proof of nonprofit status will result in rejection of the application. Such applications will

receive no further consideration from ACF. For-profit entities may participate as grantees under Priority Area A, Runaway and Homeless Youth Basic Center Programs, but may participate only as sub-grantees for any other priority areas in this announcement.

*G. Availability of Funds*

The Administration on Children, Youth and Families expects to award approximately 600 new and continuation grants to serve runaway and homeless youth in FY 1994. Dollar amounts to be awarded by fiscal year and program are as follows:

1. Basic Center Program for Runaway and Homeless Youth

The Administration on Children, Youth and Families expects to award $32,499,000 in Basic Center Program grants in FY 1994. Of this total, $18,377,159 will be awarded in the form of non-competitive continuations to current grantees, and the remaining $14,121,841 will be available for competitive, new-start awards. In accordance with the RHY Act, the funds will be divided among the States in proportion to their respective populations under the age of 18. We recognize that the RHY Act also conditionally requires that the amounts allotted to each State (including the District of Columbia and Puerto Rico) be at least $100,000, and the amounts allotted to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (Palau), and the Commonwealth of the Northern Mariana Islands be at least $45,000 each. However, to apply these minimum allocations in FY 1994 would result in 23 of the remaining States receiving less than they received in FY 1992. Under these conditions, section 311(b)(3) of the Act becomes operable, which directs that the ongoing State minimum of $75,000 and the ongoing Territorial minimum of $30,000 continue as the basic award levels in FY 1994. The amount of funds available for both continuations and new starts in each of the States and Territories is listed in the Table of Allocations by State (Part VI, Appendix E) which reflects the FY 1994 allocations for each State. In this Table, the amounts shown in the column labeled New Starts are the amounts available for competition in the respective States.

Current Basic Center Program grantees having one or two years remaining in their project periods will receive instructions from their respective ACF Regional Offices on the procedures for applying for these continuation grants and should not respond to this announcement. These grantees are listed in Part VI, Appendix D.1, have project expiration dates in FY 1995 and 1996, and are not eligible to apply for new Basic Center grants.

Current Basic Center Program grantees with project periods ending by September 30, 1994, and all other eligible applicants not currently receiving Basic Center funds may apply for the new competitive grants under this announcement.

The number of new awards made within each State will depend upon the funds available (i.e., the State's total allotment less the amount required for non-competing continuations), as well as on the number of acceptable applications. Therefore, where the amount required for non-competing continuations in any State equals the State's total allotment, no new awards will be made.

All applicants under this announcement will compete with other applicants in the State in which their services would be provided. In the event that an insufficient number of acceptable applications is approved for funding from any State or jurisdiction, the Commissioner, ACYF, will reallocate the unused funds.

2. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth

In FY 1994, the Administration on Children, Youth and Families expects to award $2,000,000 in new competitive Drug Abuse Prevention Program grants and $9,780,702 in non-competing continuation DAPP awards.

3. Transitional Living Program for Homeless Youth

The Administration on Children, Youth and Families awarded $6,117,067 for 33 new Transitional Living Program grants in the first quarter of FY 1994 (October-December 1993). An additional $5,095,648 will be awarded in FY 1994 for TLP continuation grants.

No additional new TLP awards will be made in FY 1994. However, applications for new awards will be solicited in FY 1994 for funds to be provided in FY 1995 (beginning on October 1, 1994), subject to appropriation of funds by the Congress. It is anticipated that approximately $5,000,000 will be available for these new grants.

4. Training and Technical Assistance Grants

In FY 1994, the Administration on Children, Youth and Families estimates the award of $1,500,000 in new cooperative agreements for the provision of training and technical assistance to RHY grantees.

*H. Duration of Projects*

This announcement solicits applications for projects of up to three years duration (36-month project periods), with the exception of the T&TA cooperative agreements which will be awarded for five-year project periods. Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantees, and determination that continued funding would be in the best interest of the government.

*I. Maximum Federal Share and Grantee Share of the Project*

The maximum amount of Federal funds for which an applicant can apply is specified in each program description found in Part III of this announcement.

The legislation authorizing runaway and homeless youth programs requires that grantees provide a non-Federal match for Federal funds. In some cases, this non-Federal share is a percent of the total cost of the project and, in some cases, it is a percent of the Federal share. Specific non-Federal share requirements for each Priority Area are found in Part III of this announcement.

The non-Federal share may be met by cash or in-kind contributions. Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants. Applicants which do not provide the required percentage of non-Federal share will not be funded. For-profit applicants for Basic Center Program grants are reminded that no grant funds may be paid as profit to any recipient of a grant or sub-grant (45 CFR 74.705).

**Part II. Evaluation Criteria**

The five criteria that follow will be used to review and evaluate each application under each of the three RHY programs and the training and technical assistance grants, and should be used in developing the program narrative. The point values following each criterion heading indicate the numerical weight each criterion will be accorded in the review process. Note that the highest possible value an application can receive is 105 points. See Criterion 4 for specific information.

*Criterion 1. bjectives and Need for Assistance (15 Points)*

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the goals or service objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Give a precise location of the project site(s) and area(s) to be served by the proposed project. Maps or other graphic aids may be attached. (The applicant should refer to Part I, Section C, of this announcement for a description of each program's purpose.)

*Criterion 2. Results or Benefits Expected (20 Points)*

Identify the results and benefits to be derived from the project. State the numbers of runaway and homeless youth and their families to be served, and describe the types and quantities of services to be provided. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project.

*Criterion 3. Approach (35 Points)*

Outline a plan of action pertaining to the scope of the project and detail how the proposed work will be accomplished. Describe any unusual features of the project, such as extraordinary social and community involvements, and how the project will be maintained after termination of Federal support. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

*Criterion 4. Staff Background and Organizational Experience (20–25 Points)*

List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Summarize the background and experience of the project director and key project staff and the history of the organization. Demonstrate the ability to effectively manage the project and to coordinate activities with other agencies. Legislation authorizing each of the Federal Runaway and Homeless Youth Programs requires that priority for funding be given to agencies with experience in providing direct services to runaway and homeless youth. In line with this requirement, applicants having three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in section 312 of the Act are eligible to receive an additional five (5) points in this criterion. Applicants are encouraged to discuss staff and organizational experience in working with this population and may include information regarding their past performance under RHYP grants. (Applicants may refer to the staff resumes and to the Organizational Capability Statement included in the submission.)

*Criterion 5. Budget Appropriateness (10 Points)*

Demonstrate that the project's costs (overall costs, average cost per youth served, costs for different services) are reasonable in view of the anticipated results and benefits. (Applicants may refer (1) to the budget information presented in Standard Forms 424 and 424A and in the associated budget justification, and (2) to the results or benefits expected as identified under Criterion 2.)

The Program Narrative information provided by the applicant in response to the priority area description identified in Part III of this announcement should be organized and presented according to these five evaluation criteria.

**Part III. Priority Areas**

*A. Runaway and Homeless Youth Basic Center Program*

*Eligible applicants:* Any State, unit of local government, combination of units of local government, public or private agency, organization, institution, or other non-profit entity is eligible to apply for these funds. Federally recognized Indian Tribes are eligible to apply for Basic Center grants. Non-Federally recognized Indian Tribes and urban Indian organizations are also eligible to apply for grants as private, non-profit agencies.

Grantees (including subgrantees) with current Basic Center grants who are eligible to apply for continuation funding in FY 1994 may not apply for a new Basic Center grant under this announcement. Applicants may refer to Part VI, Appendix D.1 for a listing of current grantees which are ineligible for grants under this priority area.

As required by runaway and homeless youth legislation, priority for funding will be given to agencies with demonstrated experience establishing and operating centers that provide direct services to runaway and homeless youth in a manner that is outside the law enforcement system, the child welfare system, the mental health system and the juvenile justice system Demonstrated experience providing direct services means three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in section 312 of the Act. Applications claiming credit for this preference must include a statement of no more than one page documenting the relevant experience.

*Program purpose, goals, and objectives:* The Administration on Children Youth and Families will award approximately 150 new service grants to establish or strengthen existing or proposed runaway and homeless youth Basic Centers. These programs must be locally controlled efforts that provide temporary shelter, counseling and other services to juveniles who have left home without permission of their parents or guardians or to other homeless juveniles.

Applications are solicited under this priority area to carry out direct service projects designed to carry out the program purpose, goals and objectives set forth in the legislation and as specified in Part I, section C.1 of this announcement. These goals and objectives are:

1. To alleviate the problems of runaway and homeless youth,
2. To reunite youth with their families and to encourage the resolution of intrafamily problems through counseling and other services,
3. To strengthen family relationships and to encourage stable relationships for youth, and
4. To help youth decide upon constructive courses of action.

*Background:* The Runaway Youth and Homeless Youth Act was enacted in response to widespread concern regarding the alarming number of youth who were leaving home without parental permission, crossing State lines, and who, while away from home, were exposed to exploitation and other dangers of street life.

Each Basic Center funded under the authorizing legislation is required to provide outreach to runaway and homeless youth; temporary shelter for up to fifteen days; food; clothing; individual, group, and family counseling; and related services. Many Basic Centers provide their services in residential settings with a capacity for no more than 20 youth. Some centers also provide some or all of their shelter services through host homes (usually private homes under contract to the centers), with counseling and referrals being provided from a central location.

Currently, approximately 60,000 youth annually receive shelter for an

average of 12 nights and other ongoing services through ACYF-funded Basic Centers. The primary presenting problems of these youth include conflict with parents or other adults, including physical and sexual abuse (63 percent); other family crises such as divorce, death, or sudden loss of income (9 percent); and personal problems such as drug use, or problems with peers, school attendance and truancy, bad grades, inability to get along with teachers, and learning disabilities (28 percent).

Low self-esteem is a major problem among this population. Half (49 percent) have a poor self image; somewhat less than half (43 percent) are depressed; and 12 percent are possibly suicidal.

After receiving ongoing services from shelter programs, 50 percent of the youth return to their families. One-third (33 percent) are provided alternative, but safe, long-term living arrangements. Five percent return to the streets, and 12 percent leave the centers with no known destination.

*Minimum requirements for project design:* As part of addressing the evaluation criteria outlined in Part II of this announcement, each applicant must address the following items in the program narrative section of the proposal.

**Objectives and Need for Assistance**

1. Applicant must specify the goals and objectives of the project and how implementation will fulfill the purposes of the legislation identified in Part I, section C.1. of this announcement.

2. Applicant must describe the conditions of youth and families in the area to be served, with an emphasis on the incidence and characteristics of runaway and homeless youth and their families. The discussion must consider matters of family functioning, along with the health, education, employment, and social conditions of the youth, including at-risk conditions or behaviors such as drug use, school failure, and delinquency.

3. Applicant must discuss the existing support systems for at-risk youth and families in the area, with specific references to law enforcement, health and mental health care, social services, school systems, and child welfare. In addition, other agencies providing shelter and services to runaway and homeless youth in the area must be identified.

4. Within the context of the existing support systems, applicant must demonstrate the need for the center and indicate the objectives that the program would work toward fulfilling.

5. Applicant must describe the area to be served by the proposed center, and must demonstrate that the center is or will be located in an area which is frequented by and/or easily accessible by runaway and homeless youth.

**Results and Benefits Expected**

1. Applicant must specify the numbers of runaway and homeless youth and their families to be served, the number of beds available for runaway and homeless youth and the types and quantities of services to be provided.

2. Applicant must describe the anticipated changes in attitudes, values and behavior, and improvements in individual and family functioning that will occur as a consequence of the services provided by the center.

3. Applicant must discuss the expected impact of the project on the availability of services to runaway and homeless youth in the local community and indicate how the project will enhance the organization's capacity to provide services that address the needs of runaway and homeless youth in the community.

**Approach**

1. Applicant must describe how runaway and homeless youth and their families will be reached, and how services will be provided in compliance with the Program Performance Standards listed in Part VI, Appendix A.

2. Applicant must describe the center's philosophy regarding the provision of services to runaway and homeless youth and the involvement of the youth's parents or legal guardians in these services.

3. Applicant must include detailed plans for implementing direct services based upon identified goals and objectives. Applicant must identify the strategies that will be employed and the activities that will be implemented, including innovative approaches to securing appropriate center services for the runaway and homeless youth to be served, for involving family members as an integral part of the services provided, for periodic review and assessment of individual cases, and for encouraging awareness of and sensitivity to the diverse needs of runaway and homeless youth who represent particular ethnic and racial backgrounds, sexual orientations, or are street youth.

4. Applicant must describe the center's plans for conducting an outreach program that, where applicable, will attract members of ethnic and racial minorities and/or persons with limited ability to speak English.

5. Applicant must describe the center's plans and procedures for intake and assessment of the youth upon arrival at the center.

6. Applicant must describe the center's plans for contacting the parents or other relatives of the youth they serve, for ensuring the safe return of the youth to their parents, relatives or legal guardians if it is in their best interests, for contacting local governments pursuant to formal or informal arrangements established with such officials, and for providing alternative living arrangements when it is not safe or appropriate for the youth to return home.

7. Applicant must describe the type of shelter that will be available, the shelter capacity of the center and the system of staff supervision to be implemented in the shelter.

8. Applicant must describe the center's plans for ensuring proper coordination with law enforcement personnel, health and mental health care personnel, social service personnel, and welfare personnel.

9. Applicant must describe the center's plans for ensuring coordination with the schools to which runaway and homeless youth will return, and for assisting the youth to stay current with the curricula of these schools.

10. Applicant must describe the center's procedures for dealing with youth who have run from foster care placements.

11. Applicant must describe procedures for dealing with youth who have run from correctional institutions, and must show that procedures are in accordance with Federal, State and local laws.

12. Applicant must describe the center's plans and procedures for providing aftercare services and for ensuring, whenever possible, that aftercare services will also be provided to those youth who are returned beyond the State in which the center is located.

13. Applicant must agree to gather and submit program and client data required by FYSB's Management Information System (MIS). While the computer software and training for the implementation of the MIS will be provided by FYSB to grantees, applicant should include a request for funds in its budget for any computer equipment needed for implementation of the MIS.

14. Applicant must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families.

15. Applicant must describe how the activities implemented under this project will be continued by the agency once Federal funding for the project has ended. The applicant must describe specific plans for accomplishing

program phase-out for the last two quarters of the 36-month project period in the event the applicant does not receive a new award.

**Staff Background and Organizational Experience**

1. As priority for funding will be given to agencies and organizations that have documented experience in establishing and operating centers that provide direct services to runaway and homeless youth, applicant must include a brief description of the organization and its experience in providing services to this client population.

2. Applicant must include a description of current and proposed staff skills and knowledge regarding runaway and homeless youth and indicate how staff will be utilized in achieving the goals and objectives of the program. Information on proposed staff training and brief resumes or job descriptions may be included.

3. Applicant must describe procedures for maintaining confidentiality of records on the youth and families served. Procedures must insure that no information on the youth and families is disclosed without the consent of the individual youth, parent or legal guardian. Disclosures without consent can be made to another agency compiling statistical records if individual identities are not provided or to a government agency involved in the disposition of criminal charges against an individual runaway or homeless youth.

4. Applicant must describe how the project has established or will establish formal service linkages with other social service, law enforcement, educational, housing, vocational, welfare, legal service, drug treatment and health care agencies in order to ensure appropriate referrals for the project clients when needed.

5. Applicant must describe how community and other support will be secured to continue the project at the conclusion of the Federal grant period.

**Budget Appropriateness**

1. Applicant must discuss and justify the costs of the proposed project in terms of numbers of youth and families to be served, types and quantities of services to be provided, and the anticipated outcomes for the youth and families.

2. The applicant must describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement.

*Duration of project:* This announcement solicits applications for Basic Center projects of up to three years duration (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the government.

*Federal share of project costs:* Priority will be given to applicants which apply for less than $200,000 per year. The maximum Federal share for a 3-year project period is $600,000.

*Applicant share of project costs:* The Runaway and Homeless Youth Act requires a non-Federal matching requirement of ten percent of the total Federal funds awarded. For example, a project requesting $300,000 in Federal funds over a three-year project period (based on an award of $100,000 per twelve-month budget period) must include a match of at least $30,000 (10 % of the Federal share).

*B. Drug Abuse Education and Prevention Program for Runaway and Homeless Youth (DAPP)*

*Eligible applicants:* Any State, unit of local government (or combination of units of local government), public or non-profit private agency, organization, institution, or other non-profit entity is eligible to apply for these funds. Federally recognized Indian Tribes are eligible to apply for DAPP grants. Non-Federally recognized Indian Tribes and urban Indian organizations are also eligible to apply for grants as private, non-profit agencies.

Grantees (including subgrantees) with current DAPP grants with 12 or more months remaining in their project periods may not apply for new DAPP grants under this announcement. Applicants may refer to Part VI, Appendix D.3 for a listing of current grantees which are ineligible to apply for grants under this priority area. No more than one grant per legal entity (organization) will be awarded under this priority area. Organizations submitting more than one application for DAPP funds must understand that only one application will be considered for funding.

Legislation authorizing each of the Federal Runaway and Homeless Youth Programs requires that priority for funding be given to agencies with experience in providing direct services to runaway and homeless youth. In line with this requirement, applicants which have three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in section 312 of the Act are eligible to receive an additional five (5) points in this criterion. Applications claiming credit for this preference must include a statement of no more than one page documenting the relevant experience. Empirical or applied research experience is not considered direct service.

*Program purpose, goals and objectives:* The Administration on Children, Youth and Families will award approximately 20 new grants to support services within a community to maintain, improve and/or expand drug abuse prevention, early intervention, and reduction of drug dependency services to runaway and homeless youth and their families. Applications are solicited under this priority area to carry out direct service projects designed to address the issue of drug abuse among runaway and homeless youth in the applicant's community as required by the goals and objectives set forth in the legislation and specified in Part I, section C.2 of this announcement.

Activities that may be maintained, improved and/or expanded through a DAPP grant include but are not necessarily limited to:

1. Improving networking and service coordination to increase the availability of services to runaway and homeless youth;

2. Expanding outreach activities, particularly street-based outreach programs;

3. Providing individual, family, group, and/or peer prevention and intervention counseling related to alcohol and other drug use;

4. Strengthening intake and assessment procedures for substance abuse at runaway and homeless youth shelters;

5. Coordinating services with drug treatment facilities and making referrals to treatment that are geared to the runaway and homeless youth population;

6. Providing aftercare and follow-up services to runaway and homeless youth with substance abuse problems who have received shelter and/or non-residential services;

7. Increasing staff knowledge and skills related to working with runaway and homeless youth with substance abuse problems by improving or accessing training opportunities;

8. Improving programming to address the unique cultural needs and concerns

of minority runaway and homeless youth;

9. Involving and educating parents, siblings and peers of runaway and homeless youth receiving drug abuse prevention services;

10. Developing and implementing programs designed to reduce drug involvement among the target population by improving coping skills and reducing stress factors arising from such problems as homelessness, family dysfunction, and peer pressure; and

11. Establishing linkages with community mental health programs that will provide comprehensive substance abuse counseling and/or treatment to runaway and homeless youth.

Efforts that will not be funded under this priority area include research and demonstration projects on illicit drug use by runaway and homeless youth, and the direct provision of drug treatment services such as those services provided in a medical setting or by medical personnel.

This priority area is specifically targeted to runaway and homeless youth. Potential applicants interested in providing drug abuse prevention services to high-risk youth other than those who are runaways or homeless are encouraged to contact the Center for Substance Abuse Prevention (CSAP). For information on CSAP grant programs and other drug abuse prevention resources, applicants should contact the National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, Maryland 20847–2345; telephone: 1–800–729–6686.

*Background:* The abuse of drugs has had an increasingly severe impact on runaway and homeless youth. Reports from shelters which serve this client population indicate a growing drug abuse problem. In 1988, 15.4 percent of the youth entering shelters indicated a personal drug abuse problem. In addition, 16.6 percent of the youth entering shelters reported that their reason for running away was parental drug and/or alcohol abuse.

A 1990 survey, conducted by the National Network of Runaway and Youth Services, of 185 community-based agencies that serve runaway and homeless youth found substance abuse to be the leading health problem among the youth served. Several other studies reveal that the incidence of substance abuse among runaway and homeless youth in large urban areas is significantly greater than the rate of abuse among other adolescents. The prevalence of the problem is underscored by the fact that not only are youth-serving agencies in major urban areas reporting an increase in drug use among their client population, but that providers in small towns and rural communities also are finding that more than half of their clients are reporting drug abuse as a primary problem.

While several studies provide some evidence of alcohol and drug abuse decline in the general youth population, recent locally based studies indicate that this is not the trend among the runaway and homeless youth population. There is a marked increase in the use of alcohol and other dangerous and addictive drugs such as cocaine and its derivative, crack. Alcohol use among the younger adolescent population is also on the increase.

This population's circumstances require more detailed and focused approaches to prevention and drug reduction services than those provided by traditional approaches. Many runaway and homeless youth have already experimented with, or become frequent users of, one or more drugs and need effective programs which help them understand drug use problems and teach them the decision-making skills they need to maintain a drug-free lifestyle.

The Drug Abuse Education and Prevention Program (DAPP) provides Federal assistance to comprehensively address the problem of drug involvement among runaway and homeless youth. Since the program's inception in 1989, ACYF has awarded approximately $82 million in discretionary grants to approximately 450 agencies and organizations located throughout the United States, including Puerto Rico and the Virgin Islands. These awards were made to support a wide variety of locally determined project designs which address the problem of drug involvement among runaway and homeless youth.

While varying degrees of success have been reported by DAPP grantees, many of the most promising programs have implemented one or more of the following components:

1. Candid discussions between youth and street-wise peer counselors and/or recovering youth substance abusers who can discuss addiction and recovery from their personal experience;

2. Sessions in which youth obtain accurate facts on any and all aspects of substance abuse and treatment;

3. Presentation of decision-making and self-assertiveness skills and techniques that assist youth in making independent choices and avoiding drug-involved friends and environments;

4. Counseling and/or other strategies for helping youth to understand both the underlying causes of drug use and the effect of drugs on them, their families, their peers and their communities;

5. Educational information that portrays the consequences of overdosing, the effects of drug withdrawal, and the increased chances of contracting the HIV virus and AIDS; and

6. The provision of specific and realistic information on various treatment options that are available, assistance in enrolling in such programs, and appropriate follow-up by the service provider.

*Minimum Requirements for project design:* As a part of addressing the evaluation criteria outlined in Part II of this announcement, applicants must address the following items in the program narrative sections of their applications.

**Objectives and Need for Assistance**

1. Applicant must specify the goals and objectives of the program and how implementation will fulfill the requirements of the legislation identified in Part I, Section C.2, of this announcement.

2. Applicant must discuss the rate of illicit drug use by juveniles, specifically addressing the issue and incidence related to runaway and homeless youth in the community(ies) to be served and the availability (or lack) of services for runaway and homeless youth in those communities.

3. Applicant must identify the extent to which the proposed projects or activities will provide services in geographic areas where similar services are unavailable or in short supply.

4. Applicant must demonstrate an understanding of the issues related to alcohol and other drug abuse among runaway and homeless youth and the provision of services to that population.

**Results and Benefits Expected**

1. Applicant must identify the number of runaway and homeless youth and their families to be served, the types and quantities of services to be provided and how units of service will be defined and measured.

2. Applicant must discuss how the project will enhance or increase the capacity of the applicant to provide services to address the illicit use of alcohol and other drugs by runaway and homeless youth.

3. Applicant must describe the extent to which the project will maintain, increase or improve the community's level of services and/or the coordination of services for runaway and homeless youth.

4. Applicant must discuss the expected impact of the project on the availability of services to homeless youth in the local community and indicate how the project will enhance the organization's capacity to provide services to address youth homelessness in the community.

**Approach**

1. Applicant must describe how the program will maintain, improve, and/or expand direct alcohol and other drug abuse prevention, intervention and reduction services in their community.

2. Applicant must include detailed plans for implementing direct services based upon identified goals and objectives. Applicant must identify the strategies that will be employed and the activities that will be implemented. These should include innovative approaches to securing appropriate drug treatment services for the runaway and homeless youth to be served, for involving family members as an integral part of services provided, and for encouraging awareness of and sensitivity to the diverse needs of runaway and homeless youth who represent particular ethnic and racial backgrounds, sexual orientations, or who are street youth.

3. Applicant must identify, when appropriate, the short-term prevention and intervention strategies to be used with runaway and homeless youth in temporary emergency shelters and explain the follow-up efforts to be implemented with the youth once they leave the shelters.

4. Applicant must discuss how the proposed project will be integrated with other services to runaway and homeless youth that are provided by the applicant or that are available in the community. In addition, applicant is encouraged to show evidence of collaboration with other agencies in the development of a comprehensive approach to service delivery for runaway and homeless youth. Applicant must identify the organizations with which they will work and describe the contributions of these organizations to the project. A letter of commitment that indicates the level of responsibility and involvement must be included for each participating agency.

5. Applicant must identify and explain how the program will provide alcohol and other drug abuse prevention services to address the particular needs of runaway and homeless youth who are members of ethnic and racial minority groups, persons with limited ability to speak English and/or who are street youth.

6. Applicant must discuss the extent, if any, to which the project will incorporate new or innovative techniques.

7. Applicant must discuss plans for evaluating the project, including assessing the outcomes and accomplishments of the program and the service delivery models being implemented.

8. Applicant must describe how the activities implemented under this project will be continued by the agency once Federal funding for the project has ended. The applicant must describe specific plans for accomplishing program phase-out for the last two quarters of program project period in the event the applicant does not receive a new award.

9. Applicant must agree to gather and submit program and client data required by FYSB's Management Information System (MIS). While the computer software and training for the implementation of the MIS will be provided by FYSB to grantees, applicant should include a request for funds in its budget for any computer equipment needed for implementation of the MIS.

10. Applicant must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families.

**Staff Background and Organizational Experience**

1. As priority for funding will be given to agencies and organizations that have documented experience in providing direct services to runaway and homeless youth, applicant must include a brief description of the organization and its experience in providing services to this client population.

2. Applicant must include a brief description of current and proposed staff skills and knowledge regarding runaway and homeless youth and indicate how staff will be utilized in achieving the goals and objectives of the program. Information on proposed staff training and brief resumes or job descriptions may be included.

3. Applicant must describe procedures for maintaining confidentiality of records on the youth and families served. Procedures must insure that no information on the youth and families is disclosed without the consent of the individual youth, parent or legal guardian. Disclosures without consent can be made to another agency compiling statistical records if individual identities are not provided or to a government agency involved in the disposition of criminal charges against an individual runaway or homeless youth.

**Budget Appropriateness**

1. Applicant must discuss and justify the costs of the proposed project in terms of numbers of youth and families to be served, types and quantities of services to be provided, and the anticipated outcomes for the youth and families.

2. The applicant must describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement.

*Duration of project:* This announcement solicits applications for Drug Abuse Prevention Projects of up to three years duration (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation grants beyond the one-year budget period, but within the 36 month project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

*Federal share of project costs:* Up to $100,000 per year, which equals a maximum Federal share of $300,000 for a 3-year project period.

*Applicant share of project costs:* Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. For example, a project requesting $300,000 in Federal funds over a three-year project period (based on an award of $100,000 per twelve-month budget period) must include a match of at least $100,000 (25% of the total approved cost of the project).

*C. Transitional Living Program for Homeless Youth (TLP)*

*Eligible Applicants:* Eligible applicants for a TLP grant under this announcement include States, units of local government (or a combination of units of local government), public or non-profit, private agency organizations, institutions or other non-profit entities. Federally recognized Indian Tribes are eligible to apply for TLP grants. Non-Federally recognized Indian Tribes and urban Indian organizations are also eligible to apply for grants as private, non-profit agencies.

Grantees (including subgrantees) with current project periods extending into

FY 1995 may not apply for new TLP grants under this announcement. Applicants may refer to Part VI, Appendix D.2, for a listing of current grantees which are ineligible for grants under this priority area.

As required by runaway and homeless youth legislation, priority for funding will be given to agencies with demonstrated experience in providing direct services to runaway and homeless youth. In line with this requirement, applicants which have three (3) or more years of continuous effort serving runaway and homeless youth in one or more areas set forth in Section 312 of the Act are eligible to receive an additional five (5) points in this criterion.

*Program purpose, goals and objectives:* The Administration on Children, Youth and Families will award approximately 25 new service grants to provide shelter, skill training and support services to assist homeless youth in making a smooth transition to self-sufficiency and to prevent long-term dependency on social services. Applications are solicited under this priority area to carry out direct service projects designed to carry out the program purpose, goals and objectives set forth in the legislation and as specified in Part I, section C.3 of this announcement.

Funds available under Part B of the Runaway and Homeless Youth Act are to be used to enhance the capacities of youth-serving agencies in local communities to effectively address the service needs of homeless older adolescents and young adults. Activities that may be maintained, improved and/or expanded through a TLP grant must include, but are not necessarily limited to:

1. Providing stable, safe living accommodations while a homeless youth is a program participant;
2. Providing the services necessary to assist homeless youth in developing both the skills and personal characteristics needed to enable them to live independently;
3. Providing education, information and counseling aimed at preventing, treating and reducing substance abuse among homeless youth;
4. Providing homeless youth with appropriate referrals and access to medical and mental health treatment; and
5. Providing the services and referrals necessary to assist youth in preparing for and obtaining employment.

*Background:* It is estimated that about one-fourth of the youth served by all runaway and homeless youth programs are homeless. This means that many of the youth served cannot return home or to another safe living arrangement with a relative. Other homeless youth have aged out of the child welfare system and are no longer eligible for foster care.

These young people are often homeless through no fault of their own. The families they can no longer live with are often physically and sexually abusive and involved in drug and alcohol abuse. They cannot provide the youth with their basic human needs such as shelter, food, clothing, let alone the supportive and safe environment needed for development of healthy self-images and the skills and personal characteristics which would enable them to mature into self-sufficient adults.

Homeless youth, lacking a stable family environment and without social and economic supports, are at high risk of being involved in dangerous lifestyles and problematic or delinquent behaviors. More than two-thirds of homeless youth served by ACYF-funded programs report using drugs or alcohol and many participate in survival sex and prostitution to meet their basic needs.

Homeless youth need a support system that will assist them in making the transition to adulthood and independent living. While all adolescents are faced with adjustment issues as they approach adulthood, homeless youth experience more severe problems and are at greater risk.

Homeless youth have been a population eligible to receive services under the Runaway and Homeless Youth Act since 1978, but the service goals for homeless youth are different from those of runaways. For example, family reunification, though desirable, is typically not feasible for homeless youth. In many instances, programs serving the homeless populations are able to provide only limited assistance to homeless youth, whose needs are more complex and longer-term than those of runaway youth.

The Transitional Living Program for Homeless Youth specifically targets services to homeless youth and affords youth service agencies an opportunity to serve homeless youth in a manner which is comprehensive and geared towards ensuring a successful transition to self-sufficiency. The TLP also improves the availability of comprehensive, integrated services for homeless youth, which reduces the risks of exploitation and danger to which these youth are exposed while living on the streets without positive economic or social supports.

*Minimum requirements for project design:* As a part of addressing the evaluation criteria outlined in Part II of this announcement, each applicant must address the following items in the program narrative section of their application.

**Objectives and Need for Assistance**

1. Applicant must specify the goals and objectives of the program and how the implementation of the objectives will fulfill the requirements of the legislation identified in Part I, Section C.3, of this announcement.

2. Applicant must discuss the issue of youth homelessness in the community to be served, the present availability of services for homeless youth and provide documentation of the incidence of homeless youth.

3. Applicant must describe the system that will be used to ensure that individual clients will meet the eligibility criteria of need for service as established by the Act. This may include a discussion of the intake and assessment activities which will be conducted with a client prior to acceptance into the TLP project. The applicant is encouraged to include samples of any forms to be used to determine eligibility and appropriate services.

**Results and Benefits Expected**

1. Applicant must describe how homeless youth will be reached and identify the number who will be served annually on both a residential and non-residential basis.

2. Applicant must provide information on the expected results and benefits of the program in terms of the number of youth who will successfully complete the program as well as potential problems or barriers to program implementation that might be possible reason(s) for non-success. Applicant must also discuss the organization's policy on termination from and reentry into the program.

3. Applicant must discuss the expected impact of the project on the availability of services to homeless youth in the local community and indicate how the project will enhance the organization's capacity to provide services to address youth homelessness in the community.

**Approach**

1. Applicant must discuss how they will implement the statutory requirements of the Act. Specifically, the applicant must describe plans for the provision of shelter and services and for program administration.

*a. Shelter*

(1) Applicant must assure that shelter is provided through one or a combination of the following:

(a) A group home facility;

(b) Family host homes; or

(c) Supervised apartments.

Applicant must indicate if the shelter will be provided directly or indirectly. When shelter will be provided indirectly, applicant must submit copies of formal written agreements with service providers regarding the terms under which shelter is provided.

(2) Applicant must assure that the facility used for housing, whether a shelter, host family home and/or supervised apartment, shall accommodate no more than 20 youth at any given time; shall have a sufficient number of staff to ensure on-site supervision at each shelter option that is not a family home including periodic, unannounced visits from project staff; and is in compliance with State and local licensing requirements.

(3) Applicant must assure, if applicable, that the applicant meets the requirements of the RHY Act for the lease of surplus Federal facilities for use as transitional living shelter facilities. Each surplus Federal facility used for this purpose must be made available for a period not less than two years, and no rent or fee shall be charged to the applicant in connection with use of such a facility. Any structural modifications or additions to surplus Federal facilities become the property of the government of the United States. All such modifications or additions may be made only after receiving prior written consent from the appropriate Department of Health and Human Services official.

*b. Services*

(1) Applicant must include a description of the core services to be provided. The description must include the purpose and concept of the service, its role in both the overall program design and the individual client TLP plan. The services to be provided must include, but are not necessarily limited to, the following:

(a) Basic life skills information and counseling, including budgeting, money management, use of credit, housekeeping, menu planning and food preparation, consumer education, leisure-time activities, transportation, and obtaining vital documents (Social Security card, birth certificate).

(b) Interpersonal skill building, such as developing positive relationships with peers and adults, effective communication, decision making, and stress management.

(c) Educational advancement, such as GED preparation and attainment, post-secondary training (college, technical school, military, etc.), and vocational education.

(d) Job preparation and attainment, such as career counseling, job preparation training, dress and grooming, job placement and job maintenance.

(e) Mental health care, such as counseling (individual and group), drug abuse education, prevention and referral services, and mental health counseling.

(f) Physical health care, such as routine physicals, health assessments, family planning/parenting skills, and emergency treatment.

(g) The substantive participation of youth in the assessment and implementation of their needs, including the development and implementation of the individual transitional living plan and in decisions about the services to be received.

The applicant must specifically describe programmatic efforts planned and/or implemented to encourage awareness of and sensitivity to the particular needs of runaway and homeless youth who are members of ethnic and racial minority groups and/or who are street youth.

*c. Administration*

(1) Applicant must describe the procedures to be employed in the development, implementation and monitoring of an individualized, written transitional living plan for each program client which addresses the provision of services, and is appropriate to the individual needs of the client.

(2) Applicant must assure that the clients will substantively participate in the assessment of their needs and in decisions about the services to be received.

(3) Applicant must assure that the outreach programs to be established are designed to attract individuals who are eligible to participate in the project.

(4) Applicant must provide an assurance that housing and services will be available to a client for a continuous period not to exceed 540 days (18 months).

(5) Applicant must describe the methods to be employed in collecting statistical records and evaluative data and for submitting annual reports on such information to the Department of Health and Human Services.

(6) Applicant must describe how the applicant will ensure the confidentiality of client records.

(7) Applicant must describe how the activities implemented under this project will be continued by the agency once Federal funding for the project has ended. The applicant must describe specific plans for accomplishing program phase-out for the last two quarters of program project period in the event that the applicant would not receive a new award.

(8) Applicant must agree to gather and submit program and client data required by ACYF's Management Information System (MIS). While the computer software and training for the implementation of the MIS will be provided by FYSB to grantees, applicant should include a request for funds in its budget for any computer equipment needed for implementation of the MIS.

(9) Applicant must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families.

**Staff Background and Organizational Experience**

1. As priority for funding will be given to agencies and organizations that have documented experience in providing direct services to homeless youth, applicant must include a brief description of the organization and its experience in providing services to this specific client population.

2. Applicant must include a description of current and proposed staff skills and knowledge regarding homeless youth and indicate how staff will be utilized in achieving the goals and objectives of the program. Information on proposed staff training and brief resumes or job descriptions may be included.

3. Applicant must describe how the project has established or will establish formal service linkages with other social service, law enforcement, educational, housing, vocational, welfare, legal service, drug treatment and health care agencies in order to ensure appropriate referrals for the project clients where and when needed.

4. Applicant must describe procedures for maintaining confidentiality of records on the youth and families served. Procedures must insure that no information on the youth and families is disclosed without the consent of the individual youth, parent or legal guardian. Disclosures without consent can be made to another agency compiling statistical records if individual identities are not provided or to a government agency involved in the disposition of criminal charges against an individual runaway or homeless youth.

**Budget Appropriateness**

1. Applicant must discuss and justify the costs of the proposed project in

terms of numbers of youth to be served, the types and quantities of services to be provided, and the anticipated outcomes for the youth.

2. Applicant must describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement.

3. Applicant must describe how cost-effective use of TLP funds will be ensured by taking maximum advantage of existing resources within the State which would help in the operation or coordination of a TLP, including those resources which are supported by Federal Independent Living Initiatives funds. Also, applicant must describe efforts to be undertaken over the length of the project which may increase non-Federal resources available to support the TLP.

*Duration of project:* Because successful applicants will receive grants with funds appropriated by Congress for FY 1995, project periods for these new awards will begin when FY 1995 funds are appropriated and made available to ACYF, but in no case will they begin prior to October 1, 1994.

This announcement solicits TLP applications for projects of up to three years duration (36-month project periods). Initial grant awards, made on a competitive basis, will be for a one-year (12-month) budget period. Applications for continuation grants beyond the one-year budget period, but within the 36-month project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

*Federal share of project costs:* Up to $200,000 per year, which equals a maximum of $600,000 for a 3-year project period.

*Applicant share of the project:* The Runaway and Homeless Youth Act requires a non-Federal matching requirement of ten percent of the total Federal funds. For example, a project requesting $600,000 in Federal funds over a three-year project period (based on an award of $200,000 per twelve-month budget period) must include a match of at least $60,000 (10% of the Federal share).

*D. Training and Technical Assistance Grants (T&TA)*

*Eligible applicants:* Statewide and regional nonprofit organizations, and combinations of such organizations, with demonstrated experience in providing services to runaway and homeless youth service providers.

*Program purpose, goals and objectives:* The Administration on Children, Youth and Families expects to fund up to ten cooperative agreements to improve the programmatic and administrative capacities of public and private agencies to provide services to runaway and homeless youth by the provision of technical assistance and short-term training. Applications to provide such assistance may cover one or more Federal Regions or may be restricted to a smaller geographic area (e.g., one or more States).

*Background information:* Over the years, many State and local agencies and programs have been established to provide needed short- and long-term services to runaway and homeless youth. These agencies are both public and private, profit-making and nonprofit. Some focus on a single concern, such as drug abuse or dropout prevention, while others are multi- or even all-purpose agencies, with specific components that deal with the physical health, mental health, family reunification and functioning, employment, education and transitional living of these young people.

Notwithstanding the significant numbers of effective agencies and competent professional staff dedicated to assisting runaway and homeless youth across the country, services in some areas are inadequate or non-existent. In other cases, existing programs lack staff members with the full range of skills required to carry out the responsibilities with which the individual programs are charged. Also, many of the developed and tested curricula and models are little known or understood, even among the programs and staff where they could be of greatest use. Further, as new issues and problems emerge (for example, the glamorization of the youth drug culture by the news and entertainment media, and the placement of troublesome youth in private mental institutions to remove them from the streets), even experienced staff need to enhance their existing skills and to develop new ones.

To address these issues, the Runaway and Homeless Youth Act, section 342, and the Drug Abuse Prevention Program for Runaway and Homeless Youth, section 3511 of the Anti-Drug Abuse Act of 1988, both administered by the Family and Youth Services Bureau, authorize support to nonprofit organizations for the purpose of providing training and technical assistance (T&TA) to runaway and homeless youth service providers.

To effectively provide such assistance, extensive interaction with grantees, integration and sharing of knowledge, coordination with components supporting the runaway and homeless youth system, and a cooperative relationship among training and technical assistance providers is needed.

Projects in this priority area are intended to result in a process which encompasses the following types of activities:

1. The provision of assistance to grantees for the purpose of assessment of grantee and staff training needs and the development, management and implementation of training plans that ensure staff have the skills to carry out their responsibilities. Training and technical assistance designed and/or provided to grantees for this purpose must be accessible and individualized, must provide concrete information and skill building and must include follow-up efforts.

2. The provision of quality staff training which focuses on skill development that (a) provides opportunities for hands-on participation, direct observation, practice and expert feedback; (b) analyzes, integrates and transmits knowledge obtained from research findings, curricula, and models of greatest interest to grantees; and (c) recognizes new and emerging youth issues and provides intensive skills training in these areas.

3. The collaborative exchange of monitoring and MIS information with runaway and homeless youth programs for the purpose of planning training and technical assistance for the geographic area being served, and for the purpose of providing follow-up training and technical assistance responsive to the findings resulting from monitoring individual grantees;

4. The promotion of a cooperative relationship among training and technical assistance providers for the exchange of information regarding identified training needs, emerging youth issues, research findings, curricula and models.

The award of these cooperative agreements will include a delineation of the responsibilities of the successful applicants and the Administration on Children, Youth and Families. The responsibilities contained in each cooperative agreement may be geared toward the unique needs of the RHY programs in the geographic areas to be served. At a minimum, responsibilities of the successful applicants will include development and implementation of a workplan, provision of training and

technical assistance to grantees and coordination with other grantee support efforts and T&TA providers. Responsibilities of ACYF will include, at a minimum, review and approval of workplans, coordination and sharing of monitoring data, as appropriate, and sponsorship of a national meeting of T&TA providers.

*Minimum requirements for project design:* As a part of addressing the generic evaluation criteria in Part II of this Announcement, each applicant must address the following items in the program narrative section of their proposal.

**Objectives and Need for Assistance**

1. Identify the exact geographic area(s) to be served in terms of its distinctive features.

2. Discuss youth homelessness in the geographic area(s) to be served. Provide documentation of the incidence of homeless youth.

3. Demonstrate an understanding of the incidence and conditions of runaway and homeless youth in the geographic area(s) to be served; and current issues, special problems and needs associated with runaway and homeless youth such as substance abuse, learning disabilities, lack of independent living skills.

4. Discuss services in the geographic area(s) for runaway and homeless youth (Basic Centers, Transitional Living Programs, Drug Abuse Prevention Programs, Demonstration grants).

5. Indicate an understanding of the capacities and management systems necessary to establish and operate runaway and homeless youth agencies. Discuss the knowledge, skills, abilities and experience required by individual youth service professionals at both the administrative and direct service levels.

6. Discuss and justify the need for training and technical assistance in the geographic area to be served.

7. Discuss barriers to services in the geographic area and greatest training and technical assistance needs of runaway and homeless youth service providers.

8. Demonstrate an understanding of relevant research and development findings and products, and knowledge of available curricula, models and experts.

**Results and Benefits Expected**

1. Discuss the goals and objectives of the proposed training and technical assistance effort and how it builds and improves upon past efforts.

2. Project the number of agencies and individuals that would receive training and technical assistance services.

3. Describe how the training and technical assistance effort will increase the capacity of RHY grantees to deliver effective and quality services to runaway and homeless youth.

4. Describe how training and technical assistance will build on current program strengths and assist grantees in program improvement.

**Approach**

1. Describe the approach, philosophy, strategies, methodologies and models that would be used to assess and address the unique training and technical assistance needs of runaway and homeless youth service providers in the geographic area(s) to be served. Describe the proposed effort and activities in detail.

2. Describe interaction with grantees to support assessment of training needs, development of training plans and design of training and technical assistance strategies.

3. Discuss the approach that will be used to provide quality staff training which focuses on skill development that provides opportunities for hands-on participation, direct observation, practice and expert feedback; which analyzes, integrates and transmits knowledge obtained from research findings, curricula, and models of greatest interest to grantees; and recognizes new and emerging youth issues and provides intensive skills training in these areas.

4. Describe the approach that will be used for the collaborative exchange of monitoring and MIS information for runaway and homeless youth programs for the purpose of planning, training, and technical assistance for the geographic area to be served. Include a discussion of training and technical assistance that is a follow-up to monitoring and responsive to the needs of individual grantees.

5. Describe the approach that would be used to promote the transmittal of knowledge and skills from highly skilled youth service providers to less experienced staff.

6. Describe the approach for establishing a cooperative relationship with other training and technical assistance providers.

7. Provide a detailed description of the efforts that will be carried out by the applicant directly and those efforts to be carried out in conjunction with other agencies or consultants. Discuss how these efforts will enhance training and technical assistance provision.

8. Describe the methodology that will be used to evaluate the effectiveness of the training and technical assistance provided to runaway and homeless youth service providers in the geographic area(s).

9. Discuss the approach that would be used to encourage cultural competency of runaway and homeless youth service providers in areas such as outreach, program design, staffing and board development.

10. Include proposed time frames for accomplishing major milestones, levels of effort, letters of commitment and support.

**Staff Background and Organizational Experience**

1. Describe the organizational history, structure, and experience providing training and technical assistance. Discuss operating principles with respect to the development and implementation of training and technical assistance.

2. Clearly define roles and provide job descriptions of key project positions.

3. Provide resumes of current and proposed staff. Include skills, experience, and qualifications working with runaway and homeless youth, and developing and designing training and technical assistance for youth service providers.

4. Describe facilities, equipment, and other resources that would be available to the project.

5. Describe the administrative and organizational structure and linkages established with other relevant organizations (e.g. subcontractors, other projects). Provide charts summarizing these structures and linkages and written agreements defining them (include in appendices).

**Budget Appropriateness**

1. Discuss and justify the cost of the proposed project in terms of types and quantities of services to be provided.

2. Describe the fiscal control and accounting procedures that will be used to ensure the prudent use, proper disbursement, and accurate accounting of funds received.

3. Describe how additional resources necessary to carry out this project would be obtained and integrated into the work of the project.

4. Provide assurance that one key person from the project would attend an annual 2–3 day FYSB sponsored meeting in Washington, DC.

*Duration of Project:* This announcement solicits applications for Training and Technical Assistance cooperative agreements of up to five years in duration (60-month project periods). Initial awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for continuation

cooperative agreements beyond the one-year budget period, but within the 60-month project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the government.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $150,000 per Federal Region for the first 12-month budget period, or a maximum of $750,000 per Federal Region for the 5-year project period. (For example, a project covering two Regions may receive up to $300,000 for the first 12-month budget period. Conversely, a project serving less than a Federal Region (e.g., a Statewide system) would receive less than $150,000 for the first 12-month budget period.)

*Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $750,000 is $75,000 for a 5-year project period. This constitutes 10 percent of the total Federal share.

*Anticipated number of projects to be funded:* It is anticipated that up to ten projects will be funded.

**Part IV. Application Process**

*A. Assistance to Prospective Grantees*

Potential grantees can receive informational assistance in developing applications from the appropriate ACF Regional Youth Contacts listed in Part VI, Appendix F or from the Administration on Children, Youth and Families in Washington, DC (see address at the beginning of this announcement). Organizations may also receive information and technical assistance in preparing applications from the appropriate Training and Technical Assistance Provider grantee listed in Part VI, Appendix G.

*B. Application Requirements*

To be considered for a Runaway and Homeless Youth grant, each application must be submitted on the forms provided at the end of this announcement (see Part VI, section I of this announcement) and in accordance with the guidance provided herein. The application must be signed by an individual authorized both to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

Applicants applying for grants under more than one program (Basic Center Program, Drug Abuse Prevention Program, Transitional Living Program, and/or Training and Technical Assistance grants) must submit a separate and complete application for each program and must identify the relevant Priority Area on Form 424, Item #11. Although coordination among program components is encouraged, applications that combine an application for more than one grant program in a single proposal will not be reviewed.

All applicants must indicate in their applications their willingness to fully cooperate in any data collection and research efforts mandated by the Administration for Children and Families.

If more than one agency is involved in submitting a single application, one entity must be identified as the applicant organization which will have legal responsibility for the grant.

*C. Paperwork Reduction Act of 1980*

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record-keeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications by OMB.

*D. Notification Under Executive Order 12372*

This program is covered under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the E.O., States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these seventeen jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants must contact their SPOCs as soon as possible to alert them to the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they must be addressed to: Runaway and Homeless Youth Programs, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Aerospace Building, 6th Floor, Washington, DC 20047. Attn: Maiso Bryant.

A list of the Single Points of Contact for each State and Territory is included as Part VI, Appendix H of this announcement.

Availability of Forms and Other Materials

A copy of the forms required to be submitted as part of each application for a runaway and homeless youth grant, and instructions for completing the application, are provided in Part VI, Appendix I. The Basic Center Program Performance Standards as well as descriptions of the National Runaway Switchboard and the National Clearinghouse on Runaway and Homeless Youth are presented in Part VI, Appendices A, B and C. Addresses of the State Single Points of Contact (SPOCs) to which applicants must submit review copies of their proposals are listed in Part VI, Appendix H.

Legislation referenced in Part I, section B of this announcement may be found in major public libraries and at the ACF Regional Offices listed in Part VI, Appendix F at the end of this announcement.

Additional copies of this announcement may be obtained from the ACF Regional Offices or by calling the telephone number listed at the beginning of this announcement. Further general information may be obtained from the Training and

Technical Assistance Providers listed in Part VI, Appendix G.

*F. Application Consideration*

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation process against the specific criteria outlined in Part II of this announcement and the specific Minimum Requirements for Project Design contained in Part III of this announcement. This review will be conducted in Washington, DC, by teams of non-Federal experts knowledgeable in the areas of youth development and/or human service programs. Applications for a Basic Center Program grant will be reviewed competitively only with other applications from the same State. Applications for Drug Abuse Prevention Program, Transitional Living Program and Training and Technical Assistance grants will be reviewed as a part of a national competition.

The non-Federal experts will review the applications based on the Evaluation Criteria listed in Part II of this announcement and the specific Minimum Requirements for Project Design contained in Part III of this announcement and will assign a score to each application. The results of the competitive review will be analyzed by Federal staff who, in consultation with ACF Regional officials, will select those applications to be recommended for funding to the Commissioner, ACYF.

The Commissioner will make the final selection of the applicants to be funded. As required by runaway and homeless youth legislation, priority for funding will be given to agencies with demonstrated experience in providing direct services to runaway and homeless youth. However, current grantees ending a three-year funding period, and applying as a new applicant for funds under this program announcement, are reminded that when the current project period ends so does the funding agency's obligation for future awards. Criterion 3, Approach, requires applicants to specifically discuss how their project will be maintained after termination of Federal support.

In addition to scores assigned by non-Federal reviewers, consideration also will be given to adequate geographic distribution of services and the Commissioner may show preference for applications proposing services in areas that would not otherwise be served. The Commissioner also may elect to consider an applicant's past performance in providing services to runaway and homeless youth and also may elect not to fund any applicants having known management, fiscal or other problems which make it unlikely that they would be able to provide effective services.

Grant awards for Basic Center Program, Drug Abuse Prevention Program and Training and Technical Assistance grants will be made by September 30, 1994. Grant awards for Transitional Living Program grants will be made after October 1, 1994. Successful applicants will be notified through the issuance of a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated.

Organizations whose applications will not be funded will be notified of that decision in writing by the Commissioner of the Administration on Children, Youth and Families. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made, including grantees whose three-year project periods end in FY 1994.

**Part V. Application Assembly and Submission**

Applicants applying for more than one runaway and homeless youth grant (Basic Center Program, Drug Abuse Prevention Program, Transitional Living Program and/or Training and Technical Assistance) must submit a separate and complete application for each program. Applications that combine more than one program in a single proposal will not be reviewed.

A. *Contents of application.* Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424, REV 4–88) (page i).

2. Budget Information (Standard Form 424A, REV 4–88) (pages ii–iii).

3. Budget Justification (Type on standard size plain white paper) (pages iv–v).

4. Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88) (pages vi–vii).

5. Certification Regarding Lobbying (page viii).

6. Program Narrative Statement (pages 1 and following; 40 pages maximum, double-spaced).

**Special Note:** APPLICANTS ARE STRONGLY ENCOURAGED TO LIMIT THE PROGRAM NARRATIVE STATEMENT PORTION OF THE APPLICATION TO 40 DOUBLE-SPACED PAGES.

7. Organizational Capability Statement (pages OCS–1 and following; 3 pages maximum).

8. Supporting Documents (pages SD–1 and following; 10 pages maximum, exclusive of letters of support or agreement).

*B. Instructions for Preparing Application Components*

1. Standard Forms 424 and 424A: Follow the instructions in Part VI, Appendix I. In Item 8 of Form 424, check New. In Item 10 of the 424, clearly identify the *Catalog of Federal Domestic Assistance* Program Number and Title for the program for which funds are being requested (93.623, Basic Center Program for Runaway and Homeless Youth; 93.657, Drug Abuse Education and Prevention Program for Runaway and Homeless Youth; or 93.550, Transitional Living Program for Homeless Youth. Applicants applying for Training and Technical Assistance cooperative agreements must use the number and title for the Basic Center Program for Runaway and Homeless Youth, 93.623 and indicate T&TA in parentheses in the box.

In Item 11 of the 424, identify the Priority Area (IV, A, B, C, D) and the program name (Basic Center Program (BCP), Drug Abuse Prevention Program (DAPP), Transitional Living Program (TLP), or Training and Technical Assistance (T&TA)) which the application is addressing.

