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Presidential Documents

Title 3—

he President

Presidential Determination No. 86–13 of September 16, 1986

Determination To Authorize the Furnishing of Immediate Military Assistance to the Philippines

Memorandum for the Honorable George P. Shultz, the Secretary of State

Pursuant to the authority vested in me by Section 506(a) of the Foreign Assistance Act of 1961, as amended (the Act), I hereby determine that:

• an unforeseen emergency exists which requires immediate military assistance to the Philippines; and

• the aforementioned emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except Section 506(a) of the Act.

Therefore, I hereby authorize the furnishing of up to $10,000,000 in defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training to the Philippines under the provisions of chapters 2 and 5 of part II of the Act.

This determination shall be reported to Congress immediately and published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, September 16, 1986.

cc: The Secretary of Defense

[FR Doc. 86–22219
Filed 9–26–86; 3:27 pm]
Billing code 3195–01–M

Presidential Documents

Executive Order 12566 of September 26, 1986

Safety Belt Use Requirements for Federal Employees

Each year, thousands of lives could be saved and injuries prevented if motorists would use their safety belts. The annual cost to society of these needless deaths and injuries is currently in excess of $32 billion. Taxpayers bear a large share of this cost. The estimated annual cost to Federal, State, and local governments as a result of auto accidents is $11 billion. I have determined that an on-the-job safety belt use policy for Federal employees will reduce human pain and suffering, set an example for the private sector, and reduce the burden on the taxpayers caused by motor vehicle accidents.

Accordingly, by the authority vested in me as President by the Constitution and laws of the United States of America, including Section 7902(c) of Title 5 of the United States Code and Section 19 of the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. 668), it is hereby ordered as follows:

Section 1. *Policy.* Each Federal employee occupying the front seat of a motor vehicle on official business, whose seat is equipped with a safety belt, shall have the safety belt properly fastened at all times when the vehicle is in motion.

Sec. 2. *Scope of Order.* All agencies of the Executive branch are directed to promulgate rules and take all appropriate measures within their existing employee occupational safety and health programs to carry out the purposes of this Order. This includes, but is not limited to, conducting an education program for employees about the requirements of this Order. The term "agency" as used in this Order means an Executive Department, as defined in 5 U.S.C. 101, or any employing unit or authority of the Federal government, other than those of the Legislative and Judicial branches. The Secretary of Labor shall cooperate and consult with the heads of agencies in the Legislative and Judicial branches of the Government to encourage and help them adopt safety belt use programs. The Secretary of Labor shall also submit an annual report to the President that includes the status of on-the-job belt use by Federal employees.

Sec. 3. *Coordination.* The Secretary of Transportation shall provide leadership and guidance to the heads of agencies to assist them with the employee safety belt programs established pursuant to this Order.

Sec. 4. *Other Powers and Duties.* (a) Nothing in this Order shall be construed to impair or alter the powers and duties of the heads of the various Federal agencies pursuant to Section 19 of the Occupational Safety and Health Act of 1970, or to Sections 7901, 7902, and 7903 of Title 5 of the United States Code, nor shall it be construed to affect any right, duty, or procedure under the National Labor Relations Act.

(b) The Secretary of Defense shall be responsible for implementation of all provisions of this Order insofar as they apply to military personnel of the Department of Defense.

Sec. 5. *Causes of Action.* Nothing in this Order shall be construed to create a new cause of action against the United States or to alter in any way the United States' liability under the Federal Tort Claims Act.

Ronald Reagan

THE WHITE HOUSE,
September 26, 1986.

[FR Doc. 86-22278
Filed 9-29-86; 10:20 am]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.
ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary to reflect the assignment of responsibility for the Rural Development Loan Fund program to the Under Secretary for Small Community and Rural Development and the Administrator of Farmers Home Administration.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Dwight A. Carmon, Loan Officer, Business and Industry Division, USDA, and FmHA, 14th and Independence Avenue, SW., Washington, DC 20250—Telephone (202) 475–3811.

SUPPLEMENTARY INFORMATION:
Department responsibility for coordination, evaluation and policy development on Rural Development Loan Fund issues has heretofore been located in the Office of the Secretary. Authority to service Rural Development Loan Fund loans is being delegated to the Under Secretary for Small Community and Rural Development and then further redelegated to the Administrator of Farmers Home Administration.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comments are not required and this rule may be made effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

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

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

2. Section 2.23 is amended by adding a new paragraph (a)(16) to read as follows:

§ 2.23 Delegations of authority to the Under Secretary for Small Community and Rural Development.

* * * * *

(a) * * *

(16) Administer section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 Note).

* * * * *

Subpart I—Delegations of Authority by the Under Secretary for Small Community Rural Development

3. Section 2.70 is amended by adding new paragraph (a)(31) to read as follows:

§ 2.70 Administrator, Farmers Home Administration.

(a) *Delegations.* * * *

(31) Administer section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 Note).

* * * * *

Dated: September 26, 1986.

For Subpart C.

Peter C. Myers,
Acting Secretary of Agriculture.

Dated: September 26, 1986.

For Subpart I:

Kathleen W. Lawrence,
Acting Under Secretary for Small Communiuty and Rural Development.

[FR Doc. 86–22209 Filed 9–29–86; 8:45 am]
BILLING CODE 3410–01–M

Farmers Home Administration

7 CFR Part 1962

Servicing Farmer Program Borrowers Under Jurisdiction of Bankruptcy Courts

AGENCY: Farmers Home Administration, USDA.
ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends its regulations to allow Farmer Program borrowers under the jurisdiction of a bankruptcy court to obtain a modification of the automatic stay for the limited purpose of applying for loan servicing. The major effect will be to provide a method for servicing actions to be considered without the dismissal of an action pending in bankruptcy court.

DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Bobby O. Reynolds, Deputy Director, Farm Real Estate and Production Division, Farmers Home Administration, USDA, Room 5449–S, Washington, DC 20250, Telephone: (202) 447–4572.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Depatmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernment Consulation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loan, Farm Operating Loans, and Farm Ownership Loans are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed 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, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion of Final Rule

FmHA is implementing this final rule immediately to comply with a recent Consent Order signed by the United States District Court for the Southern District of Georgia, Brunswick Division, in *Curry* v. *Block*, Civil Action No. 281.37. On November 1, 1985, FmHA published regulations (50 FR 45740) to implement the terms of that court's earlier June 11, 1982, order and other orders entered by other courts. In *Curry*, plaintiffs filed a motion for a finding of contempt, objecting to provisions in those regulations which require an FmHA farm borrower who elects to file bankruptcy to either dismiss his/her case or obtain a court order which lifts the automatic stay before seeking loan servicing relief. This rule revises FmHA regulations to make it clear that borrowers under the jurisdiction of a bankruptcy court must obtain a modification of the automatic stay for the limited purpose of applying for loan servicing. Other minor clarifying changes are also made.

List of Subjects in 7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1962—PERSONAL PROPERTY

1. The authority citation for Part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 2942; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

2. Section 1962.47 is revised to read as follows:

§ 1962.47 Bankruptcy and insolvency.

(a) *County Supervisor's responsibility.*

(1) If a borrower becomes a debtor in proceedings under any State or Federal bankruptcy or State insolvency law, the County Supervisor will promptly report the facts and forward the borrower's case file and other pertinent information and documents to the State Director for appropriate handling. The County Supervisor will keep the State Director informed of further developments, but will take no other action unless directed by the State Director or OGC. The State Director will have Form FmHA 1951–6, "Borrower Account Description Flag," prepared and processed through the "Automated Discrepency Processing System," in accordance with the "Field Office Transaction Manual." This will indicate on the borrower's account that bankruptcy action is pending, (BAP).

(2) If the borrower has no attorney, the County Supervisor will mention this in the report sent to the State Director. The State Director will ask OGC's advice on how to handle such a case to make sure that the borrower is given any required notice of loan servicing alternatives.

(3) The County Supervisor will send Forms FmHA 1924–14, 1924–25 and 1924–26 together with Exhibit D of this subpart, "Notice to Borrower's Attorney Regarding Loan Servicing Options," (available in any FmHA Office) to the attorney of a farmer program loan borrower as soon as the County Supervisor learns that a bankruptcy has been filed. A dated copy of Exhibit D of this subpart will be sent to OGC and the U.S. Attorney's office at the same time. None of the boxes on Form FmHA 1924–25 will be checked and the blank spaces will be left blank. Exhibit D of this subpart explains that FmHA wants the borrower to know about the various farmer program loan servicing tools. The bankruptcy code's automatic stay prevents FmHA from contacting the borrower directly.

(i) Exhibit D of this subpart also explains that borrowers who have filed Chapter 11 and 13 bankruptcies must request and be granted a modification of the automatic stay for the limited purpose of permitting the borrower(s) to apply and enter into agreements for debt servicing relief or dismiss their bankruptcies. Then the borrower must complete and return Form FmHA 1924–26 before FmHA will consider or grant any request for servicing. Until the automatic stay is modified for this purpose or the Chapter 11 or 13 is dismissed, FmHA will not discuss any of the servicing options with either the borrower or the borrower's attorney. If the automatic stay is not modified for the limited purpose set out above or if the bankruptcy case is not dismissed, but the borrower instead files a plan of reorganization which restructures the FmHA debt, FmHA will evaluate the merits of the plan and inform OGC of FmHA's recommendation for voting on the plan. A plan will not be rejected by FmHA simply because it is not consistent with FmHA's loan servicing regulations.

(ii) Borrowers who have filed Chapter 7 bankruptcies also must either dismiss their bankruptcies or request and be granted a modification of the automatic stay for the limited purpose of permitting the borrower(s) to apply and enter into agreements for debt servicing relief. Then the borrower must complete and return Form FmHA 1924–26 before FmHA will consider or grant any request for servicing. FmHA will not discuss any of the options with either the borrower or the borrower's attorney until the automatic stay is modified for the limited purpose set out above, or the Chapter 7 is dismissed. Exhibit D of this subpart explains that FmHA will not continue with a debtor who does not reaffirm the FmHA debt. If a Chapter 7 debtor wants to reaffirm the FmHA debt, FmHA must accept the reaffirmation.

(b) *State Director's responsibility.* On receipt of the file and related material, the State Director will determine whether FmHA has security for the debt and whether the debtor has other assets from which FmHA could make a substantial collection. If the file does not contain enough current information to allow the State Director to make these decisions, the State Director will ask the County Supervisor to provide whatever

information is needed, such as a current appraisal.

(1) In Chapter 7 cases only, if there is no security and no other asset from which a substantial recovery could be made, the file and related material will be returned to the County Office with a memorandum indicating the State Director's determination and advising that a proof of claim will not be filed unless the County Supervisor learns that the debtor has assets not previously known to exist. If assets are found before the time for filing claims has expired (90 days from the first date set for the first meeting of creditors), the County Supervisor will resubmit the case to the State Director.

(2) In all Chapter 11 and 13 cases and in Chapter 7 cases where a substantial recovery can be made, the State Director will take the following actions:

(i) The State Director will execute a proof of claim approved by OGC covering all indebtedness to FmHA, except any judgments obtained by a U.S. Attorney, and send it to OGC with attachments that are required by a State supplement. The State Director will identify for OGC in a memorandum (not on the proof of claim) the security which was taken for each FmHA loan.

(ii) If the State Director knows that a judgment has been obtained by a U.S. Attorney, the State Director will notify OGC even though that judgment has been charged off.

(iii) The State Director, on OGC's advice, will instruct the County Supervisor about actions to take with respect to meetings of creditors.

(iv) If an insured loan is not held by FmHA and has not been assigned to FmHA the State Director will arrange to have the note repurchased. If there is a problem accomplishing this, the State Director will ask OGC for advice.

(v) The State Director will take no other action without OGC's approval.

(c) *Liquidation.* (1) No security can be liquidated without OGC approval.

(2) If a bankruptcy is dismissed and liquidation of the account is necessary, liquidation will be accomplished in accordance with § 1962.40 of this subpart and § 1965.26 of Subpart A of Part 1965 of this chapter.

(3) In Chapter 11 or Chapter 13 cases, if liquidation is necessary either while the bankruptcy is pending or after the case is closed, it will be accomplished by sending the borrower Exhibit E to Subpart A of Part 1955 of this chapter and there will be no appeal of the acceleration. If the bankruptcy case is dismissed, see paragraph (c)(2) of this section.

(4) In Chapter 7 farmer program loan cases, if liquidation is necessary either while the bankruptcy is pending or after the case is closed (see paragraph (c)(2) of this section if the case is dismissed), it will be handled as follows:

(i) Loans can be liquidated if a discharge hearing has been held *and* if the borrower has not reaffirmed the debt *and* if the property is no longer part of the estate. The borrower will be sent an acceleration notice (Exhibit E to Subpart A of Part 1955 of this chapter) and there will be no appeal of the acceleration. Then the account will be liquidated.

(ii) If the borrower has reaffirmed the FmHA debt and then becomes delinquent, the procedures set out in § 1962.40 of this subpart or § 1965.26 of Subpart A of Part 1965 of this chapter will be followed before security is liquidated.

(iii) If the borrower revokes the reaffirmation, the account will be accelerated and liquidated as set out in paragraph (c)(4)(i) of this section.

(5) When security is liquidated, the proceeds, after payment of costs, will be applied first to the interest accrued to the date of filing the petition in bankruptcy and then to the principal of the debt. Additional proceeds will be applied to the interest accrued from the date the petition in bankruptcy was filed to the date of payment. When the payments are sent to the Finance Office, the County Supervisor will give the date the petition in bankruptcy was filed.

(d) After prior review and approval by OGC, a State Supplement will be issued to explain any rules or practices of local bankruptcy judges or trustees which affect the provisions of this section.

Dated: September 18, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86-22090 Filed 9-29-86; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 316A

Residence, Physical Presence and Absence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Wayne State University, Detroit, Michigan to the list of recognized American institutes conducting research abroad. This rule will allow employees of Wayne State University who are active in scientific research on behalf of the institute to be eligible for constructive residence.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT:

For General Information:

Loretta J. Shogren, Director, Policy Directive and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3048

For Specific Information:

Raymond Jaroneski, Jr., Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-5014.

SUPPLEMENTARY INFORMATION: Section 316(b) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1427(b) allows for certain absences abroad by lawful permanent residents of the United States to preserve residence and be counted towards the residence requirements for naturalization. 8 CFR 316a.2 lists American institutions of research that have been recognized by the Attorney General to qualify for the constructive resident benefit. Absences abroad in the employment of these institutions will be counted as constructive residence is establishing the residence requirements for naturalization, provided all conditions of 8 U.S.C. 1427(b), which lists the requirements for naturalization, are satisfied.

The addition of Wayne State University, Detroit, Michigan to the list of institutions conducting research abroad will enable alien employees and alien spouses of United States citizen employees of Wayne State University, Detroit, Michigan to be deemed eligible for the benefits of sections 316(b) and 319(b), if regularly stationed abroad in the conduct of research.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely amends an existing listing. In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not impact on a substantial number of small entities. This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section (1)(b) of E.O. 12291.

List of Subjects in 8 CFR Part 316a

Citizenship and naturalization, Immigration and Nationality Act, Residence.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 316a—RESIDENCE, PHYSICAL PRESENCE AND ABSENCE

1. The authority for 8 CFR Part 316a continues to read as follows:

Authority: Secs. 103 and 316 of the Immigration and Nationality Act, as amended. (8 U.S.C. 1103 and 1427).

§ 316a.2 [Amended]

In § 316a.2, American institutions of research, the listing of organizations is amended by adding in alphabetical sequence "Wayne State University, Detroit, Michigan".

Dated: September 24, 1986.

Harriet B. Marple,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-22067 Filed 9-29-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-ASW-26; Amdt. 39-5427]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 214ST, 214B, and 214B-1 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires replacement of the main rotor (M/R) drag brace assembly on certain Bell Helicopter Textron, Inc. (BHTI), Model 214ST, 214B, and 214B-1 helicopters with one that has a new nut design and a new thread design on the M/R drag brace barrel. The new drag brace assembly has a reduced retirement life of 2,500 hours on the Model 214ST. This AD is required to prevent failure of the M/R drag brace assembly which could result in loss of the helicopter.

EFFECTIVE DATE: October 18, 1986.

Compliance: As prescribed in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support.

FOR FURTHER INFORMATION CONTACT: Mr. T. K. Henry, Helicopter Certification Branch, ASW-170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101, telephone number (817) 624-5168.

Summary Information: During a recent flight, a Model 214ST experienced severe vibrations which forced a rapid emergency landing. Investigation revealed complete fractures had occurred both in the M/R drag brace barrel, Part Number (P/N) 214-010-120-3, and in the M/R drag brace nut, P/N 72789-2412. Severe corrosion, primarily as a result of loss of the protective plating during assembly, was discovered between the fractured barrel and nut. Subsequent inspections of other M/R drag brace assemblies have also detected barrels with cracks in the threads even though no evidence of corrosion was present.

As a result of damage studies on the M/R drag brace assembly, BHTI issued Alert Service Bulletin (ASB), 214-86-33, dated June 2, 1986, and ASB 214ST-86-35, dated March 3, 1986, which call for replacement of the drag brace assembly with one having ground threads in the drag brace barrel in place of machined threads, and replacement of the M/R drag brace nut with one having a locking feature that will not remove the protective cadmium plating during assembly. The new drag brace barrel and clevis for the Model 214ST have retirement lives of 2,500 hours which are reduced from 5,000 hours on the earlier parts.

The FAA has carefully reviewed the manufacturer's redesign and has determined that the new design of the M/R drag brace assembly for the Models 214ST, 214B, and 214B-1 is necessary to assure the continued airworthiness of these helicopters. Failure of the M/R drag brace assembly could result in loss of the helicopter.

Since this condition is likely to develop on other aircraft of the same type design, an airworthiness directive is being issued which requires removal of the M/R drag brace assembly, P/N 214-010-113-1 on Models 214ST, 214B, and 214B-1, and replacement with M/R drag brace assembly, P/N 214-010-113-105, for the Model 214ST, Serial Numbers (S/N's) 28101 through 28159, and P/N 214-010-113-107 for the Models 214B and 214B-1, S/N's 28001 through 28070.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

2. By adding the following new AD:

Bell Helicopter Textron, Inc. Applies to Bell Helicopter Textron, Inc., Model 214ST helicopters, S/N's 28101 through 28159, and Models 214B and 214B-1, S/N's 28001 through 28070, certificated in any category, equipped with main rotor drag brace assembly P/N 214-010-113-001.

Compliance is required as indicated, unless already accomplished.

(a) To prevent failure of the M/R drag brace assembly, P/N 214-010-113-001, on the Model 214ST helicopter, replace it with M/R drag brace assembly, P/N 214-010-113-105, within the next 50 hours' time in service or within 30 days after the effective date of this AD, whichever comes first.