2. Budget Justification: Provide breakdowns for major budget categories and justify significant costs. List amounts and sources of all funds, both Federal and non-Federal, that will be used for this project.

3. Standard Form 424B, Certification Regarding Drug-Free Workplace, Certification Regarding Debarment, and Certification Regarding Lobbying. Of these forms, only the Standard Form 424B and the Certification Regarding Lobbying need to be signed and returned with the application. By signing and submitting its application each applicant is certifying its compliance with the Drug-Free Workplace and Debarment certification requirements included in this announcement.

4. Program Narrative Statement: Use the Evaluation Criteria in Part II as a way to organize the Narrative. Be sure to address all the specifics contained in the appropriate Priority Area Description in Part III, especially the information described under Minimum Requirements for Project Design.

5. Organizational Capability Statement: Applicants must provide a description (no more than three pages,

double-spaced) of how the applicant agency is organized and the types, quantities and costs of services it provides, including services to clients other than runaway and homeless youth. For the prior year, list all contracts with or funds received from juvenile justice, probation and/or welfare agencies. Provide an organizational chart showing any superordinate, parallel, or subordinate agencies to the specific agency that will provide direct services to runaway and homeless youth, and summarize the purposes, clients and overall budgets of these other agencies. If the agency has multiple sites, list these sites, *including addresses, phone numbers and staff contact names, if different than the SF 424.* If the agency is a recipient of funds from the Administration on Children, Youth and Families for services to runaway and homeless youth for programs other than that applied for in this application, show how the services supported by these funds are or will be integrated with the existing services. Discuss the experience of the applicant organization in providing services to runaway and homeless youth.

6. Supporting Documentation: The maximum for supporting documentation is 10 pages, double spaced, exclusive of letters of support or agreement. These documents might include resumes, newsclippings, evidence of the program's efforts to coordinate youth services at the local level, etc. Documentation over the ten page limit will not be reviewed. Applicants may include as many letters of support or agreement as are appropriate.

*C. Application Submission*

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all attachments, to the application receipt point specified below. The original copy of the application must have original signatures, signed in *black* ink. Each copy must be stapled (back and front) in the upper left corner. All copies of a single application must be submitted in a single package.

Because each application will be duplicated by the government, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, fasten or in any way separate subsections of the application, including supporting documentation.

1. Closing Date for the Receipt of Applications

The closing dates for receipt of applications for the grant programs contained in this announcement are:

| Program | Closing date |
|---|---|
| BCP | June 15, 1994. |
| TLP | June 28, 1994. |
| DAPP | July 12, 1994. |
| T&TA | July 12, 1994. |

Applications may be submitted to the following address: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Aerospace Building, 6th Floor, Washington, DC 20447. Attn: Maiso Bryant, ACF–94–ACYF/RHYP. Hand delivered applications will be accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, SW., Washington, DC 20447.

Envelopes containing applications must clearly indicate the specific program that the application is addressing: Basic Center Program (BCP); Drug Abuse Prevention Program (DAPP), Transitional Living Program (TLP), or Training and Technical Assistance (T&TA).

2. Deadline for Submission of Applications

a. *Deadline.* Applications will be considered as meeting the deadline if they are either:

i. Received on or before the deadline date at the above address, or

ii. Sent on or before the deadline date and received by the ACF in time for the independent review under DHHS GAM I–62. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.)

b. *Late applications.* Applications which do not meet the criteria stated above are considered late applications. The Administration for Children and Families (ACF) will notify each late applicant that its application will not be considered in the current competition.

c. *Extension of deadline.* The ACF may extend the deadline for all applicants because of acts of God such as earthquakes, floods or hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

3. Checklist for a Complete Application

_____ One original application signed in black ink and dated plus two copies.
_____ A completed SPOC certification with the date of SPOC contact entered in item 16 on page 1 of SF 424, if applicable.
_____ SF 424 (The original application must have the word ORIGINAL hand printed in bold block letters at the top margin of its SF 424.
_____ SF 424A.
_____ Budget Justification.
_____ SF 424B.
_____ Certification Regarding Lobbying.
_____ Program Narrative Statement (maximum of 40 pages, double-spaced).
_____ Organizational Capability Statement (maximum of three pages, double-spaced).
_____ Supporting Documents (maximum of 10 pages double-spaced).

(*Catalog of Federal Domestic Assistance* Number 93.623, Basic Center Program for Runaway and Homeless Youth; Number 93.657, Drug Abuse Education and Prevention Program for Runaway and Homeless Youth; and Number 93.550, Transitional Living Program for Homeless Youth.)

Dated: April 27, 1994.

**Olivia A. Golden,**

*Commissioner, Administration on Children, Youth and Families.*

## Part VI. Appendices

### Appendix A—Basic Center Program Performance Standards

*Program Performance Standards*

I. Purpose

The Program Performance Standards established by the Bureau for its funded centers relate to the basic program components enumerated in section 317 of the Runaway and Homeless Youth Act and as further detailed in the Regulations and Program Guidance governing the implementation of the Act. They address the methods and processes by which the needs of runaway and homeless youth and their families are being met, as opposed to the outcome of the services provided on the clients served.

The terms program performance standard, criterion, and indicators are used throughout both the instrument and the instructions. These terms are defined as follows:

*Program performance standard:* The general principle against which a judgment can be made to determine whether a service or an administrative component has achieved a particular level of attainment.

*Criterion:* A specific dimension or aspect of a program performance standard which helps to define that standard and which is amenable to direct observation or measurement.

*Indicator:* The specific documentation which demonstrates whether a criterion (or an aspect of a criterion) is being met and thereby the extent to which a specific aspect of a standard is being met.

Fourteen program performance standards, with related criteria, are established by the Bureau for the projects funded under the Runaway and Homeless Youth Act. Nine of these standards relate to service components (outreach, individual intake process, temporary shelter, individual and group counseling, family counseling, service linkages, aftercare services, recreational programs, and case disposition), and five to administrative functions or activities (staffing and staff development, youth participation, individual client files, ongoing project planning, and board of directors/advisory body).

Although fiscal management is not included as a program performance standard, it is viewed by FYSB as being an essential element in the operation of its funded projects. Therefore, as validation visits are made, the Regional ACF specialist and/or staff from the Office of Fiscal Operations will also review the project's financial management activities.

FYSB views these program performance standards as constituting the minimum standards to which its funded projects should conform. The primary assumption underlying the program performance standards is that the service and administrative components which are encompassed within these standards are integral (but not sufficient in themselves) to a program of services which effectively addresses the crisis and long-term needs of runaway and homeless youth and their families.

The program performance standards are designed to serve as a developmental tool, and are to be employed by both the project staff and the Regional ACF staff specialists in identifying those service and administrative components and activities of individual projects which require strengthening and/or development either through internal action on the part of staff or through the provision of external technical assistance.

II. Program Performance Standards and Criteria

The following constitute the program performance standards and criteria established by the Bureau for its funded centers. Each standard is numbered, and each criterion is listed after a lower case letter.

1. Outreach.

The project shall conduct outreach efforts directed towards community agencies, youth and parents.

2. Individual Intake Process.

The project shall conduct an individual intake process with each youth seeking services from the project. The individual intake process shall provide for:

a. Direct access to project services on a 24-hour basis.

b. The identification of the emergency service needs of each youth and the provision of the appropriate services either directly or through referrals to community agencies and individuals.

c. An explanation of the services which are available and the requirements for participation, and the securing of a voluntary commitment from each youth to participate in project services prior to admitting the youth into the project.

d. The recording of basic background information on each youth admitted into the project.

e. The assignment of primary responsibility to one staff member for coordinating the services provided to each youth.

f. The contact of the parent(s) or legal guardian of each youth provided temporary shelter within the timeframe established by State law or, in the absence of State requirements, preferably within 24 but within no more than 72 hours following the youth's admission into the project.

3. Temporary Shelter.

The project shall provide temporary shelter and food to each youth admitted into the project and requesting such services.

a. Each facility in which temporary shelter is provided shall be in compliance with State and local licensing requirements.

b. Each facility in which temporary shelter is provided shall accommodate no more than 20 youth at any given time.

c. Temporary shelter shall normally not be provided for a period exceeding two weeks during a given stay at the project.

d. Each facility in which temporary shelter is provided shall make at least two meals per day available to youth served on a temporary shelter basis.

e. At least one adult shall be on the premises whenever youth are using the temporary shelter facility.

4. Individual and Group Counseling.

The project shall provide individual and/or group counseling to each youth admitted into the project.

a. Individual and/or group counseling shall be available daily to each youth admitted into the project on a temporary shelter basis and requesting such counseling.

b. Individual and/or group counseling shall be available to each youth admitted into the project on a non-residential basis and requesting such counseling.

c. The individual and/or group counseling shall be provided by qualified staff.

5. Family Counseling.

The project shall make family counseling available to each parent or legal guardian and youth admitted into the project.

a. Family counseling shall be provided to each parent or legal guardian and youth admitted into the project and requesting such services.

b. The family counseling shall be provided by qualified staff.

6. Service Linkages.

The project shall establish and maintain linkages with community agencies and individuals for the provision of those services which are required by youth and/or their families but which are not provided directly by the centers.

a. Arrangements shall be made with community agencies and individuals for the provision of alternative living arrangements, medical services, psychological and/or psychiatric services, and the other assistance required by youth admitted into the project and/or by their families which are not provided directly by the project.

b. Specific efforts shall be conducted by the project directed toward establishing working relationships with law enforcement and other juvenile justice system personnel.

7. Aftercare Services.

The project shall provide a continuity of services to all youth served on a temporary shelter basis and/or their families following the termination of such temporary shelter both directly and through referrals to other agencies and individuals.

8. Recreational Program.

The project shall provide a recreational-leisure time schedule of activities for youth admitted to the project for residential care.

9. Case Disposition.

The project shall determine, on an individual case basis, the disposition of each youth provided temporary shelter, and shall assure the safe arrival of each youth home or to an alternative living arrangement.

a. To the extent feasible, the project shall provide for the active involvement of the youth, the parent(s) or legal guardian, and the staff in determining what living arrangement constitutes the best interest of each youth.

b. The project shall assure the safe arrival of each youth home or to an alternative living arrangement, following the termination of the crisis services provided by the project, by arranging for the transportation of the youth if he/she will be residing within the area served by the project; or by arranging for the meeting and local transportation of the youth at his/her destination if he/she will be residing beyond the area served by the project.

c. The project shall verify the arrival of each youth who is not accompanied home or to an alternative living arrangement by the parent(s) or legal guardian, project staff or other agency staff within 12 hours after his/her scheduled arrival at his/her destination.

10. Staffing and Staff Development.

Each center is required to develop and maintain a plan for staffing and staff development.

a. The project shall operate under an affirmative action plan.

b. The project shall maintain a written staffing plan which indicates the number of paid and volunteer staff in each job category.

c. The project shall maintain a written job description for each paid and volunteer staff function which describes both the major tasks to be performed and the qualifications required.

d. The project shall provide training to all paid and volunteer staff (including youth) in both the procedures employed by the project and in specific skill areas as determined by the project.

e. The project shall evaluate the performance of each paid and volunteer staff member on a regular basis.

f. Case supervision sessions, involving relevant project staff, shall be conducted at least weekly to review current cases and the types of counseling and other services which are being provided.

11. Youth Participation.

The center shall actively involve youth in the design and delivery of the services provided by the project.

a. Youth shall be involved in the ongoing planning efforts conducted by the project.

b. Youth shall be involved in the delivery of the services provided by the project.

12. Individual Client Files.

The project shall maintain an individual file on each youth admitted into the project.

a. The client file maintained on each youth should, at a minimum, include an intake form which minimally contains the basic background information needed by FYSB; counseling notations; information on the services provided both directly and through referrals to community agencies and individuals; disposition data; and, as applicable, any follow-up and evaluation data which are compiled by the center.

b. The file on each client shall be maintained by the project in a secure place and shall not be disclosed without the written permission of the client and his/her parent(s) or legal guardian except to project staff, to the funding agency(ies) and its(their) contractor(s), and to a court involved in the disposition of criminal charges against the youth.

13. Ongoing Center Planning.

The center shall develop a written plan at least annually.

a. At least annually, the project shall review the crisis counseling, temporary shelter, and aftercare needs of the youth in the area served by the center and the existing services which are available to meet these needs.

b. The project shall conduct an ongoing evaluation of the impact of its services on the youth and families it serves.

c. At least annually, the project shall review and revise, as appropriate, its goals, objectives, and activities based upon the data generated through both the review of youth needs and existing services (13a) and the follow-up evaluations (13b).

d. The project's planning process shall be open to all paid and volunteer staff, youth, and members of the Board of Directors and/or Advisory Body.

14. Board of Directors/Advisory Body (Optional).

It is strongly recommended that the centers have a Board of Directors or Advisory Body.

a. The membership of the project's Board of Directors or Advisory Body shall be composed of a representative cross-section of the community, including youth, parents, and agency representatives.

b. Training shall be provided to the Board of Directors or Advisory Body designed to orient the members to the goals, objectives, and activities of the project.

c. The Board of Directors or Advisory Body shall review and approve the overall goals, objectives, and activities of the project, including the written plan developed under standard 13.

**Appendix B—The National Runaway Switchboard**

- Facilitates communication among youth, their families and youth and community-based resources through conference calling services.
- Provides crisis intervention counseling and message delivery services to at-risk youth and their families.
- Provides information and referral services to at-risk youth and their families on youth serving agencies using a computerized national resource directory.
- Conducts an annual conference for local switchboard service providers.

The Switchboard distributes information brochures, posters, a newsletter, and public service announcements. For more information, contact the National Runaway Switchboard, 3080 North Lincoln, Chicago, IL 60657; telephone 1–800–621–4000.

**Appendix C—National Clearinghouse on Runaway and Homeless Youth**

The Family and Youth Services Bureau (FYSB) established NCRHY in June 1992 in response to the need for a central source of information on runaway and homeless youth and the provision of services to that client population. As a national resource for youth service professionals, policymakers and the general public, NCRHY offers the following specific services:

Through its information line, bibliographic and FYSB program databases and special mailings, NCRHY distributes information about successful program approaches, available resources and current activities relevant to runaway and homeless youth organizations.

NCRHY develops semi-annual briefing packages to inform the field about new developments, ideas and issues related to services to runaway and homeless youth. It also produces informational packets on FYSB programs and reports on critical issues, best practices and model programs.

NCRHY facilitates FYSB-sponsored forums, bringing together experts in the field to discuss critical issues and develop strategies for addressing the causes and consequences of runaway episodes and homelessness.

NCRHY will assist FYSB in collaborating with national, State and local organizations on youth-related policy and program initiatives.

For more information, please contact the National Clearinghouse on Runaway and Homeless Youth, P.O. Box 13505, Silver Spring, Maryland 20911–3505, telephone (301) 608–8098.

**Appendix D—Runaway and Homeless Youth Continuation Grantees**

The following grantees are expected to receive continuation grants in FY 1994 and are NOT eligible to apply for funds under this announcement.

**D.1: Basic Center Programs for Runaway and Homeless Youth Grantees Ineligible for New FY 1994 Funding**

*Region I*

Connecticut

Council of Churches, 126 Washington Avenue, Bridgeport, CT 06604, John Cottrell, (203) 334–1121

Quinebaug Valley Youth Services Bureau, P.O. Box 812, North Grosvenordale, CT 06255, Pamela Brown, (203) 923–9526

Educational Resources, 90 North Main Street, West Hartford, CT 06107, Wayne Starkey, (203) 521–8035

Maine

Youth and Family Services, P.O. Box 502, Skowhegan, ME 04976, Ronald Herbert (207) 474–8311

Youth Alternatives, 175 Lancaster Street, Portland, Maine 04101, Mike Tarpinian, (207) 874–1175

Massachusetts

Riverside Community, Mental Health, 450 Washington Street, Dedham, MA 02026, Susan Sawyer, (617) 244–4802

The Phaneuf Center, 104 Market Street, Brockton, MA 02401, David Kaufer, (508) 584–0500

Concord-Assabet Adolescent Services, Inc., 56 Winthrop Street, Concord, MA 01742, Stephen A. Joffe, (508) 371–3006

L.U.K. Crisis Center, Inc., 99 Day Street, Fitchburg, MA 01420, Ernest M. Pletan-Cross, (508) 345–0658

New Hampshire

Child and Family Services, 99 Hanover Street, Manchester, NH 03101, Gail Starr, (603) 668–1920

Community Youth Advocates, 36 Tremont Square, Claremont, NH 03743, Rodney Minkler, (603) 543–0427

Vermont

Washington County Youth Service Bureau, P.O. Box 627, Montpelier, VT 05601, Tom Howard, (802) 229–9151

*Region II*

New Jersey

Anchor House, 482 Centre Street, Trenton, NJ 08611, Judith Donohoe, (609) 396–8329

Crossroads, 770 Woodlane Road, Suite 57, Mt. Holly, NJ 08060, Delores G. Martell, (609) 261–5400

Group Homes of Camden County, 35 S. 29th Street, Camden, NJ 08105, Sandra Mengestu, (609) 541–9283

Atlantic County Department of Social Services, 101 So. Shore Road, Northfield, NJ 08225 Don Leeds, (609) 645–5862

New York

Equinox, 214 Lark Street, Albany, NY 12210, Judith Watson, (518)465–9524

Compass House, 370 Linwood Avenue, Buffalo, NY 14209, Janell Wilson, (716) 886–1351

Town of Huntington Youth Bureau, 100 Main Street, Huntington, NY 11743, Paul Lowery, (516) 351–3061

YWCA of Binghamton/Broome County, 80 Hawley Street, Binghamton, NY 13901, Saraanne Delafield, (607) 772–0340

Family of Woodstock, U.P.O. Box 3516, Kingston, NY 12401, Joan Mayer, (914) 679–9240

Chautauqua Opportunities, 188 South Erie Street, Mayville, NY 14757, Douglas Fricke, (716) 753–2117

Emergency Housing Group, 141 Monhagen Avenue, Middletown, NY 10940, John Harper, (914) 343–7115

Oswego County Opportunities, Inc., 223 Oneida Street, Fulton, NY 13069, Janette Reshick, (315) 598–4717

Family and Community Services, 41 West Main Street, Cobleskill, NY 12043, Tom Meyer, (518) 234–3581

Oneida County Community Action Agency, 303 West Liberty Street, Rome, NY 13440, Treva Wood, (315) 339–5640
Cortland County Community Action Program (Time Out Program), 23 Main Street, Cortland, NY 13045, Lenn Ann Underwood, (607) 753–6781
The Salvation Army, 749 S. Warren Street, Syracuse, NY 13202, Roberta Schofield, (315) 479–1323
Westchester County Youth Bureau, 150 Grand Street, 6th Flr., White Plains, NY 10601, Toni Collarini, (914) 285–2745
County of Nassau, One West Street, Mineola, NY 11501, Ann M. Irvin, (516) 571–5893

Puerto Rico

Centros Sor Isolina Ferre, Box 213, Playa Station, Ponce, PR 00734, Sister Rosita Bauza, (809) 843–1910

*Region III*

Delaware

Child, Inc., 507 Philadelphia Pike, Wilmington, DE 19809, Joseph Dell'Olio, (302) 762–8989

District of Columbia

Latin American Youth Center, 3045—15th Street, NW., Washington, D.C. 20009, Lori Kaplan, (202) 483–1140

Maryland

St. Mary's County Board of County Commissioners, P.O. Box 653, Leonardtown, MD 20650, Carl Loffler, (301) 475–4464

Pennsylvania

Voyage House, 1431 Lombard Street, Philadelphia, PA 19146, Susan Pursch, (215) 545–2910
Catholic Charities, P.O. Box 3551, Union Deposit Road, Harrisburg, PA 17105, MSG. Francis Kumontis, M.S.W., (717) 657–4804
Catholic Social Services, 33 E. Northhampton, Wilkes-Barre, PA 18701, Thomas Cherry, (717) 824–5766
Three Rivers Youth, 2039 Termon Avenue, Pittsburgh, PA 15212, David Droppa, (412) 766–2215
Alternatives Family Resources, 1035 High Street, Pottstown, PA 19464, Ronald Harris, (215) 327–1601
Council of Three Rivers, American Indian Center, 200 Charles Street, Pittsburgh, PA 15238, Russell Simms, (412) 782–4457
Youth Services of Bucks County, Neshaminy Manor Center, Almshouse Building, Doylestown, PA 18901, Roger Dawson, (215) 752–7050

Virginia

Volunteer Emergency Families for Children, P.O. Box 15416, Richmond, VA 23227, William Christian, (804) 261–0607
City of Roanoke, 4350 Coyner Spring Road, Roanoke, VA 24012, Andrea Krochalis, (703) 977–3324
Seton House, Inc., 642 North Lynnhaven Road, Virginia Beach, VA 23452, Michael Inman, (804) 498–4673
Children, Youth and Family Services, 116 West Jefferson Street, Charlottesville, VA 22902, Betty Ann Hopke, (804) 977–4260
Family and Children's Services, 1518 Willow Lawn Drive, Richmond, VA 23230, Richard J. Lung, (804) 282–4255

West Virginia

Daymark (Patchwork), 1598–C Washington East, Charleston, WV 25311, Dennis Pease, (304) 340–3675
Time Out Youth Services, 1431 - 7th Avenue, Huntington, WV 25701, Pamela Dickens-Rush, (304) 525–7161

*Region IV*

Alabama

American Red Cross, 405 South First Street, Gadsden, AL 35901, Dorothy West, (205) 547–8667
Group Homes, Inc., 1426 S. Court Street, Montgomery, AL 36104, George Hoyt/ Martha Nachman, (205) 834–5512

Florida

Family Resources, Inc. (Residential South), P.O. Box 13087, St. Petersburg, FL 33733, Jane Harper, (813) 341–2200
Youth Crisis Center, P.O. Box 16567, Jacksonville, FL 32245, Tom Patania, (904) 720–0002
Youth & Family Alternatives (RAP), 7524 Plathe Road, New Port Richey, FL 34653, George Magrill, (813) 841–4184
Florida Keys Children's Center, 73 High Point Road, Tavernier, FL 33070, Dale Wolgast, (305) 852–4246
Crosswinds Youth Services, Inc., P.O. Box 540625, Merritt Island, FL 32954–0625, Jan Lokay, (305) 452–8988
Family Resources, Inc. (Residential South), P.O. Box 13087, St. Petersburg, FL 33733, Jane Harper, (813) 341–2200
Lutheran Ministries (Gulf Coast Youth and Family Services), 4610 W. Fairfield Drive, Pensacola, FL 32506, Neil Pape, (904) 453–2772

Georgia

The Bridge, 1559 Johnson Road, NW., Atlanta, GA 30318, Ann Starr, (404) 792–0070
Marshlands, Inc., 311 East Hall Street, Savannah, GA 31401, James McLaughlin, (912) 234–0103
Athens Regional Attention Home, 490 Pulaski Street, Athens, GA 30601, Sharon Smith, (404) 548–5893
The Alcove, 507 East Church Street, Monroe, GA 30655, Gail Bayes, (404) 267–9156
Tri-County Protective Agency, P.O. Box 1937, Hinesville, GA 31313, Rita Campbell, (912) 368–9200
Safe Harbor Children's Shelter, P.O. Box 1313, Beunswick, GA 31521, Chuck Ballance, (912) 267–6000

Kentucky

Brighton Center, Inc., P.O. Box 325, Newport, KY 41072, Robert Brewster, (606) 491–8303 (606) 491–8303

Mississippi

Catholic Charities, P.O. Box 2248, Jackson, MS 39225–2248, Rev. Elvin Sunds, (601) 355–8634
Mississippi Children's Home, P.O. Box 1078, Jackson, MS 39215–9911, Christopher Cherney, (601) 352–7784

North Carolina

The Relatives, 1100 East Boulevard, Charlotte, NC 28203, Jo Ann Greyer, (704) 377–0602
Mountain Youth Resources, P.O. Box 2847, Cullowhee, NC 28723–2847, Elizabeth Chambers, (704) 586–8958
Tuscarora Tribe, P.O. Box 8, Pembroke, NC 28372, Robert Locklear, (919) 521–1861
Youth Focus, Inc., 301 E. Washington Street, Greensboro, NC 27401, Charles Hodierne, (919) 333–6858
Lee County Youth Services, P.O. Box 57, Sanford, NC 27331–0057, Todd Edwards, (919) 774–8404

South Carolina

Dept. of Youth Services (Crossroads), 4360 Headquarters Road, N. Charleston, SC 29405, Greg Leighton, (803) 744–3381
Dept. of Youth Services (Hope House), 1940 Shivers Road, Columbia, SC 29210, Marilyn McEachern, (803) 731–1694
Dept. of Youth Services (Greenhouse), 529 N. Wise Drive, Sumter, SC 29150 Howard McFadden, (803) 775–3311

Tennessee

Oasis Center, P.O. Box 121648, Nashville, TN 37212, Mary Jane Dewey, (615) 327–4455
Link House, Inc., P.O. Box 7022, Kingsport, TN 37664, Connie Steere, (615) 378–4163
Child and Family Services, 114 Dameron Avenue, Knoxville, TN 37917, Charlie Gentry, (615) 524–7483
Gardner House, 317 Oak Street, Chattanooga, TN 37403, Tom Edwards, (615) 755–2725
The Family Link, P.O. Box 40437, Memphis, TN 38174, Marian Carruth, (901) 725–6911

*Region V*

Illinois

McHenry County Youth Service, 101 South Jefferson Street, Woodstock, IL 60098, Susan Krause, (815) 338–7360
Hoyleton Youth and Family Services, 36 Loisel Village, East St. Louis, IL 62203, Shelly Byndom, (618) 398–0900
Youth Service Bureau, 1111 South Eighth Street, Springfield, IL 62703, Kaywin Davis, (217) 753–8300
Mental Health Services of Franklin and Williamson Counties, Inc., 902 West Main, P.O. Box 530, West Frankfort, IL 62896, Connie Baker, (618) 997–5336
The Night Ministry, 1218 West Addison, Chicago, IL 60613, David Roth, (312) 935–8300
Omni Youth Services, 1111 Lake Cook Road, Buffalo Grove, IL 60089, Dennis Depcik, (708) 537–6878
Children's Home and Aid Society, 1819 South Neal Street, Ste. D, Champaign, IL 61820, Tom Butero, (217) 359–8815
Youth Attention Center, 527 South Main Street, P.O. Box 606, Jacksonville, IL 62651–0606, Jerome Noble, (217) 245–6000
Youth Outreach Services, 6417 W. Irving Park Road, Chicago, IL 60634, William Southwick, (312) 777–7112

Indiana

Indiana Juvenile Justice Task Force, 1800 N. Meridian, Suite 402, Indianapolis, IN 46202, James Miller, (317) 926–6100
Crisis Shelter, 1575 Dr. Martin Luther King, Jr. Street, Indianapolis, IN 46202, Ron Carpenter, (317) 634–5050
Youth Service Bureau of St. Joseph County, 2222 Lincoln Way West, South Bend, IN 46628, Bonnie Strycker, (219) 235–9231

Stopover, Inc., 2236 E. 10th Street, Indianapolis, IN 46201–2099, Elizabeth Malone, (317) 635–9301
Clark County Youth Shelter, 118 East Chestnut Street, P.O. Box 886, Jeffersonville, IN 47131, Candice Chaney, (812) 284–5229

Michigan

Comprehensive Youth Services (Macomb Co. Youth Interim Care Facility), 422 Bart Street, Warren, MI 48091, Joanne Smyth, (313) 463–7079
Link Crisis Intervention Center, 2002 South State Street, St. Joseph, MI 49085, Nancy Berendsen, (616) 983–6351
Youth Living Centers, 715 S. Inkster Road, Inkster, MI 48141, Linda Connelly, (313) 563–5005
Listening Ear Crisis Center, 107 E. Illinois Avenue, P.O. Box 65, Mt. Pleasant, MI 48804–0085, Donald Schuster, (517) 772–2918
Comprehensive Youth Services (The Harbor), 3061 Commerce Drive, Suite 2, Port Huron, MI 48060, Sally Currie, (313) 385–7010
Cory Place, 1218 Washington Avenue, Bay City, MI 48708, Raul Gonzales, (517) 895–5563
Saginaw County Youth Council, P.O. Box 3191, Saginaw, MI 48605, Ronald Spess, (517) 752–5175
Northeast Michigan Community Service Agency, 2373 Gordon Road, Alpena, MI 49707, John Swise, (517) 356–3474
League of Catholic Women (Off The Streets), 10612 E. Jefferson, Detroit, MI 48201, David.Suttner, (313) 831–1000
Advisory Centers (The Bridge), 1115 Ball Avenue, NE., Grand Rapids, MI 49505, Nancy Ayers, (616) 451–3001
Ozone House, 608 N. Main Street, Ann Arbor, MI 48104, Paul Wood, (313) 662–2265
Every Woman's Place, 425 W. Western Avenue, Muskegon, MI 49440, Mary MacDonald, (616) 726–4493
Bethany Christian Services, 6995 W. 48th Street, Fremont, MI 49412, Dale A Painter, (616) 924–3390

Minnesota

The Bridge, 2200 Emerson Avenue South, Minneapolis, MN 55405, Thomas Sawyer, (612) 377–8800
St. Paul Youth Service Bureau, Inc., 1667 Arcade Street, St. Paul, MN 55108–2615, Nancy Letoumeau, (612) 771–1301
Crossroads of Owantonna, 565 Dunnell Drive, Owatonna, MN 55060, Roy Harley, (612) 388–1041
Evergreen House, 622 Mississippi Avenue, Bemidji, MN 56601, Cheryl Byers, (218) 751–4332
Ain Dah Yung Shelter (Our Home), 1089 Portland Avenue, St. Paul, MN 55104, John Whitecloud, (612) 227–4184
Lutheran Social Services (Bethany Crisis Center), 9239 Odaho Street, Duluth, MN 55808, John Moline, (218) 626–2726

Ohio

Huckleberry House, 1421 Hamlet Street, Columbus, OH 43201, Douglas McCoard, (614) 294–8097
Shelter Care, Inc. (Safe Landing Youth Shelter), 680 E. Market St., Suite 306, Akron, OH 44304, David Fair, (216) 376–4200
Southern Consortium for Children, 7990 Dairy Lane, P.O. Box 956, Athens, OH 45701–0956, Steven Trout, (614) 593–8293
Children's and Family Service, 535 Marmion Avenue, Youngstown, OH 44502, Gerald Janosik, (216) 782–5664
Council on Rural Service Programs, 116 E. Third Street, Greenville, OH 45331, Shirley Hathaway, (513) 548–8002
Center for Children and Youth Services, 42707 North Ridge Road, Elyria, OH 44035, John Ollerton, (216) 323–3400

Wisconsin

Briarpatch, 512 E. Washington Avenue, Madison, WI 53703, Steve Sperling, (608) 251–6211
Counseling Center of Milwaukee (Pathfinders), 2038 N. Bartlett, Milwaukee, WI 53202, Ted Seaver (414) 271–2565

*Region VI*

Arkansas

Youth Bridge, P.O. Box 668, Fayetteville, AR 72702, Scott Limbaugh, (501) 521–1532
Comprehensive Juvenile Services, 1606 South J, Fort Smith, AR 72901, Jerry Robertson, (501) 785–4031

Louisiana

Johnny Gray Jones Regional Youth Shelter, 4815 Shed Road, Bossier City, LA 71111, Gerry Gardner, (318) 747–1459
Tangipahoa Youth Service Bureau, 1826 River Road, Hammond, LA 70401, Jeanne Voorhees, (504) 345–1171
ETC Harbour House P.O. Box 864, Lake Charles, LA 70602, Martha Parnell, (318) 433–1062

New Mexico

A New Day, 2720–A Carlislen NE., Albuquerque, NM 87110, Jeffrey Burrows, (505) 881–5228
Youth Development, 1710 Centro Familiar SW., Albuquerque, NM 87105, Augustine C. Baca, (505) 873–1604

Oklahoma

Cherokee Nation Youth Shelter, P.O. Box 948, Tahlequah, OK 74465, Linda Vann, (918) 456–0671
Youth Services of Tulsa, 302 South Cheyenne, Room 114, Tulsa, OK 74103, Sharon Wiggins, (918) 582–0061
Youth and Family Services of Canadian County, 2404 Sunset Drive, El Reno, OK 73036, Les Sparks, (405) 262–6556
Youth Services for Stephens County, P.O. Box 1603, Duncan, OK 73534, John Herdt, (405) 255–8800
Youth and Family Services of North Oklahoma, 2925 North Midway, Enid, OK 73701, Jane Webber, (405) 233–7220
Youth Services of Oklahoma County, 201 NE. 50th Street, Oklahoma City, OK 73105, Ken Young, (405) 235–7537
Payne County Youth Services 2224 W. 12th, Stillwater, OK 74076, James E. Lunsford, (405) 377–3380

Texas

Teen Connection, 1414 W. San Antonio Street, New Braunfels, TX 78130, Conley Thompson, (210) 629–6571
Youth Alternatives (The Bridge), 3103 West Avenue, San Antonio, TX 78213, Anita Johnston, (210) 340–8077
Catholic Family Services, 123 North Avenue, N., Lubbock, TX 79401, Stephen Hay, (806) 765–8475
Institute for Child and Family Services, 100 Sandman, Houston, TX 77007, Jane Harding, (713) 863–7850
Children's Aid Society, 1101–30th Street, Wichita Falls, TX 76302, Patricia King, (817) 322–3141
SCAN Emergency Youth Shelter, 6202 McPherson, Suite #11 Laredo, TX 78041, Iseld Dabdoub, (210) 724–3177
El Paso Center for Children, 3700 Altura, El Paso, TX 79930, Sandy Rioux, (915) 565–8361
YMCA of Dallas, 601 N. Akard Street, Dallas, TX 75201, Kathy Rod, (214) 954–0655
The Bridge Association, 115 West Broadway, Forth Worth, TX 76104, Cindy Honey, (817) 332–8317
Central Texas Youth Services Bureau, 703 Parmer Street, P.O. Box 185, Killeen, TX 76540, Keith Wallace, (817) 634–2085
The Children's Center, 2127 Avenue M, Galveston, TX 77550, Lori Del Buono, (409) 765–5212
Harris County Children's Protective Services (Chimney Rock Center), 6425 Chimney Rock Road, Houston, TX 77081, Ann Hibbert, (713) 664–5701

*Region VII*

Iowa

Youth and Shelter Services 232–½ Main Street, Ames, IA 50010, George Belitsos, (515) 233–3141
United Action for Youth, 410 Iowa Avenue, Iowa City, IA 52240, Jim Swaim, (319) 338–7518
Foundation II, 1540 Second Avenue, Cedar Rapids, IA 52403, Steve Meyer, (319) 362–1170

Kansas

Wyandotte House, 4300 Brenner Drive, Kansas City, KS 66104, Wayne Sims, (913) 334–0294
United Methodist Youthville, 900 W. Broadway, Newton, KS 67114, Stacy Pfeiffer, (316) 823–5529
Temporary Lodging for Children, 333 E. Poplar, Olathe, KS 66061, Sherrie Love, (913) 764–2887

Missouri

Marian Hall Emergency Shelter, 325 N. Newstead Avenue, St. Louis, MO 63108, Patty Johnson, (314) 653–0080
Synergy House, P.O. Box 12181, Parkville, MO 64152, Carol Kuhns, (816) 741–1477

Nebraska

Youth Service System, 2202 South 11th Street, Lincoln, NE 68502, James Blue, (402) 475–3040
Youth Emergency Services, 3001 Douglas Twin Towers, Omaha, NE 68131, Robert Sparby, (402) 345–5187
Panhandle Community Services, 3350 North 10th Street, Gering, NE 69341, Ruth Vance, (308) 635–3089

*Region VIII*

Colorado

Human Services, Inc., 899 Logan Street, Denver, CO 80203, Ben Leonard, (303) 830–2714

Urban Peak, 1577 Clarkson Street, Denver, CO 80218, Jon Schwartz, (303) 863–7325

Pueblo Youth Service Bureau, 425 West Third Street, Pueblo, CO 81003, Molly Melendez, (719) 542–5161

CHINS UP Youth and Family Services, 17 North Farragut Avenue, Colorado Springs, CO 80909, Gerar H. Veneman, (719) 475–0562

Volunteers of America, 1865 Larimer Street, Denver, CO 80202, Dianna Kunz, (303) 297–0408

Montana

Mountain Plains Youth Services, 709 East Third, Anaconda, MT 59711, Linda Wood, (701) 255–7229

Blackfeet Tribal Council, P.O. Box 1210, Browning, MT 59417, Violet Butterfly, (406) 338–5871

North Dakota

Mountain Plains Youth Services, 311 North Washington, Bismarck, ND 58501, Linda Wood, (701) 255–7229

South Dakota

Mountain Plains Youth Services (Threshold), 1401 W. 51st, Sioux Falls, SD 57102, Linda Wood, (605) 334–1414

Rosebud Sioux Tribe, P.O. Box 430, Rosebud, SD 57570, Marilyn Gangone, (605) 747–2381,

Utah

Department of Social Services, 120 North 200 West, Salt Lake City, UT 84110, Jean Nielson, (801) 538–4100

Wyoming

Mountain Plains Youth Services, P.O. Box 6291, Sheridan, WY 82801, Howard Thomas, (701) 255–7220

Attention Home, P.O. Box 687, Cheyenne, WY 82003, James Cosgrove, (307) 778–7832

*Region IX*

Arizona

Our Town Family Center, P.O. Box 26665, Tucson, AZ 85726, Dennis Noonan, (602) 323–1708,

Children's Village of Yuma, 257 South Third Avenue, Yuma, AZ 85364, Judy Smith, (602) 783–2427

California

Ocean Park Community Center, (Stepping Stone), 245 Hill Street, Santa Monica, CA 90404, Vivian Rothstein, (310) 399–9232

Santa Cruz Community Center, 298 Harvey West Boulevard, Santa Cruz, CA 95060, Terry Moriarty, (408) 425–1830

Diogenes Youth Services, 8912 Volunteer Lane, Ste. 130, Sacramento, CA 95826, James Bueto, (916) 368–3350

YMCA Youth Development Service, 4715 Viewridge Avenue, San Diego, CA 92123, Beverly DiGregorio, (619) 292–4034

Bill Wilson Counseling Center 1000 Market Street, Santa Clara, CA 95050, Sparky Harlan, (408) 984–5955

South Bay Community Services, 315 Fourth Avenue, Chula Vista, CA 91910, Kathryn Lembo, (619) 420–3620

Mendocino County Youth Project, 202 S. State Street, Ukiah, CA 95482, Arlene Rose, (707) 463–4915

Casa Youth Shelter, 10911 Reagan Street, Los Alamitos, CA 90720, Luciann Maulhardt, (310) 594–6825

Larkin Street Services, 1044 Larkin Street, San Francisco, CA 94109, Roxane White, (415) 673–0911

Xanthos, 1355 Park Avenue, Alameda, CA 94501, Jon Schiller, (510) 522–8363,

Chinatown Youth Center, 1693 Polk Street, San Francisco, CA 94109, Joseph Lam, (415) 775–2636

Center for Positive Prevention, 729 N. California Street, #18, Stockton, CA 95202, Linda Mascarenas, (209) 948–4357

Boys Town of Southern California, 303 West Lincoln Avenue, Anaheim, CA 92805, Michael Riley, (714) 491–7777

Tahoe Youth and Family Services, P.O. Box 848, S. Lake Tahoe, CA 95705, Teri Mundt, (916) 541–2445

Center for Human Services, 1700 McHenry Village Way, Modesto, CA 95350, Linda Kovacs, (209) 526–1440

Community Human Services, P.O. Box 3076, Monterey, CA 93942, Allison Olsen, (408) 373–3641

Youth and Family Assistance, 609 Price Avenue, #205, Redwood City, CA 94063, Richard Gordon, (415) 366–8401,

Klein Bottle, 401 N. Milpas, Santa Barbara, CA 93103, David Edelman, (805) 564–7830

1736 Family Crisis Center, 103 W. Torrance Boulevard, Redondo Beach, CA 90277, Carol A. Adelkoff, (310) 372–4674,

Butte County Department of Mental Health, 584 Rio Lindo Avenue, Chico, CA 95926, Ron Erickson, (916) 891–2850

Fred Finch Youth Center, 3800 Coolidge Avenue, Oakland, CA 94602, John F. Steinfirst, (510) 482–2244

Palau

Palau Community Action Agency, P.O. Box 3000, Koror, Republic of Palau 96940, Doroteo Nagata, Phone: 4882–469 (Operator Assistance Needed)

Guam

Sanctuary, P.O. Box 21030, Guam Main Facility, Guam, CM 96921, Tony Champaco, (671) 734–2661

CNMI

Commonwealth of the Marianas, Department of Community Cultural Affairs, Saipan, CM 96950, Margarita Olopai-Taitano, (670) 322–9366

*Region X*

Alaska

Alaska Youth and Parent Foundation, 3745 Community Park Loop, Anchorage, AK 99508, Sheila Gaddis, (907) 274–6541

Fairbanks Native Association, 310 First Avenue, Fairbanks, AK 99701, Banarsi Lal, (907) 452–6201

Idaho

Bannock Youth Foundation, P.O. Box 2072, Pocatello, ID 83206, Stephen Mead, (208) 234–2244

Hays Shelter Home, 5440 Franklin Road, Boise, ID 83705, Jonathan Wunrow (208) 336–1066

Oregon

Youthworks, 1307 W. Main Street, Medford, OR 97501, Maureen Koopman, (503) 779–2393

Northwest Human Services, 681 Center, NE., Salem, OR 97301, Karen Hill, (503) 588–5828

J Bar J Ranch, 62895 Hamby Road, Bend, OR 97701, Craig Christiansen, (503) 389–1409

Washington

YouthCare, 333 First Avenue West, Seattle, WA 98119, Victoria Wagner, (206) 282–1288

Youth Help Association, 522 West Riverside, Suite 610, Spokane, WA 99201, Bernadine Spalla, (509) 455–5226

Community Youth Services, 924 Fifth Avenue, SE., Olympia, WA 98501, Barbara Branstetter, (206) 943–0780

Auburn Youth Resources, 816 F Street, SE., Auburn, WA 98002, Richard Brugger, (206) 939–2202

**D.2: Transitional Living Program for Homeless Youth Grantees Ineligible for New FY 1995 Funding**

*Region I*

Connecticut

Hall Neighborhood House, 52 Green Street, Bridgeport, CT 06608, Pearl Dowell, (203) 334–3900

Maine

New Beginnings, 491 Main Street, Lewiston, ME 04240, Barbara Kawliche, (207) 946–7272

Massachusetts

Franklin County DIAL/SELF, Inc., 196 Federal Street, Greenfield, MA 01301 Melanie Goodman, (413) 774–7054

New Hampshire

Child and Family Services, 99 Hanover Street, Manchester, NH 03101, Gail Starr, (603) 668–1920

Vermont

Washington County Youth Service Bureau, P.O. Box 627, Montpelier, VT 05601, Tom Howard, (802) 229–9151

*Region II*

New Jersey

Somerset Youth Shelter, 49 Brahma Avenue, Bridgewater, NJ 08807, Jeffrey Fetzko, (201) 526–6605

Anchor House, 482 Centre Street, Trenton, NJ 08611, Judith Donohoe, (609) 396–8329

Covenant House, 14 William Street, Newark, NJ 07102, Catherine Ashman, (201) 621–8705

New York

Oneida County Community Action Agency, 303 West Liberty Street, Rome, NY 13440, Treva Wood, (315) 339–5640

The Salvation Army, 749 S. Warren Street, Syracuse, NY 13202, Roberta Schofield, (315) 479–1323

Center for Children and Families, 161–20 89th Avenue, Jamaica, NY 11432 Merrith Hockmeyer, (718) 526–0722

*Region III*

District of Columbia

Sasha Bruce Youthwork, 1022 Maryland Avenue, NE., Washington, DC 20002 Deborah Shore, (202) 675–9340

Latin American Youth Center, 3045—15th Street, NW., Washington, DC 20009, Lori Kaplan, (202) 483–1140

Virginia

Residential Youth Services, 2701 Cameron Mills Road, Alexandria, VA 22302, Bert Hawkins, (703) 548–8334

*West Virginia*

Time Out Youth Services, 1431—7th Avenue, Huntington, WV 25701, Pamela Dickens-Rush, (304) 525–7161

*Region IV*

Florida

Sarasota Family YMCA, 1075 S. Euclid Avenue, Sarasota, FL 34237, Carl Weinrich, (813) 955–8194

Daniel Memorial, Inc., 134 E. Church Street, Jacksonville, FL 32202, Kirk Swenson, (904) 353–5077

Tennessee

Oasis Center, P0 Box 121648, Nashville, TN 37212, Mary Jane Dewey, (615) 327–4455

*Region V*

Illinois

Teen Living Programs (Foundation House), 3179 N. Broadway, Chicago, IL 60657, Deborah Hinde, (312) 883–0025

The Harbour 1480 Renaissance Drive, Park Ridge, IL 60068, Mary Eichling (708) 297–8540

Jackson County Community Mental Health Center, 604 E. College, Suite 101, Carbondale, IL 62901, Art Zaitz, (618) 457–6703

Michigan

The Sanctuary, 1222 South Washington, Royal Oak, MI 48067, Meri Pohutsky, (313) 547–2260

Every Woman's Place, 425 W. Western Avenue, Muskegon, MI 49440, Mary MacDonald, (616) 726–4493

Alternatives for Girls, 1950 Trumbull, Detroit, MI 48216, Amanda Good, (313) 496–0938

*Region VI*

New Mexico

Youth Shelters and Family Services, PO. Box 8135, Santa Fe, NM 87504 Cynthia Gonzales, (505) 983–0586

Oklahoma

Youth Services of Tulsa, 302 South Cheyenne, Room 114, Tulsa, OK 74103, Sharon Wiggins, (918) 582–0061

Texas

Middle Earth Unlimited, 3816 S. First Street, Austin, TX 78704, Mitch Weynand, (512) 447–5639

Sand Dollar, 527 Spring Drive, Pasadena, TX 77504, Happy Spillar, (713) 946–3030

*Region VII*

Iowa

Youth and Shelter Services, 232–1/2 Main Street, Ames, IA 50010, George Belitsos, (515) 233–3141

Youth Homes, Inc., P.O. Box 324, Iowa City, IA 52244, William McCarty, (319) 337–4523

Wyandotte House, 4300 Brenner Drive, Kansas City, KS 66104, Wayne Sims, (913) 334–0294

Missouri

Youth in Need, 516 Jefferson, St. Charles, MO 63301, James Braun, (314) 946–0101

*Region VIII*

Colorado

Volunteers of America, 1865 Larimer Street, Denver, CO 80202, Dianna Kunz, (303) 297–0408

Region IX

Arizona

Our Town Family Center, P.0. Box 26665, Tucson, AZ 85726, Dennis Noonan, (602) 323–1708

California

San Diego Youth and Community Services, 3255 Wing Street, Ste. 550, San Diego, CA 92110, Liz Shear, (619) 221–8600

Catholic Charities of San Francisco, 1049 Market Street, San Francisco, CA 94103, Rebecca Robertson, (415) 558–7072

*Region X*

Alaska

Alaska Youth and Parent Foundation, 3745 Community Park Loop, Anchorage, AK 99508, Sheila Gaddis, (907) 274–6541

Oregon

Janus Youth Programs, 738 NE. Davis, Portland, OR 97232, Dennis Morrow, (503) 233–6090

Looking Glass, 72–B Centennial Loop, Ste. 2, Eugene, OR 97401, Galen Phipps, (503) 689–3111

Youthworks, 1307 W. Main Street, Medford, OR 97501, Maureen Koopman, (503) 779–2393

Washington

Friends of Youth, 2500 Lake Washington Blvd. N., Renton, WA 98056, J. Howard Finck, (206) 228–5775

Pierce County Alliance, 710 S. Fawcett, Tacoma, WA 90402, Terree Schmidt-Whelan, (206) 572–4750

**D.3: Drug Abuse Education and Prevention Program for Homeless Youth Grantees Ineligible for New FY 1994 Funding**

*Region I*

Connecticut

Youth Continuum, Inc., 54 Meadow Street, New Haven, CT 06519 David Sorensen, (203) 562–3396

Council of Churches of Greater Bridgeport, 126 Washington Avenue, Bridgeport, CT 06604, John Cottrell, (203) 334–1121

Educational Resources, Inc., 90 North Main Street, West Hartford, CT 06107, Wayne Starkey, (203) 521–8035

Maine

New Beginnings, 436 Main Street, Lewiston, ME 04240, Barbara Kawliche, (207) 474–8311

Massachusetts

The Bridge, 47 West Street, Boston, MA 02111, Sister Barbara Whelan, (617) 423–9575

Brookline Community Mental Health Center, 43 Garrison Road, Brookline, MA 02146, Cynthia Price, (617) 277–8107

Franklin County DIAL/SELF, 196 Federal Street, Greenfield, MA 01301, Melanie Goodman, (413) 774–7054

YMCA of Western Massachusetts, 120 Maple Street, Springfield, MA 01103, Mary Johnson, (413) 732–3121

New Hampshire

Child and Family Services, 99 Hanover Street, Manchester, NH 03101, Reed Carver, (603) 668–1920

Rhode Island

Stopover Shelters, 3380 East Main Road, Portsmouth, RI 02871, Peter Marshall, (401) 683–1824

Marathon of Rhode Island, 131 Wayland Avenue, Providence, RI 02906, Denise Roberge, (508) 660–0144

Tides Family Services, 1599 Main Street, West Warwick, RI 02893, Michael Reis, (401) 822–1360

Vermont

Washington County Youth, Service Bureau, P.O. Box 627, Montpelier, VT 05601, Tom Howard, (802) 229–9151 Counseling Service of Addison County, 89 Main Street, Middlebury, VT 05753, Barbara Rachelson, (802) 388–6751

*Region II*

New Jersey

Together, 7 State Street, Glassboro, NJ 08028, Susan Sasser, (609) 881–6100

Anchor House, 482 Centre Street, Trenton, NJ 08611, Judith Donohoe, (609) 396–8329

New York

Dutchess County, 22 Market Street, Poughkeepsie, NY 12601, Patrice Kellett, (914) 454–3600

The Salvation Army, 749 S. Warren Street, Syracuse, NY 13202, Roberta Schofield, (315) 479–1323

Educational Alliance, 197 East Broadway, New York, NY 10002, Marion Lazer, (315) 479–1323

The Hetrick-Martin Institute, 401 West Street, New York, NY 10014, Judith Verdino, (212) 633–8920

Metropolitan Assistance (Streetwork Project), 2 Lafayette Street, New York, NY 10007, Helene Lauffer, (212) 577–3806 71Virgin Islands

Caribbean Institute for Psychology, P.O. Box 1547 Kingshill, St. Croix, VI 00851, Chester Copemann, (809) 773–5113

*Region III*

District of Columbia

Sasha Bruce Youthwork, 1022 Maryland Avenue, NE., Washington, DC 20002, Deborah Shore, (202) 675–9340

Maryland

Youth Resources Center, 4320 Hamilton Street, Hyattsville, MD 20781, Holger Kjeldsen, (301) 864–9735
Diakonia, Inc., 12747 Old Bridge Road, Ocean City, MD 21842, Fredericka Danielus, (410) 213–0923

Pennsylvania

Centre County Youth, Services Bureau, 410 South Fraser Street, State College, PA 16801, Norma Keller, (814) 237–5731
Valley Youth House Committee, 539 Eighth Avenue, Bethlehem, PA 18018, David Gilgoff, (215) 691–1200
Whale's Tale, 250 Shady Avenue, Pittsburgh, PA 15206, Christopher Smith, (412) 661–1800
Catholic Social Services, 33 E. Northhampton Wilkes-Barre, PA 18701, Thomas Cherry, (717) 824–5766
Three Rivers Youth, 2039 Termon Avenue, Pittsburgh, PA 15212, David Droppa, (412) 766–2215

Virginia

Alternative House, 2136–G Gallows Road, Dunn Loring, VA 22027, Jim Warwick, (703) 771–5300
Loudoun County Youth Shelter, 16450 Meadowview Court, Leesburg, VA 22075, Jerry Tracy (703) 771–5300

West Virginia

Daymark, Inc., (Patchwork), 1598–C Washington St. East, Charleston, WV 25311, Dennis Pease, (304) 340–3675
Time Out Youth Services, 1431 - 7th Avenue, Huntington, WV 25701, Pamela Dickens-Rush, (304) 525–7161

*Region IV*

Florida

Family Resources, Inc., P.O. Box 13087, St. Petersburg, FL 33733, Jane L. Harper, (813) 341–2200
Crosswinds Youth Services, Inc., P.O. Box 540625, Merritt Island, FL 32954, Jan Lokay, (305) 452–8988
Project III of Central Florida, 1412 West Colonial Drive, Orlando, FL 32804, David Congdon, (407) 423–2273

Georgia

The Bridge, 1559 Johnson Road, NW., Atlanta, GA 30318, Ann Starr, (404) 792–0070

Kentucky

YMCA Center for Youth Alternatives, 1410 South First Street, Louisville, KY 40208, Kevin Connelly, (502) 635–5233
Brighton Center, P.O. Box 325, Newport, KY 41072, Robert Brewster, (606) 491–8303

Mississippi

Catholic Charities, PO Box 2248, Jackson, MS 39225, Rev. Elvin Sunds, (601) 355–8634

North Carolina

North Carolina Department of Human Resources, 101 N. Salisbury Street, Raleigh, NC 27603, Arthur Jones, Jr., (919) 733–4555

Tennessee

Oasis Center, PO. Box 121648, Nashville, TN 37212, May Jane Dewey, (615) 327–4455
Child and Family Services, 114 Dameron Avenue, Knoxville, TN 37917, Charlie Gentry, (615) 524–7483