(b) To prevent failure of the M/R drag brace assembly, P/N 214-010-113-001 on the Model 214B and 214B-1 helicopters, replace it with M/R drag brace assembly, P/N 214-010-113-107, within the next 50 hours' time in service or within 30 days after the effective date of this AD, whichever comes first.

(c) An alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective October 18, 1986.

Issued in Fort Worth, Texas, on September 18, 1986.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 86-22006 Filed 9-29-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-21-AD; Amdt. 39-5358]

Airworthiness Directives; Cessna Models 150, 150A, 150B and 150C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects Airworthiness Directive (AD) 86-15-07, Amendment 39-5358, applicable to Cessna Models 150, 150A, 150B and 150C airplanes. This correction is necessary because typographical errors were made in the compliance statement and in paragraphs (a)(4) and (c) of the AD when it was published in the **Federal Register** on July 22, 1986.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. Haig, Aerospace Engineer, FAA, ACE-120W, 1801 Airport Road, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of AD 86-15-07, Amendment 39-5358, applicable to Cessna Models 150, 150A, 150B and 150C airplanes, the FAA found that four typographical errors had been made in the Amendment when it was published in the **Federal Register** on July 22, 1986. Therefore, action is taken herein to make these corrections. Since this action is required to ensure that the AD reads correctly, notice and procedure hereon are unnecessary and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

PART 39—[CORRECTED]

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

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

2. By correcting the following AD:

In FR Doc. 86-16345 (51 FR 26229, appearing in the **Federal Register** of July 22, 1986, make the following correction:

(a) In the compliance statement change "the approved center of gravity (eg) limits," to read "the approved center of gravity (cg) limits,".

(b) In the fourth sentence of paragraph (a)(4) of the AD change "Installs" to "Install".

(c) In the fifth sentence of paragraph (a)(4) of the AD change "Paragraph (C)" to read "Paragraph (d)".

(d) In paragraph (c) of the AD change "FAR 91.197" to read "FAR 21.197".

Issued in Kansas City, Missouri, on September 16, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-22008 Filed 9-29-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWP-11]

Amendment to the Monterey, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend the Monterey, California, transition area description. This will enlarge the 700 foot transition area and provide controlled airspace for the procedure turn and holding pattern southeast of the Chualar Non-directional Beacon (NDB).

EFFECTIVE DATE: 0901 UTC, December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration at 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1649.

SUPPLEMENTARY INFORMATION:

History

On June 24, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to enlarge the Monterey, California, transition area (51 FR 22945). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B, dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations enlarges the Monterey, California, transition area. This provides additional controlled airspace for the procedure turn and holding pattern southeast of the Chualar NDB.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 25, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

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

2. Section 71.181 is amended as follows:

Monterey, CA—[AMENDED]

Remove "within 5 miles each side of the Big Sur VORTAC 109° radial to a point 25 miles northeast of the Big Sur VORTAC" and substitute "that airspace bounded by a line beginning at lat. 36°12'20" N., long. 121°43'35" W.; to lat. 36°34'40" N., long. 121°33'40" W.; to lat. 36°31'30" N., long. 121°23'25" W.; to lat. 36°17'00" N., long. 121°21'00" W.; to lat. 36°14'30" N., long. 121°31'03" W.; lat. 36°09'20" N., long. 121°33'20" W , to point of beginning."

Issued in Los Angeles, California, on September 17, 1986.

Wayne C. Newcomb,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 86-22007 Filed 9-29-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25088; Amdt. No. 1330]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by Reference.

Issued in Washington, DC on September 19, 1986.

John S. Kern,

Director of Flight Standards.

PART 97—[AMENDED]

Adoption of the Amendment

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

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

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

2. By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs;

§ 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective December 18, 1986

Livermore, CA—Livermore Muni, ILS RWY 25, Amdt. 4
Denver, CO—Stapleton Intl, ILS RWY 35R, Amdt. 9
Durango, CO—Durango-La Plata County, VOR-A, Amdt. 6
Durango, CO—Durango-La Plata County, VOR/DME RWY 2, Amdt. 4
Durango, CO—Durango-La Plata County, ILS/DME RWY 2, Amdt. 2
Pueblo, CO—Pueblo Memorial, VOR RWY 26R (TAC), Amdt. 26
Pueblo, CO—Pueblo Memorial, NDB RWY 8L, Amdt. 18
Pueblo, CO—Pueblo Memorial, NDB RWY 26R, Amdt. 15
Pueblo, CO—Pueblo Memorial, ILS RWY 8L, Amdt. 21
Pueblo, CO—Pueblo Memorial, ILS RWY 26R, Amdt. 11
Pueblo, CO—Pueblo Memorial, RADAR-1, Amdt. 5
Bristow, OK—Jones MEML, NDB RWY 35, Original
Ontario, OR—Ontario Municipal Airport, NDB RWY 32, Amdt. 4
Caldwell, TX—Caldwell Muni, VOR/DME-A, Amdt. 1
La Porte, TX—La Porte Muni, VOR-A, Amdt. 11
La Porte, TX—La Porte Muni, NDB RWY 30, Amdt. 3
Logan, UT—Logan-Cache, NDB-B. Amdt. 4, CANCELLED

Effective November 20, 1986

Baton Rouge, LA—Baton Rouge Metropolitan, Ryan Field, ILS RWY 22, Amdt. 4
Hobbs, NM—Lea County (Hobbs), VOR/DME or TACAN RWY 21, Amdt. 7
Medford, OR—Medford-Jackson County, ILS/DME RWY 14, Amdt. 13
Dallas-Fort Worth, TX—Dallas-Fort Worth International, ILS RWY 13R, Orig.
San Antonio, TX—San Antonio Intl, ILS RWY 30L, Amdt. 7
Oak Harbor, WA—Oak Harbor Air Park, RADAR 1, Amdt. 1
Oak Harbor, WA—Oak Harbor Air Park, RADAR 2, Orig.

Effective October 23, 1986

Greensboro, AL—Greensboro Muni, NDB RWY 36, Orig.
Mobile, AL—Brookley, VOR RWY 14, Amdt. 5
Mobile, AL—Brookley, VOR RWY 32, Amdt. 10
Unalaska, AK—Unalaska, NDB-A, Amdt. 2
Naples, FL—Naples Muni, NDB RWY 22, Amdt. 6
Palatka, FL—Kay Larkin, NDB RWY 9, Orig.
Winder, GA—Winder, NDB RWY 31, Amdt. 8
Chicago, IL—Chicago-O'Hare Intl, LOC RWY 32L, Orig. CANCELLED
Chicago, IL—Chicago-O'Hare Intl, NDB RWY 32L, Amdt. 21
Chicago, IL—Chicago-O'Hare Intl, ILS RWY 32L, Orig.
Chicago, IL—Chicago-O'Hare Intl, RADAR-1, Amdt. 38
Presque Isle, ME—Northern Maine Regional ARPT at Presque Is, VOR/DME RWY 1, Amdt. 11
Prentiss, MS—Prentiss-Jefferson Davis County, NDB RWY 30, Orig.
Beaufort, NC—Beaufort-Moorehead City, NDB RWY 14, Amdt. 5
Wilson, NC—Wilson Muni, NDB RWY 21, Orig.
Rock Hill, SC—Bryant Field, NDB-C, Amdt. 2
Bristol/Johnson/Kingsport, TN—Tri-City Regional, LOC RWY 5, Amdt. 2 CANCELLED
Bristol/Johnson/Kingsport, TN—Tri-City Regional, NDB RWY 5, Amdt. 15
Bristol/Johnson/Kingsport, TN—Tri-City Regional, ILS RWY 5, Orig.
Knoxville, TN—Knoxville Downtown Island, LOC RWY 26, Amdt. 2
Savannah, TN—Savannah-Hardin County, VOR/DME RWY 18, Amdt. 4
Savannah, TN—Savannah-Hardin County, SDF RWY 18, Amdt. 2
Savannah, TN—Savannah-Hardin County, NDB RWY 18, Amdt. 2

Effective September 12, 1986

Old Town, ME—DeWitt Fld, Old Town Muni, VOR-A, Amdt. 9

Effective September 10, 1986

Miami, FL—Tamiami, ILS RWY 9R, Amdt. 5

The FAA published an amendment in Docket No. 25068, Amdt. No. 1328 to Part 97 of the Federal Aviation Regulations (VOL 51 FR No. 170 Page 31323; dated 3 SEP 86) under Section 97.23 effective 25 SEP 86 which is hereby amended as follows:

Washington, PA, Washington County, VOR-A Amdt. 4, VOR-B Amdt. 5, Procedures rescinded.

[FR Doc. 86-22015 Filed 9-29-86; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Ch. III

[Docket No. 60622-6122]

Office of Export Administration Reorganization

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration has undergone a major reorganization. The purpose of this reorganization was to create separate, but closely associated, export licensing and technical/policy analysis units enabling Export Administration (EA) to perform more effectively.

The structure on one office (the Office of Export Administration (OEA)) with seven divisions has now been replaced by three separate program offices that report directly to the Deputy Assistant Secretary for Export Administration: The Office of Export Licensing (OEL), the Office of Technology and Policy Analysis (OTPA), and the Office of Foreign Availability OFA). This rule changes the regulations to reflect the new organizational structure.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Office of Technology and Policy Analysis, Department of Commerce, Washington, DC (Telephone: (202) 377-2440).

SUPPLEMENTARY INFORMATION:

Background

The Foreign Availability Division has been elevated to the Office level in response to the 1985 Export Administration Amendments Act and will continue to expand its present program of assessing the comparability of foreign goods to controlled U.S. commodities or technologies and their availability to proscribed destinations.

The Office of Technology and Policy Analysis is a merger of EA's technical expertise with its policy formulation capability. This Office is responsible for all technical and policy analyses that fall within the realm of EA, except foreign availability determinations. OTPA is divided into a Strategic Planning and Policy Division and four Technical Centers organized along commodity areas—Computer Systems Technology Center, Capitol Goods and Production Materials Technology Center, Electronic Components and Instrumentation and the Telecommunications Technology Center. A few examples of the types of issues that will be addressed by OTPA include: the COCOM List Review, foreign policy evaluations, third country initiatives, and the formulation and publication of regulations.

The Office of Export Licensing (OEL) has sole responsibility for the receipt, review and issuance of export license applications. This Office is divided into three divisions: The Individual Validated Licensing Division, the Special Licensing Division, and Operational Support Division.

The former Exporters' Service Staff function is now under the Office of Export Licensing as part of the Individual Validated Licensing Division. The former Computer Services Division is now the Automated Information Staff reporting directly to the Deputy Assistant Secretary for Trade Administration. Its function of planning and operation Export Administration ADP systems remains the same; the

ultimate goal of automating the licensing process is still its highest priority.

A new unit, the Program Review Staff, provides programmatic reviews and evaluations directly to the Deputy Assistant Secretary for Export Administration.

By clearly defining and delineating responsibilities for licensing and policy work, accountability is finely concentrated and identified. The OTPA staff will be fully dedicated to export control policy formulation and analysis, allowing licensing officers to concentrate solely on the processing of export license applications. The policy team will also establish better and more frequent liaison with industry—all contributing to a more effective export control program.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)) exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, like other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Cheryl D. White, Regulations Branch, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) or the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

CHAPTER III—[AMENDED]

Accordingly, Parts 368, 370, 371, 372, 373, 374, 375, 376, 378, 379, 385, 386, 387, 388, 390, and 399 of the Export Administration Regulations (15 CFR Part 368–399) are amended as follows:

1. (a) The authority citation for 15 CFR Parts 368, 370, 372, 374, 375, 376, 378, 387, and 388 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.* as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

(b) The authority citation for 15 CFR Parts 371, 373, 379, 385, 386 and 399 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.* as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq;* E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986).

(c) The authority citation for 15 CFR Part 390 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.;* E.O. 12543 of January 7, 1986 (51 FR 875, January 9, 1986).

2. The phrases "Office of Export Administration", "Office of Export Administration (OEA)", and the acronym "(OEA)" are changed everywhere they appear in Chapter III to "Office of Export Licensing", "Office of Export Licensing (OEL)", and the acronym "(OEL)", *except* in the following places:

a. The phrase "Office of Export Administration" is changed to "Export Administration" in the following places:

§ 368.1(a)(2)(i), (a)(2)(i)(A);

§ 370.2, under the definitions of "Commodity Control List", "Department of Commerce", and "Validated License";

§ 370.10(f)(2), (f)(3);

Supplement No. 2 to Part 370, footnote 2 to the introductory text;

§ 371.2(c)(1);

§ 378.6(a);

footnote 3 to § 379.1(a);

§ 379.2, footnote 8;

§ 379.5, footnote 1 to (e)(2)(ix);

§ 385.7(a)(1)(ii);

§ 386.10, introductory text;

Supplement No. 1 to Part 386, paragraph (h) of Section 30.55; and Supplement No. 1 to Part 388, paragraphs (b)(3)(i) and (b)(3)(ii).

b. The phrase "Office of Export Administration" is changed to "Office of Technology and Policy Analysis" in §§ 370.1(b)(4) and 390.1(b)(1).

c. The phrase "Office of Export Administration (OEA)" is changed to "Export Administration (EA)" in § 399.1(a).

d. The phrase "OEA" is changed to "EA" in § 399.1(d).

3. The phrase "Office of Export Control" is changed to "Export Administration" in § 373.2(h)(1).

4. The phrase "Exporters' Service Staff" is changed to "Exporter Assistance Staff" everywhere it appears in Chapter III.

5. The phrase "Exporters' Service Staff of the Office of Export Administration" is changed to "Exporter Assistance Staff of the Office of Export Licensing" in § 372.4(h).

6. The phrase "Exporter's Service Staff, Office of Export Administration" is changed to "Exporter Assistance Staff, Office of Export Licensing" in § 399.1(f)(1) and in § 399.2, Interpretations 10 and 12.

7. The phrase "Multiple Licensing Branch of the Office of Export Administration" is changed to "Special Licensing Branch of the Office of Export Licensing" in § 373.3(d)(1).

8. The phrase "Multiple Licensing Branch, OEA" is changed to "Special Licensing Branch, OEL" in the concluding text of § 373.3(e)(1)(ix), and in § 373.3(f)(2)(i) and (f)(2)(ii).

9. The phrase "Multiple License Branch" is changed to "Special Licensing Branch" in § 373.3(h)(1) and (1)(4)(iv).

10. The phrase "Office of Export Administration, Multiple Licensing Branch" is changed to "Office of Export Licensing, Special Licensing Branch" in § 373.3(h)(1).

11. The phrase "Director, Operations Division, Office of Export Administration" is changed to read "Director, Office of Export Licensing, Export Administration" in §§ 373.4(e)(3); 373.2(a)(4)(ii); and Supplement No. 1 to Part 379, in the answer to the 9th question.

12. The phrase "Export Control Administration" is changed to "Export Licensing" in the introductory text of § 390.4.

13. The phrase "Compliance Division of OEA" is changed to "Office of Export Enforcement" in § 386.3(q)(1).

Dated: September 17, 1986.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86-22052 Filed 9-29-86; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Parts 372, 373, 374, 375, 376, 379, and 399

[Docket No. 60615-6115]

Editorial Corrections and Clarifications to the Export Administration Regulations

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule, which neither expands nor limits the provisions of the Export Administration Regulations, makes various corrections and clarifications:

(1) In § 372.9, a reference to case numbers on export license applications is amended and a sentence is revised for the sake of clarity.

(2) A listing of spectrum analyzers excluded from special export license procedures is transferred from Supplement No. 1 of § 399.1 to Supplement No. 1 of Part 373. This change is made to establish a consistent format in those supplements.

(3) A reference in § 374.3 to Form ITA-6031P, Computer System Parameters, is corrected to reflect the latest redesign of that Form.

(4) Section 376.5 of the Regulations is removed because it refers to expired export controls on certain helicopters.

(5) A reference in § 376.14 to a paragraph in the Export Administration Act is corrected to reflect the new paragraph numbering of the Act, as amended in 1985 (Pub. L. 99-64).

(6) A provision in § 379.4 on the export of technical data under General License GTDR is amended to clarify that it applies only to such exports to South Africa or Namibia.

(7) An entry of the Commodity Control List (Supplement No. 1 of § 399.1) is amended by inserting regulatory material inadvertently left out of a final rule published on April 8, 1985 (50 FR 13770-13771).

(8) The code letter "D" following certain entries on the Commodity Control List is changed to "C" to indicate that a validated license is required for export to certain countries other than those in Country Groups Q, S, W, Y, and Z.

(9) Entry 1521A of the Commodity Control List is amended by correcting a reference to "lasers" to read "amplifiers".

EFFECTIVE DATES: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (50 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.).*

List of Subjects in 15 CFR Parts 372, 373, 374, 375, 376, 379 and 399

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

1. The authority citation for Parts 372, 374, 375 and 376 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citation for Parts 373, 379 and 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*, E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986).

PART 372—[AMENDED]

§ 372.9 [Amended]

3. In § 372.9, the first sentence of paragraph (b) is amended by revising the phrase "consisting of the letter 'A' " to read "consisting of a letter" and the first sentence of paragraph (c) is revised to read "Unless a specific unit of quantity is shown in the 'Unit' paragraph of an entry on the Commodity Control List, commodities covered by that entry are licensed in terms of the total dollar value as shown on the license."

PART 373—[AMENDED]

4. Supplement No. 1 to Part 373, "Commodities Exluded From Certain Special License Procedures", is amended by revising the entry for 1529, as follows:

Supplement No. 1—Commodities Excluded From Certain Special License Procedures

* * * * *

1529 Sub-entry (b)(4) only: Spectrum analyzers employing time compression of the input signal or FFT (Fast Fourier Transform) techniques that have either of the following characteristics:

1. The time required to process 1024 time domain samples and update a 512-line PSD display or some part thereof is less than 50 ms and the measurement can be made with 0.1 Hz or better resolution with the maximum frequency range set at 500 Hz or below, or

2. The time required to process 1024 time domain samples and transfer an updated 512-line PSD data block is less than 50 ms and the

measurement can be made with 0.1 Hz or better resolution with the maximum frequency range set at 500 Hz or below.

* * * * *

PART 374—[AMENDED]

5. Section 374.3 is amended by revising paragraph (e)(1)(i)(D) to read as follows:

§ 374.3 How to request reexport authorization.

* * * * *

(e) Reexports from COCOM countries.

(1) * * *

(i) * * *

(D) If included in entry 1565A, have at least one parameter exceeding any of the parameters listed in Advisory Note 12 to that entry.

* * * * *

PART 376—[AMENDED]

§ 376.5 [Removed]

6. Section 376.5 is removed and reserved.

§ 376.14 [Amended]

7. Section 376.14, paragraph (a) is amended by revising in the first sentence the phrase "Pursuant to section 6(j) of the Export Administration Act of 1979" to read "Pursuant to section 6(k) of the Export Administration Act of 1979".