*Region V*

Illinois

Project OZ, 502 Morris Avenue, Bloomington, IL 61701, Peter Rankaitis, (309) 827–0377
Hoyleton Youth and Family Services, 36 Loisel Village, East St. Louis, IL 62203, Shelly Byndom, (618) 398–0900
Youth Services Project, 3942 W. North Avenue, Chicago, IL 60647, Nancy Abbate, (312) 772–6270

Indiana

Youth Service Bureau of St. Joseph County, 2222 Lincolnway West, South Bend, IN 46628, Bonnie Strycker, (219) 235–9231
Park Center, Inc., 2722 Fairfield Avenue, Fort Wayne, IN 46807, Kim Butcher, (219) 481–2700

Michigan

The Sanctuary, 1222 South Washington, Royal Oak, MI 48067, Meri Pohutsky, (313) 547–2260
Gateway Community Services, 910 Abbott Road, East Lansing, MI 48823, David Glerum, (517) 351–4000
Youth Living Centers, 715 S. Inkster Road, Inkster, MI 48141, Linda Connelly, (313) 563–5005
Comprehensive Youth Services (Harbor), 3061 Commerce Drive, Port Huron, MI 48060, Sally Currie, (313) 385–7010
Advisory Centers (The Bridge), 1115 Ball Avenue, NE., Grand Rapids, MI 49505, Nancy Ayers, (616) 451–3001
Alternatives for Girls, 1950 Trumbull, Detroit, MI 48216, Amanda Good, (313) 496–0938
Juvenile Diversion Program, 301 Francis Street, Jackson, MI 49201, Gene Hubbard, (517) 788–4240

Minnesota

The Bridge, 2200 Emerson Avenue South, Minneapolis, MN 55405, Thomas Sawyer, (612) 377–8800

Ohio

Lutheran Metropolitan, Ministries, Inc., 1468 West 25th Street, Cleveland, OH 44123, Thomas Sutton, (216) 241–4791

Wisconsin

Wisconsin Association for Runaway Services, 2318 E. Dayton Street, Madison, Wisconsin 53704, Patricia Balke, (608) 241–2649
Briarpatch, 512 E. Washington Avenue, Madison, WI 53703, Steve Sperling, (608) 251–6211
Counseling Center of Milwaukee, 2038 N. Bartlett, Milwaukee, WI 53202, Ted Seaver, (414) 271–2565

*Region VI*

New Mexico

Youth Shelters and Family Services, P.O. Box 8135, Santa Fe, NM 87504, Cynthia Gonzales, (505) 983–0586

Oklahoma

Youth Services for Stephens County, P.O. Box 1603, Duncan, OK 73534, John Herdt, (405) 255–8800
Youth and Family Services of North Oklahoma, 2925 North Midway, Enid, OK 73701, Jane Webber, (405) 233–7220

Texas

Middle Earth Unlimited, 3816 S. First Street, Austin, TX 78704, Mitch Weynand, (512) 447–5639
Promise House, 236 W. Page Street, Dallas, TX 75208, Lee Schimmel, (214) 941–8578
Youth Alternatives (The Bridge), 3103 West Avenue, San Antonio, TX 78213, Anita Johnston, (210) 340–8077
Montgomery County Youth Services, PO Box 1316, Conroe, TX 77305, Gretchen Faulkner, (409) 756–8682

*Region VII*

Iowa

United Action for Youth, 410 Iowa Avenue, Iowa City, IA 52240, Jim Swaim, (319) 338–7518
Foundation II, 1540 Second Avenue, Cedar Rapids, IA 52403, Steve Meyer, (319) 362–1170
Youth Emergency Services, 921 Pleasant Street, Des Moines, IA 50309, Susan Gehring-Liker, (515) 243–7825

Kansas

Wichita Children's Home, 810 N. Holyoke, Wichita, KS 67208, Sarah Robinson, (316) 684–6581

Missouri

Youth in Need, 516 Jefferson, St. Charles, MO 63301, James Braun, (314) 946–0101
Marian Hall Emergency Shelter, 325 North Newstead Avenue, St. Louis, MO 63108, Patty Johnson, (314) 653–0080

Nebraska

Youth Service System, 2202 South 11th Street, Lincoln, NE 68502, James Blue, (402) 475–3040

*Region VIII*

Colorado

Urban Peak, 1577 Clarkson Street, Denver, CO 80218, Jon Schwartz, (303) 863–7325
Pueblo Youth Service Bureau, 425 West Third Street, Pueblo, CO 81003, Molly Melendez, (719) 542–5161
Ute Mountain Ute Nation (Sunrise Youth Shelter), General Delivery, Towaoc, CO 81334, Rita Arnett, (303) 565–3751, Ext. 213

Montana

Blackfeet Tribal Council, PO Box 1210, Browning, MT 59417, Violet Butterfly, (406) 338–5871

South Dakota

Crow Creek Sioux Tribe (Red Horse Lodge), PO Box 49, Ft. Thompson, SD 57339, Tamara Schmidt, (605) 245–2213

Utah

Salt Lake City Division of Youth Services, 3975 South Main, Suite A, Murray, UT 84107, Lamar Eyre, (801) 264–2254

*Region IX*

Arizona

Open-Inn, 4810 E. Broadway, Tucson, AZ 85711, Darlene Dankowski, (602) 323–0200

California

Santa Clara Social Advocates for Youth, 1072 Saratoga-Sunnyvale Rd., San Jose, CA 95129, Kathleen Lynch, (408) 253–3540

Central City Hospitality House, 146 Leavenworth Street, San Francisco, CA 94102, Kate Durham, (415) 776–2102

San Diego Youth and Community Services, 3255 Wing Street, Suite 550, San Diego, CA 92110, Liz Shear, (619) 221–8600

Diogenes Youth Services, 8912 Volunteer Lane, Suite 130, Sacramento, CA 95826, James Bueto, (916) 368–3350

Bill Wilson Counseling Center, 1000 Market Street, Santa Clara, CA 95050, Sparky Harlan, (408) 984–5955

South Bay Community Services, 315 Fourth Avenue, Chula Vista, CA 91910, Kathryn Lembo, (619) 420–3620

Mendocino County Schools, 202 S. State Street, Ukiah, CA 95482, Arlene Rose, (707) 463–4915

Larkin Street Services, 1044 Larkin Street, San Francisco, CA 94109, Roxane White, (415) 673–0911

Tahoe Youth and Family Services, PO Box 848, South Lake Tahoe, CA 95705, Teri Mundt, (916) 541–2445

Center for Human Services, 1700 McHenry Village Way, Modesto, CA 95350, Linda Kovacs, (209) 526–1440

Youth and Family Assistance, 609 Price Avenue, Suite 205, Redwood City, CA 94063, Richard Gordon, (415) 366–8401

Community Service Programs, 17200 Jamboree, Suite D, Irvine, CA 92714, Margot Carlson, (714) 250–0488

Los Angeles Free Clinic, 8489 W. 3rd St., Suite 1080, Los Angeles, CA 90048, Andrea Sobbe/May Rainwater, (213) 462–7400

Los Angeles Gay and Lesbian, 1213 North Highland Avenue, Los Angeles, CA 90038, Jackie Gelfand, (213) 464–7400

*Region X*

Alaska

Fairbanks Native Association, 310 First Avenue, Fairbanks, AK 99701, Banarsi Lal, (907) 452–6201

Oregon

Youthworks, 1307 W. Main Street, Medford, OR 97501, Maureen Koopman, (503) 779–2393

J Bar J Youth Services, 62895 Hamby Road, Bend, OR 97701, Craig Christiansen, (503) 389–1409

Washington

Friends of Youth, 2500 Lake Washington Blvd. N., Renton, WA 98052, Jo. Howard Finck, (206) 228–5775

United Indians, PO Box 99100, Seattle, WA 98199, Bernie Whitebear, (206) 285–4425

Youth Help Association, 522 W. Riverside Avenue, Spokane, WA 99201, Bernadine Spalla, (509) 455–5226

Pierce County Alliance, 710 S. Fawcett, Tacoma, WA 98402, Terree Schmidt-Whelan, (206) 572–4750

South Puget Intertribal Planning, SE 1750 Old Olympic Highway, Shelton, WA 98584, Amadeo Tiam, (206) 426–3990

Tacoma Housing Authority, 1728 East 44th Street, Tacoma, WA 98404, Patricia Harrington, (206) 473–2331

## APPENDIX E.—BASIC CENTER PROGRAM FOR RUNAWAY AND HOMELESS YOUTH, TABLE OF ALLOCATIONS BY STATE

[Total 57 States and Jurisdicitons—Fiscal Year 1994]

| Regions and states | Continuations | New starts | Totals |
|---|---|---|---|
| Region I: | | | |
| Connecticut | $227,131 | $148,724 | $375,855 |
| Maine | 93,977 | 55,195 | 149,172 |
| Massachusetts | 337,653 | 332,159 | 669,812 |
| New Hampshire | 132,680 | 3,817 | 136,497 |
| Rhode Island | 0 | 112,123 | 112,123 |
| Vermont | 75,000 | 0 | 75,000 |
| Region II: | | | |
| New Jersey | 315,319 | 582,639 | 897,958 |
| New York | 1,417,254 | 711,130 | 2,128,384 |
| Puerto Rico | 103,758 | 458,806 | 562,564 |
| Virgin Islands | 0 | 30,000 | 30,000 |
| Region III: | | | |
| Delaware | 45,547 | 36,426 | 81,973 |
| District of Columbia | 28,800 | 46,200 | 75,000 |
| Maryland | 82,040 | 503,436 | 585,476 |
| Pennsylvania | 750,573 | 628,538 | 1,379,111 |
| Virginia | 412,533 | 337,228 | 749,761 |
| West Virginia | 207,075 | 5,958 | 213,033 |
| Region IV: | | | |
| Alabama | 243,315 | 278,787 | 522,102 |
| Florida | 671,401 | 789,608 | 1,461,009 |
| Georgia | 539,190 | 326,106 | 865,296 |
| Kentucky | 144,599 | 322,904 | 467,503 |
| Mississippi | 295,669 | 70,436 | 366,105 |
| North Carolina | 460,712 | 340,235 | 800,947 |
| South Carolina | 362,187 | 95,079 | 457,266 |
| Tennessee | 582,844 | 16,769 | 599,613 |
| Region V: | | | |
| Illinois | 821,865 | 639,144 | 1,461,009 |
| Indiana | 405,665 | 308,509 | 714,174 |
| Michigan | 911,928 | 298,999 | 1,210,927 |
| Minnesota | 489,912 | 89,714 | 579,626 |
| Ohio | 706,441 | 667,795 | 1,374,236 |
| Wisconsin | 245,184 | 393,916 | 639,100 |
| Region VI: | | | |
| Arkansas | 112,985 | 192,184 | 305,169 |
| Louisiana | 323,698 | 277,378 | 601,076 |
| New Mexico | 133,452 | 89,819 | 223,271 |
| Oklahoma | 374,266 | 37,664 | 411,930 |
| Texas | 1,305,103 | 1,117,238 | 2,422,341 |
| Region VII: | | | |
| Iowa | 227,579 | 126,339 | 353,918 |
| Kansas | 250,912 | 76,682 | 327,594 |

APPENDIX E.—BASIC CENTER PROGRAM FOR RUNAWAY AND HOMELESS YOUTH, TABLE OF ALLOCATIONS BY STATE—Continued

[Total 57 States and Jurisdicitons—Fiscal Year 1994]

| Regions and states | Continuations | New starts | Totals |
|---|---|---|---|
| Missouri | 267,560 | 385,677 | 653,237 |
| Nebraska | 148,056 | 64,002 | 212,058 |
| Region VIII: | | | |
| Colorado | 197,182 | 233,272 | 430,454 |
| Montana | 105,671 | 3,039 | 108,710 |
| North Dakota | 81,977 | 2,435 | 84,412 |
| South Dakota | 76,790 | 21,285 | 98,075 |
| Utah | 304,690 | 8,766 | 313,456 |
| Wyoming | 75,000 | 0 | 75,000 |
| Region IX: | | | |
| American Samoa | 0 | 30,000 | 30,000 |
| Arizona | 109,579 | 382,787 | 492,366 |
| California | 2,216,474 | 1,762,424 | 3,978,898 |
| Guam | 30,000 | 0 | 30,000 |
| Hawaii | 0 | 140,885 | 140,885 |
| Northern Marianas | 30,000 | 0 | 30,000 |
| Nevada | 0 | 156,972 | 156,972 |
| Palau | 30,000 | 0 | 30,000 |
| Region X: | | | |
| Alaska | 52,859 | 34,969 | 87,828 |
| Idaho | 151,161 | 4,349 | 155,510 |
| Oregon | 171,171 | 193,472 | 364,643 |
| Washington | 342,910 | 297,653 | 640,563 |
| Totals | 18,229,327 | 14,269,673 | 32,499,000 |

**Appendix F—Administration for Children and Families Regional Office Youth Contacts**

Region I: Sue Rosen, Administration for Children and Families, John F. Kennedy Federal Building, Room 2011, Boston, Massachusetts 02203 (CT, MA, ME, NH, RI, VT) (617) 565–2480

Region II: Estelle Haferling, Administration for Children and Families, 26 Federal Plaza, Room 4149, New York, NY 10278 (NJ, NY, PR, VI) (212) 264–1329

Region III: Dave Lyon, Administration for Children and Families, 3535 Market Street, P.O. Box 13714, Philadelphia, PA 19101 (DC, DE, MD, PA, VA, WV) (215) 596–4139

Region IV: Viola Brown, Administration for Children and Families, 101 Marietta Tower, Suite 903, Atlanta, GA 30323 (AL, FL, GA, KY, MS, NC, SC, TN) (404) 331–7210

Region V: Kathleen Penak, Administration for Children and Families, 105 West Adams, 23rd Floor, Chicago, IL 60603 (IL, MI, MN, OH, WI) (312) 886–3380

Region VI: Ralph Rogers, Administration for Children and Families, 1200 Main Tower, 20th Floor, Dallas, TX 75202 (AR, LA, NM, OK, TX) (214) 767–4542

Region VII: Lynda Bitner, Administration for Children and Families, Federal Office Building, Room 384, 601 East 12th Street, Kansas City, MO 64106 (IA, KS, MO, NE), (816) 426–5401

Region VIII: Vicki Wright, Administration for Children and Families, Federal Office Building, 1961 Stout Street, 9th Floor, Denver, CO 80294 (CO, MT, ND, SD, UT, WY), (303) 844–3100, Ext. 361

Region IX: Al Brown, Administration for Children and Families, 50 United States Nations Plaza, San Francisco, CA 94102 (AZ, CA, HI, NV, American Samoa, Guam, Northern Mariana Islands, Marshall Islands, Federated States of Micronesia, Palau) (415) 556–6153

Region X: Steve Ice, Administration for Children and Families, 2201 Sixth Avenue, RX 32, Seattle, WA 98121 (AK, ID, OR, WA) (206) 615–2558, Ext. 3075

**Appendix G—Training and Technical Assistance Providers**

FYSB funds ten regionally based organizations to provide training and technical assistance to programs funded under the Basic Center, Transitional Living and Drug Abuse Prevention Programs, and to other agencies serving runaway and homeless youth.

Each of the training and technical assistance providers offers on-site consultations; regional, State and local conferences; information sharing and skill-based training.

For more information, contact the training and technical assistance provider in your region.

The New England Consortium for Families and Youth, 25 Stow Road, Roxbury, MA 01719, (508) 266–1998, Contact: Nancy Jackson

Empire State Coalition, 121 Avenue of the Americas, Room 507, New York, NY 10013, (212) 966–6477, Contact: Margo Hirsch

Mid-Atlantic Network of Youth and Family Services, Inc., 9400 McKnight Road, Suite 106, Pittsburgh, PA 15237, (412) 366–6562, Contact: Nancy Johnson

Southeastern Network of Youth and Family Services, 337 South Milledge Avenue, Suite 209, Athens, GA 354–4568, Contact: Gail Kurtz

Michigan Network of Runaway and Youth Services, 115 West Allegan, Suite 310, Lansing, MI 48933, (517) 484–5262, Contact: Bruce Haas

Southwest Network of Youth Services, 2525 Wallingwood Drive, Austin, TX 78746, (512) 328–6860, Contact: Theresa Andreas-Tod

M.I.N.K., A Network of Runaway and Youth Serving Agencies, PO Box 14403, Parkville, MO 64152, (314) 946–0101, Contact: Laura Harrison

Mountain Plains Youth Services, 311 North Washington, Bismarck, ND 58501, (701) 255–7229, Contact: Linda Wood

Western States Youth Services Network, 1306 Ross Street, Suite B, Petaluma, CA 94954, (707) 763–2213, Contact: Nancy Fastenau

Northwest Network of Runaway and Youth Services, 603 Stewart Street, Seattle, WA 98101, (206) 628–3760, Contact: Carmen Ray

**Appendix H—Executive Order 12373—State Single Points of Contact**

*Arizona*

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

*Arkansas*

Tracie L. Copeland, Manager, State Clearninghouse, Office of Intergovernmental Services, Department of Finance and Administration, PO Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

*California*

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street,

Sacramento, California 95814, Telephone (916) 323–7480

*Colorado*

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

*Delaware*

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

*District of Columbia*

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

*Florida*

Florida State Clearinghouse, Intergovernmental Affairs, Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

*Georgia*

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

*Illinois*

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Statton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

*Indiana*

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

*Iowa*

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

*Kentucky*

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

*Maine*

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

*Maryland*

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

*Massachusetts*

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

*Michigan*

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

*Mississippi*

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

*Missouri*

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, PO Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

*Nevada*

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

*New Hampshire*

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

*New Jersey*

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

*New Mexico*

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

*New York*

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

*North Carolina*

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

*North Dakota*

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58503–0170, Telephone (701) 224–2094

*Ohio*

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

*Rhode Island*

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656. Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

*South Carolina*

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

*South Dakota*

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

*Tennessee*

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

*Texas*

Mr. Thomas Adams, Governor's Office of Budget and Planning, PO Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

*Utah*

Utah State Clearinghouse, Office of Planning and Budget, Attn: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

*Vermont*

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montepelier, Vermont 05602, Telephone (802) 828–3326

*West Virginia*

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

*Wisconsin*

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, PO Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

*Wyoming*

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

*Guam*

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, PO Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

*Northern Mariana Islands*

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

*Puerto Rico*

Norma Burgos/Jose H. Caro, Chairman/ Director, Puerto Rico Planning Board, Minillas Government Center, PO Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

*Virgin Islands*

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802. Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750.

BILLING CODE 4184–01–P

APPENDIX I

# APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

5. APPLICANT INFORMATION

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address *(give city, county, state, and zip code)*: | Name and telephone number of the person to be contacted on matters involving this application *(give area code)* |

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

| 13. PROPOSED PROJECT: Start Date | Ending Date | 14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project |
|---|---|---|---|
| | | | |

| 15. ESTIMATED FUNDING: | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

**Instructions for the SF 424**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

*Item and entry*

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   —"New" means a new assistance award.
   —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

## BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

**SECTION A – BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

**SECTION B – BUDGET CATEGORIES**

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

## SECTION C - NON-FEDERAL RESOURCES

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

## SECTION D - FORECASTED CASH NEEDS

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

## SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

| 21. Direct Charges: | 22. Indirect Charges: |
|---|---|
| 23. Remarks | |

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

**Instructions for the SF–424A**

**General Instructions**

This form is designated so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, sections A, B, C, and D should provide the budget for the first budget period (usually a year) and section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of section B.

**Section A. Budget Summary**

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

*For new applications,* leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant *program applications,* submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal-Resources**

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount of Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Lines 20—Enter the total for each of the Columns (b)–(e). When additional

schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

**Assurances—Non-Construction Programs**

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in appendix A of OMP's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age: (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) section 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records: (h) Title VIII of the Civil Right Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistanced and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purpose regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7, the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Offical

Applicant Organization

Title

Date Submitted

BILLING CODE 4184-01-P

## U.S. Department of Health and Human Services
## Certification Regarding Drug-Free Workplace Requirements
## Grantees Other Than Individuals

**By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.**

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

**"Controlled substance"** means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

**"Conviction"** means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

**"Criminal drug statute"** means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

**"Employee"** means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**The grantee certifies that it will or will continue to provide a drug-free workplace by:**

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

**The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):**

**Place of Performance (Street address, City, County, State, ZIP Code)**_____

_____

*Check ___ if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

**DGMO Form#2 Revised May 1990**

*Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions*

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

*Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants*

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

*Certifiction Regarding Lobbying, Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

*State for Loan Guarantee and Loan Insurance*

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submision of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty or not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–P

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

| 1. Type of Federal Action: | 2. Status of Federal Action: | 3. Report Type: |
|---|---|---|
| ☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | ☐ a. bid/offer/application<br>b. initial award<br>c. post-award | ☐ a. initial filing<br>b. material change<br>**For Material Change Only:**<br>year _____ quarter ____<br>date of last report _____ |

| 4. Name and Address of Reporting Entity: | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: |
|---|---|
| ☐ Prime ☐ Subawardee<br>Tier _____, *if known*:<br><br>**Congressional District**, *if known*: | <br><br>**Congressional District**, *if known*: |
| **6. Federal Department/Agency:** | **7. Federal Program Name/Description:**<br><br>CFDA Number, *if applicable*: _____ |
| **8. Federal Action Number**, *if known*: | **9. Award Amount**, *if known*:<br>$ |
| **10. a. Name and Address of Lobbying Entity**<br>*(if individual, last name, first name, MI)*: | **b. Individuals Performing Services** *(including address if different from No. 10a)*<br>*(last name, first name, MI)*: |

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

| 11. Amount of Payment *(check all that apply)*: | 13. Type of Payment *(check all that apply)*: |
|---|---|
| $ _____ ☐ actual ☐ planned | ☐ a. retainer<br>☐ b. one-time fee<br>☐ c. commission<br>☐ d. contingent fee<br>☐ e. deferred<br>☐ f. other; specify: _____ |
| **12. Form of Payment** *(check all that apply)*:<br>☐ a. cash<br>☐ b. in-kind; specify: nature _____<br>value _____ | |

**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**15. Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

**16.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**Signature:** _____
**Print Name:** _____
**Title:** _____
**Telephone No.:** _____ **Date:** _____

**Federal Use Only:**

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federal register

Thursday
May 12, 1994

Part III

# Department of Education

34 CFR Part 364, et al.
Independent Living Services Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 364, 365, 366, and 367

RIN 1820–AB18

## Independent Living Services Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to issue new regulations and to amend existing regulations governing the State Independent Living Services (SILS), Centers for Independent Living (CIL), and Independent Living Services for Older Individuals Who Are Blind (OIB) programs. These proposed regulations are needed to implement chapters 1 and 2 of title VII of the Rehabilitation Act of 1973 (Act), as amended.

DATES: Comments must be received on or before June 13, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Commissioner, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., room 3028, Mary E. Switzer Building, Washington, DC 20202–2575.

A copy of any comments that concern information collection requirements also should 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: John Nelson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3326, Mary E. Switzer Building, Washington, DC 20202–2741. Telephone or TDD: (202) 205–9362.

SUPPLEMENTARY INFORMATION: These proposed regulations would implement chapters 1 and 2 of title VII of the Act by adding a new part 364 and revising parts 365, 366, and 367 of the regulations governing the SILS, CIL, and OIB programs.

The SILS, CIL, and OIB programs are an important part of the National Education Goals. These programs support National Education Goal 6 of the Goals 2000: Educate America Act: Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Executive Order 12866 encourages Federal agencies to solicit earlier and greater public participation in the development of regulations. In response, the Assistant Secretary of the Office of Special Education and Rehabilitative Services (OSERS) and the Acting Commissioner of the Rehabilitation Services Administration (RSA) sent, on December 20, 1993, over 400 letters, along with computer diskettes that included the most up-to-date draft of the proposed regulations, to State vocational rehabilitation (VR) agencies, Statewide Independent Living Councils, centers for independent living (centers), constituent organizations, and other interested parties and individuals, inviting their participation in a series of public meetings and teleconferences on the proposed regulations. On that same date, the Assistant Secretary of OSERS and the Acting Commissioner of RSA also made available the draft of the proposed regulations on the "DIMENET" and "RSA BBS" electronic bulletin boards. Public meetings were held on January 10 and 13 and February 1, 1994. The teleconferences were conducted on January 24, 25, and 26, 1994. A cross section of individuals representing a wide variety of independent living (IL) organizations and viewpoints on IL participated. In general, most commenters were pleased with the draft regulations. The Secretary carefully considered all comments received during the public meetings and teleconferences.

Because of the time needed to make competitive awards under part C of chapter 1 and under chapter 2 of title VII of the Act, the Secretary proposes a 30-day comment period for these proposed regulations. As described in the "Summary of Major Provisions," the Secretary already has revised the proposed regulations in response to the extensive comments received on the draft of these proposed regulations that was distributed to the public on December 20, 1993. In addition, the Secretary will make this notice of proposed rulemaking (NPRM) available through electronic bulletin boards on the date of publication of the NPRM in the Federal Register. The access numbers for the electronic bulletin boards are as follows:

DIMENET Access Number: (508) 880–5412
RSA BBS Access Number: (202) 205–5574

Distribution through the electronic bulletin boards will ensure timely availability of the NPRM. Therefore, the Secretary believes that the public interest will be served best by allowing the public 30 days to comment on the proposed regulations.

### Summary of Major Provisions

The following is a summary of the major provisions in these proposed regulations. The summary identifies changes in the regulations that are mandated by changes in the statute. Other changes described in the summary are regulations proposed by the Secretary. In addition, significant changes made to the proposed regulations as a result of public comments received during the public meetings and teleconferences are discussed in this preamble.

In addition, the Secretary proposes to change all references to "individual with a severe disability" to "individual with a significant disability." The Secretary proposes to define an individual with a significant disability to mean an individual with a severe physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of IL services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment, respectively. This definition is derived from the definition of an "individual with a severe disability" in section 7(15)(B) of the Act. The Secretary is concerned that the term "severe" has largely negative connotations and associations in common usage and believes that the term "significant" may be preferred by persons with disabilities. Consequently, the Secretary proposes to use the term "significant disability" as a synonym for the term "severe disability" in referring to an individual's disability. No change in meaning is intended by this change in nomenclature.

On October 27, 1993, the Secretary published a separate NPRM in the Federal Register (58 FR 57938) soliciting comments on this proposed change. The comment period on the "Nomenclature NPRM" expired on December 13, 1993. The Secretary received only 37 comments on the change proposed in the "Nomenclature NPRM," with no clear majority in favor or against. These commenters expressed a wide range of views on the proposed change. Commenters favoring the proposed change generally expressed the view that the term "significant" is less pejorative than the term "severe" in referring to an individual's disability and, thus, would support a more positive philosophy. These comments were generally received from commenters with an interest in the IL services and CIL programs authorized by title VII of the Act. Commenters opposing the change raised several issues. Some suggested that the proposed change is not technically accurate and that a change in meaning would result despite departmental assurances to the contrary. Others

suggested that the proposed change would be confusing and burdensome to implement and that the proposed change should be made through legislation rather than through rulemaking. These comments were generally received from commenters with an interest in the VR services programs authorized by title I of the Act.

Also on October 27, 1993, the Secretary published a separate NPRM (58 FR 57942) on the indicators of minimum compliance with the evaluation standards in section 725(b) of the Act. The "Indicators NPRM" notified the public of the "Nomenclature NPRM" and advised the public to limit comments on the proposed nomenclature change to the "Nomenclature NPRM." However, many of the comments received on the "Indicators NPRM" also included comments on the proposed change in terms from "severe" to "significant." Of the 102 comments on the "Indicators NPRM," only 4 expressed concern with the proposed change of the term "severe" to "significant." Approximately 28 commenters specifically approved of the proposed change and 24 commenters used the new terminology in their own comments, implicitly indicating their approval of the proposed change. That is, these 24 commenters used the term "significant" instead of the term "severe" in their comments, even though they did not specifically approve of the proposed change. The remaining 50 commenters expressed no views on the proposed change and did not use either of the terms "severe" or "significant" in their comments. Based on the number of comments received from the IL community supporting the proposed change from "severe" to "significant" in the "Indicators NPRM," the Secretary proposes to substitute the term "significant" for the term "severe" in this NPRM.

Further support for changing the term "severe" to "significant" in this NPRM is based on the fact that Congress totally revised title VII of the Act when it passed the 1992 and 1993 Amendments. The argument that it would be burdensome to implement the proposed change (e.g., because of the need to revise existing forms and reporting formats) is inapplicable to implementation of the changes made to the IL programs by the 1992 and 1993 Amendments because the major changes to title VII of the Act have necessitated major revisions to the regulations implementing title VII. Thus, States and other recipients of funds under title VII will have to make extensive revisions (e.g., in existing regulations, forms, and reporting formats) to be consistent with these changes and substituting the term "significant" for "severe" as part of these revisions would not add any significant additional burden.

**Part 364**

Proposed part 364 contains general provisions that would be applicable to the SILS and CIL programs, authorized by parts B and C, respectively, of chapter 1 of title VII of the Act. In addition, some provisions in proposed part 364 also are made specifically applicable to the OIB program authorized by chapter 2 of title VII of the Act.

Proposed § 364.4 lists the definitions that apply to these programs, including "administrative support services," "advocacy," "attendant care," "cross-disability," "individual with a significant disability," "minority group," "nonresidential," "peer relationships," "peer role models," "service provider," "significant disability," "transportation," and "unserved and underserved."

The definition of "administrative support services" is based on the State plan requirement in section 704(c) of the Act regarding the State's role if the CIL program is administered by the State pursuant to section 723 of the Act. The definition of "cross-disability" is based on section 725(b)(2) of the Act. The definition of an "individual with a significant disability" is the definition of "individual with a severe disability" used in section 7(15)(B) of the Act. The definition of "service provider" is derived from the manner in which this term is used in section 704(e) of the Act. The definition of "significant disability" is derived from section 7(15)(B) of the Act. The definition of "unserved and underserved" is derived from sections 704(l), 713(7), and 725(c)(10) and (11) of the Act and the legislative history of these statutory provisions.

The definitions of "attendant care" and "transportation" are based on the definitions of these terms found in § 365.1(c)(3) of the existing regulations for the SILS. The definition of "advocacy" is the same definition used in the Client Assistance Program (CAP) authorized under section 112 of the Act. The definition of "minority group" is based on the general definition of this term used by the U.S. Department of Education (ED). Finally, the definitions of "nonresidential," "peer relationships," and "peer role models" are derived from the generally accepted understanding of these terms in the IL community.

Proposed § 364.5 would not allow the use of expenditures made with non-Federal funds in a particular fiscal year as an allowable cost to offset any costs disallowed in a notice of disallowance decision or preliminary departmental decision unless the expenditures were reported as costs charged to the program on the final financial status reports for that program prior to the commencement of the audit or compliance review that formed the basis for the disallowance. This provision is designed to lessen the confusion surrounding the use of unreported costs as an offset against disallowed costs and to lessen the litigation costs associated with this practice. This provision also incorporates the Department's current practice with respect to programs under the Act.

Proposed § 364.6 would define and address the use of "program income" for grantees under the IL programs authorized under title VII of the Act. Program income could be used for additional program expenditures or as a deduction from total allowable costs, but not to meet the non-Federal share requirement under 34 CFR 365.12(b).

Proposed § 364.7 would incorporate section 19 of the Act that permits the carryover of unobligated Federal funds from one fiscal year to the next. However, pursuant to the 1993 Amendments, proposed § 364.7(b) would not permit recipients of discretionary grants under sections 722 and 752 of the Act to carry over Federal funds.

Proposed § 364.13 would implement section 706(a) of the Act concerning when the Secretary may withhold, reduce, limit, or terminate payments to a State under chapter 1 of title VII of the Act. The Secretary has revised proposed § 364.13 to make it more consistent with section 107(c), which is incorporated into title VII of the Act through section 706(a)(2)(A).

Proposed § 364.20 would implement the State plan requirements in section 704 of the Act. These requirements relate to the State plan's form and content, duration (three years), development, and periodic review and revision (at least once every three years), and to public hearings on the State plan.

Proposed § 364.20(c) would incorporate the requirement in section 704(a)(2) of the Act that the designated State unit (DSU) and the Statewide Independent Living Council (SILC) must jointly develop the State's IL plan and that the Director of the DSU and the chairperson of the SILC must jointly sign the State's IL plan.

Proposed §§ 364.20(d) and 364.22(c) would incorporate the statutory requirement in section 704(a) as it applies to the development and

submission of a State's IL plan under section 704 of the Act and part 364. Section 704 of the Act requires a single State IL plan to be developed and signed by the DSU and the SILC. Nothing in the language of section 704 permits a DSU for individuals who are blind to submit a separate State IL plan for serving individuals who are blind. However, § 364.20(d) of the proposed regulations would require that, in a State where there is a separate State agency that is the sole State agency authorized by law to provide IL services to individuals who are blind, that separate agency for individuals who are blind also must be included in the development of, and sign, the State IL plan.

Proposed § 364.20(e) would require an assurance in the State plan that the DSU actively consults with the Director of the CAP authorized by section 112 of the Act during the development of the State plan.

Proposed § 364.20(g) would require an assurance in the State plan that the DSU conducts public meetings to provide all segments of the public, including interested groups, organizations, and individuals, an opportunity to comment on the State plan prior to its submission to the Secretary and on any revisions to the approved State plan. The Secretary revised proposed § 364.20(g) to explain more comprehensively what a State is expected to do to comply with section 704 (a) and (m)(6) of the Act.

Finally, proposed § 364.20(h) would require an assurance in the State plan that, at the public meetings to develop the State plan, the DSU identifies those provisions in the State plan that are State-imposed requirements (i.e., requirements imposed by State rule or policy that are beyond what would be required to comply with the regulations in proposed 34 CFR parts 364, 365, 366, and 367).

In response to public comment on the draft regulations, the Secretary has added language to proposed § 364.21 that establishes the SILC's responsibility for funds it receives under section 705(e) of the Act and protects the SILC's independence. In addition, the Secretary has added language to this section that requires the State plan to include a description of the resource plan for the SILC that is required by section 705(e) of the Act.

Proposed §§ 364.23 and 364.24 would revise the staffing and staff development requirements in existing 34 CFR 365.6 and 365.7 to reflect the changes made by the 1992 Amendments (Pub. L. 102–569) and the 1993 Amendments (Pub. L. 103–73). These requirements would apply to all service providers.

Proposed § 364.23(a) would require the State plan to include an assurance that service providers have personnel who are specialists in the development and provision of IL services to individuals with significant disabilities and in the development of and support to centers for independent living (centers). Proposed § 364.23(b) would require the State plan to include an assurance that service providers have personnel available who are able to communicate with applicants for and recipients of IL services under title VII of the Act who need special modes of communication or whose English proficiency is limited. In response to public comment on the draft regulations, the Secretary added language to this section to include specific examples of special modes of communication that should be available for individuals who need special modes of communication. Finally, proposed § 364.24 would require the State plan to include an assurance that the service provider has adequate staff development programs to ensure that staff are able to provide quality services to meet the needs of individuals with significant disabilities.

These proposed staffing requirements, which are in §§ 365.6 and 365.7 of the existing regulations for the SILS program, are consistent with section 504 of the Act, the Americans with Disabilities Act of 1990 (Pub. L. 101–336, 42 U.S.C. 12101–12213), and title VI of the Civil Rights Act of 1964 (Pub. L. 88–352, 42 U.S.C. 2000d–2000d–6). These proposed staffing requirements have proven useful in the past, and centers have identified staff development as a significant area of need.

Proposed § 364.28 would implement the statutory requirement that a State must incorporate into the State plan required by section 704 of the Act any new methods or approaches for the provision of IL services to older individuals who are blind that are developed under a project funded under chapter 2 of title VII of the Act. A DSU would be required to incorporate into and describe in the State plan any new methods or approaches that are developed under a project funded under chapter 2 of title VII of the Act that the DSU determines to be effective.

In response to public comment on the draft regulations, the Secretary has added language to proposed § 364.30 that would require service providers to provide information about the CAP in formats that are accessible to individuals who seek or receive IL services.

Proposed § 364.40(a) would incorporate the statutory provision that makes any individual with a significant disability eligible for IL services under the SILS and CIL programs. In addition, proposed § 364.40(b) would make it clear that any individual could seek information about IL services under these programs and request referral to other services and programs for individuals with significant disabilities, as appropriate.

Proposed § 364.41 would require the State to provide an assurance that eligibility requirements are applied in a nondiscriminatory manner and that no State or local residence requirement will be imposed for IL services. The purpose of the prohibition on a residency requirement is to ensure continuity of services if an individual moves from one State to another during the time he or she is receiving IL services. Proposed § 364.41 is consistent with section 101(a)(14) of the Act regarding the prohibition on residency requirements for VR services.

In response to public comment on the draft regulations, the Secretary has specified additional information that would have to be included in the statement of the objectives that would be required by proposed § 364.42. The Secretary believes that the statement of objectives required by section 704(d) of the Act should reflect the importance of this part of the State plan to the State IL services programs and address the overall goals and mission of the State's IL programs and services, the various priorities for services and populations to be served (including the priorities established by centers pursuant to section 725(c)(4) of the Act), the types of services to be provided, the financial plan for the use of Federal and non-Federal funds to meet the objectives in the State plan, and how funds received under sections 711, 721, and 752 of the Act will further the objectives in the State plan.

Proposed § 364.43(b) would incorporate the statutory requirements in section 704(e) and (f) of the Act. Section 704(e) of the Act requires that the State must provide IL services to individuals with a significant disability with Federal, State, or other funds. Proposed § 364.43(b) would permit a State to meet its statutory mandate under section 704(e) with Federal, State, or other funds.

Proposed § 364.43(e) would incorporate the statutory requirement in section 725(b)(2) of the Act that, in the determination of eligibility, if a State contracts with or awards a grant for the general operation of a center, it must delegate to the center all functions

related to the determination of eligibility for services. If a State contracts with or awards a grant for the provision of specific IL services to individuals, the State may choose either to delegate to the IL service provider all authority for the determination of eligibility for these services and for the development of an IL plan for individuals receiving these services or to retain this authority.

Proposed §§ 364.50 through 364.56 would impose post-award conditions on the State and its subgrantees or contractors regarding the processing of referrals and applications (§ 364.50), determinations of eligibility and ineligibility (§ 364.51), initiation and development of an IL plan (§ 364.52), maintenance of consumer service records (§ 364.53), prohibition on durational limitations for IL services (§ 364.54), compliance with standards for service providers (§ 364.55), and procedures for the protection, use, and release of personal information (§ 364.56).

Proposed §§ 364.51, 364.52, and 364.53 would incorporate sections 704(e) and 725(b)(2) of the Act. In addition, proposed § 364.53 would be consistent with the proposed indicators of what constitutes compliance with the evaluation standards in section 725(b) of the Act.

Proposed §§ 364.54, 364.55, and 364.56 would keep important protections for consumers of IL services that exist in the current SILS regulations. In particular, the Secretary revised proposed § 364.56 to make it more consistent with the current SILS regulations.

Proposed § 364.57 also would permit the DSU to delegate its functions and responsibilities under proposed §§ 364.50, 364.51 (subject to proposed § 364.43(d)), 364.52, 364.53, and 364.56 to the service provider to which the DSU awards a grant or with which the DSU contracts to provide IL services in the State. Allowing the DSUs to delegate these functions and responsibilities permits the States greater flexibility in the operation of the SILS program.

In response to public comment on the draft regulations, the Secretary has added a new proposed § 364.58 that would require each service provider to establish appeals procedures and policies that an individual could use to obtain review of decisions made by the service provider concerning the individual's request for IL services or the provision of IL services to the individual. Proposed § 364.58 also would require the service provider to inform each individual who seeks or receives IL services about those appeals procedures and policies in formats that are accessible to individuals who seek or receive IL services.

Proposed § 364.59 would require a State to include in its State plan any financial needs test that would be used by a service provider to determine whether an individual with a significant disability could obtain IL services at no cost to the individual. Proposed § 364.59(d)(1) would require a service provider to maintain written policies covering the specific types of IL services for which a financial needs test could be applied and to maintain documentation of an individual's participation in the costs of any IL services.

**Part 365**

Proposed part 365 contains regulations for the SILS program authorized by part B of chapter 1 of title VII of the Act. Pursuant to proposed § 365.11(c), if a State has designated a DSU to provide IL services for the general population of individuals with disabilities and a separate DSU to provide IL services for individuals who are blind, the State would have total discretion, without any interference from ED, to determine how it would divide the funds allotted to the State under part 365 between these two DSUs. The division of funds is a matter internal to the States, and the regulations would not exclude or mandate the involvement of the SILC in this decision.

Proposed § 365.13 would impose requirements that a State would have to meet to satisfy its non-Federal share matching requirement under section 712(b) of the Act and proposed § 365.12. Proposed § 365.13(b) would prohibit a State from using cash contributions to satisfy its non-Federal share matching requirement if the contribution is for expenditures that benefit or will benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest. Pursuant to proposed § 365.13(c), the receipt of a grant, subgrant, or contract under section 713 of the Act or a grant, subgrant, or assistance contract under section 723 of the Act from the DSU would not be considered a benefit to the donor if the grant, subgrant, or contract was awarded under the State's regular competitive procedures.

Conversely, proposed § 365.14(a) would prohibit a State from conditioning the award of a grant, subgrant, or contract under section 713 of the Act or a grant, subgrant, or assistance contract under section 723 of the Act on a cash or in-kind contribution from an applicant. Proposed § 365.14(b) also would prohibit an individual, entity, or organization that is a grantee or subgrantee of the State, or has a contract with the State, from conditioning the award of a subgrant or subcontract on a cash or in-kind contribution to the State or to the grantee or contractor of the State.

Proposed § 365.15 would impose the restrictions in § 365.14 on a State's use of in-kind contributions to meet the matching requirement in section 712(b) of the Act. The Secretary has not proposed to impose on in-kind contributions the restrictions in § 365.13 because fewer problems have arisen in the past as a result of the use of this type of contribution for matching purposes.

The proposed limitations on the use of restricted contributions to meet a State's matching requirement would clarify the limitations in existing 34 CFR part 365. (See existing 34 CFR 361.76, which is incorporated by reference into the existing SILS program regulations by existing 34 CFR 365.15.) The proposed limitations would prevent States from making awards based on an applicant's ability to contribute the matching funds rather than on the programmatic merit of the applicant's proposal. The proposed limitations would not prohibit a State from accepting restricted contributions for providing services or benefits to a particular individual or group of individuals. The proposed limitations would prohibit a State only from using these restricted contributions to meet its matching share requirement if the donor of the cash contributions has restricted their use to expenditures that benefit or will benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest.

The proposed limitations on the use of restricted contributions to meet a State's matching requirement would ensure that the services and benefits that are provided under a program funded with 90 percent Federal money would be available to an eligible individual without regard to the individual's relationship to the donor. The proposed limitations also would ensure that an eligible applicant that is unable to contribute the State's share of expenditures for the program would not be disqualified from receiving a grant, subgrant, or contract under the program. To allow a State to condition the award of a grant, subgrant, or contract on the

recipient's contribution of the State's matching requirement would be tantamount to allowing the State to impose additional eligibility requirements to participate in the program. This action would contradict 34 CFR 76.770(g), which prohibits a State from acting in any manner that prevents eligible applicants from applying under the program.

Finally, the proposed limitations on the use of restricted contributions to meet a State's matching requirement also are intended to prevent the sale of grants, subgrants, or contracts by the States to the highest bidder. ED has always required, unless directed by law to do otherwise, that the award of grants, subgrants, or contracts by States be made under a fair competitive process that is free from favoritism on the assumption that fair competition will result in the best qualified applicant receiving the grant, subgrant, or contract. To allow a State to award a grant, subgrant, or contract on the basis of the amount that the eligible applicant can contribute to the State's matching requirement would be inconsistent with the advantages that ED has always presumed result from fair competition.

Proposed § 365.16 would implement the requirements in Office of Management and Budget (OMB) Circulars A–87 and A–122 that the following must be treated as a reduction of expenditures charged to the grant, subgrant, or contract awarded under part 365 and may not be used for meeting the State's matching requirement: Rebates, deductions, refunds, discounts, or reductions to the price of goods, products, equipment, rental property, real property, or services; and premiums, bonuses, gifts, and any other payments related to the purchase of goods, products, equipment, rental property, real property, or services.

Proposed §§ 365.20 and 365.21 would incorporate the requirements in sections 704(e) and (f) and 713 of the Act. As stated previously, section 704(e) of the Act requires that the State must provide IL services to individuals with a significant disability. Section 704(f) of the Act permits the State to provide these IL services through grants or contracts with third parties. Section 713 of the Act permits the State to use funds received under part B of chapter 1 of title VII of the Act to provide the resources described in section 705(e) of the Act relating to the SILC and to fund various activities related to IL services and centers. Proposed § 365.20(a) would permit the State to use funds received under part B of chapter 1 of title VII of the Act to provide the IL services required pursuant to section 704(e) of the Act.

Proposed § 365.21(b) would allow a State to provide information and referral services independent of other IL services. Frequently, individuals without a disability seek information from centers on behalf of an individual with a significant disability. Allowing States to provide information and referral services furthers the dissemination of information and the provision of IL services to individuals with significant disabilities. Proposed § 365.21(b) also would allow a State to provide information and referral services without regard to subpart G of part 366. (Subpart G includes the indicators of what constitutes minimum compliance with the evaluation standards in section 725(b) of the Act and was published separately in the October 27, 1993 "Indicators NPRM" referred to previously. When these regulations are published in final, subpart G will be included in 34 CFR part 366, along with any changes made to Subpart G as a result of the public comment received on the "Indicators NPRM.")

Proposed § 365.23 identifies the Education Department General Administrative Regulations and requirements that would apply if a State makes a subgrant or enters into a contract.

Proposed § 365.30 would require the DSU to develop, establish, and maintain written standards and procedures to be applied by the service provider to ensure expeditious and equitable handling of referrals and applications for IL services from individuals with significant disabilities.

Proposed § 365.31 would require the DSU to develop, establish, and maintain written standards for the provision of IL services to be met by service providers that do not meet the standards and assurances in section 725 of the Act and Subparts F and G of 34 CFR part 366 and that are used by the DSU to provide IL services to individuals with significant disabilities. Proposed § 365.31 also would require the DSU to assure that participating service providers meet all applicable State licensure or certification requirements. Providers used by the DSU to provide IL services that meet the requirements of section 725 of the Act and proposed subparts F and G of part 366 would not have to meet the standards developed by the DSU if the standards developed by the DSU are different than the Federal requirements. The requirements for written standards in §§ 365.30 and 365.31, which existed in the former regulations for the SILS program, provide important protections for consumers of IL services.

**Part 366**

Proposed part 366 contains regulations regarding the CIL program authorized by part C of chapter 1 of title VII of the Act.

Under proposed § 366.2(b), the expansion of an existing center through the establishment of a physically separate and complete facility at a different geographical location would be considered the same as establishing a new center for purposes of section 722(d) of the Act and proposed §§ 366.24 and 366.25, which would establish the procedures for making an award to a new center. This proposed provision would facilitate the expansion of the CIL program and the establishment of statewide networks of centers through the use of the expertise of currently existing centers. However, pursuant to proposed § 366.22(a)(1), any funds received by an existing center to establish a new center at a different geographical location pursuant to proposed § 366.2(b)(2) would not be included in determining the level of funding to the existing center in any fiscal year that the new center applies for and receives funds as a separate center.

Proposed § 366.3 lists the various activities that the Secretary is authorized by statute to fund under the CIL program. Pursuant to proposed § 366.3(a), an eligible agency may use funds awarded under subpart B of this part to carry out training and technical assistance activities described in proposed § 366.11(b). Pursuant to proposed § 366.3(b), an eligible agency may use funds under Subparts C and D of Part 366 to plan, conduct, administer, and evaluate centers, and to carry out activities that would further a center's compliance with the evaluation standards in section 725(b) of the Act and with the assurances in section 725(c) of the Act.

Pursuant to proposed § 366.14, the Secretary would use the selection criteria in proposed § 366.15 to evaluate applications from entities with experience in the operation of centers for awards to provide training and technical assistance to eligible agencies, centers, and SILCs to plan, develop, conduct, administer, and evaluate centers. The selection criteria are based on section 721(b) of the Act and § 75.210 of the Education Department General Administrative Regulations (EDGAR).

Proposed §§ 366.20 through 366.28 would incorporate the statutory

requirements that apply if the amount of Federal funds allotted to the State under section 721(c) and (d) of the Act to support the general operation of centers is greater than the amount of State funds earmarked for the same purpose, as determined pursuant to proposed §§ 366.30 and 366.31, or that apply even if this condition is met but the Director of the DSU (Director) does not submit to the Secretary and obtain approval of an application to award grants under section 723 of the Act and proposed § 366.32.

Pursuant to proposed § 366.22(b) if, after meeting the priorities in proposed § 366.22(a)(1) and (2), there are insufficient funds under the State's allotment to fund a new center under proposed § 366.22(a)(3), the Secretary may use the excess funds in the State to assist existing centers or may reallot these funds in accordance with section 721(d) of the Act. This proposed provision is designed to give the Secretary added flexibility to respond to the local needs within a State.

Pursuant to proposed § 366.26, the Secretary would use the statutory selection criteria from section 722(d)(2)(B) of the Act, as incorporated in proposed § 366.27, to evaluate applications for awards to centers under section 722 of the Act. In response to public comment on the draft regulations, the Secretary has increased the value of the "Extent of the need for the project" from 15 to 20 points and decreased the value of the "Plan of operation" from 25 to 20 points in proposed § 366.27 (a) and (g), respectively. The Secretary also has added language to the selection criterion on the "Extent of the need for the project" that would encourage an applicant to provide information on whether the applicant proposes to serve an area that has been identified in the State plan as a priority service area.

Proposed § 366.28 would clarify existing authority implicit in the Act permitting the Secretary to use funds from the allotment of one State to award a grant to a center located in another State if the Secretary determines that the proposal of the out-of-State center to serve individuals with significant disabilities who reside in the other State is consistent with the State plan of the State in which these individuals reside. Nothing in the Act limits the award of funds allotted to a State under section 721 of the Act to eligible agencies only in that State. This proposed provision would allow the Secretary to fund the most qualified applicant and would facilitate the provision of services to unserved and underserved areas in a State in the most efficient and economical manner.

Proposed §§ 366.29 through 366.38 would incorporate the statutory requirements applicable if the Director submits to the Secretary and obtains approval of an application to award grants under section 723 of the Act and proposed § 366.32 and the amount of State funds earmarked to support the general operation of centers is equal to or greater than the amount of Federal funds allotted to the State for the same purpose, as determined pursuant to proposed §§ 366.29 and 366.31.

Proposed § 366.29(a)(2) would incorporate section 723(a)(1)(A)(i) of the Act. Pursuant to proposed § 366.29(a)(2), if a State submits an application for a fiscal year to award grants under section 723 of the Act and subpart D of 34 CFR part 366, the Secretary would determine whether the amount of State funds that were earmarked by the State to support the general operation of centers meeting the requirements of part C of chapter 1 of title VII of the Act in the second fiscal year preceding the fiscal year for which the application is submitted equaled or exceeded the amount of funds allotted to the State under section 721 (c) and (d) of the Act (or part B of title VII of the Act as in effect on October 28, 1992) for that preceding fiscal year.

Pursuant to proposed § 366.29(c), the second fiscal year preceding the fiscal year for which the State submits an application to administer the CIL program under section 723 of the Act and subpart D of 34 CFR part 366 would be considered the "preceding fiscal year" for purposes of section 723(a)(1)(A)(iii) of the Act. For example, if fiscal year (FY) 1995 is the fiscal year for which the State submits an application to administer the CIL program under this subpart, FY 1993 would be the "preceding fiscal year." The Secretary chose the second fiscal year preceding the fiscal year for which the State submits an application to administer the CIL program as the "preceding fiscal year" because that year would be the most recent year for which complete financial data would be available to the Secretary to make his determination. The Secretary would make any adjustments necessary to accommodate a State's multi-year funding cycle or fiscal year that does not coincide with the Federal fiscal year.

Pursuant to proposed § 366.30(a), the amount of State funds that are earmarked by a State to support the general operation of centers would not include: (1) Federal funds used for the general operation of centers; (2) State funds used to purchase services from a center, including State funds used for grants or contracts for personal assistance or skills training; (3) State attendant care funds; or (4) Social Security Administration reimbursement funds. Proposed § 366.30(c) implements congressional intent as expressed in S. Rep. No. 102–357, 102d Cong., 2d Sess. 92 (1992).

Pursuant to proposed § 366.30(b), "earmarked funds" would mean funds appropriated by the State and expressly or clearly identified as State expenditures in the relevant fiscal year for the sole purpose of funding the general operation of centers. "Earmarked funds" would be described in this manner for purposes of this proposed provision to ensure consistency among the States for what should be included as "earmarked funds."

Pursuant to proposed § 366.31, if the State submits an application to administer the CIL program under section 723 of the Act and subpart D of 34 CFR part 366 for a fiscal year, but did not earmark the amount of State funds required by proposed § 366.29(a)(2) in the preceding fiscal year, the State would be ineligible to make grants under section 723 of the Act and subpart D of 34 CFR part 366 after the end of the fiscal year succeeding the preceding fiscal year and for each succeeding fiscal year.

**Example:** A State meets the earmarking requirement in FY 1995. However, in reviewing the State's application to administer the CIL program in FY 1998, the Secretary determines that the State failed to meet the earmarking requirement in FY 1996. The State could continue to award grants in FY 1997 but could not do so in FY 1998 and succeeding fiscal years.