PART 379—[AMENDED]

§ 379.4 [Amended]

8. In paragraph (e)(2) of § 379.4, the first sentence is amended by revising the phrase "may be made under this General License GTDR" to read "may be made *to South Africa or Namibia* under this General License GTDR".

PART 399—[AMENDED]

§ 399.1 [Amended]

9. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1312A is amended by revising the *Processing Code* paragraph to read "TE"; by adding a *Reason for Control* paragraph immediately below the *Processing Code* paragraph reading "National security; paragraph (b) of the List below is also controlled for nuclear non-proliferation."; and by revising paragraph (a)(2) of the Advisory Note to read "Chamber cavity with an inside diameter (*i.e.*, the maximum inside diameter of the working chamber) not exceeding 406 mm (16 inches), when the controlled thermal environment that can be achieved and maintained does not exceed 1,500 °C;".

10. In Supplement No. 1 to § 399.1 (the Commodity Control List), the code letter "D" is revised to read "C" after the four-digit identification number for the following entries on the Commodity Control List:

5399 (Group 3)	5568 (Group 5)
5406 (Group 4)	5585 (Group 5)
5431 (Group 4)	5595 (Group 5)
5510 (Group 5)	5596 (Group 5)
5565 (Group 5)	5799 (Group 7)

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1521A is amended by revising the *Unit* paragraph of that entry to read: "Report amplifiers and systems in 'number'; parts and accessories in '$ value'.".

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1529A is amended by revising the *Special Licenses Available* paragraph to read "Certain items under paragraph (b)(4) of the List below are excluded from special licenses; see 1529 Supplement No. 1 to Part 373. For all other items, see Part 373.".

Dated: September 24, 1986.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86-22051 Filed 9-29-86; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 86-176]

Amendment to the Customs Regulations Concerning the Coastwise Transportation of Certain Articles by Vessels of Cyprus

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to add Cyprus to the list of nations which permit vessels of the U.S. to transport certain articles specified in section 27, Merchant Marine Act of 1920, as amended, between their ports.

Customs has been furnished satisfactory evidence that the Republic of Cyprus places no restrictions on the transportation of certain specified articles by vessels of the U.S. between ports in that country. This amendment provides reciprocal privileges for vessels registered in Cyprus.

EFFECTIVE DATE: The reciprocal privileges for vessels registered in Cyprus became effective on July 10, 1986).

FOR FURTHER INFORMATION CONTACT: Donald Reusch, Carriers, Drawback & Bonds Division, (202-566-5706.

SUPPLEMENTARY INFORMATION:

Background

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883) (the "Act"), provides generally that no merchandise shall be transported by water, or by land and water, between points in the U.S. except in vessels built in and documented under the laws of the U.S. and owned by U.S. citizens. However, the 6th proviso of the Act, as amended, by Pub. L. 89-194 (79 Stat. 823, T.D. 66-176) and Pub. L. 90-474 (82 Stat. 700, T.D. 68-227), provides that upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the U.S., reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the U.S. will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), lists those nations found to extend reciprocal privileges to vessels of the U.S. for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. On July 10, 1986, the Embassy of Cyprus advised the Director, Carriers, Drawback and Bonds Division, of the Customs Service Headquarters that Cyprus places no restrictions on the transportation of empty cargo vans, empty lift vans, and empty shipping tanks by vessels of the U.S. between ports in Cyprus. The Carriers, Drawback and Bonds Division is of the opinion that satisfactory evidence has been furnished to establish the reciprocity required in § 4.93(3). Therefore, the Director of the Division has determined that, effective retroactively to July 10, 1986, Cyprus should be added to the list of nations set forth in § 4.93(b)(1).

By Treasury Department Order 165-25 the Secretary of the Treasury has delegated authority to the Commissioner of Customs to prescribe regulations relating to §§ 4.22, 4.81a(b), 4.93(b)(1) and (b)(2), 4.94(b), and 10.59(f), Customs Regulations (19 CFR 4.22, 4.81a(b), 4.93 (b)(1) and (b)(2), 4.94(b), and 10.59(f)). These sections contain lists of nations entitled to preferential treatment in Customs matters because of reciprocal

privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82-201), dated October 13, 1982, the Commissioner delegated this authority to the Assistant Commissioner (Commercial Operations), who redelegated this authority to the Director, Office of Regulations and Rulings, who then redelegated it to the Director, Regulations Control and Disclosure Law Division.

Finding

On the basis of the information received from the Embassy of Cyprus as described above, it is determined that Cyprus places no restrictions on the transportation of certain articles specified in the 6th proviso of section 27 of the Merchant Marine Act of 1920, as amended, by vessels of the U.S. between ports in Cyprus. Therefore, reciprocal privileges are accorded as of July 10, 1986, to vessels registered in Cyprus.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Cargo vessels, Maritime carriers, Vessels.

Regulations Amendment

To reflect the reciprocal privileges granted to vessels registered in Cyprus, Part 4, Customs Regulations (19 CFR Part 4), is amended in the following manner:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3, 2103;

Section 4.93 also issued under 19 U.S.C. 1322(a); 46 U.S.C. 883.

§ 4.93 [Amended]

2. Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), is amended by adding "Cyprus", in appropriate alphabetical order to the list of nations entitled to reciprocal privileges.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this is a minor amendment in which the public is not particularly interested and there is a statutory basis for the described extension of reciprocal privileges, notice and public procedure pursuant to 5 U.S.C. 553(b)(B) are unnecessary. In accordance with 5 U.S.C. 553(d)(1), a delayed effective date is not required because this amendment grants an exemption.

Inapplicability of Regulatory Flexibility Act

This document is not subject to the provisions of 5 U.S.C. 603, 604, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act." That Act does not apply to any regulations such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Dated: September 24, 1986.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 86-22062 Filed 9-29-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 814

[Docket No. 79N-0009]

Premarket Approval of Medical Devices

Correction

In the document beginning on page 26342, in the issue of Tuesday, July 22, 1986, make the following corrections:

1. On page 26356, first column, second complete paragraph, fifteenth line, "5!3" should read "513".

2. On page 26372, third column, at the end of the document, "FR Doc. 86-16262" should read "FR Doc. 86-16282".

BILLING CODE 1505-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor of a new animal drug application (NADA) for decoquinate from Hess & Clark, Inc., to Rhone-Poulenc, Inc.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc, Inc., 125 Black Horse Lane, Monmouth, NJ 08852, has acquired NADA 39-417 Deccox® (decoquinate premix) from Hess & Clark, Inc. Hess & Clark advised FDA of the sponsor change. This change of sponsor does not involve any changes in manufacturing facilities, equipment, procedures, or production personnel. The regulation providing for use of the premix is amended to reflect the change of sponsor.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.195 [Amended]

2. Section 558.195 *Decoquinate* is amended in paragraph (a) and in the table in paragraph (d) by removing "011801" and inserting in its place "011526."

Dated: September 24, 1986.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-22038 Filed 9-29-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 215 and 236

[Docket No. R-86-1163; FR-1702]

Mortgage and Loan Insurance Programs; Definition of Income, Rents and Recertification of Family Income for the Rent Supplement and Section 236 Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; correction.

SUMMARY: On June 16, 1986, HUD published the above captioned final rule and provided for an effective date of August 1, 1986. A correction document was published on July 3, 1986 (51 FR 24324). On July 28, 1986 (51 FR 26878), the effective date of this rule was postponed until October 1, 1986 because of an attempt to coordinate the effectiveness of this rule with the effectiveness of a final rule entitled Restriction on Use of Assisted Housing, originally published on April 1, 1986 (51 FR 11198), which was then expected to become effective on September 30, 1986. The effectiveness of that rule has been delayed. To prevent further delay in the effectiveness in this rule, corections are being made to delete cross-references to regulatory provisions (Part 200, Subpart G) that were to be added by the April 1, 1986 rule.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Program Planning Division, Office of Multifamily Housing Management, Department of Housing and Urban Development, Washington, DC 20410, telephone (202) 426-3944. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Cross-references to Part 200, Subpart G, are removed from §§ 215.55, 236.2, 236.80 and 236.710, since that subpart will not become an effective rule by the effective date of this rule, October 1, 1986.

PARTS 215 AND 236—[CORRECTED]

Accordingly, the Department corrects 24 CFR Parts 215 and 236, published on June 16, 1986, as follows:

§ 215.55 [Corrected]

1. On page 21857, column one, the second sentence of § 215.55(a) is removed.

§ 236.2 [Corrected]

2. On page 21859, column three, in the definition of qualified tenant, paragraph (c) is removed.

§ 236.80 [Corrected]

3. On page 21861, column two, the second sentence of § 236.80(a) is removed.

§ 236.710 [Corrected]

4. On page 21862, columns two and three, the last sentence of § 236.710 is removed.

Dated: September 25, 1986.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 86-22065 Filed 9-29-86; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket Nos. H-022C and H-022E]

Hazard Communication; Definition of Trade Secret and Disclosure of Trade Secrets to Employees, Designated Representatives and Nurses

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: This document is a final rule which modifies the trade secret definition and the trade secret access provisions of OSHA's Hazardous Communication Standard (HCS) (29 CFR 1910.1200). On May 24, 1985, the U.S. Court of Appeals for the Third Circuit upheld the challenges to the HCS trade secret definition on the grounds that it was broader than state law, and to the trade secret access provisions insofar as they limited trade secret access to health professionals. The Court directed the Agency to: (1) Reconsider a trade secret definition which would not provide trade secret protection to chemical identity information that is readily discoverable through reverse engineering; and (2) adopt provisions permitting employees and their collective bargaining representatives access to trade secrets. This final rule implements the Court decision by adopting, after public comment, a trade secret definition that does not protect chemical identity information that is readily discoverable through reverse engineering and by adopting provisions that permit employees and their designated representatives access to trade secrets. Finally, this rule permits occupational health nurses access to trade secret. In addition, OSHA is promulgating a new Appendix D that ensures that the trade secret definition is interpreted and applied in accordance with state law and the public is fully apprised of the factors and principles considered when determining whether business information is a trade secret.

EFFECTIVE DATE: The final rule is effective on September 30, 1986. The nurses' access provisions are applicable October 30, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Room N3641, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 523-8151. Copies of this document may be obtained from the Office of Information and Consumer Affairs at this address and telephone number, or by contacting any OSHA Regional or Area Office.

SUPPLEMENTARY INFORMATION: References to the rulemaking record are made in the text of this document. The abbreviation "Ex." has been used to designate the Exhibit number in Docket H-002C (interim final rule) or H-022E (access for nurses).

I. History of the Proceedings

OSHA published its final Hazard Communication Standard (HCS) on November 25, 1983 (48 FR 53280). The purpose of the HCS is to provide employees in the manufactuiring sector with information about the identity and hazards of the chemicals to which they are exposed in their workplaces. The standard is designed to accomplish this by requiring producers of chemicals (chemical manufacturers and importers) to evaluate the hazards of the chemicals they produce or import, and to prepare container labels and material safety data sheets conveying this hazard information, as well as precautions for safe handling and use. These labels and material safety data sheets are then required to be transmitted to employers purchasing these chemicals. All employers in the manufacturing sector (Standard Industrial Classification Codes 20 through 39) are required to have hazard communication programs for their employees, to transmit and explain hazard information to them through the required labels and material safety data sheets, as well as through employee training programs. For a detailed explanation of the rule's requirements, please see 48 FR 53334-53340. The rule itself was published at 48 FR 53340-53348, and is codified at 29 CFR 1910.1200.

The underlying purpose of these information transmittal requirements in the HCS is to reduce the incidence of chemical source illnesses and injuries in the manufacturing sector. OSHA believes, and the record supports, that when employers have complete information on the hazards of the chemicals in their workplaces, they are better able to devise and implement protective measures for their employees. When employees have such information, they are better able to support and participate in these protective programs, and to take steps to protect themselves.

On November 22, 1983, petitions for judicial review of the HCS were filed in the U.S. Court of Appeals for the Third Circuit by the United Steelworkers of America, AFL-CIO, and by Public Citizens, Inc., representing themselves and a number of labor groups. Motions to intervene in the case were filed by the Chemical Manufacturers Association, the American Petroleum Institute, the National Paint and Coatings Association, and the States of New York, Connecticut, and New Jersey. In addition, petitions for review of the standard were filed by the State of Massachusetts in the First Circuit; the State of New York in the Second Circuit; the State of Illinois in the Seventh Circuit; the Flavor and Extract Manufacturers' Association in the Fourth Circuit; and the Fragrance Materials Association in the District of Columbia Circuit. These cases were transferred to the Third Circuit and consolidated into one proceeding. The cases brought by the Flavor and Extract Manufacturers' Association and the Fragrance Materials Association were subsequently withdrawn.

The Court issued its decision on May 24, 1985. The rule was upheld in most respects. The Court remanded the HCS to the Agency for reconsideration and revision of three aspects: (1) To broaden the scope of industries covered to include employees exposed to hazardous chemicals in non-manufacturing industries, except to the extent that it is infeasible; (2) to narrow the definition of "trade secret" incorporated into the rule to ensure that it is not broader than applicable state laws, and does not permit chemical identities to be claimed as trade secrets if such identities can be readily discovered through reverse engineering; and (3) to extend access to trade secret information in non-emergency situations to employees and collective bargaining agents. OSHA decided not to appeal the decision.

The first remand issue, the scope of industries covered, requires extensive rulemaking activity. OSHA determined that it would be inappropriate to delay resolution of the trade secret issues in order to complete all of the rulemaking requirements for expanding the scope of the standard. Thus the Agency published an interim final rule on November 27, 1985, to address the Court's concerns with regard to issues (2) and (3) (50 FR 48750). Since the first compliance date for the HCS was November 25, 1985, OSHA believed it was imperative to have trade secret provisions, revised in accordance with the Court's direction, in place as soon after that date as possible. This best served the interests of employee protection by not delaying the effective date of the HCS rule.

OSHA invited the public to submit comments on the interim final rule during a sixty-day period following its publication. A total of nineteen (19) comments, including four received prior to publication of the interim final rule, addressed its provisions (Docket H-022C).

In addition, OSHA published a notice proposing that occupational health nurses be permitted access to trade secrets under the same conditions as other health professionals (50 FR 49410). Thirty-two (32) comments were received from interested parties during the sixty-day comment period following the proposal's publication (Docket H-022E).

II. Summary and Analysis of the Record

The preambles to the final HCS (48 FR 53280) and to the interim final rule (50 FR 48750) should be consulted for details regarding the various regulatory approaches incorporated by OSHA. The two issues of concern in the interim final rule were the definition of trade secret, and the extension of access to trade secrets to employees and their designated representatives.

A. *Definition of Trade Secret.* In the final HCS, OSHA required that the specific chemical identity of each hazardous chemical be indicated on the material safety data sheet for the substance unless the specific chemical identity is a *bona fide* trade secret. 29 CFR 1910.1200(g)(2). The "specific chemical identity" of a substance is defined in the standard as "the chemical name, Chemical Abstract Service Registry Number, or any other information that reveals the precise chemical designation of the substance". 29 CFR 1910.1200(c).

In response to comments which had been received during the public participation phase of the rulemaking, OSHA adopted a trade secret definition in the final rule which was derived from the commentary in the *Restatement of Torts*, section 757, comment *b* (1939). (*See* 48 FR 53314). The *Restatement of Torts* was published by the American Law Institute (ALI) in 1939 as an "orderly statement of the general common law of the United States. . . ." *Introduction to Restatement of Torts* at *x* ("The sections . . . may be regarded both as the product of expert opinion and as the expression of the law by the legal profession.").

The *Restatement's* trade secret definition is the one most often used in common law. As noted in the preamble to the interim final rule (*see generally* 50 FR 48752), numerous courts and jurisdictions have relied upon this *Restatement* definition:

> A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.

OSHA modified this general definition by adding a parenthetical phrase regarding chemical identities, and referring specifically to an "employer" since this is the type of business which the Agency has the authority to regulate. Thus the definition in the final HCS read as follows:

> "Trade secret" means any confidential formula, pattern, process, device, information or compilation of information (including chemical name of other unique chemical identifier) that is used in an employer's business, and that gives the employers an opportunity to obtain an advantage over competitors who do not know or use it. 29 CFR 1910.1200(c).

As has been stated previously, the Agency added the parenthetical phrase regarding chemical names to clarify that the only type of trade secret information that would be subject to disclosure under the HCS would be that dealing with specific chemical identity, not the more common process or percentage types of trade secrets.

The Third Circuit Court of Appeals was not persuaded that the addition of this parenthetical phrase served merely to clarify the definition. The Court concluded that the addition broadened the definition by providing protection for chemical identities which are determinable through reverse engineering, thus permitting information to be considered a trade secret in situations where states utilizing the *Restatement* definition would not. 763 F.2d at 740. The Court directed OSHA "to reconsider a trade secret definition which will not include chemical identity information that is readily discoverable through reverse engineering." *Id.* at 743.

OSHA did not intend through inclusion of the parenthetical phrase to allow employers to make spurious claims of trade secrecy, or even to change the criteria currently used in common practice to determine the legitimacy of a trade secret claim. "[The] definition adopted . . . was not intended to exclude the various factors noted in the [Restatement] comment. Rather they remain relevant to construing the definition." Brief for the Secretary of Labor at 66 n.61. The HCS requires employers to substantiate the legitimacy of their trade secret claims (29 CFR 1910.1200(i)(7)(iii)). OSHA continues to maintain that this is the appropriate approach, and that employers bear the burden of demonstrating that their trade secret claim is *bona fide*. The Agency will evaluate the appropriateness of that substantiation in the event that an employer denies a legitimate request for disclosure of the trade secret, and a complaint is subsequently made to OSHA.

To carry out the Court's direction regarding the definition, and clarify the intent of the Agency with regard to enforcement of the HCS, in the interim rule OSHA deleted the parenthetical phrase included in the definition of trade secret. That made the definition identical to the *Restatement of Torts* definition, eliminated the potential for interpreting the definition in a broader manner than was intended, and, therefore, is consistent with state laws.

In addition to modifying the trade secret definition to make it consistent with the *Restatement*, OSHA explicitly adopted the principles enunciated by the *Restatement*, section 757, comment *b*, as the criteria the Agency will use to evaluate an employer's substantiation of a trade secret claim. OSHA published the full text of the *Restatement of Torts'* trade secret commentary in a new Appendix D to 29 CFR 1910.1200.

The majority of the commentors supported use of the *Restatement* definition (Exs. 2–1, 2–5, 2–7, 2–8, 2–10, 2–12, 2–13, 2–17, 2–19, and 2–20), and specifically endorsed elimination of the parenthetical phrase added by OSHA (Exs. 2–5, 2–7, 2–8, and 2–19). For example, Organization Resource Counselors, Inc. stated that (Ex. 2–13):

> This issue is one that is surrounded by an aura of uncertainty. ORC accepts the premise that there are genuine trade secrets in industry. ORC also acknowledges that it is difficult to determine whether something is a trade secret.
>
> Because of the difficulty of making this determination, ORC has urged the use of the *Restatement of Law of Torts* definition of trade secrets. This long-standing definition, with which the states, the federal government, and employers have had experience, contains the fairest and best understood balance of criteria with which to determine whether something is a trade secret. As a result, ORC supports (as it did in its October 7, 1985 letter) the use by OSHA of the *Restatement of Law of Torts* definition for trade secrets, as stated in the proposal.

The October 7, 1985, letter referred to in ORC's comments is Ex. 2–7.

Although no comments were received which suggested an alternative definition, several did suggest modifications. The State of California recommended that the definition be revised to refer to non-employers who manufacture hazardous chemicals, not just chemical manufacturers who are employers (Ex. 2–4). OSHA only has jurisdiction over businesses with employees, where there is an employer-employee relationship (29 U.S.C. s654(a)). Therefore, it would not be appropriate to modify the definition to include individuals who manufacture hazardous chemicals and have no employees.

There were also several suggestions to revise the definition of trade secret to include a specific reference to reverse engineering (Exs. 2–4, 2–11, and 2–14). The Court of Appeals' conclusion that the definition provided trade secret protection for chemical identities that are determinable by reverse engineering was based on its belief that the added parenthetical phrase "enlarge[d] considerably the *Restatement* definition." 760 F.2d at 740. Eliminating the phrase satisfies the Court's concerns, and ensures that the OSHA definition will not be interpreted as affording broader trade secret protection than state laws. As the Agency's addition of the phrase resulted in the Court's concluding that the OSHA definition went beyond the common law definition, it does not appear to be appropriate to modify the definition in any other way that would also be open to varying interpretations and run the risk of inadvertently revising the *Restatement* definition. In addition, specifically referencing reverse engineering capability in the definition itself is unnecessary because the *Restatement* already excludes information that is readily determinable by reverse engineering. Furthermore, to clarify what is a trade secret, the Agency has specifically included in the appendix to the rule additional guidance regarding the factors, including reverse engineering capability, that are considered when evaluating trade secret claims in accordance with the *Restatement*.

OSHA has added a new Appendix D to the standard which was taken from the *Restatement*, section 757, comment *b*, and which indicates that there are at least six factors that are well-accepted in common law as determining whether a trade secret claim is legitimate. The factors include: (1) The extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the business to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort and money expended in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

These factors have been incorporated into the HCS, and thus provide significant guidance to employers complying with the standard, and to OSHA staff in determining the validity of trade secret claims. The discussion in the *Restatement* does not indicate that any one of these criteria is more important than the others, including reverse engineering. OSHA therefore concludes that the Agency has satisfied the Court's concerns, and in fact, has provided more information than required by the Court. A modification of the definition to reflect one criterion, such as reverse engineering, would not be consistent with commonly accepted provisions in the law, and would provide further opportunity for misinterpretation by affected parties.

A number of the commentors specifically endorsed inclusion of Appendix D and the use of the six criteria to evaluate trade secrets (Exs. 2–7, 2–8, 2–9, 2–12, 2–19, and 2–20). For example, the Dow Chemical Company stated that (Ex. 2–12):

> By adopting the criteria in comment b of section 757 of the Restatement of Torts, OSHA will clearly comply with the Third Circuit's decision. The ease or difficulty of reverse engineering is one of the factors to be considered under the Restatement. Thus OSHA's definition will not afford more protection than under state law. In addition, the Restatement was published as codification of state law and has been cited approvingly by the U.S. Supreme Court, leading commentators and numerous courts.

The AFL–CIO made several comments regarding clarification of the intent of OSHA with regard to trade secrets (Ex. 2–14). For example, it suggested that the Agency reiterate that relatively few identities will qualify as legitimate trade secrets. This was already stated by OSHA in the interim final rule, particularly in the section dealing with the regulatory impact of the action (50

FR 48756). As indicated at that time, there are a number of factors that should serve to limit the number of trade secret claims under the rule. OSHA believes that producers of commodity chemicals (single substances) will generally have very few claims, since they are marketing these chemicals by specific name and not under some unidentified proprietary name. Formulators of products are more likely to claim that identities of chemicals in a mixture are trade secrets. The HCS does not generally require that information be disclosed for hazardous chemicals in small concentrations (less than one percent for health hazards in general, less than one tenth of one percent for carcinogens). The standard also does not require that process information or the percentages of the ingredients in a mixture be disclosed. Many trade secrets involve these types of process and percentage information, rather than just the specific chemical identity. Obviously, if an ingredient is not hazardous, disclosure is not required.

The existence of the rule itself should serve to diminish the number of trade secret claims. In the past, employers provided information on chemicals voluntarily, not as a response to regulatory requirements. Since there was no requirement to divulge information, some employers frequently identified such data as being proprietary. The requirements of the rule, combined with the increased desire of customers to receive full information on a purchased product, have caused many employers to reevaluate, and limit, their trade secret claims.

Employers will have to carefully consider their existing claims in light of the six criteria specified, and ensure that they are withholding information only on the basis of sound, legal justification. This assessment by OSHA has not been changed by the addition of Appendix D or the modification of the trade secret definition. The Agency always assumed that legitimate claims would be infrequently found, and that many of the existing claims would not be determined to be valid when considered from a legal perspective. And certainly the Agency would agree that if a substance or mixture can be readily ascertained through reverse engineering, the trade secret claim would not be legitimate. As the AFL–CIO suggested, existence of laboratory evidence in this regard would be compelling.

Appendix D was adopted verbatim from the *Restatement* section 757, comment *b*. The AFL–CIO (Ex. 2–14) also suggested that the last paragraph of Appendix D be deleted since it pertains to the protection of information which is not a trade secret, and the HCS trade secret access provisions only protect *bona fide* trade secret information. Upon review of the language in the last paragraph of Appendix D, OSHA agrees with the AFL–CIO that it does not add to the proper interpretation of the HCS trade secret rules and might be misunderstood as substantively modifying the HCS information transmittal provisions with regard to information not a trade secret. OSHA is, therefore, deleting the last paragraph of Appendix D from the final rule.

The Standard Oil Company suggested that OSHA clarify in the rule that disclosure of trade secret information in accordance with the requirements of the HCS should not detract from the validity of the trade secret claim (Ex. 2–15). It appears obvious that if disclosure of trade secret information is only made pursuant to this standard, to individuals with a need-to-know, and who sign confidentiality agreements, that the employer is maintaining the legitimacy of the claim through these protective measures. It does not appear necessary to clarify the standard in this regard.

Public Citizen, Inc. claimed that the interim final rule failed to provide clear guidance on trade secrets (Ex. 2–18). The organization contended that OSHA should not merely comply with the Court's orders, but rather should further review and modify the standard's requirements regarding trade secrets. Public Citizen did not suggest any specific language to be adopted. The Agency does not believe it is either appropriate or necessary to modify provisions that have been approved by the Court, or to delay implementation of the HCS by proposing new modifications that would be required to undergo all phases of a rulemaking process. Furthermore, the interim final rule provided as much guidance for the evaluation of trade secret claims as the common law provides.

Upon review of the comments submitted, OSHA has determined that the definition of trade secret will remain as published in the interim final rule. However, the Agency will delete the last paragraph of Appendix D as it deals with protecting information that is not a trade secret, and thus is irrelevant to defining what is a *bona fide* trade secret.

B. *Employee and Designated Representative Access to Trade Secrets.* As originally promulgated, the provisions of the HCS permit employers to withhold specific chemical identity information if it is a *bona fide* trade secret. However, the standard also requires this information be disclosed to health professionals under certain conditions of need and confidentiality. In medical emergencies, a treating physician or nurse is entitled to receive the information immediately. After the emergency is abated, the holder of the trade secret could require the treating physician or nurse to sign a written statement of need and a confidentiality agreement, but it is left to the determination of the health professional as to whether an emergency which necessitates disclosure exists. *See* 29 CFR 1910.1200(i)(2).

In non-emergency situations, a health professional providing medical or other occupational health service to exposed employees is entitled to the trade secret information under certain conditions. Under the original final rule, the health professionals entitled to this non-emergency disclosure are physicians, industrial hygienists, toxicologists, and epidemiologists. The request for the disclosure of trade secret information has to be submitted to the holder of the trade secret in writing; it must specify the occupational health need for the information; explain why disclosure of the specific chemical identity is necessary, and why other information would not allow the health professional to provide the necessary services; describe the procedures that will be used to maintain the confidentiality of the information; and the requestor must agree to keep the information confidential. *See* 29 CFR 1910.1200(i)(3).

OSHA, therefore, had devised a regulatory scheme that permitted employers to withhold specific chemical identity information when it is a *bona fide* trade secret, but required that it be disclosed to health professionals with a need for the information. OSHA believed that this approach would ensure that chemical hazard information would be disclosed, resulting in adequate protection for employees in those few situations where a legitimate trade secret exists and is withheld from the trade secret holder's employees and downstream employers and their employees.

The United Steelworkers of America argued to the Third Circuit Court of Appeals that many employees may not have access to health professionals, yet have a "need-to-know" the trade secret information. If an employee satisfies the need-to-know requirements of the standard at 29 CFR 1910.1200(i)(3)(ii), and is willing to sign a confidentiality agreement, the Steelworkers argued that the employee should also be entitled to access. *See* Brief for Petitioner United

Steelworkers of America, AFL–CIO–CLC at 37–43.

The Third Circuit was persuaded by this argument, and "conclude[d] that the restriction in the [HCS] of access to trade secret information to health professionals is not supported by substantial evidence in the record. . . ." (763 F. 2d at 743). The trade secret access provision was held "invalid insofar as it limits access by employees and their collective bargaining representatives". *Id.*

In response to the Court's decision, OSHA added language to the standard in the interim final rule to give employees and their representatives access to trade secret chemical identities under the same conditions as health professionals. This appeared to be the appropriate approach to take since the Court specifically held valid all other provisions relating to trade secret disclosure. Consequently, employees and their representatives will have to submit written requests establishing a need-to-know the information, and be willing to sign a confidentiality agreement. Rather than using the term "collective bargaining agent", however, the modifications use "designated representative" to be consistent with the other requirements of the HCS. "Designated representative" is defined in the HCS, and a collective bargaining agent is automatically considered a designated representative under that definition. 29 CFR 1910.1200(c). Thus the modified language carried out the Court's instructions.

Many of the commentors on the interim final rule specifically endorsed the approach taken, stating that the conditions for access are appropriate, and that strong justification is necessary for trade secret disclosure (*see* Exs. 2–8, 2–12, 2–13, 2–15, 2–17, 2–19, and 2–20). For example, the Chemical Manufacturers Association (CMA) stated (Ex. 2–8):

> . . . [W]e believe it particularly important that OSHA has applied to employees and their designated representatives the same substantive and procedural conditions for obtaining access to trade secret information as are applicable to health professionals under the standard. The validity of those conditions was upheld by the Court of Appeals. In our view, they are even more essential in the case of employees and their designated representatives than they are in the case of health professionals. For access rights are now extended to a much larger universe of potential recipients of trade secret information—a universe that includes not only a manufacturer's own employees, but also the employees of his customers. A manufacturer's own employees have a natural interest in protecting the confidentiality of proprietary information of their employer. But employees of downstream users have no such natural interest; therefore, it is essential that they and their collective bargaining representatives demonstrate a clear need for access to trade secret information and be bound by confidentiality agreements.

The issue of downstream employee disclosure raised by the CMA was one of the most commented upon provisions of the interim final rule. Commentors noted that the Court did not specifically address downstream employee disclosure. (*See e.g.*, Exs. 2–5, 2–10, 2–12, and 2–20).

Several commentors suggested that OSHA permit trade secret holders to require downstream employers or labor unions to cosign confidentiality agreements when requests are made by employees, acting on behalf of the downstream employer or labor union (Exs. 2–5, 2–8, 2–12, 2–13, 2–19, and 2–20). A further suggestion was made that employees be required to certify that the information is being sought on their own behalf, not as a result of their position at their place of employment (Ex. 2–8). If it is being sought as part of their job, it was suggested that the employer should have to cosign (Exs. 2–8 and 2–19). It should be noted that the only employees entitled to obtain information on behalf of their employers are health professionals. Provisions have already been promulgated to ensure such employers cosign the confidentiality agreements.

OSHA is concerned that permitting a trade secret holder to deny employees or their representatives access to the trade secret unless the downstream employers cosign confidentiality agreements will constitute a barrier to employee access. It is conceivable, indeed predictable, that many downstream employers will not want to assume liability for disclosure of a trade secret that they did not choose to obtain on their own behalf, and which is known to one or more of their employees. It is not fair to restrict access, in this situation, only to those employees who have employers willing to sign such a confidentiality agreement.

The AFL–CIO contended that it should be clarified that the trade secret access rules apply to downstream employees (Ex. 2–14). Certainly, OSHA intended such an interpretation, and given the number of comments on the appropriateness of that approach, it seems that coverage of downstream employees is, in fact, clear in the rule. Employees covered under the HCS are those employed in manufacturing workplaces classified within SIC Codes 20 through 39, "who may be exposed to hazardous chemicals under normal operating conditions or foreseeable emergencies. . . ." 29 CFR 1910.1200(b). Downstream manufacturing employees, as well as employees of chemical manufacturers, must be given information concerning the hazards of chemicals in their workplaces. Clearly, a downstream manufacturing employee exposed to a hazardous chemical is entitled to review that chemical's material safety data sheet and to request the chemical's specific chemical identity if it has been withheld as a trade secret and the downstream employee has a "need-to-know" the information.

There were a number of other comments made concerning specific aspects of the access provisions. It was suggested that a designated representative should be required to prove a relationship with the exposed employees (Exs. 2–8 and 2–19). This is already included in the definition of "designated representative" which requires the employee to designate such representatives in writing, except for collective bargaining agents. 29 CFR 1910.1200(c).

One commentor argued that using the term "designated representative" rather than "collective bargaining representative" goes beyond the Court's order, and weakens trade secret protection (Ex. 2–10). Regarding the first point, the focus of the Court's decision was that OSHA had impermissibly restricted employee access to trade secrets. Under the HCS generally, "designated representatives" have access to all the information employees are entitled to receive, including written hazard determination procedures, 29 CFR 1910.1200(d)(6), written hazard communication programs, *id.* at (e)(3), and material safety data sheets, *id.* at (g)(10). While collective bargaining representatives are given some special status under the HCS, (in that they are automatically considered "designated representatives"), nothing in the standard is meant to restrict workers, whether they are organized or not, from appointing representatives of their choice to secure their rights under the standard and to help them effectively use the information obtained. *See* 48 FR 53294. Likewise, the Court opinion does not indicate that employee representatives other than collective bargaining representatives, should be excluded from trade secret access if an employee desires such representation and aid. *See* 763 F.2d at 742 (indicating Court's concern for unorganized workers). OSHA believes that permitting designated representatives trade secret access complies with the

Court's intent to provide all affected employees with access in a manner that "most adequately assures, to the extent feasible . . . that no employee will suffer material impairment of health. . . ." 29 U.S.C. 655(b)(5), quoted by, *United Steelworkers*, 763 F.2d at 743.

Regarding whether trade secret protection will be weakened by designated representative access, OSHA believes that since anyone designated would only have those rights which the employee possesses, and would have to meet the need-to-know requirements and sign required confidentiality agreements, permitting designated representatives trade secret access will not weaken trade secret protection. It should be noted that OSHA permits designated representatives access to chemical identities which are trade secrets under similar provisions in the access to employee exposure and medical records rule. 29 CFR 1910.20(f)(2)–(3). OSHA maintains that enabling employees to designate representatives to acquire trade secrets on their behalf will most effectively achieve the goals of the standard and the Act, and will not weaken trade secret protection.

Another commentor indicated that employees should not be granted access under the same conditions as physicians (Ex. 2–11), but rather should make a "clear and convincing demonstration of real necessity based on a genuine health or safety risk". Under the standard, employees do have to meet the same need-to-know requirements under the same conditions as health professionals do in non-emergency situations. The rule requires that employees demonstrate, in writing, their need and be willing to keep the information confidential. It is obviously inconsistent with the intent and purpose of the rule to require the employee to demonstrate he or she is "at risk." The standard is intended to prevent illnesses and injuries from occurring in the workplace by instructing and training employees to avoid known chemical hazards and their attendant risks. Waiting till employees are "at risk" will not accomplish that purpose.

Another commentor suggested that when a union obtains a trade secret, an employee or another designated representative should not be able to obtain it for the same purpose (Ex. 2–12). This would certainly reduce the individual rights of employees, and is not appropriate or consistent with the Court's orders. OSHA expects, however, that unions will consolidate and coordinate trade secret requests that otherwise might be made by more than one employee.

Public Citizen's comments on the access provisions, as with regard to the definition of trade secret, criticize the Agency for not going beyond the Court's directions and modifying provisions that were upheld in the Court's decision (Ex. 2–18). For example, Public Citizen suggests that employees and designated representatives should not have to sign confidentiality agreements, and that confidentiality agreements should not be used to bar further disclosures to employees who have a similar need for the information. Neither of these suggestions is warranted by the Court's decision, or by the record of the rulemaking. As the Court stated: "[C]onfidentiality agreements are a well-accepted traditional means of allowing access to trade secret information while effectively protecting the owners of that information from irreparable harm." 763 F.2d at 743.

The Oil, Chemical and Atomic Workers International Union supported extending access to employees and their designated representatives (Ex. 2–22), but objected to allowing liquidated damages provisions to be included in the confidentiality agreements. The Union stated that they do not object to confidentiality agreements in general, but are worried that the estimate of damages provision will be abused, and used to prevent access. The liquidated damages provisions, however, were upheld by the Court of Appeals. As the Court noted, the standard already "minimizes the risk that employers will make excessive demands" by prohibiting bond posting requirements and permitting only a *reasonable* estimate of likely damages. Any attempt to be unreasonable would be a violation under the rule, and thus subject to citation by OSHA.

Upon reviewing the comments submitted, OSHA has determined that the employee and designated representative access provisions are appropriate as published in the interim final rule, and no changes are being made to them.

C. *Access for Occupational Health Nurses.* In the final HCS, OSHA required non-emergency disclosure of trade secrets to physicians, industrial hygienists, toxicologists, and epidemiologists. OSHA did not list occupational health nurses among the health professionals who would be entitled to trade secret information in non-emergency situations. (Nurses are entitled to access in emergency situations under 29 CFR 1910.1200(i)(2)). At the time, OSHA had made a determination "that it is more appropriate, given the competing interests balanced in this standard, to entrust such information to the physician to whom a nurse would normally report", 48 FR 53338.