Once the Secretary determines that a State failed to earmark the required amount of funds in the second fiscal year preceding the fiscal year for which the State submits an application to administer the CIL program, the State would be precluded from administering the CIL program in succeeding fiscal years. The Secretary believes that this proposed result most clearly reflects the intent of Congress. The Secretary also believes that allowing States to re-qualify would be disruptive to the consistent administration of the CIL program within a State.

In those States in which there is both a DSU responsible for providing IL services to the general population and a DSU responsible for providing IL services for individuals who are blind, proposed § 366.32(d) would provide that the word "Director," as used in subparts D and E of part 366, would mean "the Director of the general DSU."

This provision is proposed because only the general agency in a State has authority under State law to provide IL services on a cross-disability basis. However, both State units would be required to consult with each other with respect to the provision of services for individuals who are blind.

Because the Department distinguishes between procurement contracts and assistance contracts at the State level, proposed § 366.32(e) would permit the Director to enter into assistance contracts with centers to carry out section 723 of the Act. The Department considers assistance contracts awarded by a State as equivalent to subgrants. Proposed § 366.32(e) would define an assistance contract awarded by a State as an instrument whose principal purpose is merely to transfer funds allotted to the State under section 721 (c) and (d) of the Act and 34 CFR part 366 to an eligible agency to carry out section 723 of the Act rather than as an instrument to procure services under specific terms and conditions determined by the Director. If the DSU were to use an assistance contract to award funds under section 723 of the Act, the DSU would not be permitted to add any requirements, terms, or conditions to the assistance contract other than those that would be permitted if the assistance contract were a subgrant. Under an assistance contract, the DSU would assume a role consistent with that of the Secretary under section 722 of the Act; i.e., the role of the DSU would be to ensure that the terms of the assistance contract (which are established by chapter 1 of title VII of the Act and the implementing regulations in 34 CFR parts 364, 365, and 366) are satisfied.

Conversely, proposed § 366.32(f) would implement congressional intent to prohibit the Director from entering into procurement contracts with centers to carry out section 723 of the Act. See H.R. Rep. No. 102–822, 102d Cong., 2d Sess. 137 (1992) and S. Rep. No. 102–357, 92. Proposed § 366.32(f) would define a procurement contract as an instrument whose principal purpose is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the DSU. Under a procurement contract, the DSU prescribes the specific services it intends to procure and the terms and conditions of the procurement.

Pursuant to proposed § 366.32(g), in the enforcement of any breach of the terms and conditions of an assistance contract, the DSU would be required to follow the procedures established in proposed §§ 366.40 through 366.45.

Pursuant to proposed § 366.34(b), if the order of priorities in proposed § 366.22 is followed and, after meeting the priorities in proposed § 366.22(a) (1) and (2), there are insufficient funds under the State's allotment under section 721 (c) and (d) of the Act to fund a new center under proposed § 366.22(a)(3), the Director would be permitted to use any excess funds in the State to assist existing centers or to return these funds to the Secretary for reallotment in accordance with section 721(d) of the Act. Proposed § 366.34(b) would give the Director of a DSU the same discretion that the Secretary would have under proposed § 366.22(b).

Proposed §§ 366.39 through 366.45 would establish the enforcement and appeals procedures if the Secretary or the Director determines that a center receiving funds under section 722 or 723, respectively, of the Act is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of part 366. Pursuant to section 722(g)(1) of the Act, if the Secretary determines that a center receiving funds under section 722(a) of the Act is not in compliance with the standards and assurances in section 725(b) of the Act, the Secretary is required to notify the center of the center's noncompliance. Pursuant to section 722(g)(2) of the Act, the Secretary is required to terminate funds 90 days after notifying a center that it is not in compliance with the standards and assurances in section 725(b) of the Act unless the center submits a corrective action plan to achieve compliance within 90 days after the Secretary's notification and the plan is approved by the Secretary. Proposed § 366.39 (a) and (b) would implement section 722(g) (1) and (2) of the Act.

Pursuant to proposed § 366.39(a), the Secretary would notify the center that the Secretary will offer technical assistance to a center to develop a corrective action plan to comply with the standards and assurance. Pursuant to proposed § 366.39(b)(2), the Secretary would notify the center that termination of funds would occur within 90 days after the center received notice of its noncompliance unless the center requests a hearing pursuant to proposed § 366.39 (c) or (d).

Proposed § 366.39(c) would give a center 30 days from the date it receives the Secretary's written notice disapproving its corrective action plan to file a formal written appeal with the Secretary.

Pursuant to proposed § 366.39(f), the Secretary would issue a written decision to terminate funds after a hearing if the center is found out of compliance with the standards and assurances in section 725(b) of the Act and subparts F and G of 34 CFR part 366 or the center's corrective action plan cannot be approved.

Proposed §§ 366.40 through 366.43 would incorporate similar statutory requirements related to enforcement and appeals procedures that the Director shall use before terminating a center's funds or taking other significant adverse action against a center. The due process procedures in proposed §§ 366.40 through 366.43 are designed to provide every opportunity for a dispute between a Director and a center to be resolved at the State level before the dispute is appealed to the Secretary.

Pursuant to proposed § 366.40(b), unless a center submits and obtains approval of a corrective action plan, the Director would terminate all funds to a center under section 723 of the Act 90 days after the date that the center receives the initial written notice of its noncompliance from the Director or 90 days after the date that the center receives the Secretary's final decision pursuant to proposed § 366.46(c), whichever is later.

Proposed § 366.41 describes the minimum amount of information that the Secretary believes the initial written notice sent from the Director to the center would have to contain to meet the statutory requirement of providing notice to the center of the center's noncompliance, including notice to the center that it would have 90 days from the date of receipt of the Director's initial written notice to submit a corrective action plan to the Director and 120 days from the date of receipt of the Director's initial written notice to appeal to the Secretary the decision described in a Director's initial written notice.

Pursuant to proposed § 366.42, if the center submits a corrective action plan, the Director would have to provide the center with a final written decision approving or disapproving the center's corrective action plan and informing the center, if appropriate, of the termination of funds or other proposed significant adverse action against the center. Pursuant to proposed § 366.42(c), a Director's final written decision would not take effect until 30 days after the center receives it or, if appealed to the Secretary, until the Secretary issues a final decision.

Proposed § 366.43 describes the minimum amount of information that the Secretary believes the final written decision from the Director would have to contain to meet the statutory requirement of providing notice to the center of the center's noncompliance

with statutory requirements, including the reasons why the Director could not approve the center's corrective action plan, if such a plan was submitted by the center, and notice to the center that it has the right to appeal the Director's final written decision to the Secretary.

Proposed § 366.44 describes the procedures that a center would have to follow to appeal to the Secretary a final written decision from the Director. Pursuant to proposed § 366.44(a), if a Director did not approve a center's corrective action plan, the center would be given 30 days following receipt of the Director's final written decision to appeal to the Secretary. Pursuant to proposed § 366.44(b), if a center does not submit a corrective action plan, the center would be given 120 days following receipt of the Director's initial written notice to appeal to the Secretary.

Proposed § 366.44(c) through (f) describe how a center would file an appeal to the Secretary. Proposed § 366.44(g) would allow the center to request an informal hearing with the Secretary, to which the Director also would be invited to attend.

Proposed § 366.44(h) would stay a Director's decision to terminate funds as of the date that the center files a formal written appeal with the Secretary.

Proposed § 366.45 describes the procedures that a Director would have to follow upon receipt of a copy of the formal written appeal that the center files with the Secretary.

Proposed § 366.46 describes the review procedures the Secretary would follow upon receipt of a formal written appeal from a center.

All of the proposed provisions in proposed subpart E regarding the enforcement of statutory requirements that centers must meet are designed to ensure due process and fairness.

In response to public comment on the draft regulations, the Secretary has added language to clarify the intent of proposed § 366.50. Section 725(c)(2) of the Act requires that the governing board of a center must be composed of a majority of individuals with a significant disability. The statutory definition of an individual with a significant disability is limited to individuals who are receiving or who could benefit from receiving IL services. If the statutory definition is used to determine membership on the governing board, those individuals with a significant disability who already have gained their independence, either through the receipt of IL services or on their own, could not be part of the majority of the governing board. Therefore, the Secretary has added language at the end of proposed § 366.50(b) that would modify the definition of an individual with a significant disability for purposes of this proposed section only. The proposed definition would permit those individuals with a significant disability who already have gained their independence, either through the receipt of IL services or on their own, to be part of the majority of the governing board.

**Part 367**

Proposed part 367 contains regulations regarding the OIB program, authorized by chapter 2 of title VII of the Act.

In addition to incorporating the definitions in proposed § 364.4, proposed § 367.5 includes the statutory definitions for "older individual who is blind" and "independent living services for older individuals who are blind."

Pursuant to proposed § 367.21, the Secretary would use the selection criteria in proposed § 367.22, which are based on § 75.210 of EDGAR, to evaluate applications for discretionary grants under section 752(b)(1) of the Act.

In response to public comment on the draft regulations, the Secretary has increased the value of "Plan of operation" from 20 to 25 points and decreased the value of "Likelihood of sustaining the program" from 15 to 10 points in proposed § 367.22(b) and (h), respectively.

Pursuant to proposed § 367.23, the Secretary also would consider the geographic distribution of projects in awarding these discretionary grants. The Secretary believes that it is important to have this program operate in as many States as possible, and this proposed provision would give the Secretary the flexibility to accomplish this purpose.

Finally, proposed § 367.41(a)(1) would incorporate section 752(g) of the Act that gives the designated State agency discretion to operate or administer the OIB program or projects under Part 367 through grants to public or private nonprofit agencies or organizations. In addition, proposed § 367.41(a)(2) would incorporate section 752(i)(2)(A) of the Act that gives the designated State agency discretion to operate or administer the program or projects under Part 367 either directly or through grants, as permitted by section 752(g) of the Act and § 367.41(a), or contracts. The general authority to operate or administer the OIB through grants or contracts given to States in section 752(i)(2)(A) of the Act is overridden by the specific language in section 752(g) of the Act limiting a State's authority to award grants only to public or private nonprofit agencies or organizations. Because Congress could have added contracts to section 752(g) or deleted the very specific reference to public or private nonprofit agencies or organizations in section 752(g), proposed § 367.41(a)(2) permits a State to contract only with individuals, entities, or organizations that are not public or private nonprofit agencies or organizations. However, proposed § 367.41(b) would permit States to use assistance contracts awarded by a State (which are similar to subgrants), but not procurement contracts, in a manner consistent with 34 CFR 366.32(e) through 366.32(g).

**Executive Order 12866**

*Assessment of Costs and Benefits*

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering these programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

**Clarity of the Regulations**

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed regulations clearly stated?

(2) Do the regulations contain technical terms or other wording that interferes with their clarity?

(3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 364.10.)

(4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand?

(5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 400 Maryland Avenue SW. (room 5125, FOB–6), Washington, DC 20202–2241.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are centers receiving Federal funds under these programs. However, the regulations would not have a significant economic impact on the centers affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

**Paperwork Reduction Act of 1980**

Sections 364.10, 364.11, 364.12, 364.13, 364.20, 364.21, 364.22, 364.23, 364.24, 364.25, 364.26, 364.27, 364.28, 364.29, 364.30, 364.31, 364.32, 364.33, 364.34, 364.35, 364.36, 364.37, 364.38, 364.39, 364.40, 364.41, 364.42, 364.43, 364.51, 364.52, 364.53, 365.2, 365.10, 365.30, 365.31, 366.2, 366.12, 366.15, 366.21, 366.22, 366.23, 366.24, 366.25, 366.27, 366.28, 366.29, 366.32, 366.33, 366.37, 366.38, 366.39, 366.40, 366.41, 366.42, 366.43, 366.44, 366.45, 366.50, 367.10, 367.11, 367.22, 367.31, 367.32, and 367.42 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h).)

State agencies and centers are eligible to apply for grants under these proposed regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 40 hours per response for 240 respondents, including 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, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

**Intergovernmental Review**

These programs 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 this program.

**Invitation To Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3214, Mary E. Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

**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 in 34 CFR Parts 364, 365, 366, and 367**

Centers for independent living, Independent living services for older individuals who are blind, Reporting and recordkeeping requirements, State independent living services.

(Catalog of Federal Domestic Assistance Numbers: 84.132 Centers for Independent Living; 84.169 State Independent Living Services; and 84.177 Independent Living Services for Older Individuals Who Are Blind)

Dated: May 9, 1994.

**Richard W. Riley,**

*Secretary of Education.*

The Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 364 and by revising parts 365, 366, and 367 to read as follows:

## PART 364—STATE INDEPENDENT LIVING SERVICES PROGRAM AND CENTERS FOR INDEPENDENT LIVING PROGRAM: GENERAL PROVISIONS

### Subpart A—General

Sec.

364.1 What programs are covered?
364.2 What is the purpose of the programs authorized by Chapter 1 of Title VII?
364.3 What regulations apply?
364.4 What definitions apply?
364.5 What are the limitations on allowable costs?
364.6 What is program income and how may it be used?
364.7 What requirements apply to the obligation of Federal funds and program income?

### Subpart B—What Are the Application Requirements?

364.10 What are the application requirements?
364.11 When must the State plan be submitted for approval?
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### Subpart C—What Are the State Plan Requirements?

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364.23 What are the staffing requirements?
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364.28 What requirements relate to IL services for older individuals who are blind?
364.29 What are the requirements for coordinating Federal and State sources of funding?
364.30 What notice must be given about the Client Assistance Program (CAP)?
364.31 What are the affirmative action requirements?
364.32 What are the requirements for outreach?
364.33 What is required to meet minority needs?
364.34 What are the fiscal and accounting requirements?
364.35 What records must be maintained?
364.36 What are the reporting requirements?
364.37 What access to records must be provided?
364.38 What methods of evaluation must the State plan include?
364.39 What requirements apply to the administration of grants under the Centers for Independent Living program?
364.40 Who is eligible to receive IL services?
364.41 What assurances must be included regarding eligibility?
364.42 What objectives and information must be included in the State plan?
364.43 What requirements apply to the provision of State IL services?

Subpart D—What Conditions Must Be Met After an Award?

364.50 What requirements apply to the processing of referrals and applications?
364.51 What requirements apply to determinations of eligibility or ineligibility?
364.52 What are the requirements for an IL plan?
364.53 What records must be maintained for the individual?
364.54 What are the durational limitations on IL services?
364.55 What standards shall service providers meet?
364.56 What are the special requirements pertaining to the protection, use, and release of personal information?
364.57 What functions and responsibilities may the State delegate?
364.58 What appeal procedures must be available to consumers?
364.59 May the financial need of an individual be considered to determine his or her participation in the costs of IL services?

Authority: 29 U.S.C. 796–796f–5, unless otherwise noted.

## Subpart A—General

### § 364.1 What programs are covered?

(a) This part includes general requirements applicable to the conduct of the following programs authorized under title VII of the Rehabilitation Act of 1973, as amended:

(1) The State Independent Living Services (SILS) program (34 CFR part 365).

(2) The Centers for Independent Living (CIL) program (34 CFR part 366).

(b) Some provisions in this part also are made specifically applicable to the Independent Living Services for Older Individuals Who Are Blind (OIB) program (34 CFR part 367).

(Authority: 29 U.S.C. 711(c) and 796–796f–5)

### § 364.2 What is the purpose of the programs authorized by chapter 1 of title VII?

The purpose of the SILS and CIL programs authorized by chapter 1 of title VII of the Act is to promote a philosophy of independent living (IL), including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, to maximize the leadership, empowerment, independence, and productivity of individuals with significant disabilities, and to promote and maximize the integration and full inclusion of individuals with significant disabilities into the mainstream of American society by providing financial assistance to States—

(a) For providing, expanding, and improving the provision of IL services;

(b) To develop and support statewide networks of centers for independent living (centers); and

(c) For improving working relationships among—

(1) SILS programs;

(2) Centers;

(3) Statewide Independent Living Councils (SILCs) established under section 705 of the Act;

(4) State vocational rehabilitation (VR) programs receiving assistance under title I and under part C of title VI of the Act;

(5) Client assistance programs receiving assistance under section 112 of the Act;

(6) Programs funded under other titles of the Act;

(7) Programs funded under other Federal law; and

(8) Programs funded through non-Federal sources.

(Authority: 29 U.S.C. 796)

### § 364.3 What regulations apply?

The following regulations apply to the SILS and CIL 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), with respect to grants or subgrants to an eligible agency that is not a State or local government or Indian tribal organization.

(2) 34 CFR part 75 (Direct Grant Programs), with respect to grants under subparts B and C of 34 CFR part 366.

(3) 34 CFR part 76 (State-Administered Programs), with respect to grants under 34 CFR part 365 and subpart D of 34 CFR part 366.

(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).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), with respect to grants to an eligible agency that is a State or local government or Indian tribal organization.

(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(8) 34 CFR part 82 (New Restrictions on Lobbying).

(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 regulations in this part 364.

(c) The regulations in 34 CFR parts 365 and 366 as applicable.

(Authority: 29 U.S.C. 711(c))

### § 364.4 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part and in 34 CFR parts 365, 366, and 367 are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Nonprofit
Private
Project
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part and to 34 CFR parts 365, 366, and 367:

*Act* means the Rehabilitation Act of 1973, as amended.

*Administrative support services* mean assistance to support IL programs and the activities of centers and may include financial and technical assistance in planning, budget development, and evaluation of center activities, and support for financial management (including audits), personnel development, and recordkeeping activities.

(Authority: 29 U.S.C. 796c(c)(2))

*Advocacy* means pleading an individual's cause or speaking or writing in support of an individual. To the extent permitted by State law or the rules of the agency before which an individual is appearing, a non-lawyer may engage in advocacy on behalf of another individual. Advocacy may—

(1) Involve representing an individual—

(i) Before private entities or organizations, government agencies (whether State, local, or Federal), or in a court of law (whether State or Federal); or

(ii) In negotiations or mediation, in formal or informal administrative proceedings before government agencies (whether State, local, or Federal), or in legal proceedings in a court of law; and

(2) Be on behalf of—

(i) A single individual, in which case it is *individual advocacy;*

(ii) A group or class of individuals, in which case it is *systems* (or *systemic*) *advocacy*; or

(iii) Oneself, in which case it is *self advocacy.*

*Attendant care* means a personal assistance service provided to an individual with significant disabilities in performing a variety of tasks required to meet essential personal needs in areas such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.

(Authority: 20 U.S.C. 706(30)(B)(vi))

*Center for independent living* means a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency that—

(1) Is designed and operated within a local community by individuals with disabilities; and

(2) Provides an array of IL services.

(Authority: 29 U.S.C. 796a(1))

*Consumer control* means, with respect to a center or eligible agency, that the center or eligible agency vests power and authority in individuals with disabilities, including individuals who are or have been recipients of IL services.

(Authority: 29 U.S.C. 796a(2))

*Cross-disability* means, with respect to a center, that a center provides IL services to individuals representing a range of significant disabilities and does not require the presence of one or more specific significant disabilities before determining that an individual is eligible for IL services.

(Authority: 29 U.S.C. 796a(1))

*Designated State agency* or *State agency* means the sole State agency designated to administer (or supervise local administration of) the State plan for VR services. The term includes the State agency for individuals who are blind, if that agency has been designated as the sole State agency with respect to that part of the State VR plan relating to the vocational rehabilitation of individuals who are blind.

(Authority: 29 U.S.C. 706(3) and 721(a)(1)(A))

*Designated State unit* means either—

(1) The State agency VR bureau, division, or other organizational unit that is primarily concerned with the vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities and that is responsible for the administration of the VR program of the State agency; or

(2) The independent State commission, board, or other agency that has the vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities as its primary function.

(Authority: 29 U.S.C. 706(3) and 721(a)(2)(A))

*Eligible agency* means a consumer-controlled, community-based, cross-disability, nonresidential, private, nonprofit agency.

(Authority: 29 U.S.C. 796f–5)

*Independent living core services* mean, for purposes of services that are supported under the SILS or CIL programs—

(1) Information and referral services;

(2) IL skills training;

(3) Peer counseling, including cross-disability peer counseling; and

(4) Individual and systems advocacy.

(Authority: 29 U.S.C. 706(29))

*Independent living services* includes the independent living core services and—

(1) Counseling services, including psychological, psychotherapeutic, and related services;

(2) Services related to securing housing or shelter, including services related to community group living, that are supportive of the purposes of the Act, and adaptive housing services, including appropriate accommodations to and modifications of any space used to serve, or to be occupied by, individuals with significant disabilities;

(3) Rehabilitation technology;

(4) Mobility training;

(5) Services and training for individuals with cognitive and sensory disabilities, including life skills training and interpreter and reader services;

(6) Personal assistance services, including attendant care and the training of personnel providing these services;

(7) Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;

(8) Consumer information programs on rehabilitation and IL services available under the Act, especially for minorities and other individuals with significant disabilities who have traditionally been unserved or underserved by programs under the Act;

(9) Education and training necessary for living in a community and participating in community activities;

(10) Supported living;

(11) Transportation, including referral and assistance for transportation;

(12) Physical rehabilitation;

(13) Therapeutic treatment;

(14) Provision of needed prostheses and other appliances and devices;

(15) Individual and group social and recreational services;

(16) Training to develop skills specifically designed for youths who are individuals with significant disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;

(17) Services for children;

(18) Services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with significant disabilities;

(19) Appropriate preventive services to decrease the need of individuals with significant disabilities assisted under the Act for similar services in the future;

(20) Community awareness programs to enhance the understanding and integration into society of individuals with significant disabilities; and

(21) Any other services that may be necessary to improve the ability of an individual with a significant disability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment and that are not inconsistent with any other provisions of the Act.

(Authority: 29 U.S.C. 796e–2(1))

*Individual with a disability* means an individual who—

(1) Has a physical, mental, cognitive, or sensory impairment that substantially limits one or more of the individual's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(Authority: 29 U.S.C. 706(8)(B))

*Individual with a significant disability* means an individual with a severe physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of IL services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment.

(Authority: 29 U.S.C. 706(15)(B))

*Minority group* means Alaskan Natives, American Indians, Asian Americans, Blacks (African Americans), Hispanic Americans, Native Hawaiians, and Pacific Islanders.

*Nonresidential* means, with respect to a center, that the center, as of October 1, 1994, does not operate or manage housing or shelter to individuals as an IL service on either a temporary or long-term basis unless the housing or shelter is—

(1) Incidental to the overall operation of the center;

(2) Necessary so that the individual may receive an IL service; and

(3) Limited to a period not to exceed eight weeks during any six-month period.

(Authority: 29 U.S.C. 796a, 796f–1(f) and 706f–2(f))

*Peer relationships* mean relationships involving mutual support and assistance among individuals with significant disabilities who are actively pursuing IL goals.

*Peer role models* mean individuals with significant disabilities whose achievements can serve as a positive example for other individuals with significant disabilities.

*Personal assistance services* mean a range of IL services, provided by one or more persons, designed to assist an individual with a significant disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. These IL services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(Authority: 29 U.S.C. 706(11))

*Service provider means*—

(1) A DSU that directly provides IL services to individuals with significant disabilities;

(2) A center that receives financial assistance under parts B and C of Chapter 1 of Title VII of the Act; or

(3) Any other entity or individual that meets the requirements of § 364.43(e) and provides IL services under a grant or contract from the DSU pursuant to § 364.43(b).

(Authority: 29 U.S.C. 711(c) and 796(e))

*Significant disability* means a severe physical or mental impairment that substantially limits an individual's ability to function independently in the family or community or to obtain, maintain, or advance in employment.

*State* means, except for sections 711(a)(2)(A) and 721(c)(2)(A) and where otherwise specified in the Act, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect).

(Authority: 29 U.S.C. 706(16))

*State plan* means the State IL plan required under section 704 of Title VII of the Act.

*Transportation* means travel and related expenses that are necessary to enable an individual with a significant disability to benefit from another IL service and travel and related expenses for an attendant or aide if the services of that attendant or aide are necessary to enable an individual with a significant disability to benefit from that IL service.

(Authority: 29 U.S.C. 706(30)(B)(xi) and 711(c))

*Unserved and underserved groups or populations*, with respect to groups or populations of individuals with significant disabilities in a State, include, but are not limited to, groups or populations of individuals with significant disabilities who—

(1) Have cognitive and sensory impairments;

(2) Are members of racial and ethnic minority groups;

(3) Live in rural areas; or

(4) Have been identified by the eligible agency as unserved or underserved within a center's project area.

(Authority: 29 U.S.C. 706, 711(c), and 796f—796f–5)

### § 364.5 What are the limitations on allowable costs?

Expenditures made with non-Federal funds in a particular fiscal year that are not reported as costs charged to the program on the final financial status reports for that program prior to the commencement of an audit or compliance review for that year may not be used as an allowable cost to offset any costs disallowed in a notice of disallowance decision or preliminary departmental decision based on that audit or compliance review.

(Authority: 29 U.S.C. 711(c))

### § 364.6 What is program income and how may it be used?

(a) *Definition.* Program income means gross income received by a grantee under Title VII of the Act that is directly generated by an activity supported under 34 CFR part 365, 366, or 367.

(b) *Sources.* Sources of program income include, but are not limited to, payments received from workers' compensation funds or fees for services to defray part or all of the costs of services provided to particular clients.

(c) *Use of program income.* (1) Program income, whenever earned, must be used for the provision of IL services or the administration of the State plan, as appropriate.

(2) A service provider is authorized to treat program income as—

(i) A deduction from total allowable costs charged to a Federal grant, in accordance with 34 CFR 80.25(g)(1); or

(ii) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 34 CFR 80.25(g)(2).

(3) Program income may not be used to meet the non-Federal share requirement under 34 CFR 365.12(b).

(Authority: 29 U.S.C. 711(c); 34 CFR 80.25)

### § 364.7 What requirements apply to the obligation of Federal funds and program income?

(a) Except as provided in paragraphs (b) and (c) of this section, any Federal funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under 34 CFR part 365, 366, or 367 that are not obligated by the DSU or center prior to the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated by the DSU or center prior to the beginning of the succeeding fiscal year, must remain available for obligation by the DSU or center during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year under part B of chapter 1 and under chapter 2 of title VII of the Act remain available for obligation in the succeeding fiscal year only to the extent that the DSU complied with any matching requirement by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(c) The provisions of paragraphs (a) and (b) of this section do not apply to discretionary grants awarded by the

Secretary under sections 722 and 752 of the Act.

(Authority: 29 U.S.C. 718)

## Subpart B—What Are the Application Requirements?

### § 364.10 What are the application requirements?

To receive a grant from a State's allotment of funds under parts B and C of chapter 1 of title VII of the Act and 34 CFR parts 365 and 366, a State shall submit to the Secretary, and obtain approval of, a three-year State plan meeting the requirements in subpart C of this part.

(Authority: 29 U.S.C. 796c(a)(1))

### § 364.11 When must the State plan be submitted for approval?

The designated State unit (DSU) shall submit to the Secretary for approval the three-year State plan no later than July 1 of the year preceding the first fiscal year of the three-year period for which the State plan is submitted.

(Authority: 29 U.S.C. 796c(a)(4))

### § 364.12 How does the Secretary approve State plans?

(a) *General.* The Secretary approves a State plan that the Secretary determines meets the requirements of section 704 of the Act and subparts B through D of this part and disapproves a plan that does not meet these requirements.

(b) *Informal resolution.* If the Secretary intends to disapprove the State plan, the Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice of formal hearing.* If, after reasonable effort has been made to resolve the dispute informally, no resolution has been reached, the Secretary provides written notice to the DSU of the intention to disapprove the State plan and of the opportunity for a hearing.

(d) *Hearing.* (1) If the DSU requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the Department's administration of the programs authorized by Title VII of the Act, to conduct a hearing.

(2) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(e) *Judicial review.* A State may appeal the Secretary's decision to disapprove its State plan by filing a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: 29 U.S.C. 711(c) and 796d–1(a))

### § 364.13 Under what circumstances may funds be withheld, reduced, limited, or terminated?

(a) *When withheld, reduced, limited, or terminated.* Payments to a State under chapter 1 of title VII of the Act may be withheld, reduced, limited, or terminated as provided by section 107(c) of the Act if the Secretary finds that—

(1) The State plan has been so changed that it no longer conforms with the requirements of section 704 of the Act; or

(2) In the administration of the State plan, there is a failure to comply substantially with any provision of the plan.

(b) *Informal resolution.* If the Secretary intends to withhold, reduce, limit, or terminate payment of funds to a State under Title VII of the Act as provided by section 107(c) of the Act, the Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice of formal hearing.* If, after reasonable effort has been made to resolve the dispute informally, no resolution has been reached, the Secretary provides written notice to the DSU of the intention to withhold, reduce, limit, or terminate payment of funds under Title VII of the Act and of the opportunity for a hearing.

(d) *Hearing.* If the DSU requests a hearing, the Secretary designates an administrative law judge (ALJ) in the Office of Administrative Law Judges to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(e) *Initial decision.* The ALJ issues an initial decision in accordance with 34 CFR 81.41.

(f) *Petition for review of an initial decision.* The DSU may seek the Secretary's review of an ALJ's initial decision in accordance with 34 CFR 81.42.

(g) *Review by the Secretary.* The Secretary reviews an ALJ's initial decision in accordance with 34 CFR 81.43.

(h) *Final decision of the Department.* The ALJ's initial decision becomes the final decision of the Department in accordance with 34 CFR 81.44.

(i) *Judicial review.* A State may appeal the Secretary's final decision to withhold, reduce, limit, or terminate payment of funds to a State under Title VII of the Act by filing a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: 29 U.S.C. 727(c)-(d) and 796d-1(a)) Subpart C—What Are the State Plan Requirements?

### § 364.20 What are the general requirements for a State plan?

(a) *Form and content.* The State plan must contain, in the form prescribed by the Secretary, the information required by this part and any other information requested by the Secretary.

(b) *Duration.* (1) The State plan must cover a three-year period and must be amended whenever necessary to reflect any material change in State law, organization, policy, or agency operations that affects the administration of the State plan.

(2) The Secretary may require a State to submit an interim State plan for a period of less than three years following a reauthorization of the Act and prior to the effective date of final regulations.

(c) *Joint development-single agency.* The State plan must be jointly—

(1) Developed by the DSU and the SILC; and

(2) Signed by the—

(i) Director of the DSU (Director); and

(ii) Chairperson of the SILC, acting on behalf of and at the direction of the SILC.

(d) *Joint development-separate agency for individuals who are blind.* If a separate State agency is authorized by State law as the sole State agency with authority to administer or supervise the administration of that part of the State plan relating to the vocational rehabilitation of individuals who are blind, the State plan must be jointly—

(1) Developed by the DSU, the SILC, and the separate State agency authorized to provide VR services for individuals who are blind; and

(2) Signed by the—

(i) Director;

(ii) Director of the separate State agency authorized to provide VR services for individuals who are blind; and

(iii) Chairperson of the SILC, acting on behalf of and at the direction of the SILC.

(Cross-reference: See § 364.22(c).)

(e) The State plan must assure that, as appropriate, the DSU actively consults in the development of the State plan with the Director of the client assistance program authorized under section 112 of the Act.

(f) Periodic review and revision. The State plan must provide for the review and revision of the plan, at least once every three years, to ensure the existence of appropriate planning,

financial support and coordination, and other assistance to appropriately address, on a statewide and comprehensive basis, the needs in the State for—

(1) Providing State IL services;

(2) Developing and supporting a statewide network of centers; and

(3) Working relationships between—

(i) Programs providing IL services and supporting or establishing centers; and

(ii) The VR program established under title I of the Act, and other programs providing services for individuals with disabilities.

(g) Public hearings. (1) The State plan must assure that the DSU conducts public meetings to provide all segments of the public, including interested groups, organizations, and individuals, an opportunity to comment on the State plan prior to its submission to the Secretary and on any revisions to the approved State plan. The DSU may meet the public participation requirement by holding the public meetings before a preliminary draft State plan is prepared or by providing a preliminary draft State plan for comment at the public meetings.

(2) The State plan must assure that the DSU establishes and maintains a written description of procedures for conducting public meetings in accordance with the following requirements:

(i) The DSU shall provide appropriate and sufficient notice of the public meetings. Appropriate and sufficient notice means notice provided at least 30 days prior to the public meeting through various media available to the general public, such as newspapers and public service announcements, and through specific contacts with appropriate constituency groups and organizations identified by the DSU and SILC.

(ii) The DSU shall make reasonable accommodation to individuals with disabilities who rely on special modes of communication in the conduct of the public meetings, including providing sign language interpreters and audio-loops.

(iii) The DSU shall provide the notices of the public meetings, any written material provided prior to or at the public meetings, and the approved State plan in accessible formats for individuals who rely on special modes of communication.

(h) The State plan must assure that, at the public meetings to develop the State plan, the DSU identifies those provisions in the State plan that are State-imposed requirements. For purposes of this section, a State-imposed requirement includes any State rule or policy relating to the DSU's administration or operation of IL programs under title VII of the Act, including any rule or policy based on State interpretation of any Federal law, regulation, or guideline, that is beyond what would be required to comply with the regulations in 34 CFR parts 364, 365, 366, and 367.

(Authority: 29 U.S.C. 711(c) and 796c (a) and (m)(6))

**§ 364.21 What are the requirements for the Statewide Independent Living Council (SILC)?**

(a) *Establishment.* (1) To be eligible to receive assistance under chapter 1 of title VII of the Act, each State shall establish a SILC that meets the requirements of section 705 of the Act.

(2) The SILC may not be established as an entity within a State agency, including the designated State agency or DSU. The SILC shall be independent of the DSU and all other State agencies.

(b) *Appointment and composition—*(1) *Appointment.* Members of the SILC must be appointed by the Governor or the appropriate entity within the State responsible, in accordance with State law, for making appointments.

(2) *Composition.* (i) The SILC must include—

(A) At least one director of a center chosen by the directors of centers within the State; and

(B) As ex officio, nonvoting members, a representative from the DSU and representatives from other State agencies that provide services to individuals with disabilities.

(ii) The SILC may include—

(A) Other representatives from centers;

(B) Parents and legal guardians of individuals with disabilities;

(C) Advocates of and for individuals with disabilities;

(D) Representatives from private businesses;

(E) Representatives from organizations that provide services for individuals with disabilities; and

(F) Other appropriate individuals.

(iii) A majority of the members of the SILC must be individuals with disabilities, as defined in § 364.4(b), and not employed by any State agency or center.

(c) *Qualifications.* The SILC must be composed of members—

(1) Who provide statewide representation;

(2) Who represent a broad range of individuals with disabilities; and

(3) Who are knowledgeable about centers and IL services.

(d) *Voting members.* A majority of the voting members of the SILC must be individuals with disabilities, as defined in § 364.4(b), and not employed by any State agency or center.

(e) *Chairperson—*(1) *In general.* Except as provided in paragraph (e)(2) of this section, the SILC shall select a chairperson from among the voting membership of the SILC.

(2) *Designation by Governor.* In States in which the Governor does not have veto power pursuant to State law, the Governor shall designate a voting member of the SILC to serve as the chairperson of the SILC or shall require the SILC to so designate a voting member.

(f) *Terms of appointment.* Each member of the SILC shall serve for a term of three years, except that—

(1) A member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed must be appointed for the remainder of that term;

(2) The terms of service of the members initially appointed must be (as specified by the appointing authority) for the fewer number of years as will provide for the expiration of terms on a staggered basis; and

(3) No member of the SILC may serve for more than two consecutive full terms.

(g) *Duties.* The SILC shall—

(1) Jointly develop and sign (in conjunction with the DSU) the State plan required by section 704 of the Act and § 364.20;

(2) Monitor, review, and evaluate the implementation of the State plan;

(3) Coordinate activities with the State Rehabilitation Advisory Council established under section 105 of the Act and councils that address the needs of specific disability populations and issues under other Federal law;

(4) Ensure that all regularly scheduled meetings of the SILC are open to the public and sufficient advance notice is provided; and

(5) Submit to the Secretary all periodic reports as the Secretary may reasonably request and keep all records, and afford access to all records, as the Secretary finds necessary to verify the periodic reports.

(h) *Hearings.* The SILC is authorized to hold any hearings and forums that the SILC determines to be necessary to carry out its duties.

(i) *Resource plan.* (1) The SILC shall prepare, in conjunction with the DSU, a resource plan for the provision of resources, including staff and personnel, made available under parts B and C of chapter 1 of title VII of the Act, part C of title I of the Act, and from other public and private sources that may be

necessary to carry out the functions of the SILC under this part.

(2) The SILC's resource plan must, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the State plan.

(3) No conditions or requirements may be included in the SILC's resource plan that may compromise the independence of the SILC.

(4) The SILC is responsible for the proper expenditure of funds and use of resources that it receives under the resource plan.

(5) A description of the SILC's resource plan required by paragraph (i)(1) of this section must be included in the State plan.

(j) *Staff.* (1) The SILC shall, consistent with State law, supervise and evaluate its staff and other personnel as may be necessary to carry out its functions under this section.

(2) While assisting the SILC in carrying out its duties, staff and other personnel made available to the SILC by the DSU may not be assigned duties by the designated State agency or DSU, or any other agency or office of the State, that would create a conflict of interest.

(k) *Reimbursement and compensation.* The SILC may use the resources described in paragraph (i) of this section to reimburse members of the SILC for reasonable and necessary expenses of attending SILC meetings and performing SILC duties (including child care and personal assistance services) and to pay compensation to a member of the SILC, if the member is not employed or must forfeit wages from other employment, for each day the member is engaged in performing SILC duties.

(l) *Conflict of interest.* No member of the SILC is permitted to cast a vote on any matter that may provide direct financial benefit to the member or the member's organization, that creates some other conflict of interest, or that otherwise gives the appearance of a conflict of interest under State law, unless that member announces publicly to all members of the SILC and to the public prior to his or her vote of the possible financial benefit, conflict of interest, or appearance of a conflict of interest.

(Authority: 29 U.S.C. 796d)

**§ 364.22 What is the State's responsibility for administration of the programs authorized by Chapter 1 of Title VII?**

(a) *General.* The State plan must identify the DSU as the entity that, on behalf of the State, shall—

(1) Receive, account for, and disburse funds received by the State under part B of chapter 1 and section 723 of title VII of the Act (and 34 CFR parts 365 and 366, as applicable) based on the plan;

(2) Provide, as applicable, administrative support services for the SILS and CIL programs under part B of chapter 1 and section 723 of title VII of the Act, respectively, and 34 CFR parts 365 and 366, respectively;

(3) Keep records and afford access to these records as the Secretary finds to be necessary with respect to the SILS and CIL programs; and

(4) Submit additional information or provide assurances as the Secretary may require with respect to the SILS and CIL programs.

(b) *Provision of administrative support services.* The State plan must describe the administrative support services to be provided by the DSU under paragraph (a)(2) of this section.

(c) *Designation of State unit for individuals who are blind.* The State plan may designate a State agency or the organizational unit of a State agency that is authorized under State law to provide VR services to individuals who are blind under a State VR plan as the DSU to administer that part of the State IL plan under which IL services are provided to individuals who are blind.

(Authority: 29 U.S.C. 796c(c))

**§ 364.23 What are the staffing requirements?**

(a) *General staffing requirement.* The State plan must assure that the staff of the service provider includes personnel who are specialists in the development and provision of IL services and in the development and support of centers.

(b) *Special communication needs staffing.* The State plan must also assure that, to the maximum extent feasible, the service provider makes available personnel able to communicate—

(1) With individuals with significant disabilities who rely on special modes of communication, such as manual communication, nonverbal communication devices, Braille, or audio tapes, and who apply for or receive IL services under title VII of the Act; and

(2) In the native languages of individuals with significant disabilities whose English proficiency is limited and who apply for or receive IL services under title VII of the Act.

(Authority: 29 U.S.C. 711(c) and 796c(a)(1))

**§ 364.24 What assurances are required for staff development?**

The State plan must assure that the service provider establishes and maintains a program of staff development for all classes of positions involved in providing IL services and, if appropriate, in administering the CIL program. The staff development program must emphasize improving the skills of staff directly responsible for the provision of IL services, including knowledge of the IL philosophy.

(Authority: 29 U.S.C. 711(c) and 796c(a)(1))

**§ 364.25 What are the requirements for a statewide network of centers for independent living?**

(a) The State plan must include a design for the establishment of a statewide network of centers that comply with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366.

(b) The design required by paragraph (a) of this section must identify unserved and underserved areas and must provide an order of priority for serving these areas.

(Authority: 29 U.S.C. 711(c) and 796c(g))

**§ 364.26 What are the requirements for cooperation, coordination, and working relationships?**

(a) The State plan must include steps that will be taken to maximize the cooperation, coordination, and working relationships among—

(1) The SILS program, the SILC, and centers; and

(2) The DSU, other State agencies represented on the SILC, other councils that address the needs of specific disability populations and issues, and other public and private entities determined to be appropriate by the SILC.

(b) The State plan must identify the entities to which the DSU and the SILC will relate in carrying out the requirements of paragraph (a) of this section.

(Authority: 29 U.S.C. 796c(i))

**§ 364.27 What are the requirements for coordinating independent living (IL) services?**

The State plan must describe how IL services funded under chapter 1 of title VII of the Act will be coordinated with, and complement, other services, to avoid unnecessary duplication with other Federal, State, and local programs, including the OIB program authorized by chapter 2 of title VII of the Act, that provide IL- or VR-related services. This description must include those services provided by State and local agencies administering the special education, vocational education, developmental disabilities services, public health, mental health, housing, transportation, and veterans' programs, and the programs authorized under titles XVIII

through XX of the Social Security Act within the State.

(Authority: 29 U.S.C. 796c(j) and 752(i)(2)(C))

**§ 364.28 What requirements relate to IL services for older individuals who are blind?**

The State plan must include an assurance that the DSU will seek to incorporate into and describe in the State plan any new methods or approaches for the provision to older individuals who are blind of IL services that are developed under a project funded under chapter 2 of title VII of the Act and that the DSU determines to be effective.

(Authority: 29 U.S.C. 711(c), 796c(j), and 796k(h))

**§ 364.29 What are the requirements for coordinating Federal and State sources of funding?**

(a) The State plan must describe efforts to coordinate Federal and State funding for centers and IL services.

(b) The State plan must identify the amounts, sources, and purposes of the funding to be coordinated under paragraph (a) of this section, including the amount of State funds earmarked for the general operation of centers.

(Authority: 29 U.S.C. 796c(k))

**Cross-reference:** See 34 CFR 366.30(a).

**§ 364.30 What notice must be given about the Client Assistance Program (CAP)?**

The State plan must include satisfactory assurances that all service providers will use formats that are accessible to notify individuals seeking or receiving IL services under Chapter 1 of title VII about—

(a) The availability of the CAP authorized by section 112 of the Act;

(b) The purposes of the services provided under the CAP; and

(c) How to contact the CAP.

(Authority: 29 U.S.C. 718a and 796c(m)(1))

**§ 364.31 What are the affirmative action requirements?**

The State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 of title VII of the Act will take affirmative action to employ and advance in employment qualified individuals with significant disabilities on the same terms and conditions required with respect to the employment of individuals with disabilities under section 503 of the Act.

(Authority: 29 U.S.C. 796c(m)(2))

**§ 364.32 What are the requirements for outreach?**

(a) With respect to IL services and centers funded under chapter 1 of title VII of the Act, the plan must include steps to be taken regarding outreach to populations in the State that are unserved or underserved by programs under title VII, including minority groups and urban and rural populations.

(b) The State plan must identify the populations to be designated for special outreach efforts under paragraph (a) of this section and the geographic areas in which they reside.

(Authority: 29 U.S.C. 796c(l))

**§ 364.33 What is required to meet minority needs?**

The State plan must demonstrate how the State will address the needs of individuals with significant disabilities from minority group backgrounds.

(Authority: 29 U.S.C. 711(c), 718b(b), and 796c(l))

**§ 364.34 What are the fiscal and accounting requirements?**

In addition to complying with applicable EDGAR fiscal and accounting requirements, the State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 of title VII of the Act will adopt those fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of and accounting for those funds.

(Authority: 29 U.S.C. 796c(m)(3))

**§ 364.35 What records must be maintained?**

In addition to complying with applicable EDGAR recordkeeping requirements, the State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 of title VII of the Act will maintain—

(a) Records that fully disclose and document—

(1) The amount and disposition by the recipient of that financial assistance;

(2) The total cost of the project or undertaking in connection with which the financial assistance is given or used;

(3) The amount of that portion of the cost of the project or undertaking supplied by other sources; and

(4) Compliance with the requirements of chapter 1 of title VII of the Act and this part; and

(b) Other records that the Secretary determines to be appropriate to facilitate an effective audit.

(Authority: 29 U.S.C. 796c(m)(4))

**§ 364.36 What are the reporting requirements?**

With respect to the records that are required by § 364.35, the State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of Chapter 1 and under chapter 2 of title VII of the Act will submit reports that the Secretary determines to be appropriate.

(Authority: 29 U.S.C. 796c(m)(4)(D))

**§ 364.37 What access to records must be provided?**

For the purpose of conducting audits, examinations, and compliance reviews, the State plan must include satisfactory assurances that all recipients of financial assistance under parts B and C of chapter 1 and Chapter 2 of title VII of the Act will provide access to the Secretary and the Comptroller General, or any of their duly authorized representatives, to—

(a) The records maintained under § 364.35;

(b) Any other books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under chapter 1 of title VII of the Act; and

(c) All individual case records or files or consumer service records of individuals served under 34 CFR parts 365, 366, or 367, including names, addresses, photographs, and records of evaluation included in those individual case records or files or consumer service records.

(Authority: 29 U.S.C. 711(c) and 796c(m)(4)(c) and (5))

**§ 364.38 What methods of evaluation must the State plan include?**

The State plan must establish a method for the periodic evaluation of the effectiveness of the plan in meeting the objectives established in § 364.42, including evaluation of satisfaction by individuals with significant disabilities who have participated in the program.

(Authority: 29 U.S.C. 796c(n))

**§ 364.39 What requirements apply to the administration of grants under the Centers for Independent Living program?**

In States in which State funding for centers equals or exceeds the amount of funds allotted to the State under part C of title VII of the Act, as determined pursuant to 34 CFR 366.29 and 366.31, and in which the State elects to administer the CIL program as provided in section 723 of the Act, the State plan must include policies, practices, and procedures that are consistent with section 723 of the Act to govern the awarding of grants to centers and the oversight of these centers.

(Authority: 29 U.S.C. 796c(g) and (h), 796f–1(d), and 796f–2(d)).

**§ 364.40 Who is eligible to receive IL services?**

The State plan must assure that—

(a) Any individual with a significant disability, as defined in § 364.4(b), is eligible for IL services under the SILS and CIL programs authorized under chapter 1 of title VII of the Act;

(b) Any individual may seek information about IL services under these programs and request referral to other services and programs for individuals with significant disabilities, as appropriate; and

(c) The determination of an individual's eligibility for IL services under the SILS and CIL programs meets the requirements of § 364.51.

(Authority: 29 U.S.C. 706(15)(B) and 796b)

**§ 364.41 What assurances must be included regarding eligibility?**

(a) The State plan must assure that the service provider applies eligibility requirements without regard to age, gender, race, creed, color, national origin, or type of significant disability of the individual applying for IL services.

(b) The State plan must assure that the service provider does not impose any State or local residence requirement that excludes from IL services under the plan any individual who is present in the State and who is otherwise eligible for IL services.

(Authority: 29 U.S.C. 711(c) and 796c(a)(1))

**§ 364.42 What objectives and information must be included in the State plan?**

(a) The State plan must specifically describe—

(1) The objectives to be achieved;

(2) The financial plan for the use of Federal and non-Federal funds to meet these objectives; and

(3) How funds received under sections 711, 721, and 752 of the Act will further these objectives.

(b) The objectives required by paragraph (a) of this section must address—

(1) The overall goals and mission of the State's IL programs and services;

(2) The various priorities for the types of services and populations to be served; and

(3) The types of services to be provided.

(c) In developing the objectives required by paragraph (a) of this section, the DSU and the SILC shall consider, and incorporate if appropriate, the priorities and objectives established by centers pursuant to section 725(c)(4) of the Act.

(d) The State plan must establish timeframes for the achievement of the objectives required by paragraph (a) of this section.

(e) The State plan must explain how the objectives required by paragraph (a) of this section are consistent with and further the purpose of chapter 1 of title VII of the Act, as stated in section 701 of the Act and § 364.2.

(Authority: 29 U.S.C. 796c(d))

**§ 364.43 What requirements apply to the provision of State IL services?**

(a) The State plan must describe the extent and scope of IL services to be provided under title VII of the Act to meet the objectives stated in § 364.42.

(b) The State plan must provide that the State directly, or through grants or contracts, will provide IL services with Federal, State, or other funds.

(c) IL services provided to individuals with significant disabilities must be in accordance with an IL plan that meets the requirements of § 364.52 and that is mutually agreed upon by—

(1) An appropriate staff member of the service provider; and

(2) The individual, unless the individual signs a waiver stating that an IL plan is unnecessary.

(d) If the State provides the IL services that it is required to provide by paragraph (b) of this section through grants or contracts with third parties, the State plan must describe these arrangements.

(e) If the State contracts with or awards a grant to a center for the general operation of the center, the State shall delegate to the center the determination of an individual's eligibility for services from that center. If the State contracts with or awards a grant to a third party to provide specific IL services, the State may choose to delegate to the IL service provider the determination of eligibility for these services and the development of an IL plan for individuals who receive these services.

(Authority: 29 U.S.C. 711(c), 796c(e)–(f), and 796f–4(b)(2))

Cross-reference: See 34 CFR Part 365.

## Subpart D—What Conditions Must Be Met After an Award?

**§ 364.50 What requirements apply to the processing of referrals and applications?**

The service provider shall apply the standards and procedures established by the DSU pursuant to 34 CFR 365.30 to ensure expeditious and equitable handling of referrals and applications for IL services from individuals with significant disabilities.

(Authority: 29 U.S.C. 711(c) and 796–796f–5)

**§ 364.51 What requirements apply to determinations of eligibility or ineligibility?**

(a) *Eligibility.* (1) Before or at the same time as an applicant for IL services may begin receiving IL services funded under this part, the service provider shall determine the applicant's eligibility and maintain documentation that the applicant has met the basic requirements specified in § 364.40.

(2) The documentation must be dated and signed by an appropriate staff member of the service provider.

(b) *Ineligibility.* (1) If a determination is made that an applicant for IL services is not an individual with a significant disability, the service provider shall provide documentation of the ineligibility determination that is dated and signed by an appropriate staff member.

(2)(i) The service provider may determine an applicant to be ineligible for IL services only after full consultation with the applicant or, if the applicant chooses, the applicant's parent, guardian, or other legally authorized advocate or representative, or after providing a clear opportunity for this consultation.

(ii) The service provider shall notify the applicant in writing of the action taken and inform the applicant or, if the applicant chooses, the applicant's parent, guardian, or other legally authorized advocate or representative, of the applicant's rights and the means by which the applicant may appeal the action taken.

(Cross-reference: See § 364.58(a).)

(iii) The service provider shall provide a detailed explanation of the availability and purposes of the client assistance program established within the State under section 112 of the Act, including information on how to contact the program.

(iv) If appropriate, the service provider shall refer the applicant to other agencies and facilities, including the State's VR program under 34 CFR part 361.

(c) *Review of ineligibility determination.* (1) If an applicant for IL services has been found ineligible, the service provider shall review the applicant's current status no later than 12 months after the determination has been made.

(2) The review need not be conducted in situations where the applicant has refused the review, the applicant is no longer present in the State, or the applicant's whereabouts are unknown.

(Authority: 29 U.S.C. 711(c) and 796c(e))

**§ 364.52 What are the requirements for an IL plan?**

(a) *General.* (1) Unless the individual who is to be provided IL services under this part signs a waiver in accordance with paragraph (a)(2) of this section, the

service provider, in collaboration with the individual with a significant disability, shall develop and periodically review an IL plan for the individual in accordance with the requirements in § 364.43(c) and paragraphs (b) through (e) of this section.

(2) The requirements of this section with respect to an IL plan do not apply if the individual signs a waiver stating that an IL plan is unnecessary.

(3) Subject to paragraph (a)(2) of this section, the service provider shall provide each IL service in accordance with the IL plan.

(b) *Initiation and development of an IL plan.* (1) Development of an individual's IL plan must be initiated after documentation of eligibility under § 364.51(a) and must indicate the goals or objectives established, the services to be provided, and the anticipated duration of the service program and each component service.

(2) The IL plan must be developed jointly and signed by the appropriate staff member of the service provider and the individual with a significant disability or, if consistent with State law and the individual chooses, the individual's guardian, parent, or other legally authorized advocate or representative.

(3) A copy of the IL plan, and any amendments, must be provided to the individual with a significant disability or, if consistent with State law and the individual chooses, the individual's guardian, parent, or other legally authorized advocate or representative.

(c) *Review.* (1) The IL plan must be reviewed as often as necessary but at least on an annual basis to determine whether services should be continued, modified, or discontinued, or whether the individual should be referred to a program of VR services under 34 CFR part 361 or to any other program of assistance.

(2) Each individual with a significant disability or, if consistent with State law and the individual chooses, the individual's guardian, parent, or other legally authorized advocate or representative, must be given an opportunity to review the IL plan and, if necessary, jointly redevelop and agree by signature to its terms.

(d) *Coordination with vocational rehabilitation, developmental disabilities, and special education programs.* The development of the IL plan and the provision of IL services must be coordinated to the maximum extent possible with any individualized—

(1) Written rehabilitation program for VR services for that individual;

(2) Habilitation program for the individual prepared under the Developmental Disabilities Assistance and Bill of Rights Act; and

(3) Education program for the individual prepared under part B of the Individuals with Disabilities Education Act.

(e) *Termination of services.* If the service provider intends to terminate services to an individual receiving IL services under an IL plan, the service provider shall follow the procedures in § 364.51(b)(2)(ii) through (iv) and (c).

(Authority: 29 U.S.C. 711(c) and 796c(e))

**§ 364.53 What records must be maintained for the individual?**

For each applicant for IL services and for each individual receiving IL services, the service provider shall maintain a consumer service record that includes—

(a) Documentation concerning eligibility or ineligibility for services;

(b) The services requested by the consumer;

(c) Either the IL plan developed with the consumer or a waiver signed by the consumer stating that an IL plan is unnecessary;

(d) The services actually provided to the consumer; and

(e) The IL goals or objectives—

(1) Established with the consumer, whether or not in the consumer's IL plan; and

(2) Achieved by the consumer.

(Authority: 29 U.S.C. 711(c), 712 and 796c(m)(4)(B))

**§ 364.54 What are the durational limitations on IL services?**

The service provider may not impose any uniform durational limitations on the provision of IL services, except as otherwise provided by Federal law or regulation.

(Authority: 29 U.S.C. 711(c) and 796–796f–5)

**§ 364.55 What standards shall service providers meet?**

In providing IL services to individuals with significant disabilities, service providers shall comply with—

(a) The written standards for IL service providers established by the DSU pursuant to 34 CFR 365.31; and

(b) All applicable State or Federal licensure or certification requirements.

(Authority: 29 U.S.C. 711(c) and 796–796f–5)

**§ 364.56 What are the special requirements pertaining to the protection, use, and release of personal information?**

(a) *General provisions.* The State plan must assure that each service provider will adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that—

(1) Specific safeguards protect current and stored personal information;

(2) All applicants for, or recipients of, IL services and, as appropriate, those individuals' legally authorized representatives, service providers, cooperating agencies, and interested persons are informed of the confidentiality of personal information and the conditions for gaining access to and releasing this information;

(3) All applicants or their legally authorized representatives are informed about the service provider's need to collect personal information and the policies governing its use, including—

(i) Identification of the authority under which information is collected;

(ii) Explanation of the principal purposes for which the service provider intends to use or release the information;

(iii) Explanation of whether providing requested information to the service provider is mandatory or voluntary and the effects to the individual of not providing requested information;

(iv) Identification of those situations in which the service provider requires or does not require informed written consent of the individual or his or her legally authorized representative before information may be released; and

(v) Identification of other agencies to which information is routinely released;

(4) Persons who are unable to communicate in English or who rely on special modes of communication must be provided an explanation of service provider policies and procedures affecting personal information through methods that can be adequately understood by them;

(5) At least the same protections are provided to individuals with significant disabilities as provided by State laws and regulations; and

(6) Access to records is governed by rules established by the service provider and any fees charged for copies of records are reasonable and cover only extraordinary costs of duplication or making extensive searches.

(b) *Service provider use.* All personal information in the possession of the service provider may be used only for the purposes directly connected with the provision of IL services and the administration of the IL program under which IL services are provided. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for the provision of IL services or the

administration of the IL program under which IL services are provided. In the provision of IL services or the administration of the IL program under which IL services are provided, the service provider may obtain personal information from other service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) *Release to recipients of IL services.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by a recipient of IL services, the service provider shall release all information in that individual's record of services to the individual or the individual's legally authorized representative in a timely manner.

(2) Medical, psychological, or other information that the service provider determines may be harmful to the individual may not be released directly to the individual, but must be provided through a qualified medical or psychological professional or the individual's legally authorized representative.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research activities only for purposes directly connected with the administration of an IL program, or for purposes that would significantly improve the quality of life for individuals with significant disabilities and only if the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personally identifying information without the informed written consent of the involved individual or the individual's legally authorized representative.

(e) *Release to other programs or authorities.* (1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's legally authorized representative, the service provider may release personal information to another agency or organization for the latter's program purposes only to the extent that the information may be released to the involved individual and only to the extent that the other agency or organization demonstrates that the information requested is necessary for the proper administration of its program.

(2) Medical or psychological information that the service provider determines may be harmful to the individual may be released if the other agency or organization assures the service provider that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The service provider shall release personal information if required by Federal laws or regulations.

(4) The service provider shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to judicial order.

(5) The service provider also may release personal information to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: 29 U.S.C. 711(c))

**§ 364.57 What functions and responsibilities may the State delegate?**

A DSU may carry out the functions and responsibilities described in §§ 364.50, 364.51 (subject to § 364.43(d)), 364.52, 364.53, and 364.56 or, except as otherwise provided, may delegate these functions and responsibilities to the appropriate service provider with which the DSU subgrants or contracts to provide IL services.

(Authority: 29 U.S.C. 711(c), 796c(f) and 796e–2)

**§ 364.58 What appeal procedures must be available to consumers?**

Each service provider shall—

(a) Establish policies and procedures that an individual may use to obtain review of decisions made by the service provider concerning the individual's request for IL services or the provision of IL services to the individual; and

(b) Use formats that are accessible to inform each individual who seeks or is receiving IL services from the service provider about the procedures required by paragraph (a) of this section.

(Authority: 29 U.S.C. 711(c))

**§ 364.59 May the financial need of an individual be considered to determine his or her participation in the costs of IL services?**

(a) *No Federal requirement.* There is no Federal requirement that the financial need of an individual eligible for IL services be considered in the provision of IL services.

(b) *State plan requirements.* The State plan must—

(1) Specify the types of IL services for which a financial need test may be applied; and

(2) Assure that any consideration of financial need is applied uniformly so that all individuals who are eligible for IL services are treated equally.

(c) *Financial need.* Consistent with paragraph (b) of this section, a service provider may choose to consider the financial need of an individual who is eligible for IL services.

(d) *Written policies and documentation.* If the service provider chooses to consider financial need—

(1) It shall maintain written policies covering the specific types of IL services for which a financial need test will be applied; and

(2) It shall document the individual's participation in the cost of any IL services, including financial need information.

(Authority: 29 U.S.C. 711(c))

## PART 365—STATE INDEPENDENT LIVING SERVICES

### Subpart A—General

Sec.

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365.2 Who is eligible for an award?
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### Subpart B—How Does the Secretary Make a Grant to a State?

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365.11 How is the allotment of Federal funds for State independent living (IL) services computed?
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365.13 What requirements apply if the State's non-Federal share s in cash?
365.14 What conditions relating to cash or in-kind contributions apply to awards to grantees, subgrantees, or contractors?
365.15 What requirements apply if the State's non-Federal share is In kind?
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### Subpart C—For What Purpose Are Funds Authorized or Required To Be Used?

365.20 What are the authorized uses of funds?
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**Subpart D—What Conditions Must Be Met After an Award?**

365.30 What are the standards for processing referrals and applications?
365.31 What are the standards for service providers?

**Authority:** 29 U.S.C. 796e–796e–2, unless otherwise noted.

## Subpart A—General

### § 365.1 What is the State Independent Living Services (SILS) program?

The Secretary provides financial assistance to States under the SILS program authorized by part B of chapter 1 of title VII of the Act to—

(a) Provide the resources described in the resource plan required by section 705(e) of the Act and 34 CFR 364.21(d) relating to the Statewide IL Council (SILC);

(b) Provide to individuals with significant disabilities the independent living (IL) services required by section 704(e) of the Act;

(c) Demonstrate ways to expand and improve IL services;

(d) Support the operation of centers for independent living (centers) that are in compliance with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366;

(e) Support activities to increase the capacities of public or nonprofit agencies and organizations and other entities to develop comprehensive approaches or systems for providing IL services;

(f) Conduct studies and analyses, gather information, develop model policies and procedures, and present information, approaches, strategies, findings, conclusions, and recommendations to Federal, State, and local policy makers in order to enhance IL services for individuals with significant disabilities;

(g) Train individuals with significant disabilities, individuals with disabilities, individuals providing services to individuals with significant disabilities, and other persons regarding the IL philosophy; and

(h) Provide outreach to populations that are unserved or underserved by programs under Title VII of the Act, including minority groups and urban and rural populations.

(Authority: 29 U.S.C. 796e)

### § 365.2 Who is eligible for an award?

Any designated State unit (DSU) identified by the State pursuant to 34 CFR 364.22 is eligible to apply for assistance under this part in accordance with 34 CFR 364.10 and 364.11.

(Authority: 29 U.S.C. 796c(a) (1) and (c) and 796e(a))

### § 365.3 What regulations apply?

The following regulations apply to this part:

(a) The regulations in 34 CFR part 364.

(b) The regulations in this part 365.

(Authority: 29 U.S.C. 711(c) and 796e)

## Subpart B—How Does the Secretary Make a Grant to a State?

### § 365.10 How does a State apply for a grant?

To receive a grant under this part, a State shall submit to the Secretary and obtain approval of a State plan that meets the requirements of part A of title VII of the Act and subparts B and C of 34 CFR part 364.

(Authority: 29 U.S.C. 796c(a)(1) and (c) and 796e(a))

### § 365.11 How is the allotment of Federal funds for State independent living (IL) services computed?

(a) The allotment of Federal funds for State IL services for each State is computed in accordance with the requirements of section 711(a)(1) of the Act.

(b) The allotment of Federal funds for Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau is computed in accordance with section 711(a)(2) of the Act.

(c) If the State plan designates, pursuant to § 364.22(c), a unit to administer the part of the plan under which State IL services are provided for individuals who are blind and a separate or different unit to administer the rest of the plan, the division of the State's allotment between these two units is a matter for State determination.

(Authority: 29 U.S.C. 711(c) and 796e(a))

### § 365.12 How are payments from allotments for IL services made?

(a) From the allotment of a State for a fiscal year under § 365.11, the Secretary pays to the State the Federal share of the expenditures incurred by the State during the year in accordance with the State plan approved under section 706 of the Act. After any necessary adjustments resulting from previously made overpayments or underpayments, the payments may be made in advance or by reimbursement, in installments, and on conditions that the Secretary may determine.

(b)(1) The Federal share with respect to any State for any fiscal year is 90 percent of the expenditures incurred by the State during that fiscal year under its State plan approved under section 706 of the Act.

(2) The non-Federal share of the cost of any project that receives assistance through an allotment under this part may be provided in cash or in kind, fairly evaluated, including plant, equipment, or services.

(Authority: U.S.C. 796e–1)

### § 365.13 What requirements apply if the State's non-Federal share is in cash?

(a) Except as further limited by paragraph (b) of this section, expenditures that meet the requirements of 34 CFR 80.24(a) through (b)(6) may be used to meet the non-Federal share matching requirement under section 712(b) of the Act if—

(1) The expenditures are made with funds made available by appropriation directly to the designated State agency or with funds made available by allotment or transfer from any other unit of State or local government;

(2) The expenditures are made with cash contributions from a donor that are deposited in the account of the designated State agency in accordance with State law for expenditure by, and at the sole discretion of, the DSU for activities identified or described in the State plan and authorized by § 365.20; or

(3) The expenditures are made with cash contributions from a donor that are earmarked for meeting the State's share for—

(i) Providing particular services (e.g., personal assistance services);

(ii) Serving individuals with certain types of disabilities (e.g., older individuals who are blind);

(iii) Providing services to special groups that State or Federal law permits to be targeted for services (e.g., children of migrant laborers); or

(iv) Carrying out particular types of administrative activities permissible under State law.

(b) Cash contributions are permissible under paragraph (a)(3) of this section only if the cash contributions are not used for expenditures that benefit or will benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest.

(c) The receipt of a grant, subgrant, or contract under section 713 of the Act or a grant, subgrant, or assistance contract under section 723 of the Act from the DSU is not considered a benefit to the donor of a cash contribution for purposes of paragraph (b) of this section if the grant, subgrant, or contract was awarded under the State's regular competitive procedures.

(d) For purposes of this section, a donor may be a private agency, a profit-making or nonprofit organization, or an individual.

(Authority: 29 U.S.C. 711(c) and 796e–1(b))

**§ 365.14 What conditions relating to cash or in-kind contributions apply to awards to grantees, subgrantees, or contractors?**

(a) A State may not condition the award of a grant, subgrant, or contract under section 713 of the Act or a grant, subgrant, or assistance contract under section 723 of the Act on the requirement that the applicant for the grant or subgrant make a cash or in-kind contribution of any particular amount or value to the State.

(b) An individual, entity, or organization that is a grantee or subgrantee of the State, or has a contract with the State, may not condition the award of a subgrant or subcontract under section 713 of the Act or section 723 of the Act on the requirement that the applicant for the subgrant or subcontract make a cash or in-kind contribution of any particular amount or value to the State or to the grantee or contractor of the State.

(Authority: 29 U.S.C. 711(c) and 796e–1(b))

**§ 365.15 What requirements apply if the State's non-Federal share is in kind?**

Subject to § 365.14, in-kind contributions may be—

(a) Used to meet the matching requirement under section 712(b) of the Act if the in-kind contributions meet the requirements of 34 CFR 80.24(b)(7) through (g) and if the in-kind contributions would be considered allowable costs under this part, as determined by the cost principles made applicable by either subpart Q of 34 CFR part 74 or 34 CFR 80.22, as appropriate; and

(b) Made to the program or project by the State or by a third party (i.e., an individual, entity, or organization, whether local, public, private, for profit, or nonprofit), including a third party that is a grantee, subgrantee, or contractor that is receiving or will receive assistance under sections 713 or 723 of the Act.

(Authority: 29 U.S.C. 711(c) and 796e–1(b))

**§ 365.16 What requirements apply to refunds and rebates?**

The following must be treated as a reduction of expenditures charged to the grant, subgrant, or contract awarded under this part and may not be used for meeting the State's matching requirement under section 712(b) of the Act:

(a) Rebates, deductions, refunds, discounts, or reductions to the price of goods, products, equipment, rental property, real property, or services.

(b) Premiums, bonuses, gifts, and any other payments related to the purchase of goods, products, equipment, rental property, real property, or services.

(Authority: 29 U.S.C. 711(c), 796e–1(b), and OMB Circulars A–87 and A–122)

## Subpart C—For What Purpose Are Funds Authorized or Required To Be Used?

**§ 365.20 What are the authorized uses of funds?**

The State may use funds received under this part to support the activities listed in § 365.1 and to meet its obligation under section 704(e) of the Act and 34 CFR 364.43(b).

(Authority: 29 U.S.C. 796e–2)

**§ 365.21 What funds may the State use to provide the IL core services?**

(a) In providing IL services as required under section 704(e) of the Act and 34 CFR 364.43(b), a State may use funds provided under this part to provide directly, or through grants or contracts, the following IL core services:

(1) Information and referral services.

(2) IL skills training.

(3) Peer counseling, including cross-disability peer counseling.

(4) Individual and systems advocacy.

(b) Information and referral services may be provided independently of the other services described in paragraph (a) of this section and without regard to subpart G of 34 CFR part 366.

(Authority: 29 U.S.C. 711(c) and 796c(e))

**§ 365.22 What additional IL services may the State provide?**

In addition to IL core services that the State is required to provide under section 704(e) of the Act and 34 CFR 364.43(b), the State may use funds received under part B of Chapter 1 of title VII of the Act to provide the IL services defined in 34 CFR 364.4 (Independent living services).

(Authority: 29 U.S.C. 796e–2(1))

**§ 365.23 How does a State make a subgrant or enter into a contract?**

If a State makes a subgrant or enters into a contract to provide IL services to meet its obligation under section 704(e) of the Act—

(a) The provisions of this part apply to both the State and the entity or individual to whom it awards a subgrant or with whom it enters into a contract; and

(b) The provisions concerning the administration of subgrants and contracts in 34 CFR parts 76 and 80 apply to the State.

(Authority: 29 U.S.C. 711(c), 796c(f), and 796e–2)

**Cross-reference:** See 34 CFR parts 74, 76, and 80.

## Subpart D—What Conditions Must Be Met After an Award?

**§ 365.30 What are the standards for processing referrals and applications?**

The DSU shall develop, establish, and maintain written standards and procedures to be applied by the service provider to assure expeditious and equitable handling of referrals and applications for IL services from individuals with significant disabilities.

(Authority: 29 U.S.C. 711(c) and 796e)

**§ 365.31 What are the standards for service providers?**

(a) The DSU shall develop, establish, make available to the public, maintain, and implement written minimum standards for the provision of IL services to be met by providers that do not meet the standards and assurances in section 725 of the Act and subparts F and G of 34 CFR part 366 and that are used by the DSU to provide IL services to individuals with significant disabilities.

(b) The DSU shall assure that participating service providers meet all applicable State licensure or certification requirements.

(Authority: 29 U.S.C. 711(c))

# PART 366—CENTERS FOR INDEPENDENT LIVING

## Subpart A—General

Sec.

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**Awarding Grants**

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366.45 What must a Director do upon receipt of a copy of a center's formal written appeal to the Secretary?
366.46 How does the Secretary review a center's appeal of a decision included in a Director's initial written notice or a Director's final written decision?

**Subpart F—Assurances for Centers**

366.50 What assurances shall a center provide and comply with?

**Authority:** 29 U.S.C. 796f through 796f–5, unless otherwise noted.

## Subpart A—General

### § 366.1 What is the Centers for Independent Living (CIL) program?

The CIL program provides financial assistance for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 (b) and (c) of the Act, consistent with the design included in the State plan pursuant to 34 CFR 364.25 for establishing a statewide network of centers.

(Authority: 29 U.S.C. 796f, 796f–1(a)(2), and 796f–2(a)(1)(A)(ii))

### § 366.2 What agencies are eligible for assistance under the CIL program?

(a) In any State in which the Secretary has approved the State plan required by section 704 of the Act, an applicant may receive a grant under subparts C or D of this part, as applicable, if the applicant demonstrates in its application submitted pursuant to § 366.21, 366.24, 366.33, 366.35, or 366.36 that it—

(1) Has the power and authority to—

(i) Carry out the purpose of part C of title VII of the Act and perform the functions listed in section 725 (b) and (c) of the Act and subparts F and G of this part within a community; and

(ii) Receive and administer—

(A) Funds under this part;

(B) Funds and contributions from private or public sources that may be used in support of a center; and

(C) Funds from other public and private programs; and

(2) Is able to plan, conduct, administer, and evaluate a center consistent with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(b) An applicant is eligible to apply as a new center if it—

(1) Has never received funds under part C of chapter 1 of title VII of the Act;

(2) Proposes the expansion of an existing center through the establishment of a separate and complete facility at a different geographical location; or

(3) Receives assistance under part B of chapter 1 of title VII of the Act (or received assistance under part A of title VII of the Act as in effect on October 28, 1992) for a fiscal year for the general operation of a center; and

(4) Meets the requirements of § 366.24;

(c) A State that received assistance in fiscal year (FY) 1993 to directly operate a center in accordance with section 724(a) of the Act is eligible to continue to receive assistance under this part to directly operate that center for FY 1994 or a succeeding fiscal year if, for the fiscal year for which assistance is sought—

(1) No nonprofit private agency submits and obtains approval of an acceptable application under sections 722 or 723 of the Act or § 366.21 or § 366.24 to operate a center for that fiscal year before a date specified by the Secretary; or

(2) After funding all applications so submitted and approved, the Secretary determines that funds remain available to provide that assistance.

(d) Except for the requirement that the center be a private nonprofit agency, a center that is operated by a State that receives assistance under paragraph (a), (b), or (c) of this section shall comply with all of the requirements of Part C of title VII of the Act and the requirements in subparts C or D, as applicable, and F of this part.

(e) Eligibility requirements for assistance under Subpart B of this part are described in § 366.10.

(Authority: 29 U.S.C. 711(c), 796f–1(b) and (d)(3), 796f–2(b), and 796f–3(a)(2) and (b))

### § 366.3 What activities may the Secretary fund?

(a) An eligible agency may use funds awarded under subpart B of this part to carry out activities described in § 366.11(b).

(b) An eligible agency may use funds awarded under subparts C and D of this part to—

(1) Plan, conduct, administer, and evaluate centers that comply with the standards and assurances in section 725(b) and (c) of the Act;

(2) Promote and practice the independent living (IL) philosophy in accordance with Evaluation Standard 1 ("Philosophy");

(3) Provide IL services (including IL core services and, as appropriate, a combination of any other IL services specified in section 7(30)(B) of the Act) to individuals with a range of significant disabilities in accordance with Evaluation Standards 2 and 5 ("Provision of services" and "Independent living core services," respectively);

(4) Facilitate the development and achievement of IL goals selected by individuals with significant disabilities who seek assistance from the center in accordance with Evaluation Standard 3 ("Independent living goals");

(5) Increase the availability and improve the quality of community options for independent living in order to facilitate the development and achievement of IL goals by individuals with significant disabilities in accordance with Evaluation Standard 4 ("Community options");

(6) Increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities in accordance with Evaluation Standard 6 ("Activities to increase community capacity");

(7) Conduct resource development activities to obtain funding from sources other than chapter 1 of title VII of the Act in accordance with Evaluation Standard 7 (Resource development activities); and

(8) Conduct activities necessary to comply with the assurances in section 725(c) of the Act, including, but not limited to the following:

(i) Aggressive outreach regarding services provided through the center in an effort to reach populations of individuals with significant disabilities that are unserved or underserved by programs under title VII of the Act, especially minority groups and urban and rural populations.

(ii) Training for center staff on how to serve unserved and underserved populations, including minority groups and urban and rural populations.

(Authority: 29 U.S.C. 796f through 796f–4)

(Cross-reference: See § 366.71 in Subpart G.)

### § 366.4 What regulations apply?

The following regulations apply to the CIL program:

(a) The regulations in 34 CFR part 364.

(b) The regulations in this part 366.

(Authority: 29 U.S.C. 711(c) and 796f–796f–5)

### § 366.5 How are program funds allotted?

(a) The Secretary allots Federal funds appropriated for FY 1994 and subsequent fiscal years for the CIL program to each State in accordance with the requirements of section 721 of the Act.

(b)(1) After the Secretary makes the reservation required by section 721(b) of the Act, the Secretary makes an allotment, from the remainder of the amount appropriated for a fiscal year to carry out Part C of Title VII of the Act, to each State whose State plan has been approved under section 706 of the Act and 34 CFR part 364.

(2) The Secretary makes the allotment under paragraph (b)(1) of this section subject to sections 721(c)(1)(B) and (C), 721(c)(2) and (3), and 721(d) of the Act.

(Authority: 29 U.S.C. 796f)

## Subpart B—Training and Technical Assistance

### § 366.10 What agencies are eligible for assistance to provide training and technical assistance?

Entities that have experience in the operation of centers are eligible to apply for grants to provide training and technical assistance under section 721(b) of the Act to eligible agencies, centers, and Statewide Independent Living Councils (SILCs).

(Authority: 29 U.S.C. 796f(b)(1))

### § 366.11 What financial assistance does the Secretary provide for training and technical assistance?

(a) From funds, if any, reserved under section 721(b)(1) of the Act to carry out the purposes of this subpart, the Secretary makes grants to, and enters into contracts, cooperative agreements, and other arrangements with, entities that have experience in the operation of centers.

(b) An entity receiving assistance in accordance with paragraph (a) of this section shall provide training and technical assistance to eligible agencies, centers, and SILCs to plan, develop, conduct, administer, and evaluate centers.

(Authority: 29 U.S.C. 796f(b)(1)–(3))

### § 366.12 How does the Secretary make an award?

(a) To be eligible to receive a grant or enter into a contract or other arrangement under section 721(b) of the Act and this subpart, an applicant shall submit an application to the Secretary containing a proposal to provide training and technical assistance to eligible agencies, centers, and SILCs and any additional information at the time and in the manner that the Secretary may require.

(b) The Secretary provides for peer review of grant applications by panels that include persons who are not Federal government employees and who have experience in the operation of centers.

(Authority: 29 U.S.C. 711(c) and 796f(b))

### § 366.13 How does the Secretary determine funding priorities?

In making awards under this section, the Secretary determines funding priorities in accordance with the training and technical assistance needs identified by the survey of SILCs and centers required by section 721(b)(3) of the Act.

(Authority: 29 U.S.C. 796f(b)(3))

### § 366.14 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application for a grant under this subpart on the basis of the criteria in § 366.15.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 796f(b)(3))

### § 366.15 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate applications for new awards for training and technical assistance:

(a) *Meeting the purposes of the program* (30 points).

The Secretary reviews each application to determine how well the project will be able to meet the purpose of the program of providing training and technical assistance to eligible agencies, centers, and SILCs with respect to planning, developing, conducting, administering, and evaluating centers, including consideration of—

(1) The objectives of the project; and

(2) How the objectives further training and technical assistance with respect to planning, developing, conducting, administering, and evaluating centers.

(b) *Extent of need for the project* (20 points). The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in Title VII of the Act, including consideration of—

(1) The needs addressed by the project;

(2) How the applicant identified those needs;

(3) How those needs will be met by the project; and

(4) The benefits to be gained by meeting those needs.

(c) *Plan of operation* (15 points). The Secretary reviews each application for information that shows 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 plan of management 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.

(d) *Quality of key personnel* (7 points).

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director, if one is to be used;

(ii) The qualifications of each of the other management and decision-making 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;

(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; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, including members of racial or ethnic minority groups, women, persons with disabilities, and elderly individuals.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(e) *Budget and cost effectiveness* (5 points). The Secretary reviews each application for information that shows 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.

(f) *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 appropriate to the project;

(2) Will determine how successful the project is in meeting its goals and objectives; and

(3) Are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590.)

(g) *Adequacy of resources* (3 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Extent of prior experience* (15 points). The Secretary reviews each application to determine the extent of experience the applicant has in the operation of centers and with providing training and technical assistance to centers, including—

(1) Training and technical assistance with planning, developing, and administering centers;

(2) The scope of training and technical assistance provided, including methods used to conduct training and technical assistance for centers;

(3) Knowledge of techniques and approaches for evaluating centers; and

(4) The capacity for providing training and technical assistance as demonstrated by previous experience in these areas.

(Authority: 29 U.S.C. 711(c) and 796f(b))

## Subpart C—Grants to Centers for Independent Living (Centers) in States in Which Federal Funding Exceeds State Funding

### § 366.20 When does the Secretary award grants to centers?

The Secretary awards grants to centers in a State in a fiscal year if—

(a) The amount of Federal funds allotted to the State under section 721 (c) and (d) of the Act to support the general operation of centers is greater than the amount of State funds earmarked for the same purpose, as determined pursuant to §§ 366.29 and 366.31; or

(b) The Director of a designated State unit (DSU) does not submit to the Secretary and obtain approval of an application to award grants under section 723 of the Act and § 366.32 (a) and (b).

(Authority: 29 U.S.C. 796f–1 and 796f–2(a)(2))

### § 366.21 What are the application requirements for existing eligible agencies?

To be eligible for assistance, an eligible agency shall submit—

(a) An application at the time, in the manner, and containing the information that is required;

(b) An assurance that the eligible agency meets the requirements of § 366.2; and

(c) The assurances required by section 725(c) of the Act and subpart F of this part.

(Authority: 29 U.S.C. 796f–1(b))

### § 366.22 What is the order of priorities?

(a) In accordance with a State's allotment and to the extent funds are available, the order of priorities for allocating funds among centers within a State is as follows:

(1) Existing centers, as described in § 366.23, that comply with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part first receive the level of funding each center received in the previous year. However, any funds received by an existing center to establish a new center at a different geographical location pursuant to proposed § 366.2(b)(2) are not included in determining the level of funding to the existing center in any fiscal year that the new center applies for and receives funds as a separate center.

(2) Existing centers that meet the requirements of paragraph (a)(1) of this section then receive a cost-of-living increase in accordance with procedures consistent with section 721(c)(3) of the Act.

(3) New centers, as described in § 366.2(b), that comply with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of this part.

(b) If, after meeting the priorities in paragraphs (a) (1) and (2) of this section, there are insufficient funds under the State's allotment under section 721 (c) and (d) of the Act to fund a new center under paragraph (a)(3) of this section, the Secretary may—

(1) Use the excess funds in the State to assist existing centers; or

(2) Reallot these funds in accordance with section 721(d) of the Act.

(Authority: 29 U.S.C. 711(c) and 796f–1(e))

### § 366.23 What grants must be made to existing eligible agencies?

(a) In accordance with the order of priorities established in § 366.22, an eligible agency may receive a grant if the eligible agency demonstrates in its application that it—

(1) Meets the requirements in § 366.21 or § 366.24;

(2) Is receiving funds under Part C of Title VII of the Act on September 30, 1993; and

(3) Is in compliance with the program and fiscal standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part. (The indicators of minimum compliance in subpart G of this part are used to determine compliance with the evaluation standards in section 725(b) of the Act.)

(b) For purposes of this section, an eligible agency is receiving funds under Part C of Title VII of the Act on

September 30, 1993, if it was awarded a grant on or before that date, i.e., during FY 1993.

(Authority: 29 U.S.C. 796f–1(c))

**§ 366.24 How is an award made to a new center?**

(a) To apply for a grant as a new center, an eligible agency shall—

(1) Meet the requirements of § 366.2(b);

(2) Submit an application that meets the requirements of § 366.21; and

(3) Meet the requirements of this section.

(b) Subject to the order of priorities established in § 366.22, a grant for a new center may be awarded to the most qualified eligible agency that applies for funds under this section, if—

(1) (i) No center serves a geographic area of a State; or

(ii) A geographic area of a State is underserved by centers serving other areas of the State;

(2) The eligible agency proposes to serve the geographic area that is unserved or underserved in the State; and

(3) The increase in the allotment of the State under section 721 of the Act for a fiscal year, as compared with the immediately preceding fiscal year, is sufficient to support an additional center in the State.

(c) The establishment of a new center under this subpart must be consistent with the design included in the State plan pursuant to 34 CFR 364.25 for establishing a statewide network of centers.

(d) An applicant may satisfy the requirements of paragraph (c) of this section by submitting appropriate documentation demonstrating that the establishment of a new center is consistent with the design in the State plan required by 34 CFR 364.25.

(Authority: 29 U.S.C. 796f–1(d))

**§ 366.25 What additional factor does the Secretary use in making a grant for a new center under § 366.24?**

In selecting from among applicants for a grant under § 366.24 for a new center, the Secretary considers comments regarding the application, if any, by the SILC in the State in which the applicant is located.

(Authority: 29 U.S.C. 796f–1(d)(1))

**§ 366.26 How does the Secretary evaluate an application?**

(a) The Secretary evaluates each application for a grant under this subpart on the basis of the criteria in § 366.27.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 796f(b)(3))

**§ 366.27 What selection criteria does the Secretary use?**

In evaluating each application for a new center under this part, the Secretary uses the following selection criteria:

(a) *Extent of the need for the project* (20 points).

(1) The Secretary reviews each application for persuasive evidence that shows the extent to which the project meets the specific needs for the program, including considerations of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs (e.g., whether from the 1990 census data or other current sources);

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(2) The Secretary looks for information that shows that the need for the center has been established based on an assessment of the ability of existing programs and facilities to meet the need for IL services of individuals with significant disabilities in the geographic area to be served.

(3) The Secretary looks for information that shows—

(i) That the applicant proposes to establish a new center to serve a priority service area that is identified in the current State plan; and

(ii) The priority that the State has placed on establishing a new center in this proposed service area.

(b) *Past performance* (5 points). The Secretary reviews each application for information that shows the past performance of the applicant in successfully providing services comparable to the IL core services and other IL services listed in section 7 (29) and (30) of the Act and 34 CFR 365.21 and 365.22 and other services that empower individuals with significant disabilities.

(c) *Meeting the standards and the assurances* (25 points). The Secretary reviews each application for information that shows—

(1) Evidence of demonstrated success in satisfying, or a clearly defined plan to satisfy, the standards in section 725(b) of the Act and subpart G of this part; and

(2) Convincing evidence of demonstrated success in satisfying, or a clearly defined plan to satisfy, the assurances in section 725(c) of the Act and subpart F of this part.

(d) *Quality of key personnel* (10 points).

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director, if one is to be used;

(ii) The qualifications of each of the other management and decision-making 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;

(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; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, including—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Persons with disabilities; and

(D) Elderly individuals.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(e) *Budget and cost effectiveness* (10 points). The Secretary reviews each application for information that shows 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.

(f) *Evaluation plan* (5 points).

The Secretary reviews each application for information that shows 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 how successful the project is in meeting its goals and objectives; and

(3) Are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590)

(g) *Plan of operation* (20 points). The Secretary reviews each application for information that shows 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 plan of management 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 and adequacy of the applicant's plan to use its resources (including funding, facilities, equipment, and supplies) and personnel to achieve each objective;

(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; and

(6) A clear description of how the applicant will provide equal access to services for eligible project participants who are members of groups that have been traditionally under-represented, including—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Elderly individuals; and

(iv) Children and youth.

(h) *Involvement of individuals with significant disabilities* (5 points).

(1) The Secretary reviews each application for information that shows that individuals with significant disabilities are appropriately involved in conducting center activities.

(2) The Secretary looks for information that shows that individuals with significant disabilities or their parents, guardians, or other legally authorized representatives or advocates, as appropriate, will be substantially involved in planning, policy direction, and management of the center, and, to the greatest extent possible, that individuals with significant disabilities will be employed by the center.

(Authority: 29 U.S.C. 796f–1(d)(2)(B))

**§ 366.28 Under what circumstances may the Secretary award a grant to a center in one State to serve individuals in another State?**

(a) The Secretary may use funds from the allotment of one State to award a grant to a center located in another State if the Secretary determines that the proposal of the out-of-State center to serve individuals with significant disabilities who reside in the other State is consistent with the State plan of the State in which these individuals reside.

(b) An applicant shall submit documentation demonstrating that the arrangements described in paragraph (a) of this section are consistent with the State plan of the State in which the individuals reside.

(Authority: 29 U.S.C. 711(c) and 796f(c) and (d))

## Subpart D—Grants to Centers in States in Which State Funding Equals or Exceeds Federal Funding

### Determining Whether State Funding Equals or Exceeds Federal Funding

**§ 366.29 When may the Director of the designated State unit (DSU) award grants to centers?**

(a) The Director of the DSU (Director) may award grants under section 723 of the Act and this subpart to centers in a State in a fiscal year if—

(1) The Director submits to the Secretary and obtains approval of an application to award grants for that fiscal year under section 723 of the Act and § 366.32 (a) and (b); and

(2) The Secretary determines that the amount of State funds that were earmarked by the State to support the general operation of centers meeting the requirements of Part C of Chapter 1 of Title VII of the Act in the second fiscal year preceding the fiscal year for which the application is submitted equaled or exceeded the amount of funds allotted to the State under section 721 (c) and (d) of the Act (or Part B of Title VII of the Act as in effect on October 28, 1992) for that preceding fiscal year.

(b) For purposes of section 723(a)(1)(A)(iii) of the Act and this subpart, the second fiscal year preceding the fiscal year for which the State submits an application to administer the CIL program is considered the "preceding fiscal year." *Example*: If FY 1995 is the fiscal year for which the State submits an application to administer the CIL program under this subpart, FY 1993 is the "preceding fiscal year." In determining the "preceding fiscal year" under this subpart, the Secretary makes any adjustments necessary to accommodate a State's multi-year funding cycle or fiscal year that does not coincide with the Federal fiscal year.

(Authority: 29 U.S.C. 796f–2(a)(3))

**§ 366.30 What are earmarked funds?**

(a) For purposes of this subpart, the amount of State funds that were earmarked by a State to support the general operation of centers does not include—

(1) Federal funds used for the general operation of centers;

(2) State funds used to purchase services from a center, including State funds used for grants or contracts for personal assistance or skills training;

(3) State attendant care funds; or

(4) Social Security Administration reimbursement funds.

(b) For purposes of this subpart, "earmarked funds" means funds appropriated by the State and expressly or clearly identified as State expenditures in the relevant fiscal year for the sole purpose of funding the general operation of centers.

(Authority: 29 U.S.C. 711(c) and 796f–2(a)(1)(A))

**§ 366.31 What happens if the amount of earmarked funds does not equal or exceed the amount of Federal funds for a preceding fiscal year?**

If the State submits an application to administer the CIL program under section 723 of the Act and this subpart for a fiscal year, but did not earmark the amount of State funds required by § 366.29(a)(2) in the preceding fiscal year, the State shall be ineligible to make grants under section 723 of the Act and this subpart after the end of the fiscal year succeeding the preceding fiscal year and for each succeeding fiscal year.

**Example:** A State meets the earmarking requirement in FY 1994.

It also meets this requirement in FY 1995. However, in reviewing the State's application to administer the CIL program in FY 1998, the Secretary determines that the State failed to meet the earmarking requirement in FY 1996. The State may continue to award grants in FY 1997 but may not do so in FY 1998 and succeeding fiscal years.

(Authority: 29 U.S.C. 796f–2(a)(1)(B))

### Awarding Grants

**§ 366.32 Under what circumstances may the DSU make grants?**

(a) To be eligible to award grants under this subpart and to carry out section 723 of the Act for a fiscal year, the Director must submit to the Secretary for approval an application at the time and in the manner that the Secretary may require and that includes, at a minimum—

(1) Information demonstrating that the amount of funds earmarked by the State for the general operation of centers meets the requirements in § 366.29(a)(1); and

(2) A summary of the annual reports submitted to the Director from centers in accordance with § 366.50(n).

(b) If the amount of funds earmarked by the State for the general operation of centers meets the requirements in § 366.29(a)(1), the Secretary approves the application and designates the Director to award the grants and carry out section 723 of the Act.

(c) If the Secretary designates the Director to award grants and carry out section 723 of the Act under paragraph (b) of this section, the Director makes grants to eligible agencies in a State, as

described in § 366.2, for a fiscal year from the amount of funds allotted to the State under section 721 (c) and (d) of the Act.

(d) (1) In the case of a State in which there is both a DSU responsible for providing IL services to the general population and a DSU responsible for providing IL services for individuals who are blind, for purposes of subparts D and E of this part, the "Director" shall be the Director of the general DSU.

(2) The State units described in paragraph (d)(1) of this section shall periodically consult with each other with respect to the provision of services for individuals who are blind.

(e) The Director may enter into assistance contracts with centers to carry out section 723 of the Act. For purposes of this paragraph, an assistance contract is an instrument whose principal purpose is to transfer funds allotted to the State under section 721(c) and (d) of the Act and this part to an eligible agency to carry out section 723 of the Act. Under an assistance contract, the DSU shall assume a role consistent with that of the Secretary under section 722 of the Act. If the DSU uses an assistance contract to award funds under section 723 of the Act, the DSU may not add any requirements, terms, or conditions to the assistance contract other than those that would be permitted if the assistance contract were a grant rather than an assistance contract. Under an assistance contract, as defined in this paragraph, the role of the DSU is to ensure that the terms of the assistance contract, which are established by Chapter 1 of Title VII of the Act and the implementing regulations in this part and 34 CFR part 364, are satisfied.

(f) The Director may not enter into procurement contracts with centers to carry out section 723 of the Act. For purposes of this paragraph, a procurement contract is an instrument whose principal purpose is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the DSU. Under a procurement contract, the DSU prescribes the specific services it intends to procure and the terms and conditions of the procurement.

(g) In the enforcement of any breach of the terms and conditions of an assistance contract, the DSU shall follow the procedures established in §§ 366.40 through 366.45.

(Authority: 29 U.S.C. 711(c) and 796f–2(a)(2))

**§ 366.33 What are the application requirements for existing eligible agencies?**

To be eligible for assistance under this subpart, an eligible agency shall comply with the requirements in § 366.21.

(Authority: 29 U.S.C. 796f–2(b))

**§ 366.34 What is the order of priorities?**

(a) Unless the Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC, jointly agree on another order of priorities, the Director shall follow the order of priorities in § 366.22 for allocating funds among centers within a State, to the extent funds are available.

(b) If the order of priorities in § 366.22 is followed and, after meeting the priorities in § 366.22(a)(1) and (2), there are insufficient funds under the State's allotment under section 721 (c) and (d) of the Act to fund a new center under § 366.22(a)(3), the Director may—

(1) Use the excess funds in the State to assist existing centers; or

(2) Return these funds to the Secretary for reallotment in accordance with section 721(d) of the Act.

(Authority: 29 U.S.C. 711(c) and 796f–2(e))

**§ 366.35 What grants must be made to existing eligible agencies?**

In accordance with the order of priorities established in § 366.34(a), an eligible agency may receive a grant under this subpart if the eligible agency meets the applicable requirements in §§ 366.2, 366.21, and 366.23.

(Authority: 29 U.S.C. 796f–2(c))

**§ 366.36 How is an award made to a new center?**

To be eligible for a grant as a new center under this subpart, an eligible agency shall meet the requirements for a new center in §§ 366.2(b) and 366.24, except that the award of a grant to a new center under this section is subject to the order of priorities in § 366.34(a).

(Authority: 29 U.S.C. 796f–2(d))

**§ 366.37 What procedures does the Director of the DSU (Director) use in making a grant for a new center?**

(a) In selecting from among applicants for a grant for a new center under § 366.24 of this subpart—

(1) The Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC, shall jointly appoint a peer review committee that shall rank applications in accordance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part and any criteria jointly established by the Director and the chairperson or other designated individual;

(2) The peer review committee shall consider the ability of each applicant to operate a center and shall recommend an applicant to receive a grant under this subpart, based on either the selection criteria in § 366.27 or the following:

(i) Evidence of the need for a center, consistent with the State plan.

(ii) Any past performance of the applicant in providing services comparable to IL services.

(iii) The plan for complying with, or demonstrated success in complying with, the standards and the assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(iv) The quality of key personnel of the applicant and the involvement of individuals with significant disabilities by the applicant.

(v) The budget and cost-effectiveness of the applicant.

(vi) The evaluation plan of the applicant.

(vii) The ability of the applicant to carry out the plans identified in paragraphs (a)(2) (iii) and (vi) of this section.

(b) The Director shall award the grant on the basis of the recommendations of the peer review committee if the actions of the committee are consistent with Federal and State law.

(Authority: 29 U.S.C. 796f–2(d)(2))

**§ 366.38 What are the procedures for review of centers?**

(a) The Director shall, in accordance with section 723 (g)(1) and (h) of the Act, periodically review each center receiving funds under section 723 of the Act to determine whether the center is in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(b) The periodic reviews of centers required by paragraph (a) of this section must include annual on-site compliance reviews of at least 15 percent of the centers assisted under section 723 of the Act in that State in each year.

(c) Each team that conducts an on-site compliance review of a center shall include at least one person who is not an employee of the designated State agency, who has experience in the operation of centers, and who is jointly selected by the Director and the chairperson of the SILC, or other individual designated by the SILC to act on behalf of and at the direction of the SILC.

(d) A copy of each review under this section shall be provided to the Secretary and the SILC.

(Authority: 29 U.S.C. 711(c) and 796f–2(g)(1) and (h))

## Subpart E—Enforcement and Appeals Procedures

### § 366.39 What procedures does the Secretary use for enforcement?

(a) If the Secretary determines that any center receiving funds under this part is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part, the Secretary immediately notifies the center, by certified mail, return receipt requested, or other means that provide proof of receipt, that the center is out of compliance. The Secretary also offers technical assistance to the center to develop a corrective action plan to comply with the standards and assurances.

(b) The Secretary terminates all funds under section 721 of the Act to that center 90 days after the date of the notification required by paragraph (a) of this section unless—

(1) The center submits, within 90 days after receiving the notification required by paragraph (a) of this section, a corrective action plan to achieve compliance that is approved by the Secretary; or

(2) The center requests a hearing pursuant to paragraph (c) or (d) of this section.

(c) If the Secretary does not approve a center's corrective action plan submitted pursuant to paragraph (b)(1) of this section, the center has 30 days from receipt of the Secretary's written notice of disapproval of the center's corrective action plan to request a hearing by submitting a formal written request that gives the reasons why the center believes that the Secretary should have approved the center's corrective action plan.

(d) If the center does not submit a corrective action plan to the Secretary, the center has 90 days after receiving the notification required by paragraph (a) of this section to request a hearing by submitting a formal written request that gives the reasons why the center believes that the Secretary should have found the center in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(e) The date of filing a formal written request for a hearing to the Secretary under paragraph (c) or (d) of this section is determined in a manner consistent with the requirements of 34 CFR 81.12.

(f) The Secretary issues a written decision to terminate funds to the center if, after providing reasonable notice and an opportunity for a hearing, the Secretary finds that—

(1) The center receiving funds under this part is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part; or

(2) The center's corrective action plan submitted under paragraph (b)(1) of this section cannot be approved.

(g) The Secretary's decision to terminate funds to a center pursuant to paragraph (f) of this section takes effect upon issuance.

(Authority: 29 U.S.C. 711(c) and 796f–1(g))

### § 366.40 How does the Director initiate enforcement procedures?

(a) If the Director determines that any center receiving funds under this part is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part, the Director shall immediately provide the center, by certified mail, return receipt requested, or other means that provide proof of receipt, with an initial written notice that the center is out of compliance with the standards and assurances and that the Director will terminate the center's funds or take other proposed significant adverse action against the center 90 days after the center's receipt of this initial written notice. The Director shall provide technical assistance to the center to develop a corrective action plan to comply with the standards and assurances.

(b) Unless the center submits, within 90 days after receiving the notification required by paragraph (a) of this section, a corrective action plan to achieve compliance that is approved by the Director or, if appealed, by the Secretary, the Director shall terminate all funds under section 723 of the Act to a center 90 days after the later of—

(1) The date that the center receives the initial written notice required by paragraph (a) of this section; or

(2) The date that the center receives the Secretary's final decision issued pursuant to § 366.46(c) if—

(i) The center files a formal written appeal of the Director's final written decision pursuant to § 366.44(a); or

(ii) The center files a formal written appeal of the decision described in the Director's initial written notice pursuant to § 366.44(b).

(Authority: 29 U.S.C. 711(c) and 796f–2(g) and (i))

### § 366.41 What must be included in an initial written notice from the Director?

The initial written notice required by § 366.40(a) must—

(a) Include, at a minimum, the following:

(1) The name of the center.

(2) The reason or reasons for proposing the termination of funds or other significant adverse action against the center, including any evidence that the center has failed to comply with any of the evaluation standards or assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(3) The effective date of the proposed termination of funds or other significant adverse action against the center;

(b) Be given 90 days in advance of the date the Director intends to terminate a center's funds or take any other significant adverse action against the center;

(c) Inform the center that it has 90 days from the date the center receives the notice to submit a corrective action plan;

(d) Inform the center that it may seek mediation and conciliation in accordance with § 366.40(a) to resolve any dispute with the Director within the 90 days before the proposed termination of funds or other significant adverse action against the center; and

(e) Inform the center that, if mediation and conciliation are not successful and the Director does not issue a final written decision pursuant to § 366.42, the center may appeal to the Secretary the decision described in the Director's initial written notice on or after the 90th day, but not later than the 120th day, after the center receives the Director's initial decision.

(Authority: 29 U.S.C. 711(c) and 796f–2 (g) and (i))

### § 366.42 When does a Director issue a final written decision?

(a) If the center submits a corrective action plan in accordance with § 366.40(b), the Director shall provide to the center, not later than the 120th day after the center receives the Director's initial written notice, a final written decision approving or disapproving the center's corrective action plan and informing the center, if appropriate, of the termination of the center's funds or any other proposed significant adverse action against the center.

(b) The Director shall send the final written decision to the center by registered or certified mail, return receipt requested, or other means that provide a record that the center received the Director's final written decision.

(c) A Director's final written decision to terminate funds or take any other adverse action against a center may not take effect until 30 days after the date that the center receives it.

(d) If a center appeals pursuant to § 366.44(a), the Director's final written decision to terminate funds or take any

other adverse action against a center does not take effect until the Secretary issues a final decision.

(Authority: 29 U.S.C. 711(c) and 796f–2 (g) and (i))

**§ 366.43 What must be included in the Director's final written decision?**

The Director's final written decision to disapprove a center's corrective action plan required by § 366.42 must—

(a) Address any response from the center to the Director's initial written notice to terminate funds or take other significant adverse action against the center;

(b) Include a statement of the reasons why the Director could not approve the corrective action plan; and

(c) Inform the center of its right to appeal to the Secretary the Director's final written decision to terminate funds or take any other significant adverse action against the center.

(Authority: 29 U.S.C. 711(c) and 796f–2 (g) and (i))

**§ 366.44 How does a center appeal a decision included in a Director's initial written notice or a Director's final written decision?**

(a) To obtain the Secretary's review of a Director's final written decision to disapprove a center's corrective action plan submitted pursuant to § 366.40(b), the center shall file, within 30 days from receipt of the Director's final written decision, a formal written appeal with the Secretary giving the reasons why the center believes that the Director should have approved the center's corrective action plan.

(Cross-reference: See § 366.42)

(b) To obtain the Secretary's review of a decision described in a Director's initial written notice, a center that does not submit a corrective action plan to a Director shall file, in accordance with paragraph (c)(1)(i) of this section, a formal written appeal with the Secretary giving the reasons why the center believes that the Director should have found the center in compliance with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of this part.

(c) To appeal to the Secretary a decision described in a Director's initial written notice or a Director's final written decision to disapprove a center's corrective action plan and to terminate or take other significant adverse action, a center shall file with the Secretary—

(1) A formal written appeal—

(i) On or after the 90th day but not later than the 120th day following a center's receipt of a Director's initial written notice; or

(ii) On or before the 30th day after a center's receipt of the Director's final written decision to disapprove a center's corrective action plan and to terminate or take other significant adverse action;

(2) A copy of the corrective action plan, if any, submitted to the Director; and

(3) One copy each of any other written submissions sent to the Director in response to the Director's initial written notice to terminate funds or take other significant adverse action against the center.

(d) The date of filing a formal written appeal to the Secretary under paragraph (c) of this section is determined in a manner consistent with the requirements of 34 CFR 81.12.

(e) If the center files a formal written appeal with the Secretary, the center shall send a separate copy of this appeal to the Director by registered or certified mail, return receipt requested, or other means that provide a record that the Director received a separate copy of the center's written appeal.

(f) The center's formal written appeal to the Secretary must state why—

(1) The Director has not met the burden of showing that the center is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and in subparts F and G of this part;

(2) The corrective action plan, if any, should have been approved; or

(3) The Director has not met the procedural requirements of §§ 366.40 through 366.45.

(g) As part of its submissions under this section, the center may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(h) A Director's decision to terminate funds that is described in an initial written notice or final written decision is stayed as of the date (determined pursuant to paragraph (d) of this section) that the center files a formal written appeal with the Secretary.

(Authority: 29 U.S.C. 711(c) and 796f–2(g)(2) and (i))

**§ 366.45 What must a Director do upon receipt of a copy of a center's formal written appeal to the Secretary?**

(a) If the center files a formal written appeal in accordance with § 366.44(c), the Director shall, within 15 days of receipt of the center's appeal, submit to the Secretary one copy each of the following:

(1) The Director's initial written notice to terminate funds or take any other significant adverse action against the center sent to the center.

(2) The Director's final written decision, if any, to disapprove the center's corrective action plan and to terminate the center's funds or take any other significant adverse action against the center.

(3) Any other written documentation or submissions the Director wishes the Secretary to consider.

(4) Any other information requested by the Secretary.

(b) As part of its submissions under this section, the Director may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(Authority: 29 U.S.C. 711(c) and 796f–2(g)(2) and (i))

**§ 366.46 How does the Secretary review a center's appeal of a decision included in a Director's initial written notice or a Director's final written decision?**

(a) If either party requests a meeting under §§ 366.44(g) or 366.45(b), the meeting is to be held within 30 days of the date of the Secretary's receipt of the submissions from the Director that are required by § 366.45(a). The Secretary promptly notifies the parties of the date and place of the meeting.

(b) Within 30 days of the informal meeting permitted under paragraph (a) of this section or, if neither party has requested an informal meeting, within 60 days of the date of receipt of the submissions required from the Director by § 366.45(a), the Secretary issues to the parties the Secretary's decision.

(c) The Secretary reviews a decision included in a Director's initial written notice or a Director's final written decision to disapprove the center's corrective action plan and to terminate the center's funds or take any other significant adverse action against the center based on the record submitted under §§ 366.44 and 366.45 and may affirm or, if the Secretary finds that the decision included in a Director's initial written notice or a Director's final written decision is not supported by the evidence or is not in accordance with the law, may—

(1) Remand the appeal for further findings; or

(2) Reverse the decision described in the Director's initial written notice or the Director's final written decision to disapprove the center's corrective action plan and to terminate funds or take any other significant adverse action against the center.

(d) The Secretary sends copies of his or her decision to the parties by

registered or certified mail, return receipt requested, or other means that provide a record of receipt by both parties.

(e) If the Secretary affirms the decision described in a Director's initial written notice or the Director's final written decision, the Director's decision takes effect on the date of the Secretary's final decision to affirm.