In light of the Third Circuit's decision to provide trade secret access to employees and their designated representatives in addition to the listed health professionals (763 F.2d at 743), OSHA concluded that it would simply be incongruous to continue to exclude occupational health nurses. Giving nurses access would ensure greater protection for employees since nurses are frequently the only health professional available at a plant site to provide services to exposed employees. Therefore, OSHA proposed to add nurses to the list of health professionals entitled to trade secret access in non-emergency situations, 29 CFR 1910.1200(i)(3), and invited comment on the proposal (50 FR 49410).

OSHA received thirty-two comments on the proposal, and all of them supported extending access to occupational health nurses. For example, the American Association of Colleges of Nursing stated (Ex. 2–7):

> Occupational health nurses possess special knowledge about hazardous chemicals in the workplace and have the necessary access to employees to assist them in dealing with the effects of their exposure to these chemicals. Deterring negative consequences to this exposure can be accomplished by nurses who have information about hazardous chemicals in non-emergency as well as emergency situations. Improved health of workers and cost savings to employers as a result of healthier employees are two of the positive effects of allowing occupational health nurses this access.

OSHA is hereby amending the HCA by extending non-emergency access to trade secrets to occupational health nurses.

III. Legal Authority

As described in the preamble to the interim final rule, OSHA believed that publishing an interim rule was warranted because the manner and extent of the Court decision itself and the November 25, 1985, effective date of the Court validated HCS provisions made it "impracticable, unnecessary and contrary to the public interest" to delay implementation of the modifications past the date of their publication, which would have been necessary to receive and review public comments. *See* 50 FR 48754–48756.

Only one commentor objected to OSHA's use of an interim final rule to implement the Third Circuit Court of

Appeals' decision. The Michelin Tire Corporation contended that the Agency should have obtained public comment before finalizing the provisions (Ex. 2–10). Michelin further stated that comments were needed because the specific issue as to whether employees and/or designated representatives should have access has not been addressed in the record. This issue was, however, extensively commented upon during the lengthy HCS rulemaking. (*See, e.g.*, 48 FR 53312–14, 17–18). Indeed, record evidence was fully considered by the Third Circuit Court of Appeals when it directed the Agency to permit employees and their representatives access to trade secrets. (*See* 763 F.2d at 742).

OHSA continues to maintain that publishing an interim final rule was an appropriate approach to take. Employers and other affected parties were given ample opportunity to comment, and OSHA has fully considered the comments submitted.

OSHA is making the provisions of this final rule dealing with the trade secrets definition (including Appendix D), and the access of employees and their designated representatives to chemical identities which are trade secrets effective upon publication. Under the Administrative Procedure Act (APA). 5 U.S.C. 553(d)(3), OSHA may make a final rule immediately effective if the Agency has "good cause" for doing so. OSHA believes that it is "unnecessary" to delay the effective date of this final rule because the rule changes have existed under the interim final rule. Employers who must comply with the rule have therefore been aware of it for some time. The provision giving nurses access to trade secrets in non-emergency situations will become effective 30 days after publication of this document.

IV. Analyses of Regulatory Impact, Regulatory Flexibility, and Environmental Impact

Only one comment was received on the impact analyses for either the interim final rule or the notice of proposed rulemaking on nurses. Michelin Tire (Ex. 2–10) objected to the analysis of the interim final rule, and stated that the inadequacies of the analysis support their contention that further comment and consideration are required. Furthermore, Michelin states that the Agency's conclusion that the amendment to the HCS "is not a major rule" is without apparent foundation. OSHA performs regulatory impact analyses under the requirements of Executive Order 12291. Michelin argues that the costs estimated by OSHA are "extremely conservative" rather than being realistic. In particular, Michelin cites the costs of time for processing trade secret claims as being underestimated by one half. It should be noted that OSHA stated in the interim final rule (50 FR 48756–57) that it estimated the managerial and legal resources necessary for responding to requests for trade secrets by using an expected "mid-point" in the range of those resources. OSHA believes that the use of the mid-point is entirely appropriate for this analysis, and expects that consideration of the requests for trade secret information will cost more or less than the mid-point depending upon the particular circumstances of the situation.

In terms of costs, Executive Order 12291 defines a "major rule" as one which has "an annual effect on the economy of $100 million or more". OSHA has estimated that the maximum additional cost of the interim final rule in terms of extended access would be $2.5 million annually. The Agency does not believe that Michelin has provided any substantive evidence that OSHA's estimates are unreasonable given the type of information that is available to perform this type of analysis. For the sake of argument, however, let us assume that the costs would be doubled as Michelin contends. That would result in a total cost of $5.0 million, still clearly far less than the threshold for a "major rule". Michelin claims that the number of potential trade secret claims could be quantified, but provides no such evidence, or even an estimate of the number. Michelin also argues that OSHA should cost out what would happen to industry if trade secrets were disclosed. Since OSHA's rule provides effective safeguards for trade secret disclosures, it would not be appropriate to assume disclosure as a result of the rule. Therefore, OSHA maintains that its analyses of the impact of the rule are appropriate as drawn.

As was stated in the interim final rule (50 FR 48758), because of the Court decision, OSHA cannot perform a regulatory flexibility analysis on the access of employees and their representatives to trade secrets as the Agency is not in a position to consider alternatives that might reduce the costs of compliance to business. With regard to occupational health nurses' access to trade secret chemical identities, as was stated in the proposal (50 FR 49411), OSHA believes nurses' access will be at least as much a cost-savings to small business as to others based on the expectation that employees will rely to some extent on nurses to protect employees' health in connection with the use of trade secret chemical identities. In any event, the costs of the final rule do not present any significant economic burden to industry as a whole or to small entities.

The final rule has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Compliance regulations (29 CFR Part 11). As a result of this review, the Agency has determined that the final rule will not significantly affect the environment.

V. State Plan Applicability

The 25 States with their own OSHA approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of a final standard. These States include: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

VI. OMB Approval Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, the recordkeeping and disclosure requirements of this final rule concerning the definition of trade secret, and disclosure of trade secrets to employees, their designated representatives, and occupational health nurses, have been approved through December 31, 1986 by the Office of Management and Budget (OMB) under OMB Control Number 1218–0072.

VII. Authority, Signature, and the Final Rule

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. For the reasons set out in the preamble and under authority of sections 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), section 4 of the Administrative Procedures Act (5 U.S.C. 553), Secretary of Labor's Order

No. 9–83 (48 FR 35736), and 29 CFR 1911.5, 29 CFR 1910.1200 is hereby amended as set forth below.

List of Subjects in 29 CFR Part 1910

Occupational safety and health, Hazard communication.

Signed at Washington, DC this 23rd day of September, 1986.

John A. Pendergrass,

Assistant Secretary for Occupational Safety and Health.

PART 1910—[AMENDED]

1. The authority citation for Subpart Z of Part 1910 is revised to read as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act (29 U.S.C. 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754); 8–76 (41 FR 25050); or 9–86 (48 FR 35736), as applicable; and 29 CFR Part 1911.

Section 1910.1000 Tables Z–1, Z–2, Z–3 also issued under 5 U.S.C. 553.

Section 1910.1000 not issued under 29 CFR Part 1911, except for "Arsenic" and "Cotton Dust" listings in Table Z–1.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1043 also issued under 5 U.S.C. 551 *et seq.*

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

2. The definition of "trade secret" in 29 CFR 1910.1200(c), as set out in the interim final rule (50 FR 48758), is adopted as final.

3. The trade secret provisions in 29 CFR 1910.1200, paragraphs (i)(1)(iv), (i)(3)(iii), (i)(3)(v), (i)(6), (i)(7)(i), (i)(8), (i)(9) introductory text, (i)(9)(ii), (i)(9)(iii), and (i)(10)(i), as set out in the interim final rule (50 FR 48758), are adopted as final.

4. In 29 CFR 1910.1200, the introductory language of paragraph (i)(3) is revised as follows:

§ 1910.1200 Hazard communication.

* * * * *

(i) * * *

(3) In non-emergency situations, a chemical manufacturer, importer or employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under paragraph (i)(1) of this section, to a health professional (i.e. physician, industrial hygienist, toxicologist, epidemiologist, or occupational health nurse), providing medical or other occupational health services to exposed employee(s), and to employees or designated representatives, if:

* * * * *

Appendix D—[Amended]

5. Appendix D to 29 CFR 1910.1200, as set out in the interim final rule (50 FR 48759), is adopted as final, except that the last paragraph of Appendix D, titled *Information not a trade secret,* is removed.

[FR Doc. 86–21848 Filed 9–29–86; 8:45 am]

BILLING CODE 4510–26–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from October 1, 1986, to December 31, 1986.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Multiemployer Regulations Group, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW, Washington, DC 20006; telephone 202–956–5050 (202–956–5059 for TTY and TDD).

SUPPLEMENTARY INFORMATION: On May 31, 1984, the Pension Benefit Guaranty Corporation (the "PBGC") published a final regulation on Notice and Collection of Withdrawal Liability.

That regulation, codified at 29 CFR Part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default on or after July 2, 1984 (the effective date of the regulation), or to be credited by such plans on overpayments of withdrawal liability made on or after that date. The regulation allows plans to set such rates, subject to certain restrictions. Where a plan does not set such rates, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Since the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to Part 2644. See 50 FR 39664 (September 30, 1985), 50 FR 53313 (December 31, 1985), 51 FR 10826 (March 31, 1986), and 51 FR 23535 (June 30, 1986). This amendment adds to this appendix the interest rate of 7½ percent, which will be effective from October 1, 1986, to December 31, 1986. This rate represents a decrease of one percent from the rate in effect for the third quarter of 1986. This rate is based on the prime rate in effect on September 15, 1986, as reported by the Federal Reserve in Statistical Release H.15.

The appendix to 29 CFR Part 2644 does not prescribe interest rates under the regulation; the rates prescribed by the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PGBC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2644 of Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for Part 2644 continues to read as follows:

Authority: Secs. 4002(b)(3) and 4219(c), Pub. L. 93–406, as amended by secs. 403(1) and 104 (respectively), Pub. L. 96–364, 94 Stat. 1208, 1302 and 1236–1238 (1980) (29 U.S.C. 1302(b)(3) and 1399(c)(6)).

2. Appendix A is amended by adding to the end of the table of interest rates therein the following new entry:

From	To	Date of quotation	Rate (percent)
• •	• •	•	
10/01/86	12/31/86	09/15/86	7.50

Issued at Washington, DC, on this 22nd day of September, 1986.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86–21893 Filed 9–29–86; 8:45 am]

BILLING CODE 7708-01-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

41 CFR Parts 51–1 and 51–3

Application of Priorities in Assignment of Commodities

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Final rule.

SUMMARY: This change amends the Committee regulations with respect to the application of the priorities accorded by law to the Federal Prison Industries, Inc. and to the blind for commodities proposed for addition to the Procurement List.

EFFECTIVE DATE: September 30, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: The Committee for Purchase from the Blind and Other Severely Handicapped published a notice in the **Federal Register** on May 9, 1986 [51 FR 17212] of proposed rulemaking on the application of priorities in assignment of commodities. The Committee received a number of comments on the proposed changes to its regulations. The comments generally addressed three major issues: fairness of the blind priority, times relating to the exercise of the blind priority, and the rationale for the change in the Committee's involvement in the coordination of items for which the National Industries for the Blind (NIB) had not exercised the blind priority.

A workshop for the other severely handicapped commented that, while the proposed regulations "discriminate (to a lesser degree than before) against handicapped people who are not blind or in prison," all handicapped persons should be granted equal priority. Section 2(d) of Pub. L. 92–28 (41 U.S.C. 46–48c, 85 Stat. 77) specifies that:

> (2) The Committee [for Purchase from the Blind and Other Severely Handicapped] shall prescribe regulations providing that—
>
> (A) in the purchase by the Government of commodities produced and offered for sale by qualified nonprofit agencies for the blind or such agencies for other severely handicapped, priority shall be accorded to commodities produced and offered for sale by qualified nonprofit agencies for the blind . . . .

Furthermore, Pub. L. 92–28 exempts prison-made products from the mandatory procurement requirements related to commodities and services on the Committee's Procurement List. Thus, the Committee is required by law to accord priority first to the commodities produced by Federal Prison Industries, Inc. (FPI) and second to the commodities produced by workshops for the blind.

With respect to the time limits for the exercise or waiver of the blind priority and for blind workshops to develop commodities for addition to the Procurement List, the Counsel for the National Association of Rehabilitation Facilities (NARF) has commented that "there is no valid public policy reason for favoring one disability group over another," that the Committee "proposes to continue the time periods for assertion of the blind priority and completion of the essential steps without providing a rational basis for doing so", and that the Committee "has the discretionary authority to shorten the time periods [to 30 days for asserting the blind priority and to 60 days for completing the essential steps] to largely eliminate this discriminatory and unfair situation." On the other hand, the Committee received comments from NIB, the General Council of Workshops for the Blind, and six workshops serving the blind objecting to the limit of 9 months for completing the essential steps in the development of a commodity for addition to the Procurement List. The thrust of their comments was that the 9-month period for development was not reasonable and that the 9-month period should be extended to 15 months or longer. The National Industries for the Severely Handicapped (NISH) commented that, while it did not support the concept of the blind priority, "given the fact that the law provides for this priority and considering the steps that [NIB] must accomplish in order to make its decision and subsequently complete development . . . the time period[s] proposed by the Committee . . . are reasonable."

The public policy issue, raised by the NARF Counsel, regarding favoring the blind over the other severely handicapped in producing commodities on the Procurement List is not appropriate for the Committee's consideration in view of the fact that the blind priority is established by law. (See section 2(d)(2) of Pub. L. 92–28 cited above.) The primary issue which the Committee must address is how to ensure that the blind workshops are provided reasonable periods of time in which to exercise the priority accorded to them by law, while minimizing the possible impact on the other severely handicapped workshops who desire to produce commodities for which blind workshops are or will be capable of producing. The only preference in the proposed rules for workshops represented by NIB over those represented by NISH is that mandated by law.

The procedure for applying the blind priority contained in the rule is but one of a number of approaches which the Committee could have adopted. Alternative approaches include postponing the decision by the blind to exercise the blind priority to a later point in the various stages of development of a commodity nominated by a NISH workshop, or to after the commodity had been added to the Procurement List for production by the NISH workshops. When the present procedure was adopted in 1972, there was unanimous agreement among NIB and the six agencies then representing the other severely handicapped that the impact on the other severely handicapped workshop or workshops concerned would be minimized if the NIB decision on the exercise or waiver of the blind priority was made early in the development process. Under that procedure, as soon as a NISH workshop

indicates an interest in the possible development of a commodity for addition to the Procurement List, NIB is required to indicate, on behalf of nearly 100 blind workshops affiliated with NIB, whether or not it will waive or exercise the blind priority. However, once NIB has waived the blind priority for a commodity, it cannot exercise the blind priority for that commodity at some later point in the development process, or after it has been added to the Procurement List for production by another severely handicapped workshop. Thus, NIB's decision to waive the blind priority on a commodity is irrevocable and the blind workshops it represents must assume that, if the NISH workshop is successful in having it added to the Procurement List, the commodity will never become available for the blind to produce at any time in the future.

Before NIB can reach a decision on exercising or waiving the blind priority it must have certain basic procurement information on the commodity including a copy of the specification and most recent solicitation, the current contract price, and the estimated annual requirements the Government plans to procure. Based on a thorough knowledge of its workshops' capabilities and limitations, NIB is able to determine immediately that many commodities which NISH workshops have an interest in developing for possible addition to the Procurement List would not be suitable for production by blind workshops. For those commodities, NIB can and does waive the blind priority within 30 days.

On the other hand, when a commodity proposed for development by a NISH workshop is similar to one being produced by blind workshops or to one which blind workshops has considered or are considering for possible production, NIB must ensure that, before it waives the blind priority, there is no blind workshop that can develop the capability to produce that commodity within the 9 months permitted for development. Commodities in this category usually require a detailed review of the specification, an assessment of the annual contract value, and a preliminary evaluation of the production methods required to produce the commodity. These actions result in a determination as to its suitability for being manufactured by the blind. Among the considerations in determining suitability are:

a. Evaluation of direct labor content—sufficiently labor intensive.

b. Capability for being manufactured employing at least 75% blind direct labor.

c. Similarity of production to commodities already being produced by blind workshops.

d. Requirement for new production equipment and facilities and a determination that the annual contract value justifies any capital outlay.

e. Considering which workshop or workshops could develop the capability to produce the commodity and evaluating their recent contract performance.

Obtaining the answers to these considerations requires input from, and coordination with, each of NIB staff elements involved in new product development, industrial engineering and contract administration and with the NIB Technical Center.

When a commodity appears to be suitable, it is often not possible for NIB to complete the review process and reach a decision on the exercise of the blind priority within 30 days. In these cases, if NIB were forced to reach a decision within 30 days it would be faced with two alternatives neither of which is desirable. The first would be to exercise the blind priority until a final determination could be made on the commodity's suitability for production by a blind workshop. This would be very disruptive to the plans of the interested NISH workshop which must assume that the blind workshops intend to try to develop the commodity for addition to the Procurement List. The other alternative would be for NIB to waive the blind priority thereby forfeiting its workshops' rights to produce the commodity even if it were to determine shortly thereafter that the commodity is suitable for production by one or more blind workshops.

The standard contained in the rule requiring NIB to indicate its decision on the exercise or waiver of the blind priority normally within 30 days was included to cover the bulk of the commodities proposed by NISH workshops which are clearly not suitable for production by blind workshops or commodities for which NIB has already completed a preliminary analysis and is prepared to exercise the blind priority. On the other hand, for other commodities which appear to have the potential for production by one or more blind workshops, a limit of 30 days would, in many cases, not provide sufficient time for NIB to complete its preliminary analysis and reach a reasoned decision. For those commodities, considering the work and coordination required by NIB, the 60-day maximum provided in the rule represents a very limited time in which to reach a decision which could result in the permanent loss of a right provided by law.

The rule provides for continuing the 9-month limit on the time permitted blind workshops to complete the essential steps for placing a prioritized commodity on the Procurement List. The rationale for the 9-month limit is based on the time generally required for the central nonprofit agencies (and their workshops) to complete all of the essential steps required before they can propose the addition of a commodity to the Procurement List. The Committee has defined the essential steps to be the submission of a completed "Request for Initial Fair Market Price for Commodities" and the notification of the Committee that the workshop has completed all of the detailed plans required for it to begin production of the commodity. Before a central nonprofit agency can submit the price request and notify the Committee that the workshop has completed its production planning, a series of preliminary actions must be taken some of which can be taken concurrently but many of which must be accomplished sequentially. These include, but are not necessarily limited to:

a. Obtaining detailed procurement information from the procuring activity.

b. Determining estimated quantities and shipping weights to be shipped to various destinations.

c. Requesting the Committee to provide Government freight rates to the various destinations to which the item will be shipped.

d. Determining the manufacturing processes to be used.

e. Determining the equipment and raw materials required.

f. Ensuring that raw materials will meet Government specifications.

g. Determining the times and skills required to manufacture the commodity considering the equipment planned and the capabilities of the workshop's blind or other severely handicapped employees.

h. Computing the fair market price.

i. Developing the manufacturing costs for materials, labor, and burden.

j. Determining if the fair market price will support the total manufacturing costs plus central nonprofit agency fee.

k. Obtaining written quotations and lead times for the delivery of any new equipment required.

l. Establishing sources, delivery lead times, and firm written quotations for raw materials and components.

m. Developing detailed production and quality control plans.

n. Preparing plans for training and integrating blind or other severely

handicapped workers in the production of the commodity.

o. Obtaining the approval of the board of directors for the commitment of the necessary funds for equipment, raw materials, and any required modification or expansion of production facilities.

The time required to complete the above actions is greatly dependent on the timely receipt of information from outside sources such as the procuring activity, the Committee, and potential suppliers of the manufacturing equipment and raw materials required. For a commodity which would require materials and manufacturing processes different from those currently used in producing items in the workshop, even with maximum effort on the part of NIB and the workshop, it would be difficult to complete the actions described above in less than 9 months. It would be virtually impossible to complete the actions discussed above within 60 days even if the blind workshop were producing a closely similar commodity with production equipment which, with no or only minimum effort, could be converted to produce the newly assigned commodity.

Imposing a 60-day time limit on the development of prioritized items would have the practical result of restricting the exercise of the blind priority to only those commodities which blind workshops are currently producing, and would preclude their exercising the blind priority over commodities which they could develop the capability to produce but which they are not currently producing. This would be contrary to the legislative history of the Committee's Act as discussed in the Memorandum and Order of the United States District Court for the District of Columbia in *National Association of Rehabilitation Facilities v. Committee for Purchase from the Blind and Other Severely Handicapped,* Civil Action No. 84–0887, which was cited in the Supplementary Information providing background information in connection with notice of Proposed Rules published on pages 17212 and 17213 of the **Federal Register** on May 9, 1986. The Court makes it clear that the Congress did not intend to limit the blind priority to only those commodities which blind workshops are currently producing.

The 9-month limit contained in the rule for developing prioritized commodities for addition to the Procurement List, unless the blind workshop is already producing the commodity, provides a reasonable, albeit restricted, time for NIB and the blind workshops to complete the necessary actions prior to proposing the addition of the commodity to the Procurement List.

In fact, NIB, the General Council of Workshops for the Blind and several blind workshops maintain that the limit of 9 months on the development of prioritized commodities for addition to the Procurement List is not reasonable and that the time limit should be extended to 15 months. Based on data on the average length of time NIB has been assigned commodities (both those nominated by NIB and those for which it has exercised the blind priority) and after eliminating the times resulting from delays caused by conditions beyond its control due to such factors as industry impact or actions by the procuring activity which have interrupted the development process, extending the time to 15 months cannot be justified at this time. It may be that, in the future, conditions such as the consideration of increasingly more complex commodities for addition to the Procurement List will justify additional development time beyond the current 9-month period for prioritized items. In that case, it would be appropriate for NIB to request the Committee to consider extending the time for developing prioritized commodities beyond the 9-month time limit.

The time limits in the rule strike a balance between providing to the blind reasonable periods of time in which to exercise or waive the blind priority accorded by law and to develop for addition to the Procurement List those commodities for which they have exercised the blind priority, while at the same time ensuring that commodities nominated by other severely handicapped workshops are promptly released for development by those workshops or, if prioritized, are either added to the Procurement List by the blind or returned for development by other severely handicapped workshops with a minimum of delay and disruption.

The final point concerns the Committee's involvement in the coordination of commodities and services which blind and other severely handicapped workshops are evaluating for possible future addition to the Procurement List. When the Preliminary Evaluation Record (formerly Assignment Register) was established in 1973, its primary purpose was to control the assignment of commodities and services proposed by the six central nonprofit agencies representing the other severely handicapped workshops for which NIB had exercised the blind priority. The six central nonprofit agencies representing the other severely handicapped were replaced by NISH in 1976. Also, the blind priority for services expired at the end of 1976. In recent years, NIB has waived the blind priority on the vast majority of the commodities nominated by NISH.

The Preliminary Evaluation Record (PER) currently maintained and republished monthly by the Committee staff reflects the assignment of about 1,400 commodities and 100 services which workshops are evaluating for possible future addition to the Procurement List. Each new request must not only be recorded but, for commodities, also requires the preparation of letters to FPI, the procuring activity and, for NISH nominated commodities, to NIB, and the recording of the replies. When the time for assignment of each of the 1,500 commodities and services on the PER expires, the Committee staff must take action to drop the item, to reassign it to the other central nonprofit agency, or, when justified, to extend the assignment. Maintaining the PER requires the expenditure of a significant amount of staff time and effort much of which is not productive since historically less than one out of every four items on the PER is eventually added to the Procurement List.

The Committee must focus its available resources on those actions which are essential to the effective administration of its program. In this regard, the Committee's staff's continued maintenance of the PER, except for commodities proposed by NISH for which NIB has exercised the blind priority, represents the provision of a service to the central nonprofit agencies which is not essential to the administration of the Committee's program and which can no longer be justified in view of the resources currently available to the Committee.

There is no statutory requirement for the Committee or the central nonprofit agencies to maintain a listing of commodities and services which workshops are evaluating for possible development for future addition to the Procurement List. However, under the Committee's procedures for administering the priorities accorded to the blind and FPI, the Committee staff must continue to ensure that the 60-day time limits on the exercise or waiver of the blind and FPI priorities are met, unless extended by mutual agreement, and to control the initial assignment for commodities for which NIB has exercised the blind priority.

Except for the time limits on the exercise or waiver of priorities accorded the blind and FPI and the control of the initial assignment of commodities for

which NIB has exercised the blind priority, the Committee is leaving to agreement between the two central nonprofit agencies the timing and coordination of the assignment of commodities and services which their workshops are evaluating for possible future addition to the Procurement List. Consistent with this approach, the words "in writing" in the first sentences of paragraphs 51–3.3(b) and (d), and the entire last sentence of paragraph 51–3.3(d) contained in the proposed rule have been deleted.

It is not necessary for the Committee to prescribe when the written decisions of NIB and FPI on the waiver or exercise of their priorities are obtained, only that the appropriate written statement must be available when the central nonprofit agency requests the Committee to publish a notice of proposed addition in the **Federal Register**. Similarly, the coordination and exchange of information between the two central nonprofit agencies regarding the exercise or waiving of the FPI priority should be as agreed between those two agencies.

The last two sentences of paragraph 51–3.3(c) have been combined into a single sentence to preclude any possible misinterpretation of their intended meaning.

No other changes in the proposed rule are considered appropriate.

List of Subjects in 41 CFR Parts 51–1 and 51–3

Blind, Handicapped, Government procurement.

I certify that this is not a major rule under Executive Order 12291 and would not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

PARTS 51–1 AND 51–3—[AMENDED]

Accordingly, 41 CFR Parts 51–1 and 51–3 are amended as follows:

1. The authority citations for Parts 51–1 and 51–3 continue to read as follows:

Authority: Pub. L. 92–28, 85 Stat. 77 (41 U.S.C. 46–48c).

2. Paragraph (b) of § 51–1.3 is revised to read as follows:

§ 51–1.3 Priorities.

* * * * *

(b) The Committee, in approving the addition of commodities to the Procurement List, shall accord priority to commodities, including military resale commodities, which will be produced by workshops for the blind.

3. Section 51–3.3 is revised to read as follows:

§ 51–3.3 Assignment of commodity or service.

(a) The assignment to a central nonprofit agency of a commodity or service for the purpose of evaluating its potential for possible future addition to the Procurement List for production or provision by one or more workshops shall be as agreed between the two central nonprofit agencies, except for commodities proposed by the National Industries for the Severely Handicapped for which the National Industries for the Blind has exercised the blind priority. The Committee shall control the initial assignment of commodities proposed by the National Industries for the Severely Handicapped for which the National Industries for the Blind has exercised the blind priority.

(b) For commodities for which its workshops have an interest in evaluating for possible addition to the Procurement List, the National Industries for the Severely Handicapped shall obtain from the National Industries for the Blind its decision on the waiver or exercise of the blind priority. At the time the National Industries for the Severely Handicapped requests the National Industries for the Blind for a decision on the waiver or exercise of the blind priority on a commodity, it shall provide to the National Industries for the Blind the essential procurement information, as agreed to by the two central nonprofit agencies, which is required by the National Industries for the Blind to make a determination on the waiver or exercise of the blind priority. The National Industries for the Blind shall normally provide its decision waiving or exercising the blind priority within 30 days, but not later than 60 days, after receipt of the essential procurement information indicated above. The time for the decision on the blind priority may be extended beyond 60 days by mutual agreement between the two central nonprofit agencies. If agreement cannot be reached on the extension of time, the matter shall be referred to the Committee for resolution.

(c) When the National Industries for the Blind exercises the blind priority on a commodity proposed by the National Industries for the Severely Handicapped, it shall notify the National Industries for the Severely Handicapped and the Committee of that decision. The Committee shall assign such commodity to the National Industries for the Blind and the National Industries for the Blind shall complete the essential steps to place the commodity on the Procurement List within nine months after assignment. If the National Industries for the Blind has not completed these steps within that time period, the Committee shall reassign the commodity to the National Industries for the Severely Handicapped, unless the Committee extended the nine-month period for a reasonable period of time because the National Industries for the Blind has been delayed by conditions beyond its control.

(d) For commodities for which its workshops have an interest in evaluating for possible addition to the Procurement List, the central nonprofit agency concerned shall obtain from Federal Prison Industries, Inc. (hereafter FPI) its decision on the waiver or exercise of the FPI priority. At the time the central nonprofit agency requests the FPI decision on the waiver or exercise of the FPI priority, it shall provide to FPI the essential procurement information which is required by FPI to make a determination on the waiver or exercise of the FPI priority. The FPI shall normally provide its decision waiving or exercising the FPI priority within 30 days, but not later than 60 days, after receipt of the essential procurement information. The time for the decision on the FPI priority may be extended beyond 60 days by mutual agreement between FPI and the central nonprofit agency concerned. If agreement cannot be reached on the extension of time, the matter shall be referred to the Committee.

(e) When a central nonprofit agency requests the Committee to publish a notice in the **Federal Register** of the proposed addition to the Procurement List of a commodity, the request shall be accompanied by a written statement from FPI indicating its decision regarding the exercise or waiver of its priority, and, in the case of commodities requested by the National Industries for the Severely Handicapped, a written statement from the National Industries for the Blind indicating that it waives the blind priority.

C.W. Fletcher,

Executive Director.

[FR Doc. 86–22048 Filed 9–29–86; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2510

[AA-320-06-4211-02; Circular No. 2586]

Removal of Provisions Covering Entries for Enlarged Homesteads and Reclamation Homesteads

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking removes the existing regulations covering Enlarged Homesteads—43 CFR Subpart 2514 and Reclamation Homesteads—43 CFR Subpart 2515. These provisions are no longer needed because section 702 of the Federal Land Policy and Management Act of 1976 repealed the pertinent homestead entry authorities, except those related to Alaska, including, as to enlarged homesteads, the Act of February 19, 1909, as amended, and the Act of June 17, 1910, as amended. Both subparts were retained after the enactment of the Federal Land Policy and Management Act to facilitate the processing of homestead entry applications pending at that time.

EFFECTIVE DATE: September 30, 1986.

ADDRESS: Any inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, Room 3643, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary L. Rowe, (202) 343-8693.

SUPPLEMENTARY INFORMATION: This final rulemaking reflects the administrative action of removing from the existing regulations provisions whose statutory authority has been repealed. Therefore, this document is published as a final rulemaking with an effective date as of the date of publication. The provisions being removed are those covering entries for enlarged homesteads authorized by the Act of February 19, 1909, as amended (43 U.S.C. 218), and the Act of June 17, 1910, as amended (43 U.S.C. 219), contained in 43 CFR Subpart 2514. Also being removed are provisions contained in 43 CFR Subpart 2515 covering entries for homesteads in reclamation areas, which were allowed under section 3 of the Act of June 17, 1902 (43 U.S.C. 416, 432). As to Subpart 2514, the enlarged homestead laws were repealed by the Federal Land Policy and Management Act. As to Subpart 2515, the general homestead laws were repealed by the Federal Land Policy and Management Act and, consequently, new applications for reclamation homesteads no longer could be filed after the passage of the Act in 1976. The regulatory provisions were retained to facilitate the processing of applications that were pending at the time the statutes were repealed. Retention was also necessary to aid in processing of applications in Alaska. All pending actions have been completed; no new applications have been filed in Alaska since 1980, and as of October 21, 1986, the authority for filing such applications expires; and, therefore, the regulations are no longer needed. This administrative action removes the regulations in these subparts from the Code of Federal Regulations. To the extent that any question may exist or arise concerning rights associated with the regulations being removed, earlier editions of the Code of Federal Regulations will remain available to assist in interpretation.

The principal author of this final rulemaking is Gary L. Rowe, Division of Lands, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it 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.).

There are no information collection requirements contained in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 2510

Original homesteads, Additional entries, Second entries, Enlarged homesteads, Reclamation homesteads.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2510, Group 2500, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

James E. Cason,

Deputy Assistant Secretary of the Interior.

September 24, 1986.

PART 2510—[AMENDED]

1. An authority citation for Part 2510 is added to read:

Authority: 43 U.S.C. 161, 43 U.S.C. 162, 43 U.S.C. 163, 43 U.S.C. 164, 43 U.S.C. 166, 43 U.S.C. 167, 43 U.S.C. 168, 43 U.S.C. 169, 43 U.S.C. 185, 43 U.S.C. 201, 43 U.S.C. 231, 43 U.S.C. 1201.

2. Part 2510 is amended by removing Subparts 2514 and 2515 in their entireties.

[FR Doc. 86-22021 Filed 9-29-86; 8:45 am]

BILLING CODE 4310-84-M

43 CFR PART 3180

[AA-630-06-4111-02; Circular No. 2587]

Onshore Oil and Gas Unit Agreements, Unproven Areas; Technical Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking will amend the regulations in 43 CFR Part 3180—Onshore Oil and Gas Unit Agreements—Unproven Areas, by correcting errors in the final rulemaking on this part that was published in the **Federal Register** on June 10, 1983. All of these errors are non-substantive and their correction is a non-substantive action that will clarify the regulations.

EFFECTIVE DATE: September 30, 1986.

ADDRESS: Inquiries or suggestions should be addressed to: Director (630), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Stephen H. Spector, (202) 653-2147

or

Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: The existing regulations in 43 CFR Part 3180 were published in the **Federal Register** on June 10, 1983 (48 FR 26763) as 30 CFR Part 226. The regulations were redesignated as 43 CFR Part 3180 by publication of a redesignation notice in the **Federal Register** on August 12, 1983 (48 FR 36582). In the period since the publication of the existing regulations and their redesignation, the Bureau of Land Management has been notified of errors in the text of the regulations. This final rulemaking will correct those errors prior to the printing of the next edition of Title 43 of the Code of Federal Regulations.

This final rulemaking does not make any substantive changes in the existing regulations nor will it adversely impact any parties to unit agreements executed since July 11, 1983, the effective date of the existing regulations. As a matter of

fact, many operators who have entered into unit agreements using the model contained in 43 CFR 3186.1 have made many of the corrections which will be made by this final rulemaking.

The changes made by this final rulemaking are technical corrections and are not substantive. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is necessary to issue these changes as a proposed rulemaking for public review and comment. For the same reason and because many of the corrections have been obvious to the using public since the issuance of the existing regulations in 1983, it has been determined that pursuant to 5 U.S.C. 553(d) there is good cause to make this final rulemaking effective upon its publication in the **Federal Register**.

The principal author of this final rulemaking is Stephen H. Spector, Division of Fluid Mineral Operations, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

The corrections made by this final rulemaking will eliminate some obvious ambiguities in the existing regulations, thereby making the regulations more understandable and more readily usable by the public. The corrections will benefit all users equally.

This final rulemaking contains no information collection requirements that must be approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 3180

Government contracts, Oil and gas reserves, Public lands—mineral resources.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), Part 3180, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

September 8, 1986.

PART 3180—[AMENDED]

1. The authority citation for Part 3180 is revised to read as follows:

Authority: 30 U.S.C. 181, 189, 226(e), 226(j).

§ 3180.0–5 [Amended]

2. Section 3180.0–5 is amended by:

a. Amending the term "Participating Area" by removing from where it appears the phrase "productive in paying quantities" and replacing it with the phrase "productive of unitized substances in paying quantities"; and

b. Amending the term "Unitized land" by removing from where it appears the phrase "lands within" and replacing it with the phrase "lands and formations within".

§ 3183.1 [Amended]

3. Section 3183.1 is amended by removing from where it appears the word "should" and replacing it with the word "shall".

§ 3183.6 [Amended]

4. Section 3183.6 is amended by removing from where it appears the phrase "furnished by that purpose" and replacing it with the phrase "furnished for that purpose".