(Authority: 29 U.S.C. 711(c) and 796f-2(g)(2) and (i))

### Subpart F—Assurances for Centers

#### § 366.50 What assurances shall a center provide and comply with?

To be eligible for assistance under this part, an eligible agency shall provide satisfactory assurances that—

(a) The applicant is an eligible agency;

(b) The center will be designed and operated within local communities by individuals with disabilities, including an assurance that the center will have a board that is the principal governing body of the center and a majority of which must be composed of individuals with significant disabilities. (For purposes of this paragraph, an individual with a significant disability means an individual with a significant physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited.);

(c) The applicant will comply with the standards in subpart G;

(d) The applicant will establish clear priorities through—

(1) Annual and three-year program and financial planning objectives for the center, including overall goals or a mission for the center;

(2) A work plan for achieving the goals or mission, specific objectives, service priorities, and types of services to be provided; and

(3) A description that demonstrates how the proposed activities of the applicant are consistent with the most recent three-year State plan under section 704 of the Act;

(e) The applicant will use sound organizational and personnel assignment practices, including taking affirmative action to employ and advance in employment qualified individuals with significant disabilities on the same terms and conditions required with respect to the employment of individuals with disabilities under section 503 of the Act;

(f) The applicant will ensure that the majority of the staff, and individuals in decision-making positions, of the applicant are individuals with disabilities;

(g) The applicant will practice sound fiscal management, including making arrangements for an annual independent fiscal audit;

(h) The applicant will conduct an annual self-evaluation, prepare an annual report, and maintain records adequate to measure performance with respect to the standards in Subpart G;

(i) The annual report and the records of the center's performance required by paragraph (h) of this section must each contain information regarding, at a minimum—

(1) The extent to which the center is in compliance with the standards in section 725(b) of the Act and subpart G of this part;

(2) The number and types of individuals with significant disabilities receiving services through the center;

(3) The types of services provided through the center and the number of individuals with significant disabilities receiving each type of service;

(4) The sources and amounts of funding for the operation of the center;

(5) The number of individuals with significant disabilities who are employed by, and the number who are in management and decision-making positions in, the center;

(6) The number of individuals from minority populations who are employed by, and the number who are in management and decision-making positions in, the center; and

(7) A comparison, if appropriate, of the activities of the center in prior years with the activities of the center in most recent years;

(j) Individuals with significant disabilities who are seeking or receiving services at the center will be notified by the center of the existence of, the availability of, and how to contact the client assistance program;

(k) Aggressive outreach regarding services provided through the center will be conducted in an effort to reach populations of individuals with significant disabilities that are unserved or underserved by programs under title VII of the Act, especially minority groups and urban and rural populations;

(l) Staff at centers will receive training on how to serve unserved and underserved populations, including minority groups and urban and rural populations;

(m) The center will submit to the SILC a copy of its approved grant application and the annual report required under paragraph (h) of this section;

(n) The center will prepare and submit to the DSU, if the center received a grant from the Director, or to the Secretary, if the center received a grant from the Secretary, at the end of each fiscal year, the annual report that is required to be prepared pursuant to paragraph (h) of this section and that contains the information described in paragraph (i) of this section; and

(o) An IL plan as described in section 704(e) of the Act will be developed for each individual who will receive services under this part unless the individual signs a waiver stating that an IL plan is unnecessary.

(Authority: 29 U.S.C. 796f–4)

## PART 367—INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

### Subpart A—General

Sec.

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**Authority:** 29 U.S.C. 796k, unless otherwise noted.

### Subpart A—General

#### § 367.1 What Is the Independent Living Services for Older Individuals Who Are Blind program?

This program supports projects that—

(a) Provide independent living (IL) services to older individuals who are blind as these services are described in § 367.3(b);

(b) Conduct activities that will improve or expand services for these individuals; and

(c) Conduct activities to help improve public understanding of the problems of these individuals.

(Authority: 29 U.S.C. 796k (a) and (b))

**§ 367.2 Who is eligible for an award?**

Any designated State agency (DSA) is eligible for an award under this program if the DSA—

(a) Is authorized to provide rehabilitation services to individuals who are blind; and

(b) Submits to and obtains approval from the Secretary of an application that meets the requirements of section 752(i) of the Act and §§ 367.10 and 367.11.

(Authority: 29 U.S.C. 796k(a)(2))

Cross-reference: See 34 CFR 364.4(b).

**§ 367.3 What activities may the Secretary fund?**

(a) The DSA may use funds awarded under this part for the activities described in § 367.1 and paragraph (b) of this section.

(b) For purposes of § 367.1(a), IL services for older individuals who are blind include—

(1) Services to help correct blindness, such as—

(i) Outreach services;

(ii) Visual screening;

(iii) Surgical or therapeutic treatment to prevent, correct, or modify disabling eye conditions; and

(iv) Hospitalization related to these services;

(2) The provision of eyeglasses and other visual aids;

(3) The provision of services and equipment to assist an older individual who is blind to become more mobile and more self-sufficient;

(4) Mobility training, Braille instruction, and other services and equipment to help an older individual who is blind adjust to blindness;

(5) Guide services, reader services, and transportation;

(6) Any other appropriate service designed to assist an older individual who is blind in coping with daily living activities, including supportive services and rehabilitation teaching services;

(7) IL skills training, information and referral services, peer counseling, and individual advocacy training; and

(8) Other IL services, as defined in section 7(30) of the Act and as listed in 34 CFR 365.22.

(Authority: 29 U.S.C. 796k (d) and (e))

**§ 367.4 What regulations apply?**

The following regulations apply to the Independent Living Services for Older Individuals Who Are Blind program:

(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), with respect to subgrants to an entity that is not a State or local government or Indian tribal organization.

(2) 34 CFR part 75 (Direct Grant Programs), with respect to grants under subpart C.

(3) 34 CFR part 76 (State-Administered Programs), with respect to grants under subpart D.

(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).

(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).

(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 regulations in this part 367.

(c) The following provisions in 34 CFR part 364:

(1) Section 364.4 (What definitions apply?).

(2) Section 364.5 (What are the limitations on allowable costs?).

(3) Section 364.6 (What is program income and how may it be used?)

(4) Section 364.7 (What requirements apply to the obligation of Federal funds and program income?)

(5) Section 364.30 (What notice must be given about the Client Assistance Program (CAP)?).

(6) Section 364.37 (What access to records must be provided?).

(7) Section 364.56 (What are the special requirements pertaining to the protection, use, and release of personal information?).

(d) The following provisions in 34 CFR part 365:

(1) Section 365.13 (What requirements apply if the State's non-Federal share is in cash?).

(2) Section 365.14 (What conditions relating to cash or in-kind contributions apply to awards to grantees, subgrantees, or contractors?).

(3) Section 365.15 (What requirements apply if the State's non-Federal share is in kind?).

(4) Section 365.16 (What requirements apply to refunds and rebates?).

(Authority: 29 U.S.C. 711(c) and 796k)

**§ 367.5 What definitions apply?**

In addition to the definitions in 34 CFR 364.4, the following definitions also apply to this part:

*Independent living services for older individuals who are blind* means those services listed in § 367.3(b).

*Older individual who is blind* means an individual age fifty-five or older whose severe visual impairment makes competitive employment extremely difficult to obtain but for whom IL goals are feasible.

(Authority: 29 U.S.C. 711(c) and 796j)

## Subpart B—What Are the Application Requirements?

**§ 367.10 How does a designated State agency (DSA) apply for an award?**

To receive a grant under section 752(i) or a reallotment grant under section 752(j)(4) of the Act, a DSA must submit to and obtain approval from the Secretary of an application for assistance under this program at the time, in the form and manner, and containing the agreements, assurances, and information, that the Secretary determines to be necessary to carry out this program.

(Authority: 29 U.S.C. 796k (c)(2) and (i)(1))

**§ 367.11 What assurances must a DSA include in its application?**

An application for a grant under section 752(i) or a reallotment grant under section 752(j)(4) of the Act must contain an assurance that—

(a) Grant funds will be expended only for the purposes described in § 367.1;

(b) With respect to the costs of the program to be carried out by the State pursuant to this part, the State will make available, directly or through donations from public or private entities, non-Federal contributions toward these costs in an amount that is not less than $1 for each $9 of Federal funds provided in the grant;

(c) In carrying out § 367.1 (a) and (b), and consistent with 34 CFR 364.28, the DSA will seek to incorporate into and describe in the State plan under section 704 of the Act any new methods and approaches relating to IL services for older individuals who are blind that are developed by projects funded under this part and that the DSA determines to be effective;

(d) At the end of each fiscal year, the DSA will prepare and submit to the

Secretary a report, with respect to each project or program the DSA operates or administers under this part, whether directly or through a grant or contract, that contains, at a minimum, information on—

(1) The number and types of older individuals who are blind, including older individuals who are blind from minority backgrounds, and are receiving services;

(2) The types of services provided and the number of older individuals who are blind and are receiving each type of service;

(3) The sources and amounts of funding for the operation of each project or program;

(4) The amounts and percentages of resources committed to each type of service provided;

(5) Data on actions taken to employ, and advance in employment, qualified—

(i) Individuals with significant disabilities;

(ii) Older individuals with significant disabilities who are blind;

(iii) Individuals who are members of racial or ethnic minority groups;

(iv) Women; and

(v) Elderly individuals;

(6) A comparison, if appropriate, of prior year activities with the activities of the most recent year; and

(7) Any new methods and approaches relating to IL services for older individuals who are blind that are developed by projects funded under this part;

(e) The DSA will—

(1) Provide services that contribute to the maintenance of, or the increased independence of, older individuals who are blind; and—

(2) Engage in—(i) Capacity-building activities, including collaboration with other agencies and organizations;

(ii) Activities to promote community awareness, involvement, and assistance; and

(iii) Outreach efforts;

(f) The application is consistent with the State plan for providing IL services required by section 704 of the Act and subpart C of 34 CFR part 364; and

(g) The applicant has been designated by the State as the sole State agency authorized to provide rehabilitation services to individuals who are blind.

(Authority: 29 U.S.C. 711(c) and 796k (d), (f), (h), and (i))

## Subpart C—How Does the Secretary Award Discretionary Grants on a Competitive Basis?

### § 367.20 Under what circumstances does the Secretary award discretionary grants on a competitive basis to States?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is less than $13,000,000, the Secretary awards discretionary grants under this part on a competitive basis to States.

(b) Subparts A, B, C, and E of this part govern the award of competitive grants under this part.

(Authority: 29 U.S.C. 796k (b)(1))

### § 367.21 How does the Secretary evaluate an application for a discretionary grant?

(a) The Secretary evaluates an application for a discretionary grant on the basis of the criteria in § 367.22.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 711(c) and 796k(b)(1) and (i)(1))

### § 367.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a discretionary grant:

(a) *Extent of need for the project* (20 points).

(1) The Secretary reviews each application to determine the extent to which the project meets the specific needs of the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(2) The Secretary reviews each application to determine)—

(i) The extent that the need for IL services for older individuals who are blind is justified, in terms of complementing or expanding existing IL and aging programs and facilities; and

(ii) The potential of the project to support the overall mission of the IL program, as stated in section 701 of the Act.

(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 plan of management 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 and adequacy of the applicant's plan to use its resources (including funding, facilities, equipment, and supplies) and personnel to achieve each objective;

(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;

(6) A clear description of how the applicant will provide equal access to services for eligible project participants who are members of groups that have been traditionally under-represented, including members of racial or ethnic minority groups; and

(7) The extent to which the plan of operation and management includes involvement by older individuals who are blind in planning and conducting program activities.

(c) *Quality of key personnel* (10 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;

(ii) The qualifications of each of the other management and decision-making personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project;

(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; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, including—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Persons with disabilities; and

(D) Elderly individuals.

(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 scope of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(d) *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;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant demonstrates the cost-effectiveness of project services in comparison with alternative services and programs available to older individuals who are blind.

(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) Accurately evaluate the success and cost-effectiveness of the project;

(2) Are objective and produce data that are quantifiable; and

(3) Will determine how successful the project is in meeting its goals and objectives.

(Cross-reference: See 34 CFR 75.590)

(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 accessibility of facilities, equipment, and supplies.

(g) *Service comprehensiveness* (20 points).

(1) The Secretary reviews each application to determine the extent to which the proposed outreach activities promote maximum participation of the target population within the geographic area served by the project.

(2) The Secretary reviews each application to determine the extent to which the availability of the following services that will meet the IL needs of older individuals with varying degrees of significant visual impairment are included:

(i) Orientation and mobility skills training that will enable older individuals who are blind to travel independently, safely, and confidently in familiar and unfamiliar environments.

(ii) Skills training in Braille, handwriting, typewriting, or other means of communication.

(iii) Communication aids, such as large print, cassette tape recorders, and readers.

(iv) Training to perform daily living activities, such as meal preparation, identifying coins and currency, selection of clothing, telling time, and maintaining a household.

(v) Provision of low-vision services and aids, such as magnifiers to perform reading and mobility tasks.

(vi) Family and peer counseling services to assist older individuals who are blind adjust emotionally to the loss of vision as well as to assist in their integration into the community and its resources.

(vii) Any other needed services, such as transportation or guide services, provided to individuals with significant disabilities under the State IL program authorized by 34 CFR Part 365.

(h) *Likelihood of sustaining the program* (10 points). The Secretary reviews each application to determine—

(1) The likelihood that the service program will be sustained after the completion of Federal project grant assistance;

(2) The extent to which the applicant intends to continue to operate the service program through cooperative agreements and other formal arrangements; and

(3) The extent to which the applicant will identify and, to the extent possible, use comparable services and benefits that are available under other programs for which project participants may be eligible.

(Authority: 29 U.S.C. 711(c) and 796k (b)(1) and (i)(1))

### § 367.23 What additional factor does the Secretary consider?

In addition to the criteria in § 367.22, the Secretary considers the geographic distribution of projects in making an award.

(Authority: 29 U.S.C. 711(c) and 796k(b)(1) and (i)(1))

## Subpart D—How Does the Secretary Award Contingent Formula Grants?

### § 367.30 Under what circumstances does the Secretary award contingent formula grants to States?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is equal to or greater than $13,000,000, grants under this part are made to States from allotments under section 752(c)(2) of the Act.

(b) Subparts A, B, D, and E of this part govern the award of formula grants under this part.

(Authority: 29 U.S.C. 796k(c))

### § 367.31 How are allotments made?

(a) For purposes of making grants under section 752(c) of the Act and this subpart, the Secretary makes an allotment to each State in an amount determined in accordance with section 752(j) of the Act.

(b) The Secretary makes a grant to a DSA in the amount of the allotment to the State under section 752(j) of the Act if the DSA submits to and obtains approval from the Secretary of an application for assistance under this program that meets the requirements of section 752(i) of the Act and §§ 367.10 and 367.11.

(Authority: 29 U.S.C. 796k(c)(2))

### § 367.32 How does the Secretary reallot funds under section 752(j)(4) of the Act?

(a) From the amounts specified in paragraph (b) of this section, the Secretary may make reallotment grants to States, as determined by the Secretary, whose population of older individuals who are blind has a substantial need for the services specified in section 752(d) of the Act and § 367.3(b), relative to the populations in other States of older individuals who are blind.

(b) The amounts referred to in paragraph (a) of this section are any amounts that are not paid to States under section 752(c)(2) of the Act and § 367.31 as a result of—

(1) The failure of a DSA to prepare, submit, and receive approval of an application under section 752(i) of the Act and in accordance with §§ 367.10 and 367.11; or

(2) Information received by the Secretary from the DSA that the DSA does not intend to expend the full amount of the State's allotment under section 752(c) of the Act and this subpart.

(c) A reallotment grant to a State under paragraph (a) of this section is subject to the same conditions as grants made under section 752(a) of the Act and this part.

(d) Any funds made available to a State for any fiscal year pursuant to this section are regarded as an increase in the allotment of the State under § 367.31 for that fiscal year only.

(Authority: 29 U.S.C. 796k(j)(4))

## Subpart E—What Conditions Must Be Met After an Award?

### § 367.40 What matching requirements apply?

(a) Non-Federal contributions required by § 367.11(b) may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(b) For purposes of non-Federal contributions required by § 367.11(b), amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of non-Federal contributions.

(Authority: 29 U.S.C. 796k(f))

**§ 367.41 When may a DSA award grants or contracts?**

(a) A DSA may operate or administer the program or projects under this part to carry out the purposes specified in § 367.1, either directly or through—

(1) Grants to public or private nonprofit agencies or organizations; or

(2) Contracts with individuals, entities, or organizations that are not public or private nonprofit agencies or organizations.

(b) Notwithstanding paragraph (a) of this section, a DSA may enter into assistance contracts, but not procurement contracts, with public or private nonprofit agencies or organizations in a manner consistent with 34 CFR 366.32(e).

(Authority: 29 U.S.C. 796k(g) and (i)(2)(A))

**§ 367.42 When does the Secretary award noncompetitive continuation grants?**

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is less than $13,000,000, the Secretary awards noncompetitive continuation grants for a multi-year project to pay for the costs of activities for which a grant was awarded—

(1) Under chapter 2 of title VII of the Act; or

(2) Under part C of title VII of the Act, as in effect on October 28, 1992.

(b) To be eligible to receive a noncompetitive continuation grant under this part, a grantee must satisfy the applicable requirements in this part and in 34 CFR 75.253.

(Authority: 29 U.S.C. 796k(b)(2))

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Part IV

# Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 35, et al.
Lead-Based Paint Hazard Elimination;
Proposed Rule

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

### 24 CFR Parts 35, 200, 280, 291, 510, 511, 570, 577, 578, 579, 882, 885, 886, 887, 890, 905, 941, 961, 965, and 968

[Docket No. R–94–1692; FR–3061–P–01]

RIN 2501–AB23

## Lead-Based Paint Hazard Elimination

**AGENCY:** Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** HUD is proposing to amend its regulations regarding the elimination of hazards due to lead-based paint and inviting public comments on the amendments. The amendments would remedy inaccuracies and respond to advancements in the state of knowledge in the field of lead-based paint testing and hazard reduction. This proposed rule would amend both the Department's basic regulation concerning lead-based paint poisoning prevention in residential structures and additional regulations pertaining to specific programs of the Department. The changes would include revising the definitions of an elevated blood-lead level, defective paint and chewable paint; redefining the age of concern for children subject to lead hazards; providing definitions of hazard reduction methods; adding the option to test defective paint surfaces and permitting the use of laboratory analysis such as atomic absorption spectrometry (AAS); modifying approved abatement practices to control lead-based paint dust; revising requirements pertaining to the number of dwelling units to be sampled under the random sampling provision.

**DATES:** Comments due date: July 11, 1994.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Arthur S. Newburg, Director, Office of Lead-Based Paint Abatement and Poisoning Prevention, room B–133, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. 20410, telephone (202) 755–1785 or (202) 708–9300 (TDD) or 1–800–877–8339 (Federal Information Relay Service TDD). (Other than the "800" number, these are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

### Background

The existing lead-based paint regulations pertaining to the Department's programs were written pursuant to the passage of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801–4846) in the early 1970s. This legislation required the Secretary to "establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary." HUD implemented that requirement by promulgating 24 CFR part 35 in 1976 (41 FR 28878, July 13, 1976). Part 35 includes the general procedures for the testing and abatement of lead-based paint hazards in HUD-associated housing and applies to all programs. Section 35.5(c), however, allows each Assistant Secretary to develop regulations pertaining to specific HUD programs. It is the Department's intent that program-specific regulations define the conditions that require action, but reference part 35 for specification of how the action should be conducted.

Since part 35 was first written, amendments to it and to the program-specific regulations have been issued from time to time in response to changes in the law and increased knowledge about the hazards and treatment of lead-based paint. The most recent Department-wide regulatory revisions pertaining to lead-based paint were made in 1986, 1987, and 1988. Some additional revisions specific to the public and Indian housing programs were issued in 1991. However, new legislation—specifically the Residential Lead-Based Paint Hazard Reduction Act of 1992 (title X, Pub. L. 102–550; approved October 28, 1992) (Title X)—and recent advances in knowledge have again made some of the information in the existing regulations obsolete. Therefore, the Department is undertaking a comprehensive revision of its lead-based paint regulations.

The changes in this proposed rule would represent the first phase in the revision process. In the first phase, HUD would correct certain provisions in the regulations that are clearly out of date and should be corrected as soon as possible. Subsequent revisions will implement Title X, which establishes new requirements effective January 1, 1995. The Department intends to issue proposed regulations implementing the new Act as soon as possible, to allow the maximum amount of time for comment and for preparation by State and local agencies and the private sector.

HUD welcomes comments on the regulatory revisions that are described in this proposed rule.

### Revising the Definition of an Elevated Blood-Lead Level

Current regulations require special procedures if a child has an "elevated blood-lead level." This proposed rule would change the definition of an elevated blood-lead level (EBL) to conform to the new recommendations of the Department of Health and Human Services, Centers for Disease Control (CDC), regarding blood lead levels that require environmental intervention. Existing regulations define an EBL as equal to or exceeding 25 micrograms per deciliter (μg/dl). The Department's new standard for environmental intervention would be equal to or exceeding 20 μg/dl for a single test or 15–19 μg/dl in two consecutive tests several months apart.

Many people are under the impression that the CDC, in its Statement, Preventing Lead Poisoning in Young Children (October 1991), effectively lowered the definition of an EBL to 10 μg/dl. It is true that the Statement indicates that "the overall goal is to reduce children's blood lead levels below 10 μg/dl. However, the Statement does not recommend medical or environmental intervention at levels of 10–14 μg/dl. Three reasons are given:

> First, particularly at low blood lead levels, laboratory measurements may have some inaccuracy and imprecision, so a blood lead level in this range (10–14 μg/dl) may, in fact, be below 10 μg/dl. Second, effective environmental and medical interventions for children with blood lead levels in this range have not yet been identified and evaluated. Finally, the sheer numbers of children in this range would preclude effective case management and would detract from individualized follow-up required by children who have higher blood lead levels.

(See, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Preventing

Lead Poisoning in Young Children, A Statement by the Centers for Disease Control—October 1991, page 2.)

The definition currently used by HUD of an EBL first appears in 24 CFR 200.805. The revised definition would be included in 24 CFR 35.3, because the definition affects all residential HUD programs. Specific program regulations could then reference the definition in part 35 as appropriate, although some program regulations might continue to repeat the definition.

**Definitions To Be Revised**

Title X amends the Lead-Based Paint Poisoning Act to change the childhood age of concern from less than 7 years of age to less than 6 years. This change, which also reflects the advice of the CDC in its Statement, cited above, requires revisions to HUD's lead-based paint regulations in several locations. For example, the current definition of residential structure (24 CFR 35.3), includes a reference to nondwelling facilities "commonly used by children under seven years of age." A similar reference currently is found in 24 CFR 200.815(c), which requires that, in the case of a sale of a HUD-owned single-family property, if the purchaser is an owner-occupant and the occupant family contains one or more children under the age of seven years, the sale of a HUD-owned single-family property must be deferred to allow time to check for elevated blood lead levels and test for and abate lead-based paint. A similar requirement pertains to multifamily properties (see 24 CFR 200.820(c)(ii) and 24 CFR 200.825(c)(1)).

HUD also would revise or add definitions of the following terms in 24 CFR 35.22: defective paint, HEPA, HUD-associated housing, misted scraping, paint removal, replacement, and residential structure.

**Options To Test Defective Surfaces and Use Laboratory Analysis**

The proposed rule would provide an option for testing of defective paint surfaces to determine if, in fact, lead-based paint is present; if the test results are below 1.0 mg/cm², abatement is not required. For structures built prior to 1978, the existing regulations require visual inspection for defective paint surfaces and treatment of those surfaces found to be defective. Therefore, under the existing regulations, surfaces that are defective but do not contain lead and are not hazardous may be unnecessarily treated. Testing the surface is the only way to determine if it is hazardous and thus requires treatment. The revision would permit a cost review between testing and treatment without testing.

The proposed rule also specifically would permit laboratory analysis as an approved alternative to XRF testing. Current program regulations require the Federal Housing Commissioner's permission to use laboratory analysis on a case-by-case basis. This has led to a burdensome and growing number of individual concurrence actions. XRF readings are given in milligrams per square centimeter (mg/cm²), but laboratories frequently report test results as a percent of lead by weight. Therefore, an alternative standard of 0.5 percent by weight or 5000 parts per million (ppm) would be permitted as an alternative to the more widely used standard of 1.0 mg/cm².

**Approved Abatement and Dust-Control Practices**

At the time the existing regulation was written, abatement techniques were not refined and the danger of lead dust was relatively unknown. Research and experience in both the public and private sectors have advanced the state of knowledge on these subjects. The proposed rule would reference various abatement methods (defined in 24 CFR 35.22) that are consistent with the HUD Interim Guidelines and In-Place Management Recommendations. The proposed rule also would warn about the danger of lead dust. Sections 35.56(a) (1) and (2), concerning requirements applicable to the sale of federally owned property that will be used for residential purposes, also would be amended in this proposed rule.

**Including Up-to-Date Sampling and Testing Information**

Given the high cost of testing for lead-based paint, it is desirable to follow a statistically sound random sampling technique that provides satisfactory assurance of detecting lead-based paint, while not requiring the testing of all units in a multifamily property. Existing regulations for the multifamily mortgage insurance and multifamily property disposition programs require the testing of chewable surfaces in a random sample of ten housing units in properties of 20 units or more. For properties with fewer than 20 units, six units must be tested. These requirements do not have statistical validity and consequently do not provide the desired degree of assurance. Using the sample sizes and random sampling procedures in this proposed rule, if no unacceptable hazards are observed in the sample units tested, then there would be at least 95 percent confidence that no more than 5 percent of all units or 50 units, whichever is smaller, would have an unacceptable lead-based paint hazard. The table included in § 200.820(e) of the proposed rule was developed to achieve the 95 percent confidence level.

As an example, the table would require that 56 units must be tested in a 600-unit development. If lead (above th e standard of 1.0 mg/cm²) is not found in any of the 56 tested units, the Department can be 95 percent confident that no more than 30 units (the lesser of 50 or 5 percent of 600) have lead levels above the standard. As a second example, 236 units (5.9 percent of 4,000) must be tested in a 4,000-unit development. If all are below the standard, there is 95 percent confidence that no more than 50 of the 4,000 units (the lesser of 50 or 5 percent of 4000) have lead levels above the standard.

The size of the sample (number of units to be tested) is determined by three factors:

N = Total number of units in the project;
k = Maximum number of leaded units (a unit with one or more components with lead-based paint at or above the standard of 1.0 mg/cm²) that can be tolerated to be missed completely;
n = Smallest number of units that must be tested to provide 95 percent confidence that the total number of leaded units is less than "k", based on finding no leaded units in the sample tested.

For example, to be 95 percent confident that no more than 5 percent of 300 units have lead, then k=15; if no more than 50 out of 4,000 with lead, then k=50.

In the usual statistical convention, "n" is defined as the smallest integer for which the probability of obtaining no positives in a simple random sample of size "n" from a population of size "N", of which "k" are positive, is less than 0.05. When "k" of "N" total are positive, the probability of observing no positives in a simple random sample of size "n" is given by the formula:

$$[(N-k)(N-k-1)\ldots(N-k-n+1)]/[(N)(N-1)\ldots(N-n+1)].$$

The required value of "n" is obtained by successively evaluating this expression for n = 1, 2, 3, . . ., until the value of the formula first drops below 0.05. The table in § 200.820(e) of the proposed rule was generated using this method.

Several points need to be made about the revised table. First, for less than 20 units total, all units would have to be tested to get the desired confidence level. Second, the percentage of units to be tested would decrease with increasing size of the project. Third, it

is apparent from the table that for values of "N" above 1,006, 5.9 percent of the units would need to be tested.

Lower sample sizes may be attractive because of lower testing costs, but that reduces the assurance that units are not lead-contaminated. The existing procedure does not provide any identifiable level of assurance. Of course, 100 percent assurance can only be achieved by requiring the testing of all the units in a project, at much higher cost.

**Other Matters**

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with part 50 of this title, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. This Finding relies in substantial part on an Environmental Assessment prepared for the Lead-Based Paint Interim Guidelines. The subject Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

*Executive Order 12866*

This proposed rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection as provided under the section of this preamble entitled "Addresses."

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule is limited to implementation of statutory changes to the Lead-Based Paint Poisoning Prevention Act; there are no anticompetitive discriminatory aspects of the proposed rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities.

*Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12506, the Family, has determined that this proposed rule would not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The function of this proposed rule is to remedy inaccuracies in existing program regulations and respond to advancements in the field of lead-based paint testing and hazard reduction.

*Executive Order 12512, Federalism*

The General Counsel, as the Designated Official under section 8(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule do not have federalism implications and, thus are not subject to review under the Order. The function of this proposed rule would be to remedy inaccuracies in existing program regulations and respond to advancements in the field of lead-based paint testing and hazard reduction. Issuance of this proposed rule in no way changes or affects the existing relationships among Federal, State, and local governments.

*Semiannual Agenda of Regulations*

This proposed rule was listed as Item No. 1533 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20435) under Executive Order 12866 and the Regulatory Flexibility Act, and was requested by and submitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

**List of Subjects**

*24 CFR Part 35*

Grant programs—housing and community development, Lead poisoning, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 200*

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 280*

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

*24 CFR Part 291*

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

*24 CFR Part 510*

Lead poisoning, Loan programs—housing and community development, Relocation assistance, Reporting and recordkeeping requirements, Social security, Urban renewal.

*24 CFR Part 511*

Administrative practice and procedure, Grant programs—housing and community development, Lead poisoning, Low and moderate income housing, Reporting and recordkeeping requirements, Technical assistance.

*24 CFR Part 570*

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

*24 CFR Part 577*

Community facilities, Employment, Grant programs—housing and community development, Grant programs—social programs, Individuals with disabilities, Homeless, Indians, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements, Technical assistance.

*24 CFR Part 578*

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Individuals with disabilities, Homeless, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements, Technical assistance.

*24 CFR Part 579*

Community facilities, Grant programs—housing and community

development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

*24 CFR Part 882*

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 885*

Aged, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

*24 CFR Part 886*

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 887*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 890*

Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Reporting and recordkeeping requirements.

*24 CFR Part 905*

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

*24 CFR Part 941*

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

*24 CFR Part 961*

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

*24 CFR Part 965*

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

*24 CFR Part 968*

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 35, 200, 280, 291, 510, 511, 570, 577, 578, 579, 882, 885, 886, 887, 890, 905, 941, 961, 965, and 968 are proposed to be amended as follows:

## PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

1. The authority citation for part 35 would be revised to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 4821–1846.

2. Section 35.3 would be amended by:

a. Adding in alphabetical order a new definition "Elevated blood lead level or EBL";

b. Amending the definition of "HUD-associated housing" by removing the word "or" at the end of paragraph (2), replacing the period with a comma at the end of paragraph (3), and adding new paragraphs (4) and (5) in that definition; and

c. Revising the definition of "residential structure", to read as follows:

**§ 35.3 Definitions.**

* * * * *

*Elevated blood lead level or EBL.* Excessive absorption of lead is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms of lead per deciliter of whole blood) for a single test or of 15–19 µg/dl in two consecutive tests several months apart.

*HUD-associated housing.* * * *

(4) That is currently covered by a mortgage held by the Secretary; or

(5) That was purchased by a third party at a foreclosure by the Secretary of a Secretary-held mortgage and is subject to any requirements regarding its use or operation under an agreement, or condition imposed by the Secretary.

*Residential structure.* Any house, apartment, or structure intended for human habitation, including any nondwelling facility operated by the owner and commonly used by children less than six years of age, such as a child care center.

* * * * *

3. Section 35.10 would be revised to read as follows:

**§ 35.10 Purpose and scope.**

This subpart implements the provisions of 42 CFR part 90, issued by the Secretary of Health and Human Services pursuant to section 401 of the Act, which are applicable to Federal agencies and prohibit the use of lead-based paint in residential structures constructed or rehabilitated by the Federal government or with Federal assistance. This subpart also establishes procedures to prohibit the use of lead-based paint in all HUD-associated housing.

4. Section 35.14 would be revised to read as follows:

**§ 35.14 Requirements.**

(a) No office of the Department shall use or permit the use of lead-based paint in HUD-associated housing.

(b) Each Assistant Secretary shall implement the requirements of paragraph (a) of this section with respect to the HUD programs within his/her administrative jurisdiction. Implementation shall include:

(1) The establishment of procedures to require the inclusion of appropriate provisions in contracts and subcontracts involving HUD-associated housing prohibiting the use of lead-based paint in the HUD-associated housing; and

(2) Provisions necessary for enforcement of the prohibition.

5. Section 35.22 would be amended by removing the definition of "applicable surface"; by revising the definition of "defective paint surface"; and by adding in alphabetical order definitions of "HEPA", "misted scraping", "paint removal", and "replacement", to read as follows:

**§ 35.22 Definitions.**

* * * * *

*Defective paint surface* means a surface on which the paint is nonintact, i.e. the paint is cracking, scaling, chipping, peeling, or loose.

*HEPA* means a high efficiency particle air filter, as used in lead-abatement vacuum cleaners.

* * * * *

*Misted scraping* means both the surface to be scraped and the scraping tool are kept wet with water during the removal process to minimize the dispersal of paint chips and air-borne dust.

*Paint removal* means stripping paint from the surfaces of building components.

*Replacement* means the removal of building components, such as windows, doors, and trim, that have lead-based painted surfaces and the installation of

new components free of lead-based paint.

* * * * *

6. Section 35.24 would be amended by revising paragraphs (b) introductory text, (b)(1) and (b)(2); by redesignating paragraph (b)(3) and (b)(4) as paragraphs (b)(5) and (b)(6), respectively; and by adding new paragraphs (b)(3) and (b)(4), to read as follows:

**§ 35.24 Requirements.**

* * * * *

(b) Subject to the provisions of separate regulations promulgated with respect to any program by the Assistant Secretary having jurisdiction over that program, the following minimum requirements shall apply to all programs:

(1) All painted surfaces of HUD-associated housing constructed before 1978 shall be inspected to determine whether defective paint surfaces exist.

(2) Defective paint surfaces must either:

(i) Be tested for lead content and, if found to contain lead at concentrations equal to or exceeding levels specified in paragraph (b)(3) of this section, abated as described in paragraph (b)(4) of this section. Defective paint surfaces that do not contain lead-based paint do not require treatment; or

(ii) Be abated, if defective paint surfaces are not tested. If not tested, the presence of lead-based paint shall be assumed.

(3) If defective paint surfaces are tested, testing shall be accomplished by using a portable X-ray fluorescence (XRF) analyzer or by laboratory analysis of paint samples, whichever is more cost effective. Abatement as described in paragraph (b)(4) of this section is required of all defective paint surfaces for which the test results equal or exceed 1.0 milligram of lead per square centimeter of paint surface. If the laboratory reports the test results in percent by weight, the standard shall be 0.5 percent or 5000 parts per million (ppm). A qualified inspector or laboratory shall certify in writing the precise results of the testing.

(4)(i) Lead-based paint abatement can create lead dust that is dangerous to workers and occupants, especially small children. Abatement should be performed only by workers who are trained in managing lead hazards and are properly protected. Abatement should not be undertaken by home craftsmen, even very skilled ones, or untrained construction professionals. The generation and control of dust must be carefully considered when selecting the abatement method. Dust caused by abatement shall be contained within the work area and shall not be allowed to spread to adjacent spaces or the soil.

(ii) Abatement shall be by covering lead-based paint surfaces, removal of paint, or replacement of painted building components. Acceptable methods of covering lead-based paint surfaces require the use of durable materials, sealed and caulked to prevent the escape of lead-contaminated dust. Acceptable methods of paint removal are misted scraping, scraping with an infrared or coil-type heat gun, and chemical stripping on- or off-site. Unacceptable methods of abatement include dry unassisted scraping; machine sanding and use of propane or gasoline torches (open flame methods); and washing and repainting without first thoroughly removing the paint by one of the approved methods.

(iii) Appropriate action shall be taken to protect occupants, especially young children and pregnant women, from lead hazards associated with abatement. Occupants may not enter spaces undergoing abatement. In most circumstances, occupants must be temporarily relocated during abatement, in accordance with § 35.28.

(iv) All abatement procedures must be concluded with a thorough cleaning of all surfaces in the affected dwelling units and common areas in order to remove lead dust. Cleanup shall be accomplished by vacuuming with a HEPA vacuum and washing surfaces with a trisodium phosphate detergent, followed by another high efficiency vacuuming. The waste generated by abatement shall be safely disposed of in accordance with Federal, State, and local laws.

(v) In the case of defective paint spots of one square foot or less, misted scraping and repainting of the defective spot is considered adequate treatment. However, treatment of defective paint spots shall include proper containment and cleanup. If the total area of defective paint spots on any one surface exceeds one square foot, or if there are defective paint spots on more than two surfaces in any one room or space (hallways, pantry, etc.), misted scraping and repainting of the defective spots is not acceptable treatment. In such circumstances, the entire defective paint surface must be abated in accordance with paragraph (b)(4)(ii) of this section.

* * * * *

A new § 35.28 would be added to subpart C, to read as follows:

**§ 35.28 Temporary relocation.**

(a) *Protection of occupants.* Appropriate action shall be taken to protect occupants, especially young children and pregnant women, from lead hazards associated with abatement. Occupants may not enter spaces undergoing abatement. Except as provided in paragraphs (b) and (c) of this section, occupants must be temporarily relocated during abatement.

(b) *Exterior abatement.* Relocation of occupants is not required if abatement is only on the exterior of a structure and the interior is sealed and safe entry and egress can be assured.

(c) *Interior abatement.* Relocation of occupants is not required if abatement is on the interior and either:

(1) Abatement and cleanup can be completed in one 8-hour working day, and the following conditions are met:

(i) Dust caused by abatement is contained within the work area; and

(ii) Occupants have safe access to bathrooms and kitchens; or

(2) If all of the following conditions are met, even though abatement and cleanup cannot be completed in one 8-hour working day:

(i) Abatement is of limited scope (e.g. limited to no more than one or two rooms at a time);

(ii) The work area is secured against entry during nonworking hours;

(iii) Dust caused by abatement is contained within the work area; and

(iv) Occupants have safe access to bathrooms, kitchens and sleeping areas.

(d) *Personal belongings.* Personal belongings that are in work areas must be relocated or sealed to protect the belongings from contamination from lead dust.

8. Section 35.56 would be amended by revising the first sentence in paragraph (a)(1) and by revising paragraph (a)(2), to read as follows:

**§ 35.56 Requirements.**

(a) * * *

(1) All painted surfaces of residential structures constructed before 1978 shall be inspected to determine whether defective paint surfaces exist. * * *

(2) Treatment necessary to eliminate hazards of lead-based paint shall conform to the procedures described in § 35.24(b)(4).

* * * * *

9. Section 35.62 would be revised to read as follows:

**§ 35.62 Federal construction; prohibition against use of lead-based paint.**

1. No Federal agency shall, in any residential structure constructed or rehabilitated by such agency, use or permit the use of lead-based paint.

10. Section 35.63 would be amended by revising paragraph (a) and adding a heading to paragraph (b), to read as follows:

§ 35.63 Federally assisted construction; prohibition against use of lead-based paint.

(a) *Regulations required.* Each agency head shall issue regulations and take such other steps as in his or her judgment are necessary to prohibit the use of lead-based paint on or in any residential structure constructed or rehabilitated by such agency under any federally assisted program.

(b) *Contents of regulations.* * * *

## PART 200—INTRODUCTION

11. The authority citation for part 200 would be revised to read as follows:

Authority: 12 U.S.C. 1701–1715z 18; 42 U.S.C. 3535(d)).

12. Section 200.805 would be amended by removing the definition of "Applicable surface"; and by revising the definitions of "Chewable surface", "Defective paint surface", and "Elevated blood lead level or EBL", to read as follows:

§ 200.805 Definitions.

*Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age.

*Defective paint surface* has the same meaning as the term is defined in § 35.22 of this title.

*Elevated blood lead level or EBL* has the same meaning as the term is defined in § 35.3 of this title.

* * * * *

13. Section 200.815 would be amended by revising paragraphs (b), (c), and (d), to read as follows:

§ 200.815 HUD-owned single family property disposition.

* * * * *

(b) For residential structures constructed prior to 1978, HUD shall cause the property to be inspected for defective paint surfaces before the closing of the sale of the property. In the case of a sale to a non-owner-occupant purchaser, treatment may be made a condition of sale, with sufficient sale funds escrowed to assure treatment. Defective paint surfaces either:

(1) Must be tested for lead content and, if found to contain lead at concentrations equal to or exceeding levels specified in § 35.24(b)(3) of this title, abated as described in § 35.24(b) of this title; or

(2) If not tested, the presence of lead-based paint shall be assumed and the surfaces abated as described in paragraph (d) of this section.

(c) *Chewable surfaces.* This subsection applies to dwellings constructed before 1978, except as provided in paragraph (d) of this section. If the purchaser is an owner-occupant and the occupant family contains one or more children less than six years of age, closing of the sale shall be deferred until completion of the following procedures. Where a blood lead level screening program is determined by HUD to be reasonably available, screening of each occupant child less than six years of age will be required. If an EBL condition is identified, HUD will cause the dwelling to be tested for lead-based paint on chewable surfaces or follow treatment procedures. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, a qualified HUD inspector or an organization recognized by HUD. Testing shall be performed using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for the presence of lead-based paint. If the laboratory reports the results in percent by weight, 0.5 percent or 5000 parts per million shall be considered positive. Where lead-based paint on chewable surfaces is identified, the entire interior or exterior chewable surface shall be treated. Treatment shall consist of covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title.

(d) *Abatement without testing.* In the case of a residential structure constructed before 1978, in lieu of the procedures set forth in paragraph (c) of this section, HUD, at its option, may forgo testing and abate all chewable and defective paint surfaces in accordance with the methods set out in § 35.24(b)(4) of this title.

14. Section 200.820 would be amended by redesignating paragraphs (d) and (e) as paragraphs (f) and (g), respectively; by revising the third sentence in paragraph (a) and paragraphs (b), (c)(1), (c)(2), the second sentence in paragraph (c)(3), and (c)(4); and by adding new paragraphs (d) and (e), to read as follows:

§ 200.820 Multifamily insurance and coinsurance.

(a) * * * This section does not apply to projects for the elderly or handicapped (except for units housing children less than six years of age) or projects subject to an application for insurance under sections 231, 232, 241, or 242 of the National Housing Act.

* * *

(b) *Defective paint surfaces.* In the case of a residential structure constructed before 1978, the HUD or coinsurer's architect and the sponsor's architect shall inspect the property for defective paint surfaces before the issuance of a commitment. If defective paint surfaces are found, testing and abatement as required by § 35.24(b) of this title shall be completed before final endorsement as a condition of the firm commitment. If defective paint surfaces are tested, a random sample of dwelling units shall be tested as required by paragraph (e) of this section.

(c) *Chewable surfaces*—(1) *Random sample.* In the case of a residential structure constructed before 1978, a random sample of dwelling units shall be tested for lead-based paint on chewable surfaces as required by paragraph (e) of this section, including a sample of common areas and exterior chewable surfaces. Common areas included in the sample should include nondwelling facilities commonly used by children less than six years of age, such as child care centers. All chewable surfaces in selected units shall be tested. If none of the tested units, common areas or exterior chewable surfaces contain lead-based paint, the project may be considered free of lead-based paint, and no further testing or abatement action will be required. If lead-based paint is found in any unit in the sample, all units in the project are required to be tested. If lead-based paint is found in any common area, all common areas in the project are required to be tested. If lead-based paint is found in any exterior chewable surface, all exterior chewable surfaces in the project are required to be tested.

(2) *Testing requirements.* Testing shall be performed using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead based paint. If the laboratory reports the test results in percent by weight the standard shall be 0.5 percent or 5000 parts per million (ppm). Testing of chewable surfaces shall be performed by a State or local health or housing agency or by an inspector certified or regulated by the State or local health or housing agency. The testing entity shall certify to the results of the test. The mortgagor shall be responsible for obtaining these testing services.

(3) * * * Treatment shall consist of covering or removal of the paint surface in accordance with § 35.24(b)(4) in this title. * * *

(4) *Abatement without testing.* In lieu of the procedures set forth in paragraphs (c)(1), (2) and (3) of this section, in the case of a residential structure constructed before 1978, the developer

may forego testing and abatement and abate all chewable surfaces in accordance with the methods set out in § 35.24(b)(4) of this title before final endorsement. HUD or the coinsuring lender will reinspect all units after repair and before final endorsement.

(d) *EBL child.* In the case of a residential structure constructed before 1978, if the developer is presented with test results that indicate a child less than six years of age living in a unit has an EBL, the developer must test defective paint surfaces and chewable surfaces in the unit occupied by the child. If such test is positive for lead-based paint, the developer either:

(1) Must abate the unit surfaces in accordance with the methods set out at § 35.24(b) of this title; or

(2) If the developer chooses not to test, the developer must abate all unit surfaces.

(e) *Random sampling of units.* Random sampling of housing units for testing of chewable and defective paint surfaces shall be based on the following table:

NUMBER OF UNITS TO BE TESTED AS A FUNCTION OF PROJECT SIZE

| No. of units in building or group of buildings uniformly painted at the time of construction and with subsequent random painting history | No. of units to be tested |
|---|---|
| <20 | All |
| 20–26 | 20 |
| 27 | 21 |
| 28 | 22 |
| 29–30 | 23 |
| 31 | 24 |
| 32 | 25 |
| 33–34 | 26 |
| 35 | 27 |
| 36 | 28 |
| 37 | 29 |
| 38–39 | 30 |
| 40–50 | 31 |
| 51 | 32 |
| 52–53 | 33 |
| 54 | 34 |
| 55–56 | 35 |
| 57–58 | 36 |
| 59 | 37 |
| 60–73 | 38 |
| 74–75 | 39 |
| 76–77 | 40 |
| 78–79 | 41 |
| 80–95 | 42 |
| 96–97 | 43 |
| 98–99 | 44 |
| 100–117 | 45 |
| 118–119 | 46 |
| 120–138 | 47 |
| 139–157 | 48 |
| 158–177 | 49 |
| 178–197 | 50 |
| 198–218 | 51 |
| 219–258 | 52 |
| 259–299 | 53 |
| 300–379 | 54 |
| 380–499 | 55 |
| 500–638 | 56 |
| 639–799 | 57 |
| 800–1003 | 58 |
| 1004–1005 | 59 |
| 1006 or more | (5.9 percent of the number of units, rounded to the nearest unit.) [1] |

[1] For buildings or groups of similar buildings with 1,006 units or more, test 5.9 percent of the units and round the result to the nearest number. E.g., if there are 2,170 units, 5.9 percent equals 128.03, so 128 units should be tested.

* * * * *

15. Section 200.825 would be amended by:

a. Revising the second sentence of paragraph (a);

b. Revising paragraph (b);

c. Revising paragraph (c) introductory text by:

(1) Revising the third and fourth sentences, and adding a new sentence after the fourth sentence, as revised; and,

(2) Revising the last two sentences of the introductory text; and

d. Revising paragraphs (c)(1) and (c)(2), to read as follows:

**§ 200.825 HUD-owned multifamily property disposition.**

(a) * * * This section does not apply to projects for the elderly or handicapped (except for units housing children less than six years of age).

* * *

(b) *Defective paint surfaces.* For residential structures constructed before 1978, HUD shall cause the property to be inspected for defective paint surfaces before offering the property for sale. Defective paint surfaces either must be tested for lead content and abated as described in § 35.24(b) of this title, if found to contain lead at concentrations equal to or exceeding levels specified in § 35.24(b)(3) of this title, or, if not tested, the presence of lead-based paint shall be assumed and the defective paint surfaces abated as described in § 35.24(b)(4) of this title. Abatement must be completed before delivery of the property to the purchaser or, if the disposition program under part 290 of this title provides for repairs to be performed by the purchaser, such treatment may be included in the required reports. Residential structures assisted under section 223(f) of the National Housing Act are to be inspected and treated as set forth in this paragraph.

(c) * * * Testing shall be performed using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm$^2$ or higher using an XRF shall be considered positive for presence of lead-based paint. If the laboratory reports the results in percent by weight, 0.5 percent or 5000 parts per million (ppm) shall be considered positive. * * * Treatment shall consist of covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title. Treatment shall be completed before delivery of the property to the purchaser, or, if the disposition program under part 290 of this title provides for repairs to be performed by the purchaser, such treatment may be included in the required repairs.

(1) *EBL child.* In the case of a residential structure constructed before 1978, if HUD is presented with test results that indicate a child less than six years of age living in a unit has an elevated blood lead level or EBL, HUD must either:

(i) Test or cause to be tested the unit occupied by the child, and, if such test is positive for lead-based paint, abate the unit surfaces in accordance with the methods set out in § 35.24(b)(4) of this title; or

(ii) If HUD chooses not to test the unit, HUD must abate all of the unit surfaces.

(2) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c) of this section, in the case of a residential structure constructed before 1978, HUD, at its option, may forego testing and abate all chewable surfaces in accordance with the methods set out in § 35.24(b)(4) of this title.

* * * * *

## PART 280—NEHEMIAH HOUSING OPPORTUNITY GRANTS PROGRAM

16. The authority citation for part 280 would continue to read as follows:

**Authority:** 12 U.S.C. 1715*l* note; 42 U.S.C. 3535(d).

17. Section 280.207 would be amended by:

a. Revising the second and third sentences in paragraph (e)(2)(i);

b. Revising the introductory text of paragraph (e)(2)(ii);

c. Removing the definitions for "Applicable surface" and "Defective paint surfaces" in paragraph (e)(2)(ii);

d. Revising the definitions for "Chewable surface", and "Elevated blood lead level or EBL" in paragraph (e)(2)(ii);

e. Adding the definition "Defective paint surface" in alphabetical order in paragraph (e)(2)(ii);

f. Revising the second sentence in paragraph (e)(2)(iii); and

g. Revising paragraphs (e)(2)(iv) and (v), to read as follows:

**§ 280.207 Other Federal requirements.**

* * * * *

(e) * * *

(2) (i) * * * This paragraph is promulgated under § 35.24(b)(6) of this title and supersedes, with respect to assistance under this part, the requirements prescribed in part 35, subpart C, of this title. The requirements of this paragraph apply to structures that are occupied or are expected to be occupied by children less than six years of age.

(ii) The following definitions apply to paragraph (e) of this section:

*Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

*Defective paint surface* means a surface on which the paint is nonintact, i.e. the paint is cracking, scaling, chipping, peeling, or loose.

*Elevated blood lead level or EBL means the same as the term is defined in § 35.3 of this title.*

* * * * *

(iii) * * * If defective paint surfaces are found, treatment in accordance with § 35.24(b)(4) of this title is required.

* * *

(iv) In the case of a structure constructed or substantially rehabilitated before 1978, if the recipient is presented with test results that indicate that the family purchasing a home under the program includes a child less than six years of age who has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified by a State or local health or housing agency, or by an association recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1.0 mg/cm² or higher shall be considered positive for the presence of lead-based paint. If the laboratory reports the results in percent by weight, the standard shall be 0.5 percent or 5000 parts per million (ppm). Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title is required.

(v) In lieu of the procedures set forth in paragraph (e)(2)(iv) of this section, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the methods set out in § 35.24(b)(4) of this title.

* * * * *

## PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

18. The authority citation for part 291 would be revised to read as follows:

**Authority:** 12 U.S.C. 1709 and 1715b; 42 U.S.C. 1441, 1551a, and 3535(d).

19. Section 291.430 would be amended by revising the second and third sentences in paragraph (a); by removing the definitions of "Applicable surfaces" and "Defective paint surfaces" in paragraph (b); by adding the definition of "Defective paint surface" in alphabetical order in paragraph (b); by revising the second sentence in paragraph (c); and by revising paragraph (d), to read as follows:

**§ 291.430 Elimination of lead-based paint hazards.**

(a) * * * This section established procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to properties that may be occupied by children less than six years of age. This section is promulgated under § 35.24(b)(6) of this title and supersedes, with respect to this program, the requirements prescribed in subpart C of part 35 of this title.

(b) * * *

*Defective paint surface* means a surface on which the paint is nonintact, i.e., the paint is cracking, scaling, chipping, peeling, or loose.

* * * * *

(c) * * * If defective paint surfaces are found, treatment as required by § 35.24(b)(4) of this title shall be completed by HUD before the sale or lease of the property.

(d) *Testing and treatment of painted surfaces.* (1) If the lessee or purchaser knows or has reason to expect that the property will be occupied by homeless families with children less than six years of age, the lessee or purchaser must cause the unit to be tested for lead-based paint on all painted surfaces before initial occupancy. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for the presence of lead-based paint. If the laboratory reports the test results in percent by weight, 0.5 percent or 5000 parts per million (ppm) shall be considered positive. Where lead-based paint is identified, the lessee or purchaser must cause all painted surfaces to be treated. Treatment must consist of covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title. If the lessee or purchaser certifies to HUD that the property will not be occupied by children less than six years of age, testing or treatment will not be required.

(2) If a lessee or purchaser has reason to believe that a property contains lead-based paint on painted surfaces, the lessee or purchaser may, at its option, dispense with the testing procedure and proceed directly to treatment.

(3) The lessee or purchaser may not allow the property to be occupied by children less than six years of age until proof of testing and, if necessary, treatment has been submitted to and reviewed by HUD.

* * * * *

## PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

20. The authority citation for part 510 would be revised to read as follows:

**Authority:** 42 U.S.C. 1452b and 3535(d). Sec. 510.106 is also issued under 42 U.S.C. 3543.

Section 510.410 would be amended by:

a. Revising paragraph (b)(2)(v);

b. Revising the first and third sentences of the introductory text in paragraph (c);

c. Removing the definition of "applicable surface" and revising the definitions of "chewable surface", "defective paint surface", and "elevated blood lead level or EBL" in paragraph (c)(1);

d. Revising the first sentence in paragraph (c)(2)(i); and

e. Revising paragraphs (c)(2)(ii), (c)(2)(iii), and (c)(4), to read as follows:

**§ 510.410 Lead-based paint.**

* * * * *

(b) * * *

(2) * * *

(v) Of the advisability and availability of blood lead level screening for children less than six years of age; and

* * * * *

(c) *Elimination of lead-based paint hazards.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards due to the presence of paint that may contain lead and to which children less than six years of age may be exposed in existing housing that is rehabilitated with assistance provided under this part. * * * This paragraph is promulgated pursuant to the authorization granted in § 35.24(b)(6) of this title and supersedes, with respect to all housing to which it applies, the requirements of part 35, subpart C, of this title. * * *

(1) *Definitions—Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age.

*Defective paint surface* means the same as the term is defined in § 35.22 of this title.

*Elevated blood lead level or EBL* means the same as the term is defined in § 35.3 of this title.