§ 3186.1 [Amended]

5. Section 3186.1 is amended by:

a. Amending the second "WHEREAS" clause by removing from where it appears the phrase "representatives to units with each other, or jointly or separately with others, in collectively adopting and operating a unit plan of development" and replacing it with the phrase "representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit plan of development";

b. Amending section 2(a), Unit Operator, by removing from where it appears the word "therefore" and replacing it with the word "therefor";

c. Amending section 5, Resignation or Removal of Unit Operator, by removing from where it appears in the fifth paragraph the word "elected";

d. Amending section 10, Plan of Further Development and Operation, by removing from where it appears in the first paragraph the word "DMM" and replacing it with the phrase "authorized officer";

e. Amending section 11, Participation After Discovery, by removing from where it appears in the second paragraph the phrase "area productive of unitized substances known or reasonably proved to be productive in paying quantities" and replacing it with the phrase "area known or reasonably proved to be productive of unitized substances in paying quantities" and by removing from where it appears in the fourth paragraph the phrase "paying quantities and inclusion in a participating area of the land on which it is situated in a participating area" and replacing it with the phrase "paying quantities and inclusion in a participating area of the land on which it is situated";

f. Amending section 13, Development or Operation of Nonparticipating Land or Formations, by removing from where it appears in the third paragraph the phrase "owner that obtains production" and replacing it with the phrase "owner obtains production";

g. Amending section 15, Rental Settlement, by removing from where it appears the phrase "to relieve the leases of any land from their respective lessees obligations" and replacing it with the phrase "to relieve lessees of any land from their respective lease obligations";

h. Amending section 18, Leases and Contracts Conformed and Extended, by removing from where it appears in the introductory paragraph the phrase "producing, rental minimum royalty," and replacing it with the phrase "producing, rental, minimum royalty,", by removing from where it appears in paragraph (b) the phrase "upon any at the time, such lease shall be extended for 2 years, and so tract" and replacing it with the phrase "upon any tract" and by removing from where it appears in paragraph (e) the phrase "established in paying quantities under" and replacing it with the phrase "established under";

i. Amending section 20, Effective Date and Term, by removing from where it appears in paragraph (c) the phrase "diligent drilling operations to restore production or new production are not in progress or reworking within 60 days" and replacing it with the phrase "diligent drilling or reworking operations to restore production or new production are not in progress within 60 days" and by removing from where it appears in paragraph (d) the word "'accordance";

j. Amending section 22, Appearances, by removing from where it appears at the beginning of the section the phrase "Unit Operators" and replacing it with the phrase "The Unit Operator";

k. Amending the Certification—Determination section by removing from the introductory paragraph the phrase

"the appropriate (Name and Title of authorized officer, BLM) Service" and replacing it with the phrase "(the appropriate Name and Title of the authorized officer, BLM)" and by removing from where it appears in paragraph C the phrase "producing, rental minimum royalty, and royalty requirements of all Federal lease" and replacing it with the phrase "producing, rental, minimum royalty, and royalty requirements of all Federal leases";

l. Amending Exhibit A by removing from where it appears in section 35 of the exhibit the date "7–30–81" and replacing it with the date "7–31–81"; and

m. Amending Exhibit B by removing from where it appears in the listing for number 2, section 35, the date "7–30–81" and replacing it with the date "7–31–81"; by adding to the listing for number 4, section 27, immediately under the phrase "Deer Oil Co. 50%." the phrase "Doe Oil Co. 30%." and the phrase "Able Drilling Co. 20%.", by adding to the listing for number 4, section 33, immediately under the phrase "Deer Oil Co. 50%." the phrase "Doe Oil Co. 30%." and the phrase "Able Drilling Co. 20%.", by removing from where it appears in the listing for number 5, section 26, the phrase "W–52780" and replacing it with the phrase "W–52780, 12–31–85", by removing from where it appears in the listing following number 6 the phrase "6 Federal tracts 7,047.30 acres or 68.76% of the unit area." and replacing it with the phrase "6 Federal tracts totalling 7,047.30 acres or 68.76018% of the unit area.", by removing from where it appears in the listing for number 7, section 16, the phrase "65–67430, 8–31–85" and replacing it with the phrase "78–620, 6–30–88", by removing from where it appears in the listing following number 7 the phrase "1 State tract 1,280.60 acres or 12.49% of unit area." and replacing it with the phrase "1 State tract totalling 1,280.60 acres or 12.49476% of the unit area.", by removing from where it appears in the listing for number 8, section 13, the date "8–2–74" and replacing with the date "5–31–82", by removing from where it appears in the listing for number 9, section 22, the date "9–15–76" and replacing it with the date "5–31–82", by removing from where it appears in the listing for number 10, section 34, the date "6–1–75" and replacing it with the date "6–30–82" and by removing from where it appears in the listing following number 10 the phrase "3 Patented tracts 1,921,20 acres or 18.75% of unit area." and replacing it with the phrase "3 Patented tracts totalling 1.921.20 acres or 18.74506% of the unit area.".

§ 3186.3 [Amended]

6. Section 3186.3 is amended by removing from where it appears the phrase "approve a unit agreement" and replacing it with the phrase "approved a unit agreement".

[FR Doc. 86–22022 Filed 9–29–86; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 2, 3, 5, 6, 8, 9, 11, 67, 68, 77, 80, 81, 82, 83, 205, 306, 325, 333, 350, 351

Organizational Changes, Erroneous Citations, etc.; Technical Corrections

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This regulation makes a number of technical corrections to FEMA regulations to reflect organizational changes, erroneous citations and matters of a nonsubstantive nature.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Harding, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, telephone (202) 646–4096.

Accordingly, Title 44, Code of Federal Regulations is amended as follows:

PART 2—ORGANIZATION, FUNCTIONS, AND DELEGATION OF AUTHORITY

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

Authority: 5 U.S.C. 552; Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148.

2. Section 2.81 is amended by adding in chronological sequence to the table the following OMB numbers:

§ 2.81 OMB control numbers assigned to information collections.

44 CFR Part or section when identified or described	Current OMB control No.
14	3067–0149
80, 81, and 83	3067–0051
205.54	3067–0163
205.59	3067–0166

3. Section 2.81 is amended by removing in the table CFR Part 360 and OMB Control No. 067–0100.

PART 3—STANDARDS OF CONDUCT

1. The authority citation for Part 3 is revised to read:

Authority: Title II of Ethics in Government Act of 1987, 5 U.S.C. App.; 5 CFR Parts 735, 737; E.O. 11222.

§ 3.15 [Amended]

2. Section 3.15(c) is amended by removing 31 U.S.C. 638a(c) and adding in its place 31 U.S.C. 1344, 1349.

PART 5—PRODUCTION OR DISCLOSURE OF INFORMATION

1. The authority citation for Part 5 continues to read:

Authority: 5 U.S.C. 552; Reorganization Plan No. 3 of 1978; and E.O. 12127.

§ 5.3(d) [Amended]

2. In § 5.3(d) remove "Director, Office of Public Affairs" and add "FOIA/Privacy Act Specialist" in place thereof.

§ 5.54 [Amended]

3. In § 5.54(a)(6) remove "Executive Administrator" and add "Chief of Staff" in place thereof.

PART 6—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

1. The authority citation for Part 6 is revised to read:

Authority: 5 U.S.C. 552a; Reorganization Plan No. 3 of 1978; and E.O. 12127.

§ 6.2 [Amended]

2. In § 6.2(o) remove "Director of Office of Public Affairs" and add "FOIA/Privacy Act Specialist" in place thereof.

§ 6.33 [Amended]

3. In § 6.33(b)(6) remove "Executive Administrator" and add "Chief of Staff" in place thereof.

§ 6.70 [Amended]

4. In § 6.70(a), (b), and (d) remove Director of the Office of Management and Budget" and add in place thereof "Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget" in place thereof.

5. In § 6.70(d) remove "OMB Circular A–108, and Transmittal Memorandum 1 and 3" and add "OMB Circular A–130" in place thereof.

PART 8—NATIONAL SECURITY INFORMATION

1. The authority citation for Part 8 continues to read:

Authority: Reorganization Plan No. 3 of 1978, Executive Orders 12148 and 12356.

§ 8.2 [Amended]

2. In § 8.2, paragraph (c) is revised and new paragraph (d) is added as follows:

§ 8.2 Original classification authority

* * * * *

(c) In accordance with § 1.2(d)(3), Executive Order 12356, the following positions have been delegated ORIGINAL SECRET CLASSIFICATION AUTHORITY by the Director, FEMA:

(1) Chief of Staff.

(2) Associate Director, State and Local Program Directorate.

(3) Associate Director, National Preparedness Programs Directorate.

(4) Regional Directors.

(d) The positions delegated ORIGINAL TOP SECRET CLASSIFICATION AUTHORITY in § 8.2(b) of this section, are also delegated ORIGINAL SECRET and CONFIDENTIAL CLASSIFICATION AUTHORITY by virtue of this delegation. The positions delegated ORIGINAL SECRET CLASSIFICATION AUTHORITY in § 8.2(c) of this section, are also delegated ORIGINAL CONFIDENTIAL CLASSIFICATION AUTHORITY by virtue of this delegation. Any further delegation of original classification authority, for any classification level, will be accomplished only by the Director of FEMA.

§ 8.4 [Amended]

3. In § 8.4, paragraph (g)(1) remove "Office of Public Affairs" and add "Office of External Affairs" in its place and remove "Special Assistant for Security Policy" and add "Chief of Staff or his/her representative" in its place.

PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

1. The authority citation for Part 9 continues to read:

Authority: E.O. 11988, E.O. 11990; Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148; 42 U.S.C. 5201.

§ 9.7 [Amended]

2. In § 9.7(c)(1)(ii) remove "FHFBM" and add "FBFM" in its place and remove "Flood Boundary Floodway Map" and add "Flood Hazard Boundary Map (FHBM)" in its place.

PART 11—CLAIMS

1. The authority citation for Part 11 continues to read:

Authority: 28 U.S.C. 2672; 28 CFR Part 14.11; 5 U.S.C. 301; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 11.54 [Amended]

2. In § 11.54(a) remove "41 CFR Part 44" and add "48 CFR Part 44" in place thereof.

§ 11.30 [Amended]

3. In § 11.30(b) remove from paragraph (6) "Executive Administrator's Office" and add "Chief of Staff's Office" in place thereof and add a new paragraph (9).

§ 11.30 Scope of regulations.

* * * * *

(9) United States Fire Administration.

PART 67—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

1. The authority citation for Part 67 continues to read:

Authority: 42 U.S.C. 4002, *et seq.;* Reorganization Plan No. 3 of 1978; E.O. 12127.

2. Any authority citation to a section in Subpart 67 is removed.

PART 68—ADMINISTRATIVE HEARING PROCEDURES

The authority citation for Part 68 is revised to read:

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

PART 77—ACQUISITION OF FLOOD DAMAGED STRUCTURES

The authority citation for Part 77 is revised as follows and the authority citations for any sections in Part 77 are removed:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978; E.O. 12148.

PART 80—DESCRIPTION OF PROGRAM AND OFFER TO AGENTS

1. The authority citation for Part 80 is revised to read as follows and any authority citation to any section of Part 80 is removed:

Authority: 12 U.S.C. 1749bbb *et seq.;* Reorganization Plan No. 3 of 1978; E.O. 12127.

2. Section 80.1(a) is amended by adding the following paragraphs (16)–(23).

§ 80.1 Definitions.

* * * * *

(16) "Act" means the Urban Property Protection and Reinsurance Act of 1968, codified as title XII of the National Housing Act (12 U.S.C. 1749bbb–1749bbb–21), which authorized the program. Section references are to the National Housing Act;

(17) "Administrator" means the Federal Insurance Administrator within the Federal Emergency Management Agency, to whom the Director has delegated the administration of the program.

(18) "Binder" means a temporary and preliminary contract of insurance to protect owner against loss from the occurrence of an insurable event before a policy is issued;

(19) "Person" includes any individual, group of individuals, corporation, partnership, association, or any other organized group of persons;

(20) "Property owner" or "owner," with respect to any real property, personal property, or mixed real and personal property, means any person having an insurable interest in such property;

(21) "Director" means the Director of the Federal Emergency Management Agency;

(22) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions, and the Trust Territory of the Pacific Islands;

(23) "State insurance authority" means the person having legal responsibility for regulating the business of insurance within a State.

* * * * *

3. Section 80.1 (a)(1) is removed and reserved.

PART 81—PURCHASE OF INSURANCE AND ADJUSTMENT OF CLAIMS

The authority citation for Part 81 is revised to read as follows and authority citations to any section of Part 81 are removed:

Authority: 12 U.S.C. 1749bbb *et seq.;* Reorganization Plan No. 3 of 1978; E.O. 12127.

PART 82—PROTECTIVE DEVICE REQUIREMENTS.

The authority citation for Part 82 is revised to read as follows and any authority citation to any section of Part 82 is removed:

Authority: 12 U.S.C. 1747bbb *et seq.;* Reorganization Plan No. 3 of 1978; E.O. 12127.

PART 83—COVERAGES RATES, AND PRESCRIBED POLICY FORMS

The authority citation for Part 83 is revised to read as follow and any authority citation to any section of Part 83 is removed:

Authority: 12 U.S.C. 1749bbb *et seq.;* Reorganization Plan No. 3 of 1978; E.O. 12127.

PART 205—FEDERAL DISASTER ASSISTANCE (PUBLIC LAW 93-288)

1. The authority citation for Part 205 continues to read:

Authority: 42 U.S.C. 5201; Reorganization Plan No., 3 of 1978; E.O. 12127, E.O. 12148 and subpart N is issued under 16 U.S.C. 3501, 3505; 42 U.S.C. 5201.

2. The authority citations for all subparts or other sections or paragraphs in Part 205 are removed.

§ 205.42 [Amended]

2. In § 205.429(a)(2) remove "Disaster Assistance Centers" and add "Disaster Application Centers" in place thereof.

§ 205.104 [Amended]

3. In § 205.104(b)(1)(iv) add the word "based" between the word "work" and the words "or reasonable.".

PART 306—OFFICIAL CIVIL DEFENSE INSIGNE

The authority citation for Part 306 is revised to read as follows:

Authority: 50 U.S.C. App. 2251 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

PART 308—LABOR STANDARDS FOR FEDERALLY ASSISTED CONTRACTS

The authority citation for Part 308 is revised to read as follows and any authority citation in sections of Part 308 is removed:

Authority: 50 U.S.C. app. 2251 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

PART 325—EMERGENCY HEALTH AND MEDICAL OCCUPATIONS

1. The authority citation for Part 325 is revised to read:

Authority: 50 U.S.C. 2061; E.O. 11490; E.O. 12148.

§ 325.3 [Amended]

2. In § 325.3(a) introductory text, remove "Secretary of Health, Education and Welfare" where it appears twice and add "Secretary of Health and Human Services" in the two places.

PART 333—PEACETIME SCREENING

1. The authority citation for Part 333 is revised to read:

Authority: 50 U.S.C. 404; 50 U.S.C. App. 2061 *et seq.*; E.O. 12148; E.O. 11190, as amended by E.O. 11382.

§ 333.2 [Amended]

2. In §333.2 designate the undersignated paragraphs as (a) and (b). Part 350 Review and Approval of State and Local Radiological Emergency Plans and Preparedness.

1. The authority citation for Part 350 is revised to read:

Authority: 42 U.S.C. 5131, 5201, 50 U.S.C. App. 2253(g); Sec. 109 Pub. L. 96–295; Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148.

§ 350.3 [Amended]

2. § 350.3(d) is revised to read:

§ 350.3 Background.

* * * * *

(d) To carry out these responsibilities, FEMA is engaged in a cooperative effort with State and local governments and other Federal agencies in the development of State and local plans and preparedness to cope with the offsite effects resulting from radiological emergencies at commercial nuclear power facilities. FEMA developed and published the Federal Radiological Emergency Response Plan 50 FR 46542 Nov. 8, 1985, to provide the overall support to State and local governments, for all types of radiological incidents including those occurring at nuclear power plants.

* * * * *

PART 351—RADIOLOGICAL EMERGENCY PLANNING AND PREPAREDNESS

1. The authority citation for Part 351 is revised to read:

Authority: 5 U.S.C. 552, Reorganization Plan No. 3 of 1978, E.O. 12127, E.O. 12148, E.O. 12241; Presidential Directive of December 7, 1979.

§ 351.3 [Amended]

In § 351.3(a) remove "Master Plan" and all the remainder of the paragraph and add in place thereof "Federal Radiological Emergency Response Plan" (50 FR 46452, November 18, 1985).

George W. Watson,

Acting General Counsel.

[FR Doc. 86–21999 Filed 9–29–86; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 311

Federal Employee Emergency Identification Card

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Removal of part.

SUMMARY: This action removes Part 311—Federal Employee Emergency Identification Card from the Code of Federal Regulations. Part 311 is an obsolete part dealing with an emergency identification card.

EFFECTIVE DATE: This removal is effective September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Contact Keith Peterson, Chief Operations and Plans Division, Emergency Operations, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3002.

SUPPLEMENTARY INFORMATION: This identification card is now not used, and the regulation is unnecessary. As this is an administrative matter affecting Federal employees only, there is no need for notice and public comment. It is not subject to Executive Order 12291, and there is no need for environmental studies. It may be made effective immediately.

List of Subjects in 44 CFR Part 311.

Civil Defense, Government employees.

Accordingly, 44 CFR Part 311 is amended as follows:

PART 311—FEDERAL EMPLOYEE EMERGENCY IDENTIFICATION CARD [REMOVED AND RESERVED]

Authority: The authority for Part 311 is 50 U.S.C. 2251, *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12048.

Part 311 is removed and the part number reserved.

Julius W. Becton, Jr.,

Director.

[FR Doc. 86–22060 Filed 9–29–86; 8:45 am]

BILLING CODE 6718–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 282

General Procedures for Determining Operating-Differential Subsidy for Liner Vessels

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: the Maritime Administration (MARAD) is issuing this final rule establishing regulations governing the calculation and payment of daily operating-differential subsidy (ODS) for liner vessels engaged in essential services in the foreign commerce of the United States. The existing system governing ODS payments requires extensive audit of expenses of operators, resulting in delayed ODS payments. The new regulations provide for the payment of ODS as a fixed and final daily amount that includes all items of expense authorized for ODS participation by the respective ODS contracts currently in force.

EFFECTIVE DATE: This rule is effective October 30, 1986 for application to the wage rate year beginning July 1, 1984

and the rate year for other items beginning January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Costs, Maritime Administration, Washington, DC 20590, Tel. (202) 366–2323.

SUPPLEMENTARY INFORMATION:

Background

Sections 603 and 606 of the Merchant Marine Act, 1936, (Act) as amended (46 U.S.C. 1173, 1176) contain the statutory requirements for the determination of ODS rates and the payment of ODS. The Act is quite specific in prescribing the methods for determining wage rates, but provides no guidance on the methods for determining rates for other subsidizable expenses, i.e., maintenance and repairs (M&R), hull and machinery insurance premiums (H&M) and protection and indemnity insurance premiums and deductibles (P&I). ODS rates for wages are determined and paid for fiscal periods, while ODS rates for the other expenses are determined and paid for calendar periods. In administering 46 U.S.C. 1173 and 1176, MARAD bases ODS payments on estimated expenses accrued by the operators. The Act does not require the operator to pay expenses before receiving ODS payments from MARAD.

MARAD has issued the Manual of General Procedures for Determining Operating-Differential Subsidy (Manual) to implement its statutory authority for determining ODS for liner vessels. This Manual contains procedures that now govern the determination of ODS rates and payment of ODS. The new regulation incorporates those procedures, revises the current system for ODS rate determinations, and replaces the Manual.

Foreign-flag competition for liner vessels has been determined in accordance with the provisions of the Manual of General Procedures for Determining Substantiality and Extent of Foreign Flag Competition (Competition Manual). MARAD uses the foreign-flag competition as a basis for calculating the cost differential between foreign-flag and U.S. vessels, and bases the ODS rate on this cost differential. Payment of ODS is based on the U.S.-foreign cost differential, which is the excess of an operator's cost over the principal foreign-flag competitors' cost. The new regulation includes amended procedures for determining foreign competition and also replaces the Competition Manual.