* * * * *

(2) *Inspection and testing*—(i) *Defective paint surfaces.* The local agency shall inspect for defective paint surfaces in all units constructed before 1978 that are occupied by children less than six years of age and are proposed for rehabilitation assistance. * * *

(ii) *Chewable surfaces.* The local agency shall be required to test the lead content of chewable surfaces if a child under six years of age with an identified EBL condition is part of the family residing in a unit that was constructed before 1978 and receives rehabilitation assistance. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm $^2$ or higher shall be considered positive for presence of lead-based paint. If the laboratory reports the results in percent by weight, the standard shall be 0.5 percent or 5000 parts per million (ppm).

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(2)(ii) of this section, in the case of a residential structure constructed before 1978, the owner may forego testing and abate all chewable surfaces in accordance with the method set out in § 35.24(b)(4) of this title.

* * * * *

(4) *Abatement methods.* At a minimum, treatment of the defective areas and chewable lead-based paint surfaces shall consist of covering or removal of the painted surfaces as described in § 35.24(b)(4) of this title.

* * * * *

## PART 511—RENTAL REHABILITATION GRANT PROGRAM

22. The authority citation for part 511 would be revised to read as follows:

**Authority:** 42 U.S.C. 1437(o) and 3535(d).

23. Section 511.15 would be amended by revising paragraph (b)(2)(v), the introductory text of paragraph (c), paragraphs (c)(1), (c)(2), (c)(3)(i), and (c)(4), to read as follows:

**§ 511.15 Lead-based paint.**

* * * * *

(b) * * *

(2) * * *

(v) Of the advisability and availability of blood lead level screening for children less than six years of age; and

* * * * *

(c) *Elimination of lead-based paint hazards.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing as far as practicable the hazards due to the presence of paint that might contain lead and to which children less than six years of age may be exposed in projects assisted under this part. The Secretary has promulgated requirements at part 35, subpart C of this title, regarding the elimination of lead-based paint hazards in HUD-associated housing.

(1) *Definitions—Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

*Defective paint surface* means a surface on which the paint is nonintact, i.e., the paint is cracking, scaling, chipping, peeling, or loose.

*Elevated blood lead level or EBL.* Excessive absorption of lead is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms per deciliter of whole blood) for single test or 15–19 µg/dl in two consecutive tests several months apart.

*Lead-based paint surface* means a paint surface, whether or not defective, that is identified as having a lead content of greater than or equal to 1 mg/cm$^2$ or 0.5 percent by weight or 5000 parts per million.

(2) *Inspection and testing*—(i) *Defective paint surfaces.* The grantee or State recipient shall inspect for defective paint surfaces in all units constructed before 1978 that are occupied by families with children less than six years of age and that are proposed for rehabilitation assistance. Defective paint surfaces either must be tested for lead content or, if defective paint surfaces are not tested, the presence of lead-based paint shall be assumed and the surfaces shall be abated.

(ii) *Chewable surfaces.* The grantee or State recipient shall be required to test the lead content of chewable surfaces if a child less than six years of age with an identified EBL condition is part of the family residing in a unit that was constructed before 1978 and receives rehabilitation assistance. Lead content shall be tested by using a portable X-ray fluorescence (XRF) analyzer or by laboratory analysis of paint samples.

(iii) *Abatement without testing.* In lieu of the procedures set forth in § 511.15(c)(2)(ii), in the case of a residential structure constructed before 1978, the grantee or State recipient may forego testing and abate all chewable surfaces in accordance with the methods set out in § 35.24(b)(4) of this title.

(3) *Abatement actions.* (i) When surfaces inspected under § 511.15(c)(2)(i) are found to contain lead-based paint and when defective paint surfaces are found but not tested for lead content, all such surfaces shall be abated. If defective paint surfaces are tested for lead content, surfaces found to equal or exceed 1.0 milligrams of lead per square centimeter or 0.5 percent by weight or 5000 parts per million (ppm), shall be abated. A qualified inspector or laboratory shall certify in writing the precise results of the testing. Abatement shall be performed before final inspection and approval of the work.

* * * * *

(4) *Abatement methods.* At a minimum, treatment of the defective area and chewable lead-based paint surfaces shall consist of covering or removal of the painted surface as described in § 35.24(b)(4) of this title.

* * * * *

## PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

24. The authority citation for part 570 would continue to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 5300–5320.

25. Section 570.608 would be amended by:

a. Revising paragraph (b)(2)(v);

b. Revising the last sentence of the introductory text of paragraph (c), the first sentence in paragraph (c)(1), paragraphs (c)(1) (vi) and (vii), and (c)(2);

c. Revising the first and third sentences in paragraph (c)(3) (i); and

d. Revising paragraphs (c)(3) (ii) and (iii), (c)(4)(i), and (c)(5), to read as follows:

**§ 570.608 Lead-based paint.**

* * * * *

(b) * * *

(2) * * *

(v) Of the advisability and availability of blood lead level screening for children less than six years of age; and

* * * * *

(c) * * * This paragraph (c) is promulgated pursuant to the authorization granted in § 35.24(b)(6) of this title and supersedes, with respect to all housing to which it applies, the requirements prescribed by part 35, subpart C of this title.

(1) *Applicability.* This paragraph (c)(1) applies to the rehabilitation of all painted surfaces in existing housing that is assisted under this part. * * *

* * * * *

(vi) Other similar types of single-purpose programs that do not include physical repairs or remodeling of any painted surfaces of residential structures; and

(vii) Any non-single purpose rehabilitation that does not involve any painted surface and does not exceed $3000 per unit.

(2) *Definitions—Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

*Defective paint surface* means a surface on which the paint is nonintact, i.e., the paint is cracking, scaling, chipping, peeling, or loose.

*Elevated blood lead level or EBL.* Excessive absorption of lead is a confirmed concentration of lead in whole blood of 20 μg/dl (micrograms per deciliter of whole blood) for a single test or of 15–19 μg/dl in two consecutive tests several months apart.

*Lead-based paint surface* means a paint surface, whether or not defective, that is identified as having a lead content greater than or equal to 1 mg/cm$^2$.

(3) *Inspection and testing.* (i) The grantee shall inspect for defective paint surfaces in all units constructed before 1978 that are occupied by families with children less than six years of age and that are proposed for rehabilitation. * * * Defective paint surfaces either must be tested for lead content or, if defective paint surfaces are not tested, the presence of lead-based paint shall be assumed and the surfaces shall be abated.

(ii) *Chewable surfaces.* The grantee shall be required to test the lead content of chewable surfaces if a child less than six years of age with an identified EBL condition is part of the family residing in a unit that was constructed before 1978 and receives rehabilitation assistance. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm$^2$ or higher using an XRF shall be considered positive for presence of lead-based paint. If the laboratory reports the results in percent by weight the standard shall be 0.5 percent or 5000 parts per million (ppm).

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(3)(ii) of this section, in the case of a residential structure constructed before 1978, the grantee may forego testing and abate all chewable surfaces in accordance with the methods set out in § 35.24(b)(4) of this title.

(4) *Abatement actions.* (i) When surfaces inspected under § 570.608(c)(3)(i) are found to contain lead-based paint and when defective paint surfaces are found but not tested for lead content, all such surfaces shall be abated. If defective paint surfaces are tested for lead content, surfaces found to equal or exceed 1.0 milligrams of lead per square centimeter or 0.5 percent by weight or 5000 parts per million (ppm) shall be abated. A qualified inspector or laboratory shall certify in writing the precise results of the testing. Abatement shall be performed before final inspection and approval of the work.

* * * * *

(5) *Abatement methods.* At a minimum, treatment of the defective areas and chewable lead-based paint surfaces shall consist of covering or removal of the painted surface as described in § 35.24(b)(4) of this title.

* * * * *

## PART 577—TRANSITIONAL HOUSING

26. The authority citation for part 577 would be revised to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 11386.

27. Section 577.335 would be amended by:

a. Revising the last two sentences of paragraph (d)(2)(i);

b. Revising paragraph (d)(2)(ii);

c. Revising the third sentence of paragraph (d)(2)(iii); and

d. Revising paragraphs (d)(2)(iv) and (v), to read as follows:

**§ 577.335 Applicability of other Federal requirements.**

* * * * *

(d) * * *

(2)(i) * * * This paragraph is promulgated under § 35.24(b)(6) of this title and supersedes, with respect to the program, the requirements prescribed in part 35, subpart C, of this title. The requirements of this paragraph apply to structures that will be occupied by children less than six years of age.

(ii) The following definitions apply to paragraph (d) of this section:

*Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

*Defective paint surface* means a surface on which the paint is nonintact, i.e., the paint is cracking, scaling, chipping, peeling, or loose.

*Elevated blood lead level or EBL.* Excessive absorption of lead is a confirmed concentration of lead in whole blood of 20 μg/dl (micrograms per deciliter of whole blood) for a single test or of 15–19 μg/dl in two consecutive tests several months apart.

*Lead-based paint surface* means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm$^2$.

(iii) * * * If defective paint surfaces are found, treatment in accordance with § 35.24(b)(4) of this title is required.

* * *

(iv) In the case of a structure constructed or substantially rehabilitated before 1978, if the recipient is presented with test results that indicate that a child less than six years of age occupies the structure and has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm$^2$ or higher using an XRF shall be considered positive for the presence of

lead based paint. If the laboratory reports the results in percent by weight the standard shall be 0.5 percent or 5000 parts per million (ppm). When lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title is required.

(v) In lieu of the procedures set forth in paragraph (d)(2)(iv) of this section, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with § 35.24(b)(4) of this title.

* * * * *

## PART 578—PERMANENT HOUSING FOR HANDICAPPED HOMELESS PERSONS

28. The authority citation for part 578 would be revised to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 11386.

29. Section 578.335(d)(2) would be amended by:

a. Revising the last two sentences of paragraph (d)(2)(i);

b. Removing the definitions for "Applicable surface" and "Defective paint surfaces" in paragraph (d)(2)(ii);

c. Revising the introductory text and the definitions for "Chewable surface", and "Elevated blood lead level or EBL" in paragraph (d)(2)(ii), and adding a definition for "Defective paint surface" in alphabetical order;

d. Revising the third sentence of paragraph (d)(2)(iii); and

e. Revising paragraphs (d)(2)(iv) and (d)(2)(v), to read as follows:

**§ 578.335 Applicability of other Federal requirements.**

* * * * *

(d) * * *

(2)(i) * * * This paragraph is promulgated under § 35.24(b)(6) of this title and supersedes, with respect to the program, the requirements prescribed in part 35, subpart C, of this title. The requirements of this paragraph apply to structures that will be occupied by children less than six years of age.

(ii) The following definitions apply to paragraph (d) of this section:

*Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

*Defective paint surface* means a surface on which the paint is nonintact, i.e., the paint is cracking, scaling, chipping, peeling, or loose.

*Elevated blood lead level or EBL.* Excessive absorption of lead is a confirmed concentration of lead in whole blood of 20 μg/dl (micrograms per deciliter of whole blood) for a single test or of 15–19 μg/dl in two consecutive tests several months apart.

* * * * *

(iii) * * * If defective paint surfaces are found, treatment in accordance with § 35.24(b)(4) of this title is required. * * *

(iv) In the case of a structure constructed or substantially rehabilitated before 1978, if the recipient is presented with test results that indicate that a child less than six years of age occupies the structure and has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for the presence of lead based paint. If the laboratory reports the results in percent by weight the standard shall be 0.5 percent or 5000 parts per million (ppm). When lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title is required.

(v) In lieu of the procedures set forth in paragraph (d)(2)(iv) of this section, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with § 35.24(b)(4) of this title.

* * * * *

## PART 579—SUPPLEMENTAL ASSISTANCE FOR FACILITIES TO ASSIST THE HOMELESS

30. The authority citation for part 579 would be revised to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 11301 note.

31. Section 579.325 would be amended by:

a. Revising the second and third sentences in paragraph (d)(2)(i);

b. Removing the definitions of "Applicable surface" and "Defective paint surfaces" in paragraph (d)(2)(ii);

c. Revising the introductory text and the definitions of "Chewable surface" and "Elevated blood level or EBL", and adding a definition for "Defective paint surface" in alphabetical order in paragraph (d)(2)(ii);

d. Revising the third sentence in paragraph (d)(2)(iii); and

e. Revising paragraphs (d)(2)(iv) and (v), to read as follows:

**§ 579.325 Applicability of other Federal requirements.**

* * * * *

(d) * * *

(2)(i) * * * This paragraph is promulgated under 24 CFR 35.24(b)(6) and supersedes, with respect to the program, the requirements prescribed in 24 CFR part 35, subpart C. The requirements of this paragraph apply only to structures that will be occupied by children less than six years of age.

(ii) The following definitions apply to paragraph (d) of this section:

*Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

*Defective paint surface* means a surface on which the paint is nonintact, i.e., the paint is cracking, scaling, chipping, peeling, or loose.

*Elevated blood lead level* or *EBL* means the same as the term is defined in § 35.3 of this title.

* * * * *

(iii) * * * If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(4) is required. * * *

(iv) In the case of a structure constructed or substantially rehabilitated before 1978, if the recipient is presented with test results that indicate that a child less than six years of age occupies the structure and has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm² or higher shall be considered positive for the presence of lead-based paint. If the laboratory reports the results in percent by weight, the standard shall be 0.5 percent or 5,000 parts per million (ppm). Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(4) is required.

(v) In lieu of the procedures set forth in paragraph (d)(2)(iv) of this section, the recipient may, at its discretion, abate all interior and exterior chewable

surfaces in accordance with the methods set out at 24 CFR 35.24(b)(4).

* * * * *

## PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

32. The authority citation for part 882 would be revised to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d). Subpart H is also issued under 42 U.S.C. 11361 and 11401.

33. Section 882.109 would be amended by:

a. Revising the second sentence of paragraph (i)(1);

b. Removing the definition of "Applicable surface" in paragraph (i)(2);

c. Revising the definitions of "Chewable surface", "Defective paint surface" and "Elevated blood lead level or EBL" in paragraph (i)(2);

d. Revising the first two sentences of paragraph (i)(3); and

e. Revising paragraphs (i)(4) and (i)(5), to read as follows:

### § 882.109 Housing quality standards.

* * * * *

(i) * * *

(1) * * * This paragraph is promulgated under the authorization granted in § 35.24(b)(6) of this title, and supersedes, with respect to all housing to which it applies, the requirements prescribed by part 35, subpart C, of this title. * * *

(2) *Definitions—Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

*Defective paint surface* means a surface on which the paint is nonintact, i.e., the paint is cracking, scaling, chipping, peeling, or loose.

*Elevated blood lead level or EBL* means the same as the term is defined in § 35.3 of this title.

* * * * *

(3) *Defective paint.* In the case of a unit constructed before 1978 that is for a family that includes a child less than six years of age, the initial inspection under § 882.209(h)(1), and each periodic inspection under § 882.211(b), shall include an inspection for defective paint surfaces. Defective paint surfaces either must be tested for lead content or, if defective paint surfaces are not tested, the presence of lead-based paint shall be assumed and the surfaces abated as required by § 35.24(b) of this title, in accordance with § 882.209(h) or § 882.211 (b) and (c), as appropriate. * * *

(4) *Chewable surfaces.* In the case of a unit constructed before 1978 that is for a family that includes a child less than six years of age with an identified EBL condition, the initial inspection under § 882.209(h)(1), or a periodic inspection under § 882.211(b), shall include a test for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for the presence of lead-based paint. If the laboratory reports the results in percent by weight the standard shall be 0.5 percent or 5000 parts per million (ppm). When lead based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title shall be required, in accordance with § 882.209(h) or § 882.211 (b) and (c), as appropriate, and correction shall be completed within the time limits set forth in paragraph (i)(3) of this section.

(5) *Abatement without testing.* In lieu of the procedures set forth in paragraph (i)(4) of this section, at its discretion the PHA may forego testing and require the owner to abate all interior and exterior chewable surfaces in accordance with the method set out in § 35.24(b)(4) of this title.

* * * * *

34. Section 882.404 would be amended by:

a. Revising the second and last sentences of paragraph (c)(1);

b. Removing the definition of "applicable surface" and revising the definitions of "chewable surface", "defective paint surface", and "elevated blood lead level or EBL" in paragraph (c)(2);

c. Revising the first two sentences of paragraph (c)(3); and

d. Revising paragraphs (c) (4) and (5), to read as follows:

### § 882.404 Housing quality standards.

* * * * *

(c) *Lead-based paint.* (1) * * * This paragraph (c)(1) is promulgated under the authorization granted in § 35.24(b)(6) of this title and supersedes, with respect to all housing to which it applies, the requirements prescribed by part 35, subpart C of this title. * * * This section does not apply to projects for the elderly or handicapped (except for units housing children less than six years of age).

(2) *Definitions—Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

*Defective paint surface* means the same as the term is defined in § 35.22 of this title.

*Elevated blood lead level or EBL* means the same as the term is defined in § 35.3 of this title.

* * * * *

(3) *Defective paint.* In the case of a unit constructed before 1978 that is for a family that includes a child less than six years of age, the initial inspection under § 882.504(a), and each periodic inspection under § 882.516(b), shall include an inspection for defective paint surfaces. Defective paint surfaces either must be tested for lead content or, if defective paint surfaces are not tested, the presence of lead-based paint shall be assumed and abatement of the surfaces as required by § 35.24(b) of this title shall be included in the specific work items referred to in § 882.504(a) or required as corrective action pursuant to § 882.516(c), as appropriate. * * *

(4) *Chewable surfaces.* If a proposal is submitted with respect to a unit constructed before 1978 that is occupied by a family that includes a child less than six years of age with an identified EBL condition, the PHA shall cause the unit to be tested for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. If the laboratory reports the results in percent by weight 0.5 percent or 5000 parts per million (ppm) is the standard. When lead-based paint on chewable surfaces is identified at initial inspection, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title shall be included in the specific work items referred to in § 882.504(a). When lead-based paint on chewable surfaces is discovered at periodic inspection, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title shall be completed within the time

limits set forth in paragraph (c)(3) of this section.

(5) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(4) of this section, at its discretion the PHA may forego testing and require the abatement of all interior and exterior chewable surfaces in accordance with § 35.24(b)(4) of this title.

* * * * *

35. Section 882.514 would be amended by:

a. Removing the word "and" at the end of paragraph (d)(1)(iv), changing the period to a semicolon and adding the word "and" at the end of paragraph (d)(1)(v);

b. Adding a new paragraph (d)(1)(vi); and

c. Removing paragraph (d)(2)(vi), to read as follows:

**§ 882.514 Family participation.**

* * * * *

(d) * * *

(1) * * *

(vi) The advisability and availability of blood lead level screening for children less than six years of age and HUD's requirements for inspecting, testing, and, in certain circumstances, abating lead-based paint.

* * * * *

36. Section 882.753(d)(6) would be revised to read as follows:

**§ 882.753 Family participation.**

* * * * *

(d) * * *

(6) The advisability and availability of blood lead level screening for children less than six years of age, and HUD's requirements for inspecting, testing, and, in certain circumstances, abating lead-based paint; and

* * * * *

## PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

37. The authority citation for part 885 would continue to read as follows:

**Authority:** 12 U.S.C. 1701q; 42 U.S.C. 1437f and 3535(d).

38. Section 885.740 would be amended by:

a. Revising paragraph (f)(1) and the second sentence of paragraph (f)(2)(i);

b. Removing the definitions of "Applicable surface" and "Defective paint surfaces" and revising the introductory text and the definitions of "Chewable surface", and "Elevated blood lead level or EBL" in paragraph (f)(2)(ii);

c. Adding the definition of "Defective paint surface" in alphabetical order in paragraph (f)(2)(ii);

d. Revising the second sentence of paragraph (f)(2)(iii); and

e. Revising paragraphs (f)(iv), (f)(v) and (f)(vi), to read as follows:

**§ 885.740 Other Federal requirements.**

* * * * *

(f) * * *

(1) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at part 35 of this title (except as superseded in paragraph (f)(2) of this section) apply to the dwellings (except zero-bedroom dwelling units) in housing assisted under this subpart that was constructed or substantially rehabilitated before 1978 and in which any child less than six years of age resides or is expected to reside.

(2)(i) * * * This paragraph (f)(2)(i) is promulgated under § 35.24(b)(6) of this title and supersedes, with respect to the program, the requirements prescribed in part 35, subpart C, of this title.

(ii) The following definitions apply to paragraph (f) of this section: *Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

*Defective paint surface* means the same as the term is defined in § 35.22 of this title.

*Elevated blood lead level or EBL* means the same as the term is defined in § 35.3 of this title.

* * * * *

(iii) * * * Defective paint surfaces either must be tested for lead content or, if defective paint surfaces are not tested, the presence of lead-based paint shall be assumed and the surfaces abated in accordance with § 35.24(b) of this title. * * *

(iv) In the case of a structure constructed or substantially rehabilitated before 1978, if the Borrower is presented with test results that indicate that a child under the age of six years occupies the structure and has an elevated blood lead level (EBL), the Borrower must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm$^2$ or higher using an XRF shall be considered positive for the presence of lead-based paint. If the laboratory reports the results in percent by weight 0.5 percent or 5000 parts per million (ppm) is the standard. When lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title is required.

(v) When abatement will result from rehabilitation activities planned (i.e., when all defective paint or chewable surfaces will be replaced, covered, or otherwise abated as described in this part), these surfaces need not be tested.

(vi) In lieu of the procedures set forth in paragraph (f)(2)(v) of this section, at its discretion the Borrower may abate all interior and exterior chewable surfaces in accordance with the methods set out in § 35.24(b)(4) of this title.

* * * * *

## PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

39. The authority citation for part 886 would be revised to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

40. Section 886.113 would be amended by:

a. Revising the second and sixth sentences in paragraph (i)(1);

b. Removing the definition of "Applicable surface" and revising the definitions for "Chewable surface", "Defective paint surface", and "Elevated blood lead level or EBL" in paragraph (i)(2);

c. Revising the second sentence in paragraph (i)(3); and

d. Revising paragraph (i)(4), to read as follows:

**§ 886.113 Housing quality standards.**

* * * * *

(i) * * *

(1) * * * This paragraph (i)(1) is promulgated under the authorization granted in § 35.24(b)(6) of this title and supersedes, with respect to all housing to which it applies, the requirements prescribed by part 35, subpart C of this title. * * * This section does not apply to projects for the elderly or handicapped (except for units housing children less than six years of age).

(2) *Definitions—Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

*Defective paint surface* means the same as the term is defined in § 35.22 of this title.

*Elevated blood lead level or EBL* means the same as the term is defined in § 35.3 of this title.

* * * * *

(3) * * * Defective paint surfaces either must be tested for lead content or, if defective paint surfaces are not tested, the presence of lead-based paint shall be assumed and the surfaces abated in accordance with § 35.24(b) of this title as a condition of satisfaction of the requirements of § 886.107(c).

(4)(i) *Chewable surfaces.* In the case of a residential structure constructed before 1978, a random sample of dwelling units shall be tested for lead-based paint on chewable surfaces in accordance with § 200.820(c)(1) of this title. Testing shall be performed using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive. If the laboratory reports the results in percent by weight, 0.5 percent or 5000 parts per million shall be considered positive. Testing of chewable surfaces shall be performed by a State or local health or housing agency, or by an organization recognized by HUD. The testing entity shall certify to the results of the test. The owner shall be responsible for obtaining these testing services. Where lead-based paint on chewable surfaces is identified, the entire interior or exterior chewable surface shall be treated. Covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title shall be required as a condition of satisfaction of the requirements of § 886.107(c).

(ii) *EBL child.* In the case of a residential structure constructed before 1978, if the owner is presented with test results that indicate a child less than six years of age living in a unit has an elevated blood lead level or EBL, the owner must either test the unit occupied by the child and, if the test is positive for lead-based paint, abate the unit surfaces in accordance with the methods set out in § 35.24(b)(4), or choose not to test, but then abate all the unit surfaces.

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraphs (i)(3) and (4) of this section, in the case of a residential structure constructed before 1978, the owner may forego testing and abate all defective and chewable surfaces in accordance with the methods set out in § 35.24(b)(4) of this title.

* * * * *

## PART 887—HOUSING VOUCHERS

The authority citation for part 887 would be revised to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437(f), and 3535(d).

42. Section 887.251 would be amended by:

a. Revising the second sentence in paragraph (i)(1);

b. Removing the definition of "Applicable surface" and revising the definitions of "Chewable surface", "Defective paint surface", and "Elevated blood level of EBL" in paragraph (i)(2);

c. Revising the first and second sentences in paragraph (i)(3); and

d. Revising paragraphs (i)(4) and (i)(5), to read as follows:

### § 887.251 Housing quality standards (HQS).

* * * * *

(i) * * *

(1) * * * This paragraph is promulgated under the authorization granted in § 35.24(b)(6) of this title and supersedes, with respect to all housing to which it applies, the requirements prescribed by part 35, subpart C of this title. * * *

(2) *Definitions—Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

*Defective paint surface* means the same as the term is defined in § 35.22 of this title.

*Elevated blood lead level or EBL* means the same as the term is defined in § 34.3 of this title.

* * * * *

(3) *Defective paint.* In the case of a unit constructed before 1978 that is for a family that includes a child less than six years of age, the initial inspection under § 887.207(c), and each periodic inspection under § 887.257, shall include an inspection for defective paint surfaces. If defective paint surfaces are found, treatment as required by § 35.24(b)(4) of this title shall be required, in accordance with §§ 887.207(c) or 887.257, as appropriate. * * *

(4) *Chewable surfaces.* In the case of a unit constructed before 1978 that is for a family that includes a child less than six years of age with an identified EBL condition, the initial inspection under § 887.207(c), or a periodic inspection under § 887.257, shall include a test for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content shall be tested using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher shall be considered positive for the presence of lead-based paint. If the laboratory reports the test results in percent by weight, 0.5 percent or 5000 parts per million (ppm) shall be considered positive. When lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title shall be required in accordance with §§ 887.207(c) or 887.257, as appropriate, and correction shall be completed within the time limits in paragraph (i)(3) of this section.

(5) *Abatement without testing.* In lieu of the procedures set forth in paragraph (i)(4) of this section, at its discretion the PHA may forego testing and require the owner to abate all interior and exterior chewable surfaces in accordance with the method set out in § 35.24(b)(4) of this title.

* * * * *

## PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

43. The authority citation for part 890 would be revised to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 8013.

44. Section 890.260 would be amended by:

a. Revising paragraph (f)(1)(ii);

b. Revising the second sentences of paragraphs (f)(2)(i) and (iii);

c. Removing the definitions of "Applicable surface" and "Defective paint surfaces" and revising the introductory text and the definitions of "Chewable surface", and "Elevated blood lead level or EBL" in paragraph (f)(2)(ii);

d. Adding the definition "Defective paint surface" in alphabetical order in paragraph (f)(2)(ii); and

e. Revising paragraphs (f)(2)(iv), (v) and (vi), to read as follows:

### § 890.260 Other Federal requirements.

* * * * *

(f) * * *

(1) * * *

(ii) In which any child less than six years of age resides or is expected to reside.

(2)(i) * * * This paragraph is promulgated under § 35.24(b)(6) and supersedes, with respect to the program, the requirements prescribed in part 35, subpart C, of this title.

(ii) The following definitions apply to paragraph (f) of this section:

*Chewable surface* means any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

*Defective paint surface* means the same as the term is defined in § 35.22 of this title.

*Elevated blood lead level or EBL* means the same as the term is defined in § 35.3 of this title.

* * * * *

(iii) * * * Defective paint surfaces either must be tested for lead content or, if defective paint surfaces are not tested, the presence of lead-based paint shall be assumed and the surfaces abated in accordance with § 35.24(b)(4) of this title. * * *

(iv) In the case of a structure constructed or substantially rehabilitated prior to 1978, if the Owner is presented with test results that indicate that a child less than six years of age occupies the structure and has an elevated blood lead level (EBL), the Owner must cause the unit to be tested for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content shall be tested using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 $mg/cm^2$ or higher shall be considered positive for the presence of lead-based paint. If the laboratory reports the test results in percent by weight, 0.5 percent or 5000 parts per million (ppm) shall be considered positive. When lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with § 35.24(b)(4) of this title is required.

(v) When abatement will result from rehabilitation activities planned (i.e., when all defective or chewable surfaces will be replaced, covered, or otherwise abated as described in this part), these surfaces do not have to be tested.

(vi) In lieu of the procedures set forth in the preceding clause, at its discretion the Owner may abate all interior and exterior chewable surfaces in accordance with the methods set out in § 35.24(b)(4) of this title.

* * * * *

## PART 905—INDIAN HOUSING PROGRAMS

45. The authority citation for part 905 would be revised to read as follows:

**Authority:** 25 U.S.C. 450e(b); 42 U.S.C. 1437a-1, 1437aa, 1437bb, 1437c, 1437cc, 1437ee, and 3535(d).

46. Section 905.102 would be amended by removing the definition of "Applicable surface" and revising the definitions of "Chewable surface", "Defective lead-based paint surface", "Defective paint surface", and "Elevated blood lead level or EBL", to read as follows:

**§ 905.102 Definitions.**

* * * * *

*Chewable surface.* Any intact protruding painted surface up to five feet from the floor or ground that is readily accessible to children less than six years of age (e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork).

* * * * *

*Defective lead-based paint surface.* A surface having paint that has a lead content of at least 1 $mg/cm^2$ and that is cracking, scaling, chipping, peeling, or loose.

*Defective paint surface.* A surface on which the paint is nonintact, i.e. the paint is cracking, scaling, chipping, peeling, or loose.

* * * * *

*Elevated blood lead level or EBL.* Excessive absorption of lead is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms per deciliter of whole blood) for a single test or of 15–19 µg/dl in two consecutive tests several months apart.

* * * * *

47. The last sentence in § 905.551 would be revised to read as follows:

**§ 905.551 Purpose and applicability.**

* * * This subpart is promulgated in accordance with the authorization granted in § 35.24(b)(4) of this title and supersedes, with respect to all housing to which it applies, the requirements prescribed by part 35, subpart C, of this title.

48. Section 905.553(a) would be revised to read as follows:

**§ 905.553 Testing and abatement applicable to development.**

(a) *Pre-acquisition testing.* With respect to development, all existing properties constructed before 1978 (or substantially rehabilitated before 1978) and proposed to be acquired for family projects (whether or not they will need rehabilitation) shall be tested for lead-based paint on all interior and exterior painted surfaces.

* * * * *

49. Section 905.555 would be amended by revising the first sentence in paragraph (a)(2) and the second sentence in paragraph (d), to read as follows:

**§ 905.555 Testing and abatement applicable to modernization.**

(a) * * *

(2) *Special Purpose.* The requirements for lead-based paint testing and abatement apply to the following three categories of special purpose modernization: vacant unit reduction; accessibility for handicapped (for any dwelling in such housing in which any child less than six years of age resides or is expected to reside); and cost-effective energy efficiency measures. * * *

* * * * *

(d) * * * Abatement within a comprehensive and homeownership modernization project should be prioritized in relation to the immediacy of the hazards to children less than six years of age.

* * * * *

50. Section 905.560 would be amended by revising the first sentence of paragraph (a)(6) and the heading and first sentence of paragraph (b), to read as follows:

**§ 905.560 Notification.**

(a) * * *

(6) Of the advisability and availability of blood lead level screening for children less than six years of age. * * *

(b) *Lead-based paint hazard notification for applicants and prospective purchasers.* A notice of the dangers of lead-based paint poisoning and a notice of the advisability and availability of blood lead level screening for children less than six years of age shall be provided to every applicant family at the time of application. * * *

* * * * *

51. The second sentence of § 905.565 would be revised to read as follows:

**§ 905.565 Maintenance obligation; defective paint surfaces.**

* * * If defective paint surfaces are found, covering or removal of the defective paint spots as described in § 35.24(b)(4) of this title shall be required. * * *

52. Section 905.570 would be amended by revising paragraphs (a)(1), (b), and (d)(1)(ii); the heading in paragraph (d)(1)(iii); and the second sentence in paragraph (d)(2), to read as follows:

**§ 905.570 Procedures involving EBLs.**

(a) * * *

(1) Test for lead-based paint all surfaces in the unit and all interior and exterior painted surfaces of any IHA-owned and operated child care facility, if used by the EBL child, and abate the surfaces found to contain lead-based paint. Testing of exterior and interior common areas (including nondwelling IHA facilities that are commonly used by the EBL child less than six years of age) will be done as considered necessary and appropriate by the IHA and HUD; or

* * * * *

(b) *Procedures when a nonresident child using an IHA-owned or operated child care facility has an EBL.* When a nonresident child using an IHA-owned or operated child care facility has been identified as having an EBL, the IHA shall test all interior and exterior painted surfaces of the IHA-owned or operated facility and abate the surfaces found to contain lead-based paint.

* * * * *

(d) * * *

(1) * * *

(ii) *IHA-owned or operated child care facility used by a child with an EBL.* Any interior or exterior painted surface found to contain lead-based paint shall be treated.

(iii) *Interior common areas (including nondwelling IHA facilities that are commonly used by EBL children less than six years of age) and exterior surfaces of projects in which children with EBLs reside.* * * *

(2) * * * Certain prohibited abatement methods are set forth in § 35.24(b)(4) of this title. * * *

* * * * *

## PART 491—PUBLIC HOUSING DEVELOPMENT

53. The authority citation for part 941 would be revised to read as follows:

**Authority:** 42 U.S.C. 1437b, 1437c, 1437(g), and 3535(d).

54. The first sentence in § 941.208(h) would be revised to read as follows:

**§ 941.208 Other Federal requirements.**

* * * * *

(h) *Lead-based paint.* All existing properties constructed before 1978 (or substantially rehabilitated before 1978) and proposed to be acquired for family projects (whether or not they need rehabilitation) under this part, including those proposed for Major Reconstruction of Obsolete Projects (MROP) grants, shall be tested for lead-based paint on all interior or exterior painted surfaces.

* * * * *

## PART 961—PUBLIC HOUSING DRUG ELIMINATION PROGRAM

55. The authority citation for part 961 would continue to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 11901 *et seq.*

56. Section 961.29 would be amended by:

a. Revising the second sentence of the introductory text of paragraph (e);

b. Removing paragraph (e)(2) and redesignating paragraph (e)(3) as paragraph (e)(2);

c. Revising paragraphs (e)(2)(ii) and (iii), as redesignated, to read as follows:

**§ 961.29 Other Federal requirements.**

* * * * *

(e) * * * This section is promulgated pursuant to the authority granted in § 35.24(b)(6) of this title and supersedes, with respect to all housing to which it applies, the requirements (not including definitions) prescribed by part 35, subpart C of this title.

* * * * *

(2) * * *

(ii) Other similar types of single-purpose programs that do not involve physical repairs or remodeling of painted surfaces of residential structures; or

(iii) Any non-single purpose rehabilitation that does not involve painted surfaces and that does not exceed $3,000 per unit.

* * * * *

## PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

57. The authority citation for part 965 would be revised to read as follows:

**Authority:** 42 U.S.C. 1437, 1437a, 1437d, 1437g, 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

58. The last sentence in § 965.701 would be revised to read as follows:

**§ 965.701 Purpose and applicability.**

* * * This subpart is promulgated pursuant to the authorization granted in § 35.24(b)(6) in this title and supersedes, with respect to all housing to which it applies, the requirements prescribed by part 35, subpart C of this title.

59. Section 965.702 would be amended by removing the definition of "Applicable surface" and revising the definitions of "Defective lead-based paint surface", "Defective paint surface", and "Elevated blood lead level or EBL", to read as follows:

**§ 965.702 Definitions.**

*Defective lead-based paint surface.* A surface having paint that has a lead content of at least 1 mg/cm² and is cracking, scaling, chipping, peeling, or loose.

*Defective paint surface* means the same as the term is defined in § 35.22 of this title.

*Elevated blood lead level or EBL* means the same as the term is defined in § 35.3 of this title.

* * * * *

60. Section 965.703 would be amended by:

a. Designating paragraph (a) introductory text as paragraph (a)(1) and redesignating paragraphs (1) through (6) as paragraphs (a)(1) (i) through (vi);

b. Revising newly designated paragraph (a)(1)(vi);

c. Designating the concluding paragraph in paragraph (a) as paragraph (a)(2); and

d. Revising the heading and first sentence of paragraph (b), to read as follows:

**§ 965.703 Notification.**

(a) * * *

(vi) Of the advisability and availability of blood lead level screening for children less than six years of age.

* * * * *

(b) *Lead-based paint hazard notification for applicants and prospective purchasers.* A notice of the dangers of lead-based paint poisoning and a notice of the advisability and availability of blood lead level screening for children less than six years of age shall be provided to every applicant family at the time of the application.

* * *

* * * * *

61. The second sentence of § 965.704 would be revised to read as follows:

**§ 965.704 Maintenance obligation.**

* * * Defective paint surfaces either must be tested for lead content or, if defective paint surfaces are not tested, the presence of lead-based paint shall be assumed and the surfaces abated in accordance with § 35.24(b)(4) of this title. * * *

62. Section 965.706 would be amended by:

a. Revising paragraphs (a) and (b);

b. Revising the fifth sentence in paragraph (c);

c. Revising the second sentence in paragraph (d)(1)(ii);

d. Revising the first sentence in paragraph (d)(1)(iii); and

e. Revising the second sentence in paragraph (d)(2), to read as follows:

**§ 965.706 Procedures involving EBLs.**

(a) *Procedures when a current resident child has an EBL.* When a child residing in a PHA-owned low income

family project has been identified as having an EBL, the PHA shall: (1) Test for lead-based paint all painted surfaces in the unit and at the PHA-owned or operated child care facility, if used by the EBL child, and abate the surfaces found to contain lead-based paint. Testing of exteriors and interior common areas (including nondwelling PHA facilities that are commonly used by the EBL child less than six years of age) will be done as considered necessary and appropriate by the PHA and HUD; or

(2) Assign the family to a post-1978 or previously tested unit that was found to be free of lead-based paint hazards or in which such hazards have been abated as described in this section.

(b) *Procedures when a nonresident child using a PHA-owned or operated child care facility has an EBL.* When a nonresident child using a PHA-owned or operated child care facility has been identified as having an EBL, the PHA shall test all painted surfaces of the PHA-owned or operated child care facility and abate the surfaces found to contain lead-based paint.

(c) * * * If the results equal or exceed a level of 1 mg/cm² or 0.5 percent by weight or 5,000 parts per million (ppm), the results shall be provided to the tenant or the family of the EBL child using PHA-owned or operated child care facilities. * * *

(d) * * *

(1) * * *

(ii) * * * Any painted surface found to contain lead-based paint shall be treated.

(iii) Interior common areas (including nondwelling PHA facilities that are commonly used by EBL children less than six years of age) and exterior surfaces of developments in which children with EBLs reside. * * *

(2) * * * Certain prohibited abatement methods are set forth in § 35.24(b)(4) of this title. * * *

## PART 968—PUBLIC HOUSING MODERNIZATION

63. The authority citation for part 968 would continue to read as follows:

**Authority:** 42 U.S.C. 1437d, 1437l and 3535(d).

64. Section 968.110 would be amended by revising the first sentence in paragraph (k)(1)(ii) and the second sentence of paragraph (k)(4), to read as follows:

**§ 968.110 Other program requirements.**

* * * * *

(k) * * *

(1) * * *

(ii) The requirements for lead-based paint testing and abatement apply to the following three categories of special purpose modernization: vacant unit reduction; accessibility for handicapped (and any dwelling in such housing in which any child who is less than six years of age resides or is expected to reside); and cost-effective energy efficiency measures. * * *

* * * * *

(4) * * * Abatement within a comprehensive and homeownership modernization project should be prioritized in relation to the immediacy of the hazards to children less than six years of age.

* * * * *

Dated: April 26, 1994.

**Henry G. Cisneros,**

*Secretary.*

[FR Doc. 94–11400 Filed 5–11–94; 8:45 am]

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Thursday
May 12, 1994

Part V

# Department of Education

34 CFR Parts 75 and 693

National Early Intervention Scholarship and Partnership Program; Final Rule and Notice

## DEPARTMENT OF EDUCATION

### 34 CFR Parts 75 and 693

RIN 1840–AB79

### Direct Grant Programs; National Early Intervention Scholarship and Partnership Program

**AGENCY:** Department of Education

**ACTION:** Final Regulations

**SUMMARY:** The Secretary provides final regulations to implement the new National Early Intervention Scholarship and Partnership (NEISP) Program in accordance with the provisions in chapter 2, subpart 2, part A, title IV, of the Higher Education Amendments of 1992, (1992 amendments), which amended the Higher Education Act of 1965 (HEA). These final regulations for the NEISP Program specify the role of the Secretary and the responsibilities of the States in the administration of the program. The final regulations also specify the State and student applicant eligibility requirements and the criteria by which the Secretary approves a State's application to participate in the program.

**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:** Daniel Sullivan or Priscilla Zink Mulford, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4018, ROB–3, Washington, DC 20202–5447. Telephone: (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Secretary provides final regulations to implement the National Early Intervention Scholarship and Partnership (NEISP) Program, a new program authorized under the amended HEA, (Pub. L. 102–325). The Secretary also amends a reference to the NEISP Program in 34 CFR 75.60 of the regulations for the Direct Grant Programs. The Secretary also is making technical amendments in separate final regulations to insert references to the NEISP Program into the appropriate sections of 34 CFR part 668, the Student Assistance General Provisions regulations.

The NEISP Program provides States with Federal financial incentives to establish or maintain a program with matching State-originated funds. It provides for (1) a scholarship component that, to the extent possible, guarantees the financial assistance necessary for eligible low-income students who graduate from high school to attend an institution of higher education, and (2) an early intervention component that uses Statewide resources, both government and private, to provide additional counseling, financial aid counseling, mentoring, academic support, outreach, and supportive services to preschool, elementary, middle, and secondary school students who are at risk of dropping out of school.

The NEISP Program's early intervention component supports National Education Goals 2 (High School Completion), 3 (Student Achievement and Citizenship), and 4 (Science and Mathematics). The NEISP Program's scholarship component also supports National Education Goal 5 (Adult Literacy and Lifelong Learning).

On March 8, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (59 FR 10926–10937). The major issues addressed by the proposed regulations are discussed in the preamble to the NPRM. Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations. One of the technical revisions is that the Secretary is including in § 693.40(d) the requirement under section 404D(d)(2) of the HEA that, to be eligible for a NEISP Program scholarship, a student must have received a high school diploma or a certificate of high school equivalence on or after January 1, 1993.

### Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, six 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.

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.

### PART 693—NATIONAL EARLY INTERVENTION SCHOLARSHIP AND PARTNERSHIP PROGRAM

*Comment:* One commenter applauded the Department's efforts to date, and another commenter noted the many good aspects of the proposed regulations, including their overall clarity and sensitivity to State issues.

*Discussion:* The Secretary agrees with the commenters and thanks them for their support.

*Changes:* None.

*Section 693.10 What must a State do to obtain a grant under this program?*

*Comment:* One commenter recommended § 693.10(b)(1) be modified to have the State agency that administers the State Student Incentive Grant (SSIG) Program be the only designated agency for administering the NEISP Program. The commenter believed that, since the SSIG agency was already involved with the administration of grant and loan programs as well as early intervention programs, the agency would be able to ensure that the Statewide efforts would be well-coordinated.

*Discussion:* While the circumstances described by the commenter may be true in some States, the States vary with respect to how they distribute various responsibilities among State agencies. The Secretary, therefore, continues to believe that requiring the Governor of a State to designate the agency responsible for the NEISP Program provides necessary flexibility for the States. In addition, it ensures that program funds are allocated to an appropriate and responsible State agency and is consistent with other Federal and State-administered student financial aid programs, such as the SSIG Program.

*Changes:* None.

*Section 693.10 What must a State do to obtain a grant under this program? And Section 693.13 What information must a State provide in its annual application to receive a grant under the NEISP Program?*

*Comment:* One commenter believed that a State would have to identify private funds expended within the State under § 693.10(b)(5)(i) and § 693.13(a)(4) to ensure that the funds provided under the NEISP Program will supplement and not supplant funds expended for State and local early intervention programs and State need- and non-need-based student financial grant assistance programs. The commenter believed that it would be sufficient to document the amount of State funds expended on need-based student financial aid alone or the amount expended for State-

matching funds for the NEISP Program. One commenter was also concerned that, in the Supplementary Information section of the preamble to the NPRM (59 FR 10927), the discussion of this requirement can be interpreted to mean that a State's matching expenditures under the NEISP Program should be an amount that exceeds, as opposed to being an amount that is in addition to, the amount of funds the State previously expended. Another commenter questioned whether State funds appropriated to postsecondary institutions and used for student assistance in the State could be used as matching funds under § 693.10(b)(5).

*Discussion:* The Secretary notes that the texts of § 693.10(b)(5)(i) and § 693.13(a)(4) refer only to "State and local," *i.e.*, public, expenditures as does the applicable statutory provision (section 404B(b)(3) of the HEA). Under § 693.10(b)(5)(i) and § 693.13(a)(4), a State's matching funds under the NEISP Program represent expenditures that are in addition to the level of funds previously expended instead of a matching amount that exceeds the previous level of expenditures, and these funds may include State funds appropriated to postsecondary educational institutions and used for student grant aid including tuition waivers at public institutions.

*Changes:* None.

*Section 693.11 What requirements must be met by the State under the program's early intervention component?*

*Comment:* Two commenters requested clarification concerning whether under § 693.11(a) the States were required to provide all of the early intervention services listed or whether the activities cited are examples that States may choose to incorporate into their NEISP Program.

*Discussion:* Under section 404C(b)(3) of the NEISP Program statute, the early intervention activities listed are given as examples of permissible activities. Section 693.11(a) therefore provides States with examples of acceptable early intervention activities.

*Changes:* The Secretary is amending § 693.11(a) to clarify that the activities listed in § 693.11(a) are examples of appropriate activities.

*Section 693.12 What requirements must be met by the State under the program's scholarship component?*

*Comment:* One commenter recommended modifying § 693.12(c) (1) and (2) to include an option for a State to award scholarships based on the State's definition and prioritization of low-income students as an alternative to the expected family contribution (EFC) as calculated under part F of title IV of the HEA. Another commenter recommended the Secretary adopt as a standard for defining low-income students the standard used for the Federal TRIO programs.

*Discussion:* The Secretary agrees with the commenter that there are additional standards for identifying low-income students and agrees that a State should be able to use the State's criteria for identifying low-income students in prioritizing eligible students as an alternative to using the EFC. However, the Secretary believes that using the EFC represents a proven methodology for identifying low-income students and that it is in the Federal interest for any departures from using the EFC to be subject to approval by the Secretary.

*Changes:* The Secretary is amending § 693.12(c) (1) and (2) to provide a State the option of developing and using its own criteria for identifying a low-income student if approved by the Secretary.

*Comment:* One commenter recommended changing the wording under § 693.12(f) to clarify that the assumption should not be made that NEISP recipients must receive other student financial assistance in order to be eligible to receive an NEISP Program scholarship.

*Discussion:* The Secretary agrees that an NEISP recipient need not be receiving other student financial assistance in order to be eligible to receive an NEISP Program scholarship.

*Changes:* The Secretary is amending § 693.12(f) to clarify that this provision applies to a NEISP Program scholarship recipient who also is eligible for and receiving other student assistance.

*Section 693.20 What criteria does the Secretary use to determine whether a State's proposed early intervention component meets the requirements under this program as a formula grant program?*

*Comment:* One commenter believed that the extensive data requested under § 693.20(e)(2) should be collected for the targeted area in which the State plans to operate its program rather than providing data covering the entire State.

*Discussion:* The Secretary believes that, in order to be able to target the areas in which the NEISP Program will be most beneficial, it is necessary for States to collect and analyze Statewide data as required under § 693.20(e)(2). The Secretary notes that this requirement is not intended to be overly prescriptive and that a State is expected to have sufficient information available to make a reasonable determination of Statewide needs for early intervention activities.

*Changes:* None.

*Section 693.22 How does the Secretary allot funds to States on a competitive basis?*

*Comment:* One commenter believed that the "tie-breaker" to be used in the selection of similarly rated applications under § 693.22(c)(4) should not give preference to Statewide programs. Due to the limited Federal funding, the commenter proposed that priority be given to programs that will serve a targeted population well, rather than serving students Statewide but in a less effective way.

*Discussion:* The Secretary believes that the emphasis placed on selecting applicants with Statewide, coordinated programs is appropriate. Since this provision is a "tie-breaker" for otherwise similarly rated applications, the Secretary does not believe that the State providing services to more areas will be less effective.

*Changes:* None.

*Comment:* One commenter believed that early intervention programs should be provided as early in a student's schooling as necessary to be effective and, therefore, believed that there should be a stronger preference for long-term early intervention programs in the selection criteria.

*Discussion:* During the development of the NPRM, the Secretary gave careful consideration to the need to emphasize long-term mentoring and advising and believes that adequate emphasis on long-term mentoring and advising has been incorporated into § 693.22 after taking into consideration the overall objectives of the early intervention program.

*Changes:* None.

*Section 693.40 What are the requirements for a student to receive a scholarship under this program?*

*Comment:* One commenter recommended adding to the scholarship requirements under § 693.40 that a student (1) must meet or exceed the academic milestones listed in the student agreement and (2) be determined at the time of application to be a low-income student.

*Discussion:* If a State, as part of its early intervention program under § 693.11, requires a student to sign an agreement that includes academic milestones, the Secretary agrees that the State should be able to require that a student meet these milestones as one of the student eligibility requirements for a scholarship. However, if a student has participated in the early intervention program, the student should be eligible

for scholarship consideration since income level is not necessarily the basis for determining scholarship eligibility in the NEISP Program under section 404D(d) of the HEA.

*Changes:* The Secretary is amending § 693.40 to provide that if a State includes academic milestones in a written agreement signed by a student under § 693.11(a)(3), it may include meeting these milestones as a scholarship eligibility requirement.

*Comment:* One commenter believed that under proposed § 693.40(e) (1) and (2) the Secretary should not limit scholarship eligibility to those students who participated in the NEISP Program or a Federal Upward Bound Program. The commenter believed that accepting early intervention programs comparable to those described in section 404C of the program statute as meeting the requirement would allow States the flexibility to identify additional students as eligible to receive scholarships.

*Discussion:* The Secretary agrees with the commenter and further notes that section 404D(d)(4) of the HEA clearly provides for such an option since it does not require that the early intervention program establishing student eligibility for a scholarship be funded under the NEISP Program as is required in the case of the Federal Upward Bound Program in section 404D(e)(2) of the HEA.

*Changes:* The Secretary is amending § 693.40 to add § 693.40(g)(3) which provides the option to a State to consider other comparable early intervention programs as also meeting this student eligibility requirement.

*Section 693.52 What requirements must a State meet in preparing and submitting an evaluation report?*

*Comment:* One commenter believed that, due to the comprehensive nature of the biennial evaluation report under § 693.50(b), it would not be reasonable to estimate one hour to complete the report. In the commenter's opinion, the report could not be designed and implemented in less than two staff months.

*Discussion:* The Secretary agrees and is amending the burden hour estimate to reflect two staff months. The Secretary encourages each State to work with the Departmental program staff to streamline its evaluation study while still providing relevant policy information.

*Changes:* None.

*Comment:* One commenter recommended that under § 693.52(b) the Secretary should not require that a State's biennial evaluation report include all the listed items and, instead, should require only that a State address the listed items to the extent possible.

*Discussion:* The Secretary believes that, in order to have a comprehensive evaluation of the early intervention program, States must include at a minimum the types of information listed in § 693.53(b). The Secretary recognizes a State's evaluation report may place varying emphasis on the different items listed.

*Changes:* None.

**Executive Order 12866**

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the final regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

**Assessment of Educational Impact**

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require 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 75*

Education Department, Grant programs—education, Grant administration.

*34 CFR Part 693*

Grant programs—education, Postsecondary education, State administered—education, Student Aid—education, Reporting and recordkeeping requirements.

Dated: May 2, 1994.

**Richard W. Riley,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number 84.272, National Early Intervention Scholarship and Partnership Program)

The Secretary amends title 34 of the Code of Federal Regulations by amending part 75 and by adding a new part 693 as follows:

## PART 75—DIRECT GRANT PROGRAMS

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

**Authority:** 20 U.S.C. 1221e–3(a)(1) and 3474, unless otherwise noted.

**§ 75.60 [Amended]**

2. In § 75.60, paragraph (b)(1) is amended by adding the term "National Early Intervention Scholarship and Partnership (NEISP) Program (20 U.S.C. 1070a–21, *et seq.*)," after "(20 U.S.C. 1070a, *et seq.*),".

3. A new part 693 is added to read as follows:

## PART 693—NATIONAL EARLY INTERVENTION SCHOLARSHIP AND PARTNERSHIP PROGRAM

**Subpart A—General**

Sec.

693.1 What is the National Early Intervention Scholarship and Partnership Program?
693.2 Who is eligible to participate under this program?
693.3 What kinds of activities may be assisted under this program?
693.4 What regulations apply to this program?
693.5 What definitions apply to this program?

**Subpart B—How Does a State Obtain a Grant?**

693.10 What must a State do to obtain a grant under this program?
693.11 What requirements must be met by the State under the program's early intervention component?
693.12 What requirements must be met by the State under the program's scholarship component?
693.13 What information must a State provide in its annual application to receive a grant under the NEISP Program?

**Subpart C—How Does the Secretary Make a Grant to a State?**

693.20 What criteria does the Secretary use to determine whether a State's proposed early intervention component meets the requirements under this program as a formula grant program?
693.21 How does the Secretary allot funds to a State?
693.22 How does the Secretary allot funds to States on a competitive basis?

**Subpart D—How Does a Student Participate in the Early Intervention Component under the NEISP Program?**

693.30 What are the requirements for a student to be a participant in the early intervention component of this program?

**Subpart E—How Does a State Award a Scholarship to a Student?**

693.40 What are the requirements for a student to receive a scholarship under this program?

**Subpart F—What Postaward Conditions Must Be Met by a State?**

693.50 What are allowable costs attributable to administration of the early intervention component?

693.51 What are nonallowable costs that may not be charged to administration of the early intervention component?

693.52 What requirements must a State meet in preparing and submitting an evaluation report?

**Authority:** 20 U.S.C. 1070a–21 through 1070a–27, unless otherwise noted.

## Subpart A—General

### § 693.1 What is the National Early Intervention Scholarship and Partnership Program?

Under the National Early Intervention Scholarship and Partnership (NEISP) Program, the Secretary provides grants to States to—

(a) Encourage the States to provide or maintain a guaranteed amount of financial assistance necessary to permit eligible low-income students who obtain high school diplomas or the equivalent to attend an institution of higher education; and

(b) Provide financial incentives to enable States, in cooperation with local educational agencies, institutions of higher education, community organizations, and businesses, to provide—

(1) Additional counseling, mentoring, academic support, outreach, and supportive services to preschool, elementary, middle, and secondary school students who are at risk of dropping out of school; and

(2) Information to students and their parents about the advantages of obtaining a postsecondary education and their college financing options.

(Authority: 20 U.S.C. 1070a–21)

### § 693.2 Who is eligible to participate under this program?

(a) States that meet the requirements of §§ 693.10, 693.11, 693.12, 693.13, 693.20 (formula grant program), 693.21, and 693.22 (discretionary grant program) are eligible to receive grants under this program.

(b) Under the early intervention component, students who meet the requirements of § 693.30 are eligible to participate in the State-administered programs under this part.

(c) Under the scholarship component, students who meet the requirements of § 693.40 are eligible to receive scholarships from States under this program.

(Authority: 20 U.S.C. 1070a–22 to 1070a–24)

### § 693.3 What kinds of activities may be assisted under this program?

Under the NEISP Program, a State may use its allotment under § 693.21 or § 693.22 to—

(a) Provide a variety of early intervention services such as comprehensive mentoring, counseling, outreach, and other supportive services to eligible students enrolled in preschool through grade 12, including prefreshman summer programs; and

(b) Award scholarships to eligible low-income students for attendance at any institution of higher education participating in the Federal Pell Grant Program.

(Authority: 20 U.S.C. 1070a–22 to 1070a–24)

### § 693.4 What regulations apply to this program?

The following regulations apply to the NEISP Program:

(a) The regulations in this part 693.

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) If the amount appropriated for the program is less than $50,000,000, 34 CFR part 75 (Direct Grant Programs).

(2) If the amount appropriated for the program is $50,000,000 or more, 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(c) Institutional Eligibility Under the Higher Education Act of 1965, as Amended in 34 CFR part 600.

(d) The Student Assistance General Provisions in 34 CFR part 668.

(Authority: 20 U.S.C. 1070a–21 through 1070a–27)

### § 693.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget Period
Department
Elementary school
Fiscal Year
Grant
Grantee
Local educational agency (LEA)
Private
Project
Project Period
EDGAR
Secretary
State

(b) *Definitions in subpart A of the Institutional Eligibility regulations, 34 CFR part 600.* The following terms used in this part are defined in 34 CFR part 600:

Award year
Institution of higher education
Recognized equivalent of a high school diploma

(c) *Definition in the Student Assistance General Provisions regulations, 34 CFR part 668.* The following term used in this part is defined in 34 CFR part 668:

Academic year

(d) *Other definitions that apply to this part.* The following definitions also apply to this part:

*At-risk student* means a preschool through grade 12 student whom a State identifies as being a potential dropout from secondary or postsecondary school.

*Disadvantaged student* means a student who is either (1) a low-income individual who is also a first-generation college student; or (2) a student with disabilities.

*Early intervention program* means a program that provides education-related activities such as counseling, mentoring, academic support, outreach, and other supportive services, including providing information on opportunities for postsecondary student financial aid, to students enrolled in preschool through grade 12.

*First-generation college student* means—

(1) A student neither of whose parents completed a baccalaureate degree; or

(2) A student who regularly resides with and receives support from only one parent who did not complete a baccalaureate degree.

*HEA* means the Higher Education Act of 1965, as amended.

*Limited proficiency in English* with reference to an individual, means an individual—

(1)(i) Who was not born in the United States;

(ii) Whose native language is other than English;

(iii) Who comes from an environment in which a language other than English is most relied on for communication; or

(iv) Who is an American Indian or Alaskan Native student and comes from an environment in which a language other than English has had a significant impact on his or her level of proficiency in English; and

(2) Who, as a result of the circumstances described in paragraph (1) of this definition, is unable to learn successfully in classrooms in which instruction is in English because he or she cannot adequately understand, speak, read, or write English.

*Low-income individual* means an individual whose taxable family income for the year before the year in which he or she is scheduled to receive assistance under this part did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the U.S. Bureau of the Census or a resident who is considered to be a low-income resident by the State in which he or she lives.

*Postsecondary education* means a program of education beyond the secondary school level.

*Priority student* means any student within a State in preschool through grade 12 who is eligible—

(1) To be counted as attending an institution receiving Federal funds under chapter 1 of the Elementary and Secondary Education Act of 1965;

(2) To receive free or reduced-price meals under the National School Lunch Act; or

(3) To receive assistance under the Aid to Families with Dependent Children Act.

*Scholarship* means an award made to an individual under this part.

*Secondary school*, as defined under section 1471(21) of the Elementary and Secondary Education Act of 1965, means a day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

*State educational agency (SEA)*, as defined under section 1471(23) of the Elementary and Secondary Education Act of 1965, means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

*Student with a disability*, as defined in section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)), means a student with a physical or mental impairment that substantially limits one or more of the major life activities of the student and thus requires special education and related services.

(Authority: 20 U.S.C. 1070a–21 through 1070a–27)

## Subpart B—How Does a State Obtain a Grant?

### § 693.10 What must a State do to obtain a grant under this program?

(a) To obtain a grant, a State shall submit to the Secretary for review and approval an initial plan and annual application for carrying out the activities under the NEISP Program.

(b) The Secretary approves a State plan that—

(1) By direction of the State's Governor, designates as the State agency for administering the program under this part, either—

(i) The State agency that administers the State Student Incentive Grant Program under title IV, part A, subpart 4 of the HEA;

(ii) The State educational agency; or

(iii) Another appropriate State agency approved by the Secretary;

(2) Provides that the State program under this part shall be known as the "[insert name of the State] National Early Intervention Scholarship and Partnership Program" which may be referred to as the "[State name] NEISP Program,";

(3) Demonstrates to the satisfaction of the Secretary that the State will provide for the conduct under the State's NEISP Program of both—

(i) An early intervention component meeting the requirements under § 693.11 as evaluated by the Secretary under the criteria in § 693.20 (formula grant program) and § 693.22 (discretionary grant program); and

(ii) A scholarship component meeting the requirements under § 693.12;

(4) Describes the administrative plan for implementing the State's NEISP Program, including those functions that will be carried out by public and private organizations; and

(5) Provides assurances that the State will—

(i) Ensure that the funds provided under this part supplement and do not supplant funds expended for State and local early intervention programs and State need- and non-need-based student financial grant assistance programs during the fiscal year 2 years prior to the fiscal year in which the State first received funds under this program;

(ii) Expend, from State, local, or private funds or other acceptable funding methods, not less than one-half of the cost of the program under this part;

(iii) Specify the methods by which such share of the costs will be paid;

(iv) Not use less than 25 percent or more than 50 percent of its total NEISP Program funds for the early intervention component, unless the State can satisfactorily demonstrate in its plan submitted to the Secretary that the State has additional means to provide scholarships to students, in accordance with the waiver provision in § 693.13(b);

(v) Expend all of the NEISP Program funds under the scholarship component only to provide scholarships to eligible students; and

(vi) Conduct and submit to the Secretary a biennial evaluation of the early intervention program assisted under this part in accordance with the requirements in § 693.52.

(c) With the exception of its initial year of participation when each State also must submit the application required under § 693.13 at the same time as the State plan under paragraph (b) of this section, the State shall submit annually an application to participate in the NEISP Program in accordance with the requirements in § 693.13.

(Authority: 20 U.S.C. 1070a–22 and 1070a–26)

(Approved by the Office of Management and Budget under control number 1840–0677)

### § 693.11 What requirements must be met by the State under the program's early intervention component?

(a) A State shall demonstrate to the Secretary in its plan submitted according to § 693.10(b) how its early intervention component provides services designed to meet the unique needs of the State's eligible students enrolled in preschool through grade 12. These services may include, but are not limited to, the following kinds of activities:

(1) A continuing system of mentoring and advising that—

(i) Is coordinated with the Federal and State community service initiatives; and

(ii) Includes such support services as—

(A) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success in education beyond secondary school;

(B) After-school and summer tutoring;

(C) Assistance in obtaining summer jobs;

(D) Career mentoring;

(E) Academic counseling and assistance in secondary school course selection;

(F) Financial aid counseling that provides information on the opportunities for postsecondary student financial assistance;

(G) Instruction designed to prepare students participating in the program for careers in which students from disadvantaged backgrounds are particularly underrepresented, as determined by the State; and

(H) Programs and activities specifically designed for students with limited proficiency in English.

(2) Activities designed to ensure high school completion and college enrollment of at-risk students by providing, in addition to the activities specified under paragraph (a) of this section, the following:

(i) Assessment to identify at-risk students.

(ii) Skills assessment.

(iii) Activities to encourage volunteer and parent involvement in the activities planned under this section.

(iv) Programs that involve the participation of former or current scholarship recipients as mentors or peer counselors.

(v) Personal and family counseling, including home visits.

(vi) Staff development to provide the services under this part.

(3) Activities that encourage students to complete secondary school and pursue postsecondary education by requiring each student to enter into an agreement under which the State will provide postsecondary tuition assistance to a student, during a period of time to be established by the State, if the student agrees to achieve certain academic milestones, such as—

(i) Completing the prescribed set of secondary courses required for an individual to be eligible for a Presidential Access Scholarship under chapter 3, subpart 2, part A, title IV of the HEA; and

(ii) Maintaining satisfactory academic progress according to the requirements in 34 CFR 668.7 in a postsecondary education program.

(4) Prefreshman summer programs that—

(i) Are at institutions of higher education that also have academic support services for disadvantaged students through projects regulated by 34 CFR part 646, Student Support Services, or through comparable projects as certified by the SEA or other appropriate State agency funded by the State or other sources;

(ii) Assure the participation of students who qualify as disadvantaged students or who are eligible for comparable programs funded by the State and certified under paragraph (a)(4)(i) of this section;

(iii) Provide summer services, including—

(A) Instruction in remedial, developmental, or supportive courses;

(B) Counseling, tutoring, or orientation; and

(C) Grant aid to students to cover prefreshman summer costs for books, supplies, living costs, and personal expenses; and

(iv) Assure that participating students will receive financial aid during each academic year they are enrolled at the participating institution after the prefreshman summer.

(5) Other activities as the State proposes and the Secretary approves as supportive of the purposes of the NEISP Program.

(b) The State shall indicate to the Secretary which of the following permissible service providers will conduct the early intervention component activities:

(1) Community-based organizations.

(2) Elementary or secondary schools.

(3) Institutions of higher education.

(4) Public and private agencies.

(5) Nonprofit and philanthropic organizations.

(6) Businesses.

(7) Institutions and agencies sponsoring programs authorized under the State Student Incentive Grant Program, subpart 4, part A, title IV of the HEA.

(8) Institutions and agencies sponsoring programs authorized under the Federal TRIO Programs, chapter 1, subpart 2, part A, title IV of the HEA.

(9) Religious organizations.

(10) Other organizations proposed by the State that are subsequently deemed appropriate by the Secretary.

(c) The State shall describe how the service providers listed in paragraph (b) of this section will administer the early intervention component activities.

(d) The State shall propose for review by and approval of the Secretary the methods by which it will target its early intervention services on priority students.

(Authority: 20 U.S.C. 1070a–23)

(Approved by the Office of Management and Budget under control number 1840–0677)

**§ 693.12 What requirements must be met by the State under the program's scholarship component?**

A State shall provide for a scholarship component that—

(a) As described in the State's plan approved by the Secretary under 693.10, is closely coordinated with other Federal, State, local, and private scholarship programs within the State;

(b) Awards scholarships only to students who meet the eligibility requirements in 693.40;

(c) Places a priority on awarding scholarships to students who will receive Federal Pell Grant awards for the academic year in which the award is being made under this part by—

(1) Selecting those eligible students who will receive Federal Pell Grants and who—

(i) Have the lowest expected family contributions as calculated under part F of title IV of the HEA; or

(ii) Are the neediest students as prioritized under the State's criteria for low-income students if the State's criteria are approved by the Secretary; and

(2) If the State has NEISP Program scholarship funds remaining after making NEISP awards to all of the eligible Federal Pell Grant recipients, awarding the remaining NEISP Program scholarship funds to those eligible students who will not receive Federal Pell Grant awards and who—

(i) Have the lowest expected family contributions; or

(ii) Are the neediest students as prioritized under the State's criteria for low-income students if the State's criteria are approved by the Secretary;

(d) Awards continuation scholarships in successive award years to each student who received an initial scholarship and who continues to meet the student eligibility requirements under § 693.40;

(e) Establishes the maximum amount of a scholarship that each eligible student is to receive and ensures that no scholarship is less than the lesser of—

(1) 75 percent of the average cost of attendance, as determined under section 472, part F of the HEA, for an in-State student in a 4-year program of instruction at public institutions of higher education in the State; or

(2) The maximum Federal Pell Grant award funded for that fiscal year;

(f) Ensures that, for each recipient of a scholarship under this part who is eligible for and receiving other postsecondary student financial assistance, a Federal Pell Grant be awarded first, other public and private grant and scholarship assistance be awarded second, a scholarship under this part be awarded third, and then other financial assistance be awarded;

(g) Ensures that no scholarship awarded under this part, combined with other title IV, HEA financial assistance and any other grant or scholarship assistance exceeds the student's total cost of attendance, as determined under section 472, part F of the HEA;

(h) Expends all NEISP Program funds under the scholarship component, as determined according to § 693.10(b)(5)(iv), on scholarships to students;

(i) Notifies recipients of scholarships under this part that they are to be known as "[insert name of the State] National Partnership Scholars"; and

(j) Describes to the satisfaction of the Secretary the procedures the State will use to award scholarships to eligible students in the event that the State receives reduced or no Federal funding under the NEISP Program during any fiscal year.

(Authority: 20 U.S.C. 1070a–24)

(Approved by the Office of Management and Budget under control number 1840–0677)

**§ 693.13 What information must a State provide in its annual application to receive a grant under the NEISP Program?**

(a) Each State desiring to participate in the program under this part shall submit an application annually through the State agency designated to administer the NEISP Program under § 693.10(b) that contains information required by the Secretary to demonstrate that the State meets its fund-matching assurances provided for in its plan, including—

(1) The total amount of non-Federal funds, listed by each source, that the State expects to expend during the next award year that will total one-half or more of the cost of the NEISP Program such as—

(i) The amount of the scholarships paid to students from State, local, or private funds under the NEISP Program;

(ii) The amount of tuition, fees, room, or board waived or reduced for recipients of grants under the NEISP Program; and

(iii) The amount expended on documented, targeted, long-term mentoring and counseling provided by volunteers or paid staff of nonschool organizations, including businesses, religious organizations, community groups, postsecondary educational institutions, nonprofit or philanthropic organizations, and other organizations proposed by the State and approved by the Secretary;

(2) A description of the specific methods by which the State's share of the costs under the NEISP Program will be paid;

(3) The percentage of the State's Federal allotment that it plans to expend for the early intervention component of its NEISP Program and, if the State requests a waiver from the Secretary under paragraph (b) of this section, the State shall submit supporting documentation, including the amount and source of its additional assistance;

(4) The documentation that assures the Secretary that the amount of funds provided in paragraph (a)(1) of this section will supplement and not supplant funds expended for State and local early intervention programs and State need- and non-need-based student financial grant and scholarship assistance expended during the fiscal year 2 years prior to the fiscal year in which the State first received funds under this program; and

(5)(i) Proposed changes to the initial State plan that was approved by the Secretary, according to § 693.10(b), for the review and approval of the Secretary; or

(ii) If no changes to its initial plan are proposed, an assurance that the State will continue to operate its NEISP Program according to the existing State plan approved by the Secretary under § 693.10(b).

(b) The Secretary waives the requirement in § 693.10(b)(5)(iv) and allows the State to exceed the 50 percent limit on expenditure of its Federal allotment for the early intervention component if the State can demonstrate to the satisfaction of the Secretary that the State has another adequate means to provide scholarships to eligible students under the NEISP Program.

(Authority: 20 U.S.C. 1070a–22)

(Approved by the Office of Management and Budget under control number 1840–0677)

## Subpart C—How Does the Secretary Make a Grant to a State?

**§ 693.20 What criteria does the Secretary use to determine whether a State's proposed early intervention component meets the requirements under this program as a formula grant program?**

The Secretary uses the following criteria to determine whether a State's early intervention component proposed under § 693.10(b)(3)(i) meets the requirements of § 693.11:

(a) *Plan of operation.* (1) The Secretary reviews each State's plan for information that shows the quality of the operating plan of the early intervention component.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the component;

(ii) An effective plan of management that ensures proper and efficient administration of the component;

(iii) A clear description of how the State's proposed early intervention component relates to the purpose of the program;

(iv) The way that the State plans to use its resources and personnel to achieve the objectives of the component;

(v) A clear description of the methods that the State will use to target early intervention services to priority students. The State must base the proposed methods on the latest available State data. The State may target services on priority students by——

(A) Elementary and secondary schools with high concentrations of priority students within the State;

(B) Appropriate identifiable geographic areas such as counties or school districts (including both public and private schools) with high concentrations of priority students within the State; or

(C) Other methods proposed by a State and approved by the Secretary;

(vi) A clear description of the comprehensive long-term mentoring and advising that the State plans to provide to eligible students; and

(vii) The extent to which other State grant funds are available to eligible NEISP students for postsecondary educational scholarships if the Federal scholarship component of the program is unfunded or reduced.

(b) *Quality of key personnel.* (1) The Secretary reviews each State plan for information that shows the qualifications of the key personnel the State plans to use to administer its early intervention component.

(2) The Secretary looks for information that shows—

(i) The qualifications of the director of the early intervention component;

(ii) The qualifications of each of the other key personnel to be used in the component; and

(iii) The amount of time each person referred to in paragraphs (b)(2)(i) and (ii) of this section will spend working in the activities under this component.

(3) To determine the qualifications of the key personnel, the Secretary considers evidence of past experience and training in fields related to the objectives of the early intervention component as well as other information the State provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each State's plan for information that shows that the early intervention component has an adequate budget and is cost-effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the early intervention component activities; and

(ii) Costs are reasonable in relation to the activities under the component.

(3) The Secretary reviews the State's budget for the early intervention

component to verify that not more than 50 percent of the State's allotment is projected to be spent on its early intervention component unless the State requests and is granted a waiver under § 693.13(b).

(d) *Adequacy of resources.* (1) The Secretary reviews each State's plan for information that shows that the State plans to devote adequate resources to its early intervention component.

(2) The Secretary looks for information that shows—

(i) The facilities that the State plans to use are adequate; and

(ii) The equipment and supplies that the State plans to use are adequate.

(e) *Need for the program.* (1) The Secretary reviews each State's plan for information that shows the need for the early intervention component and the methods for targeting its early intervention component activities on eligible students.

(2) The Secretary looks for information that shows—

(i) The number and percentage of students who are eligible to be served by the State's early intervention component, including students who are priority students and students who are disadvantaged;

(ii) The extent to which the State documents its need for the services and activities that the State proposes to provide under its early intervention component;

(iii) The ratio of secondary school counselors to all students and to early intervention eligible students, if the data is available;

(iv) For each of the 3 preceding years, if available, the estimated dropout rates for the State, including the dropout rate for all students and for students eligible for the early intervention component as proposed by the State; and

(v) For each of the 3 preceding years, if available, the estimated number and percentage of students in the State who enrolled in postsecondary institutions for—

(A) All students who were eligible to enroll; and

(B) Students who would have been eligible for the State's proposed early intervention component.

(f) *Likelihood for success.* (1) The Secretary reviews each State plan for information that shows the likelihood of success of its early intervention component.

(2) The Secretary looks for information that shows the extent to which the State's early intervention component is likely to—

(i) Enable the participants to develop academic skills, such as reading, writing, mathematics, and study skills, that are essential for postsecondary education;

(ii) Improve academic skills and motivate the participants to complete a secondary educational program and subsequently gain admission to postsecondary education institutions; and

(iii) Increase the secondary and postsecondary readmission rates of those participants who have not completed secondary or postsecondary education.

(3) The Secretary also looks for information that shows how comprehensively the State's proposed early intervention component—

(i) Identifies and selects eligible participants;

(ii) Diagnoses each participant's need for academic support in order to successfully pursue a program of postsecondary education;

(iii) Develops a plan of program support to improve each participant's skills; and

(iv) Provides the services and activities listed in § 693.11(a) that relate to the goals of the NEISP Program.

(g) *Public and private support.* (1) The Secretary reviews each State's plan for information that shows how the State will put in place a partnership of public and private organizations within the State to administer the early intervention component of the program under this part.

(2) The Secretary looks for information that shows—

(i) The extent to which the State has received and has included in its plan written commitments by organizations that will provide early intervention services under § 693.11(b); and

(ii) The existence of a plan to inform the residents of the State of the NEISP Program services and eligibility criteria.

(h) *Coordination with other early intervention activities.* (1) The Secretary reviews each State's plan for information that shows how the State will coordinate its early intervention component with existing early intervention activities within the State.

(2) The Secretary looks for information that shows—

(i) The extent to which the State has investigated early intervention program activity and included in its plan the number and types of currently operating public and private early intervention programs within the State;

(ii) The extent to which the State's proposed plan will supplement existing Federal, State, local, and private early intervention programs within the State, such as the Federal Head Start, Chapter 1 Program in Local Educational Agencies, and TRIO programs; and

(iii) The written plans and commitments submitted to the State by other early intervention program providers that the State plans to use as either early intervention service providers under § 693.11(b) or as support organizations for those service providers.

(i) *Evaluation report plan.* (1) The Secretary reviews each State's plan to evaluate the quality of the proposed biennial evaluation report of the early intervention component of the program.

(2) The Secretary looks for information that shows—

(i) The quality of the design of the component;

(ii) The extent that the methods of evaluation are appropriate for the program and the extent they are objective and produce useful data that are quantifiable;

(iii) The State's commitment to design an evaluation report to measure objectively performance against, at a minimum, the following standards:

(A) The effectiveness of the State's program in meeting the purposes of the program.

(B) The effect of the program on the student recipients being served by the program.

(C) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program.

(D) The cost-effectiveness of the program.

(E) The extent to which the student recipients comply with the requirements of the program; and

(iv) Any other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs.

(Authority: 20 U.S.C. 1070a–23)

(Approved by the Office of Management and Budget under control number 1840–0677)

**§ 693.21 How does the Secretary allot funds to a State?**

(a) If the amount appropriated for the program under this part for a fiscal year is $50,000,000 or more, the Secretary allots to each State that has submitted an approved plan under § 693.10 and an approved application under § 693.13, an amount that bears the same ratio to the total appropriation as the amount allocated to the LEAs in the State under 34 CFR part 200 bears to the total amount allocated to all LEAs in all States using the most recently available data.

(b) If the amount appropriated for the program under this part for a fiscal year

is less than $50,000,000, the Secretary allots funds to each State in accordance with the provisions in § 693.22.

(c) From the allotment calculated in this section, the Secretary disburses to a State an amount equal to not more than one-half of the total amount of funds from all sources the State projects that it will expend on its NEISP Program for a fiscal year as reported on its annual application under § 693.13(a).

(d) A State may expend from its Federal allotment no more than one-half of the total amount of funds the State expends under its NEISP Program for that fiscal year.

(Authority: 20 U.S.C. 1070a–25)

**§ 693.22 How does the Secretary allot funds to States on a competitive basis?**

(a) The Secretary allots funds to States under this program on a competitive basis if the program appropriation for a fiscal year is less than $50,000,000.

(b) The Secretary conducts a grant competition for the States by means of a notice published in the **Federal Register** that contains the information needed by a State to apply for funds under a discretionary NEISP Program competition. The Secretary evaluates a State's application for funds under a discretionary NEISP Program competition on the basis of the extent to which the State fulfills the requirements listed in §§ 693.10, 693.11, 693.12, and 693.13, and the selection criteria in this section.

(c)(1) The Secretary uses the selection criteria in paragraph (d) of this section to evaluate applications for grants under this program.

(2) The maximum score, not including prior grant recipient priority points in paragraph (d)(12) of this section, for all of these criteria is 140 points.

(3) The maximum score for each criterion is indicated in parentheses in paragraph (d) of this section.

(4) In the final selection of similarly rated applications, the Secretary considers the extent to which a State provides—

(i) A comprehensive State-wide early intervention and postsecondary educational scholarship program;

(ii) Eligible students with comprehensive long-term mentoring and advising; and

(iii) Eligible students with State grant funds for their postsecondary education as compared to the other States who apply for grant funds.

(d)(1) *Need for the program.* (20 points) The Secretary reviews each State's application for information that shows the need for the State-wide early intervention component and the methods for targeting its early intervention component activities on eligible students including consideration of—

(i) The number and percentage of students who are eligible to be served by the State's early intervention component, including students who are priority students and students who are disadvantaged;

(ii) The extent to which the State documents its need for the services and activities that the State proposes to provide under its early intervention component;

(iii) The ratio of secondary school counselors to all students and to early intervention eligible students, if the data is available;

(iv) For each of the three preceding years, if available, the estimated dropout rates for the State, including the dropout rate for all students and for students eligible for the early intervention component as proposed by the State; and

(v) For each of the three preceding years, if available, the estimated number and percentage of students in the State who enrolled in postsecondary institutions for—

(A) All students who were eligible to enroll; and

(B) Students who would have been eligible for the State's proposed early intervention component; and

(vi) Describes the procedures the State will use to award postsecondary education scholarships to eligible students in the event that the State receives reduced or no Federal funding under the NEISP Program during any fiscal year.

(2) *Plan of operation.* (30 points) The Secretary reviews each State's application for information that shows the quality of the operating plan of the State-wide early intervention component, including—

(i) (3 points) The quality of the design of the component;

(ii) (3 points) An effective plan of management that ensures proper and efficient administration of the component;

(iii) (3 points) A clear description of how the State's proposed early intervention component relates to the purpose of the program;

(iv) (3 points) The way that the State plans to use its resources and personnel to achieve the objectives of the component;

(v) (3 points) A clear description of the methods that the State will use to target early intervention services to priority students. The State must base the proposed methods on the latest available State data. The State may target services on priority students by—

(A) Elementary and secondary schools with high concentrations of priority students within the State;

(B) Appropriate identifiable geographic areas such as counties or school districts (including both public and private schools) with high concentrations of priority students within the State; or

(C) Other methods proposed by a State and approved by the Secretary;

(vi) (7 points) A clear description of the comprehensive long-term mentoring and advising that the State plans to provide to eligible students; and

(vii) (8 points) The extent to which other State grant funds are available to eligible NEISP students for their postsecondary education if the Federal scholarship component of the program is unfunded or reduced.

(3) *Quality of key personnel.* (10 points) (i) The Secretary reviews each State application for information that shows the qualifications of the key personnel the State plans to use to administer its State-wide early intervention component including—

(A) The qualifications of the director of the early intervention component;

(B) The qualifications of each of the other key personnel to be used in the component; and

(C) The amount of time each person referred to in paragraphs (d)(3)(i) (A) and (B) of this section will spend working in the activities under this component.

(ii) To determine the qualifications of the key personnel, the Secretary considers evidence of past experience and training in fields related to the objectives of the early intervention component as well as other information the State provides.

(4) *Budget and cost effectiveness.* (5 points) The Secretary reviews each State's application for information that shows that the early intervention component has an adequate budget and is cost-effective including—

(i) The budget for the project is adequate to support the early intervention component activities; and

(ii) Costs are reasonable in relation to the activities under the component.

(5) *Adequacy of resources.* (5 points) The Secretary reviews each State's application for information that shows that the State plans to devote adequate resources to its early intervention component including—

(i) The facilities that the State plans to use are adequate; and

(ii) The equipment and supplies that the State plans to use are adequate.

(6) *Likelihood for success.* (20 points) The Secretary reviews each State application for information that shows

the extent to which the State's early intervention component is likely to—

(i) Enable the participants to develop academic skills, such as reading, writing, mathematics, and study skills, that are essential for postsecondary education;

(ii) Improve academic skills and motivate the participants to complete a secondary educational program and subsequently gain admission to postsecondary education institutions;

(iii) Increase the secondary and postsecondary readmission rates of those participants who have not completed secondary or postsecondary education;

(iv) Identify and select eligible participants;

(v) Diagnose each participant's need for academic support in order to successfully pursue a program of postsecondary education; and

(vi) Develop a plan of program support to improve each participant's skills.

(7) *Public and private support.* (15 points) The Secretary reviews each State's application for information that shows how the State will put in place a partnership of public and private organizations within the State to administer the early intervention component of the program including—

(i) The extent to which the State has received and has included in its plan written commitments by organizations that will provide early intervention services; and

(ii) The existence of a plan to inform the residents of the State of the NEISP Program services and eligibility criteria.

(8) *Coordination with other early intervention activities.* (15 points) The Secretary reviews each State's application for information that shows how the State will coordinate its early intervention component with existing early intervention activities within the State including—

(i) The extent to which the State has investigated early intervention program activity and included in its plan the number and types of currently operating public and private early intervention programs within the State;

(ii) The extent to which the State's proposed plan will supplement existing Federal, State, local, and private early intervention programs within the State, such as the Federal Head Start, Chapter 1 Program in Local Educational Agencies, and TRIO programs; and

(iii) The written plans and commitments submitted to the State by other early intervention program providers that the State plans to use as either early intervention service providers or as support organizations for those service providers.

(9) *Willingness to overmatch.* (10 points) The Secretary reviews each State's application to determine whether the State is willing to contribute more than one-half the cost of the program and the extent to which the State will overmatch its Federal allotment.

(10) *Evaluation report plan.* (10 points) The Secretary reviews each State's application to evaluate the quality of the proposed biennial evaluation report of the early intervention component of the program including—

(i) The quality of the design of the component;

(ii) The extent that the methods of evaluation are appropriate for the program and the extent they are objective and produce useful data that are quantifiable; and

(iii) The State's commitment to design an evaluation report to measure objectively performance against, at a minimum, the following standards:

(A) The effectiveness of the State's program in meeting the purposes of the program.

(B) The effect of the program on the student recipients being served by the program.

(C) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program.

(D) The cost-effectiveness of the program.

(E) The extent to which the student recipients comply with the requirements of the program; and

(iv) Any other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs.

(11) *Prior experience.* (20 points) In any award year subsequent to the 1994–95 award year, the initial year for which Federal funds were appropriated for this program, the Secretary gives priority to each State applicant that has conducted a NEISP Program within the fiscal year prior to the fiscal year for which the State applicant is applying in accordance with the following procedures:

(i) To determine the number of priority points to be awarded each eligible State applicant, the Secretary considers the State's prior experience of program participation in accordance with paragraphs (d)(11) (ii) and (iii) of this section.

(ii) The Secretary may add from one to twenty points to the point score obtained on the basis of the selection criteria, based on the State applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (d)(11)(iii) of this section.

(iii) The Secretary—based on information contained in one or more of the following: Performance reports, audit reports, site visit reports, program evaluation reports, the previously funded application, the negotiated program plan or plans, previous State matching funds, and the application under consideration—considers information that shows—

(A) (5 points) The extent to which the State's program has served the number of student participants it was funded to serve;

(B) (5 points) The extent to which the State's program has achieved the goals and objectives as stated in the previously funded application or negotiated program plan;

(C) (5 points) The extent to which the State has met the administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of the previously funded award; and

(D) (5 points) The extent to which the State has provided funds to match its Federal allotment.

(e) The Secretary disburses to each State selected in the competition conducted under paragraph (b) of this section an amount equal to not more than one-half of the total amount of funds from all sources the State projects that it will expend on its NEISP Program for a fiscal year as reported on its annual application under § 693.13(a)(1).

(Authority: 20 U.S.C. 1070a–25)

(Approved by the Office of Management and Budget under control number 1840–0677)

## Subpart D—How Does a Student Participate in the Early Intervention Component Under the NEISP Program?

### § 693.30 What are the requirements for a student to be a participant in the early intervention component of this program?

The State agency administering the NEISP Program, as approved by the Secretary under § 693.10(b)(1), shall select students in preschool through grade 12 to participate in the State's early intervention component, each of whom—

(a)(1) Is a citizen or a national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for

other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Is, at the time of initial selection, a priority student, an at-risk student, a disadvantaged student, or a student with a limited proficiency in English;

(c) Has a need for academic support, as determined by the State, to pursue his or her education successfully;

(d) Resides within the State;

(e) Is not currently enrolled in a program of postsecondary education;

(f) Meets such other criteria as the State includes in its plan in order to meet the unique needs of the State and that are approved by the Secretary; and

(g) For an otherwise eligible student who is attending secondary school, is a student whom the State determines can reasonably be expected to meet the student eligibility requirements of 34 CFR 668.7 for Federal student financial assistance and such other requirements as necessary to qualify for State, local, or private student financial assistance, at such time as the student enrolls in postsecondary education.

(Authority: 20 U.S.C. 1070a-23)

## Subpart E—How Does a State Award a Scholarship to a Student?

### § 693.40 What are the requirements for a student to receive a scholarship under this program?

To be eligible for a scholarship under the scholarship component of this program, a student must—

(a) Apply for the scholarship by following the application procedures and deadlines established by the State agency approved by the Secretary under § 693.10(b)(1) to administer the NEISP Program in the State in which the individual resides;

(b) Meet the relevant eligibility requirements contained in 34 CFR 668.7;

(c) Be less than 22 years old at the time his or her first scholarship is awarded;

(d) Have a high school diploma or a certificate of high school equivalence received on or after January 1, 1993;

(e) Be enrolled or accepted for enrollment in a program of instruction at an institution of higher education that is located within the State's boundaries, except that a State, at its option, may offer such a scholarship to a student who attends an eligible institution of higher education outside of the State;

(f) If a State includes academic milestones in a student agreement under § 693.11(a)(3) and requires the student to meet the milestones to be eligible for a scholarship, have met or exceeded the academic milestones to receive a scholarship; and

(g)(1) Have participated in the early intervention component of the program under this part;

(2) At the State's option, be a student whom the State documents as having successfully participated in a Federal Upward Bound Program funded under section 402C, chapter 1, subpart 2, part A of title IV of the HEA as determined by an administrator of the Federal Upward Bound program in which the student participated; or

(3) At the State's option, be a student whom the State determines as having successfully participated in an early intervention program comparable to the early intervention component of the program under this part.

(Authority: 20 U.S.C. 1070a-24)

## Subpart F—What Postaward Conditions Must Be Met by a State?

### § 693.50 What are allowable costs attributable to administration of the early intervention component?

A State may use its NEISP Program funds for the following allowable costs not specifically covered by 34 CFR parts 76 or 80 that are reasonably related to carrying out the early intervention component of the NEISP Program:

(a) In-service training of project staff.

(b) Transportation and meal costs for participants and staff for—

(1) Approved visits to postsecondary educational institutions in the area;

(2) Participation in "College Days" and "College Fair" activities; and

(3) Field trips to observe and meet with people who are employed in various career fields and who can act as role models for early intervention participants.

(c) Purchasing testing materials.

(d) Admission fees, transportation, and other costs necessary to participate in field trips, attend educational activities, visit museums, and attend other events that have as their purpose the intellectual, social, and cultural development of early intervention participants.

(e) Courses in English language instruction for participants with limited proficiency in English, if these classes are limited to early intervention component participants and if these classes are not otherwise available to those participants.

(f) For participants in an early intervention residential summer activity, room and board—computed on a weekly basis—not to exceed the weekly rate a host institution charges regularly enrolled students at the institution.

(g) Room and board for those people responsible for dormitory supervision of early intervention component participants during a residential summer activity.

(h) Transportation costs of early intervention component participants for regularly scheduled component activities.

(i) Transportation, meals, and overnight accommodations for staff members if they are required to accompany participants in program activities such as field trips.

(j) Costs of remedial and special classes if—

(1) These classes are limited to early intervention component participants; and

(2) Identical instruction is not readily available through another Federal program or a State, local, or privately funded program.

(Authority: 20 U.S.C. 1070a–22)

### § 693.51 What are nonallowable costs that may not be charged to administration of the early intervention component?

A State may not use its NEISP Program funds for costs incurred for the early intervention component of the NEISP Program such as—

(a) Duplication of services that are available to participants through—

(1) State, local, or private sources not included in the State plan under § 693.11; or

(2) Other Federal programs, such as projects under the Federal TRIO programs;

(b) Research not directly related to the evaluation or improvement of the program;

(c) Purchase of any equipment, unless the State demonstrates to the Secretary's satisfaction that purchase is less expensive than renting or leasing;

(d) Meals for program staff except as provided in § 693.50.

(e) Clothing;

(f) Construction, renovation, or remodeling of any facilities; or

(g) Tuition, stipends, or any other form of student financial support for program staff.

(Authority: 20 U.S.C. 1070a–22)

### § 693.52 What requirements must a State meet in preparing and submitting an evaluation report?

(a) Each State receiving an allotment under this part shall prepare and submit to the Secretary every two years an evaluation of the early intervention component of its NEISP Program. The report must summarize and evaluate a State's activities under the program and the performance of the student participants. Each State's evaluation

report design must include measures that permit the State to track all participating students progress throughout each student's participation in the program.

(b) The biennial evaluation report of the early intervention component of the program must include, but is not limited to—

(1) Quantifiable information on the extent to which the State's program is fulfilling the program objectives;

(2) The effect of the program on the student recipients being served by the program, including measurable outcomes such as improved academic performance, increased postsecondary education enrollment and retention, increased elementary and secondary school grade retention, reduced elementary and secondary school dropout rates, and reduced financial barriers to attendance at institutions of higher education;

(3) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program;

(4) The cost-effectiveness of the program;

(5) The extent to which the student recipients comply with the requirements of the program;

(6) Key program information listed on an annual and biennial basis;

(7) Other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs; and

(8) Any other information required by the Secretary in order to carry out the evaluation report function.

(Authority: 20 U.S.C. 1070a–26)

(Approved by the Office of Management and Budget under control number 1840–0677)

[FR Doc. 94–11499 Filed 5–11–94; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

[CFDA No: 84.272]

### National Early Intervention Scholarship and Partnership (NEISP) Program; Notice Inviting Applications for New Awards for Fiscal Year 1994

*Purpose of Program:* Under the NEISP Program, the Secretary provides grants to States to—

(a) Encourage the States to provide or maintain a guaranteed amount of financial assistance necessary to permit eligible low-income students who obtain high school diplomas or the equivalent to attend an institution of higher education; and

(b) Provide financial incentives to enable States, in cooperation with local educational agencies, institutions of higher education, community organizations, and businesses, to provide—

(1) Additional counseling, mentoring, academic support, outreach, and supportive services to preschool, elementary, middle, and secondary school students who are at risk of dropping out of school; and

(2) Information to students and their parents about the advantages of obtaining a postsecondary education and their college financing options.

*Eligible Applicants:* The Secretary is authorized to accept applications from the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Republic of Palau, and the Virgin Islands.

*Deadline for Transmittal of Applications:* June 27, 1994.

*Deadline for Intergovernmental Review:* August 26, 1994.

*Applications Available:* May 12, 1994.

*Avaliable Funds:* The Administration's budget request for fiscal year 1994 did not include funds for this program. However, the Congress has appropriated $1,875,000 in fiscal year 1994 for the early intervention component of the NEISP Program to be allocated to States on a competitive basis. Please note that for fiscal year 1994 no Federal funds are provided for the postsecondary educational scholarship component of the program.

*Estimated Range of Awards:* $50,000 to $375,000.

*Estimated Average Size of Awards:* $187,500.

*Estimated Number of Awards:* 5–10.

**Note:** The Department is not bound by any estimates in this notice.

*Product Period:* Up to 60 months.

*Budget Period:* 12 months.

*Applicable Regualtions:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 76, 77 79, 80, 82, 85 and 86; (b) the regulations in 34 CFR part 600; (c) the regulations in 34 CFR part 668; and (d) the regulations for this program in 34 CFR part 693, as published in this issue of the **Federal Register**.

*Supplementary Information:* The Secretary strongly requests the applicant to limit the application narrative to no more than 50 double-spaced, typed pages (on one side only) although the Secretary will consider applications of greater length. The Department anticipates that successful applications under this program generally will meet this page limit.

*Priority:* None.

*Selection Criteria:* In evaluating applications for grants under this program competition, the Secretary uses the selection criteria in 34 CFR 693.22 (d)(1) through (d)(10) of the program regulations.

*For Further Information Contact:* Daniel Sullivan or Priscilla Zink Mulford, U.S. Department of Education, 400 Maryland Avenue, SW., room 4018, ROB–3, Washington, DC 20202–5447. Telephone: (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

*Program Authority:* 20 U.S.C. 1070a–21 to 1070a–27.

Dated: May 6, 1994.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 94–11500 Filed 5–11–94; 8:45 am]

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federal register

Thursday
May 12, 1994

Part VI

# The President

Proclamation 6688—Labor History Month, 1994

Federal Register
Vol. 59, No. 91
Thursday, May 12, 1994

# Presidential Documents

Title 3—

The President

Proclamation 6688 of May 10, 1994

## Labor History Month, 1994

By the President of the United States of America

A Proclamation

For more than a century, the labor movement in the United States has served as a major force for our economic and social progress as a Nation.

American trade unionists have fought for and achieved benefits for all citizens. At the turn of the century, the average worker made about ten dollars for a 60-hour week, and more than 2 million children similarly worked long hours for even less pay. Prior to the formation of a national labor movement in 1881, safe working conditions, regular hours, decent living wages, paid holidays, and vacations were often mere dreams. Emergency and family leave were almost unimaginable.

The struggle of American workers against these appalling circumstances transformed our Nation. Disasters, like the 1911 Triangle Shirtwaist Fire and the 1991 Hamlet Poultry Fire, and triumphs, like the Sanitation Workers struggle for dignity and union representation in 1968, have played a significant role in shaping American life. By studying labor history, we find the foundations of work life in America—the 8-hour day, the 40-hour week, security in unemployment and old age, protection for the sick and injured, equal employment opportunity, protection for children, and health and safety standards. In addition, labor history shows that American workers were in the forefront of the effort to make public education available for every child.

As an American, I am proud of the accomplishments of our labor movement, through which we all enjoy better lives. In issuing this proclamation to observe Labor History Month, I recognize that our work for economic and social progress in America is not over. As we approach the 21st century, the next chapter of labor history must be characterized by a strong voice for America's workers. This will include establishing partnerships of employers and workers, cooperating to achieve safe, high-performance work environments, improving the skills of American workers and the competitiveness of American businesses, and enhancing human dignity in the American workplace.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the month of May 1994, as "Labor History Month." I call upon the people of the United States to observe this period with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–11794
Filed 5–11–94; 10:53 am]
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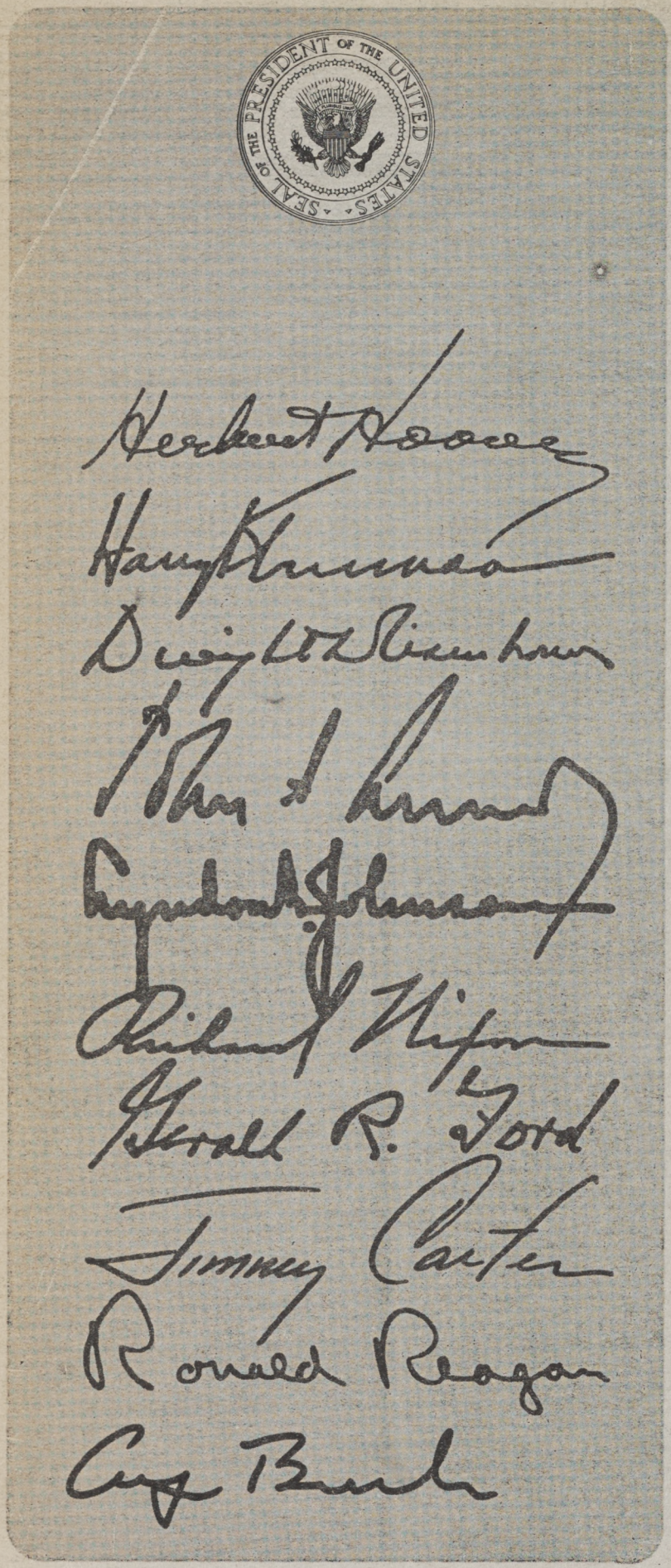
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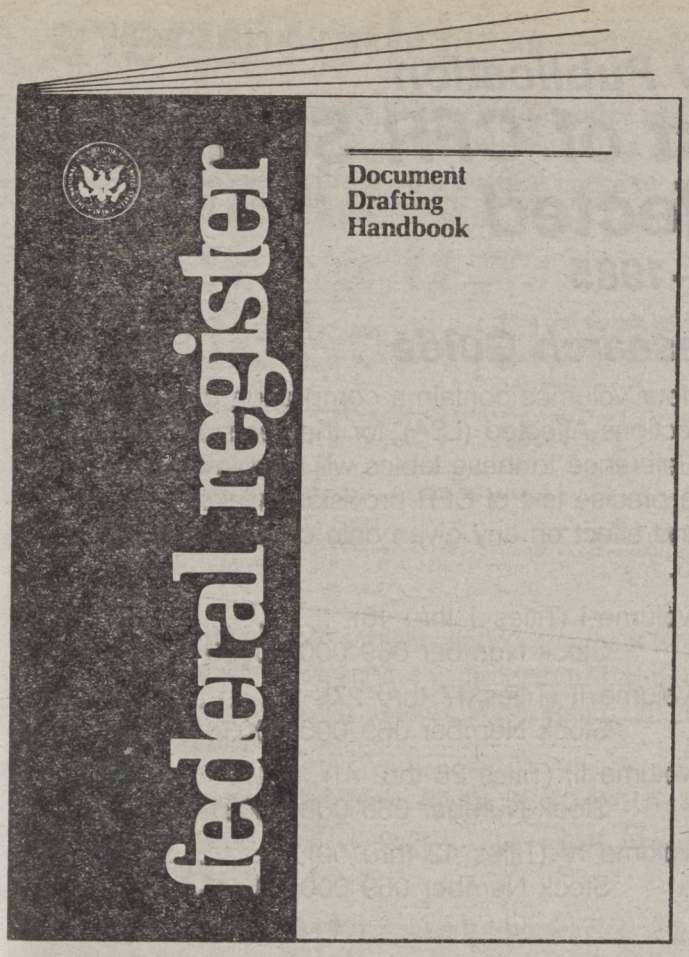
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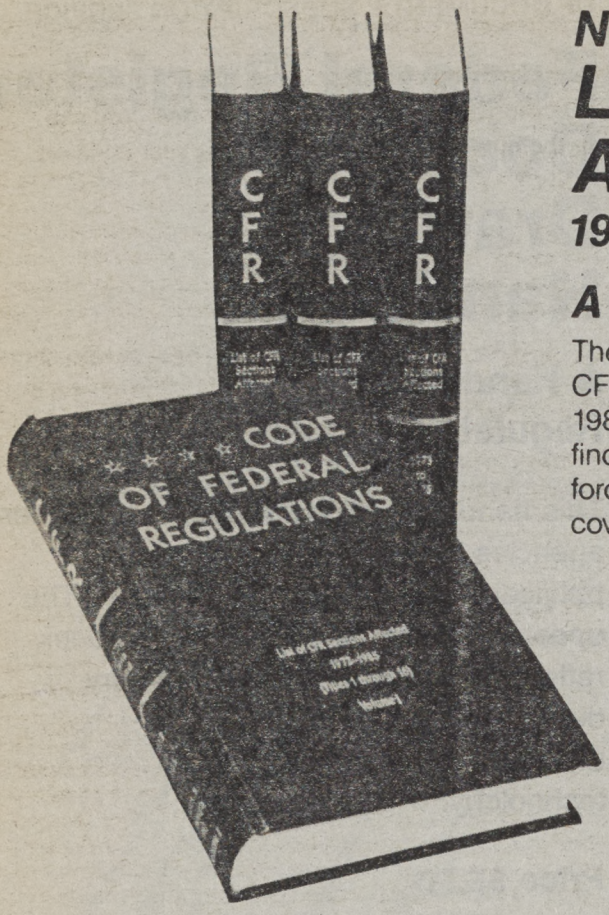
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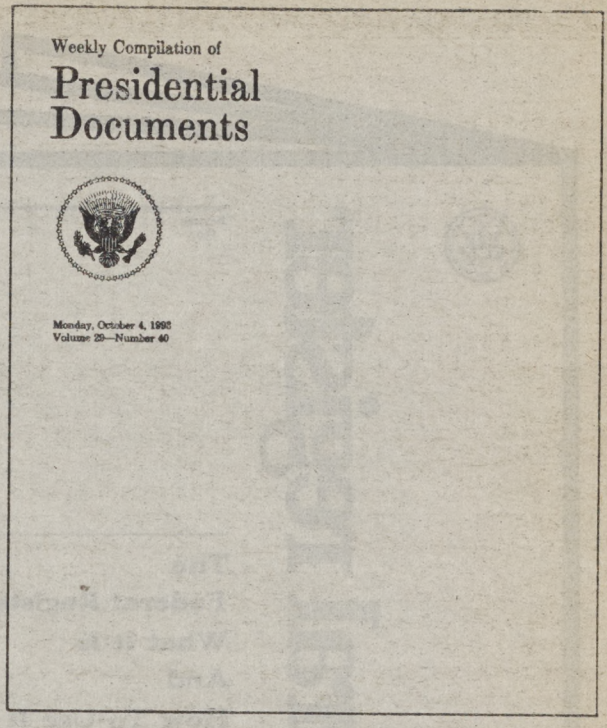
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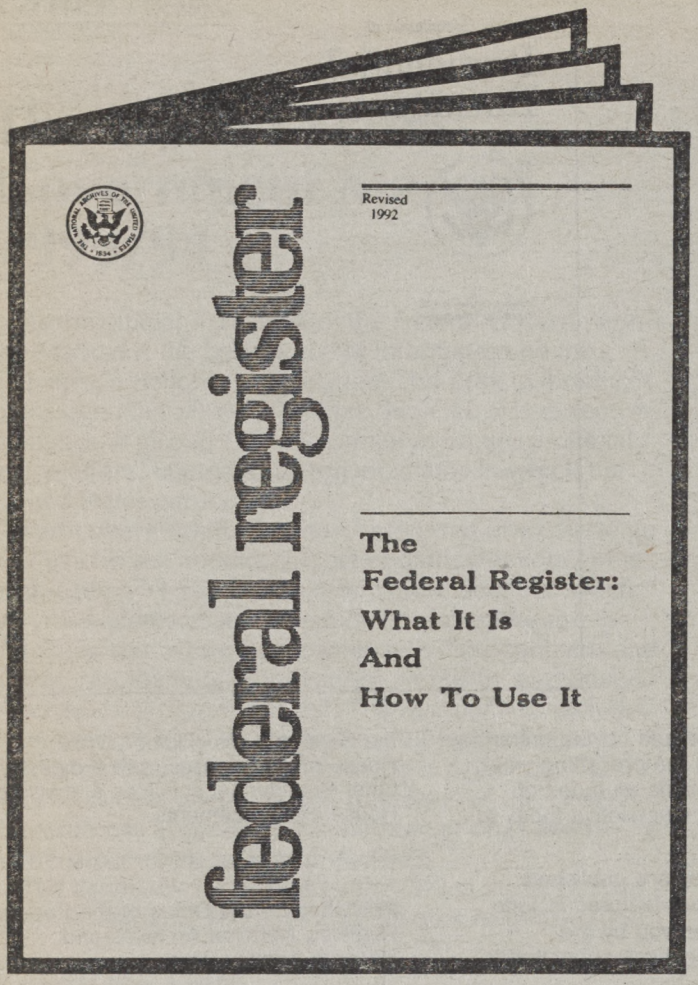
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