The existing system includes two methods for payment of ODS, i.e., a daily rate for wages and a reimbursement method, based on a percentage differential applied to eligible expenses, for other subsidizable items. It is a system which requires that MARAD audit the actual expenses of the operators. Further, under existing procedures, the finalization of U.S. and foreign cost differentials and the concomitant final payment of ODS cannot be accomplished until two to two and one-half years after the close of the subsidized year.

In 1981, the Comptroller General of the United States completed an audit of the system for ODS as previously described. The GAO audit report of November 30, 1981 (CED–82–2), urged MARAD to expedite ODS payments and concluded, in part:

> "The U.S. Government owes subsidized operators millions of dollars. Subsidy payments are delayed due to an extensive and time-consuming process used to compute final . . . subsidy rates. This process, which currently delays final payments by an average of 3 years, precludes these operators from timely receipt of monies due them and hurts their cash management capability."

The GAO report added that MARAD should take steps to provide for payment of accrued ODS owed to operators for prior years and to provide for more timely payment of future subsidy. The Office of the Secretary, Department of Transportation, concurred with the GAO's conclusions and recommendations.

In response to the GAO report MARAD has developed a new system to improve procedures for ODS rate determinations and timely payment. Notice of MARAD's intent to modify the system was published, as a Notice of Proposed Rulemaking, in the **Federal Register** of February 6, 1986, at 51 FR 4627 (Docket R–103). Comments were requested within 60 days of the publication date (April 7, 1986). Timely responses were received from the Council of American Flag Ship Operators (CASO) and Waterman Streamship Corporation (Waterman).

Comments on Proposed Rule

Both responses cover essentially the same issues. CASO's comments were more extensive and will be addressed herein, with appropriate reference to Waterman's comments.

With respect to the determination of foreign-flag competition, CASO considers the proposed recognition of only those flags which aggregate 50 percent of foreign carriage in a trade to be an inadequate measurement of competition, and suggests a threshold of no less than 75 percent. CASO believes that the "weighting" proposed in § 282.10 could distort the competition by giving significance to flags that carry minimal tonnage. Waterman, in a similar view, requests that the 60 percent aggregate used under the Competition Manual be continued and states that the elimination of two to four flags will reduce the accuracy of competition.

MARAD acknowledges that the reduction of foreign aggregate carryings from the current 60 percent to 50 percent could eliminate two to four foreign-flags presently considered in ODS rate calculations. However, the foreign carriers omitted would be marginal carriers, and the impact of their elimination is expected to be minimal and more than offset by the anticipated benefits of more timely final subsidy payments. MARAD also contends that the recognition of only countries actually served by a subsidized operator and the weighting of those countries according to the operator's own carryings would improve the accuracy of the competition determination. Rather than distorting the competition, as CASO claims, the weighting mechanism will more precisely define an operator's competition by giving significance to flags that are in direct competition with the operator.

Further, with respect to weighting, CASO commented that § 282.10(c) should be reworded to make clear that the aggregate 50 percent of total foreign-flag carryings would be calculated before any weighting is done. At MARAD's request, CASO further clarified its comment. In CASO's view, the number of flags utilized in the competition computation should not be less than that number necessarily included in calculation of at least 50 percent of actual foreign-flag carrying on the service.

The determination of foreign-flag competition that recognizes the weighted carryings of those foreign-flag operators that serve the countries actually called by the subsidized operator is, without question, a more accurate measure of competition. It is necessary, therefore, to identify those foreign competitors serving the countries actually called by the subsidized operator *before* determining which of those foreign competitors comprise 50 percent of total foreign carryings. Therefore, MARAD has made no change in the final rule to the proposed competition methodology.

CASO has requested that the word "primary" be removed from § 282.10(a) The effect of that change would be to limit MARAD to the use of commodity import/export data compiled by the Bureau of the Census, to the exclusion of

all other data sources that may ultimately be available. Good data may become available from other sources, and MARAD would like to be in a position to utilize such material without having to resort to the time-consuming process of regulatory amendment. Accordingly, MARAD has made no change to this provision.

CASO also requested that § 282.10(e) be reworded to make clear that the period of experience used to determine foreign competition would be a full year. Such clarification has been included in the final rule.

CASO requests that words be added at the end of § 282.20(a) to indicate that an operator having several trade routes and vessel types may elect to receive a composite daily subsidy rate based on the previous year's vessel type voyage service experience. MARAD intends to use composite daily subsidy rates when it is appropriate to do so. There exists sufficient latitude within the regulation to permit rate consolidation on the basis of service experience. MARAD would prefer to retain flexibility to follow other mutually acceptable courses, if necessary. For this reason, MARAD has not amended the language in § 282.20(a).

Next, CASO correctly points out that the third sentence of § 282.10(c) appears to contain a typographical error. An appropriate correction appears in this final rule.

CASO has two comments concerning § 282.21. In the first, it is suggested that the words "in the index described above" be added to the end of the first sentence of paragraph (a)(7), for clarity. MARAD concurs and an appropriate change is included in the final rule. The second comment suggests that the words "or, in the alternative" be added to link the first and second sentences in paragraph (h). MARAD agrees, and the changes have been made.

With regard to § 282.22, CASO and Waterman have expressed several opinions. CASO and Waterman believe that the mix of aggregate calendar year and fiscal year data used to arrive at the ratio of calendar year M&R subsidy to fiscal period wage subsidy will result in distortions. They suggest that the M&R and wage subsidy amounts be reduced to daily amounts before the ratio is established. MARAD has modified § 282.22(c)(1) accordingly. Appropriate changes have also been made to the example calculation contained in that paragraph. CASO has also stated that the years shown in the example should be 1979, 1980 and 1981. The example is for 1985; therefore, in accordance with these regulations, the appropriate three-year period should be 1980, 1981 and 1982, as shown in the example.

Both Waterman and CASO believe that the reporting requirement in § 282.22(c)(2) is unnecessary in view of existing reporting requirements on Form MA–140 as required in 46 CFR 272. Upon further review, MARAD agrees with CASO's comments, and has deleted the requirement for an annual certified statement of the latest eligible M&R expenses by month. However, the submission of the historical data for the period referred to in preceding paragraph (c)(1) is required. However, since this historical data should be readily available to the subsidized operators prior to January 1 of the subsidized year, the reporting date for this data has been changed to January 1 of the subsidized year. Section 282.22(c)(2) has been changed accordingly.

CASO recommends that § 282.24(c)(3) be amended so that the five years of experience used to determine the crew liability portion of premium costs is the five years preceding the year before the subsidized year. MARAD concurs. The earlier reporting period would give a more accurate picture of crew liabilities and permit accelerated calculation of the appropriate rates. MARAD has made appropriate changes.

Both CASO and Waterman request that § 282.24(d)(2), relating to crew illness and injury claims deductibles, be modified in a manner similar to that suggested for the M&R ratio in § 282.22(c)(1). MARAD concurs and has made this conforming change.

CASO also states that the calendar years shown in the example in § 282.24 are incorrect. Upon review, MARAD agrees. The period covered is three years, beginning six years prior to January 1 of the subsidized year. Accordingly, for the 1985 example shown, the period would be 1979, 1980 and 1981. The example now reflects these changes.

In reviewing the proposed regulation, MARAD finds that no reporting requirement was included in § 282.24 for the historical data required on crew claims for the calculation of subsidy rates for P&I deductibles. Accordingly, MARAD has added a new paragraph (d)(3) to require the reporting of this data by January 1 of the subsidized year.

MARAD also notes that § 282.21(d) requires that Schedule A of Form MA–790 is required by December 31 of the year preceding the subsidized year. For the sake of continuity, MARAD has changed that date to January 1 of the subsidized year.

Finally, CASO claims that the affidavit required by § 282.31(b)(2) no longer serves a purpose and should be withdrawn. MARAD does not concur. An affidavit attesting to the correctness and accuracy of all statements and amounts reported by the operators is a prudent requirement. Therefore, the text of this requirement remains unchanged in the final rule.

E.O. 12291, Statutory and DOT Requirements

The Maritime Administrator has determined that this rulemaking is not major, as defined in E.O. 12291, and is significant under DOT regulatory policies and procedures due to considerable public interest (49 FR 11034; February 26, 1979). This rulemaking places the ODS receipts of the operators and the obligations of the Government on a current basis, with no appreciable overall change in the amounts of such receipts and obligations. Since it only facilitates the payment of final ODS amounts in a more timely manner, the economic impact of this proposal has been found to be minimal and further evaluation to be unnecessary. However, MARAD specifically requested comments on the industry's views with respect to the economic impact of this proposal. No comments on this aspect of the regulation were received. MARAD expects no appreciable change in receipts or obligations and, thus, no appreciable cost associated with the rule. The major benefit is one of improving the cash flow of the operators by improving the timeliness of ODS payments. Accordingly, no separate Regulatory Evaluation is deemed necessary.

Since the regulation will affect principally ship operators with substantial annual revenues, the Maritime Administrator certifies that this rulemaking will not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

It does not include new information collection requirements, but maintains existing information requirements which have been approved by OMB under control numbers 2133–0004 and 2133–0024, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 46 CFR Part 282

Liner cargo vessels, ODS program, Water transportation.

Accordingly, a new Part 282 is being added to Title 46, Code of Federal Regulations, to read as follows:

PART 282—OPERATING-DIFFERENTIAL SUBSIDY FOR LINER VESSELS ENGAGED IN ESSENTIAL SERVICES IN THE FOREIGN COMMERCE OF THE UNITED STATES

Subpart A—Introduction

Sec.
282.1 Purpose.
282.2 Definitions.
282.3 Waivers.

Subpart B—Foreign-Flag Competition

282.10 Basis for determining foreign-flag competition.
282.11 Ranking of flags.

Subpart C—Calculation of Subsidy Rates

282.20 Amount of subsidy payable.
282.21 Wages of officers and crew.
282.22 Maintenance (Upkeep) and repairs.
282.23 Hull and machinery insurance.
282.24 Protection and indemnity insurance

Subpart D—Subsidy Payment and Billing Procedures.

282.30 Payment of subsidy.
282.31 Subsidy billing procedures.
282.32 Appeal procedures.

Authority: Secs. 204(b), 603, 606, Merchant Marine Act 1936, as amened (46 U.S.C. 1114(b), 1173, 1176), 49 CFR 1.66.

Subpart A—Introduction

§ 282.1 Purpose.

This part prescribes regulations implementing Title VI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1171–1176 and 1178–1181) governing operating-differential subsidy for liner vessels engaged in essential services in the foreign commerce of the United States.

§282.2 Definitions.

When used in this part:

(a) Act means the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101–1294).

(b) Board means the Maritime Subsidy Board of the Maritime Administration (MARAD).

(c) Contracting Officer means the Associate Administrator for Maritime Aids.

(d) Fiscal Period means any annual period beginning on July 1 and ending on June 30.

(e) Foreign-flag competition means those foreign-flag vessels deemed by the Maritime Administrator to be competitive with the subsidized vessel.

(f) Maritime Administrator means the Maritime Administrator, Maritime Administration of the Department of Transportation.

(g) Operating day means any day or part of a day during which a subsidized vessel is operated in accordance with the terms and conditions of an operating-differential subsidy agreement.

(h) Operating-differential subsidy (ODS) means, except as the operator and the United States Government should agree upon a lesser amount, the excess of cost of subsidizable items of expense incurred in the operation under United States registry of a vessel over the estimated fair and reasonable cost of the same items of expense (excluding any increase in the cost of such items necessitated by features incorporated for national defense), if such vessel were operated under the registry of a foreign country whose vessels are substantial competitors of the vessel.

(i) Operating-differential subsidy agreement (ODSA) means the Agreement entered into by the operator and the United States Government for the payment of operating-differential subsidy.

(j) ODS rate means the method adopted by the Maritime Administrator for determining the amount of ODS that is to be paid for an item of subsidizable expense.

(k) Operator means any individual, partnership, corporation or association that contracts with the United States Government under Title VI of the Act to receive ODS.

(l) Reduced crew period means a period in port between or during voyages when the subsidized vessel's approved crew complement is reduced by 10 percent or more and division of wages (wages of an absent seaman are divided among the seamen who provide the absent seaman's work) is not paid for the missing men.

(m) Region Director means the Region Director of the Maritime Administration within whose region the principal office of the operator is located.

(n) Subsidized service means the operation of a vessel, other than in the coastal or intercoastal trade, in accordance with the terms and conditions of the ODSA.

(o) Subsidized vessel means a vessel covered by an ODSA.

(p) U.S. foreign commerce means the commerce or trade between the United States, its territories or possessions, or the District of Columbia, and a foreign country.

(q) Vessel means subsidized vessel, unless otherwise specified.

§ 282.3 Waivers.

In special circumstances and for good cause shown, the procedures prescribed in this part may be waived in writing, by mutual agreement of the parties, in keeping with the circumstances then present, so long as the procedures adopted are consistent with the Act and with the intent of these regulations.

Subpart B—Foreign-Flag Competition

§ 282.10 Basis for determining foreign-flag competition.

The foreign-flag competition shall form the basis for determining the cost disadvantage of operating the subsidized vessels in the essential service. The Maritime Administrator shall determine the foreign-flag competition from those countries that have carried a significant amount of cargo in the service by using the following procedures:

(a) The primary source of information shall be commodity import/export data compiled by the Bureau of the Census. Cargo data shall be compiled in long tons. Trade publications which show advertised sailings shall be used to verify the liner services offered by foreign-flag operators.

(b) The U.S. import/export data shall be compiled by reference to countries actually served by the subsidized operator, using the subsidized operator's own competition data for each country to eliminate the flags which are not substantial competitors with the subsidized vessels. An example of the weighting procedure follows:

EXAMPLE

	Country A	Country B	Country C	Total
I. Determination of U.S.-Flag Weights:				
U.S. Subsidized Carrier	300	500	200	1,000
Percent	30	50	20	100
II. Actual Foreign-Flag Carryings:				
Flag 1	1,500	500	1,000	3,000
Flag 2	4,000	6,000	0	10,000
Flag 3	5,000	2,000	5,000	12,000
III. Adjusted Foreign-Flag Carrying (Actual Foreign x U.S. wts):				
Flag 1	450	250	200	900
Flag 2	1,200	3,000	0	4,200
Flag 3	1,500	1,000	1,000	3,500
				8,600
IV. Competition Computation:		Actual percent		Reweight (percent)
Flag 2	4200/8600	49.0		55.0
Flag 3	3500/8600	41.0		45.0
		90.0		100.0

(c) The principal foreign flags shall be those countries whose cargo carrying would rank the flag among those carriers that aggregate at least 50 percent of the total foreign-flag carryings.

(d) The total cargo carryings of each principal foreign flag shall be expressed

as a percentage of total cargo carryings of all principal flags on the service. The resultant ratio shall be applied to the costs of that principal flag for determining its portion of the composite foreign cost, which shall be used for establishing the cost disadvantage of U.S. vessles in the service.

(e) The determination of the principal competitors and competition weight factors shall be based upon the import/export data for the twelve months of the penultimate calendar year preceding January 1 of the subsidized year to allow several months to collect foreign cost data.

§ 282.11 Ranking of flags.

The operators under each principal foreign flag shall be ranked as predominant, secondary, etc., for the purpose of establishing the priority of costs which are representative of the flag. For liner cargo vessels, the ranking of operators shall be based on the long tons of cargo carried.

(a) If the predominant operator is an agent, charterer or a joint venture in which the vessels are owned by two or more lines, under the name of such agent, charterer or joint venture, the predominant operator shall be the owner whose vessels carried the most cargo.

(b) If cost experience cannot be obtained for the foreign-flag operators in the subsidized service, MARAD may use the costs of another service, following the same ranking of operators, if possible.

Subpart C—Calculation of Subsidy Rates

§ 282.20 Amount of subsidy payable.

(a) *Daily Rates.* Daily ODS rates shall be used to quantify the amount of ODS payable. The daily ODS rate represents the cost differential between the subsidized vessel and its foreign-flag competition. A daily rate shall be calculated for each subsidized item of expense identified in the ODSA, and the total of all items is the daily amount of ODS payable for approved vessel operating days, excluding reduced crew periods.

(b) *Reduced Crew Periods.* For reduced crew periods, as defined in § 282.3 of this part, a man-day reduction amount, calculated separately for officers and unlicensed crew members, shall be used to reduce the daily wage ODS rate to conform to the complement remaining on the vessel. The man-day reduction amounts shall be determined by dividing the daily wage ODS for officers and unlicensed crew members by the number of subsidizable crew members in each category. For each day of a reduced crew period, the man-day amount shall be multiplied by the number of crew members missing for that day, and the resulting product shall be deducted from the daily ODS rate. The difference shall be the ODS payable for such day. (See illustration in Schedule D at § 282.31 of this part.)

(c) *Review of Rates.* Daily subsidy rates shall be reviewed every six months. For the item "wages of officers and crews," the daily rate shall be calculated for fiscal periods July 1 through June 30, in accordance with provisions of the Act. During the period January through June, adjustments—paid as a lump sum or as a daily amount—shall be made to wage ODS so that the correct amount of ODS for the full fiscal period is received by the operator. For other subsidizable items of expense, the daily rate shall be calculated for calendar years.

(d) *Negative Rates.* When an ODS rate in any category is less than zero, indicating that the subsidized operator is at an advantage rather than a disadvantage in such category, the negative rate shall be deducted from positive rates in determining the daily ODS amount payable.

(e) *Operator Comments.* The operator shall have the opportunity to comment on each subsidy rate as calculated by the Maritime Administration. The operator and contracting officer shall make every effort to resolve disagreements that arise. In the event of a disagreement that cannot be resolved, comments received from the operator and the contracting officer's recommendation shall be presented to the Maritime Administrator for consideration in determining subsidy rates.

§ 282.21 Wages of officers and crews.

(a) *Definitions.* When used in this part.

(1) *Base period.* The first base period under the wage index system, as provided in section 603 of the Act, is the period beginning July 1, 1970 and ending June 30, 1971. Thereafter, base period means any annual period beginning July 1 and ending June 30, with respect to which the Maritime Administrator establishes a base period cost. At intervals of not less than two years, nor more than four years, the Maritime Administrator shall establish a new base period. Base periods shall be announced by the Maritime Administrator prior to the December 31 date that would be included in the new base period.

(2) *Base period cost.*—(i) *Initial base period.* For the initial base period of subsidized service, the term "base period cost" means the collective bargaining cost as of January 1 of that base period.

(ii) *Subsequent base periods.* For base periods subsequent to the initial base period, the term "base period cost" means the averaged of the collective bargaining cost as of January 1 of such fiscal year, and the base period cost of the previous base period, indexed to January 1 of the new base period by an index compiled by the Bureau of Labor Statistics. This index shall consist of the average annual change in wages and benefits placed into effect for employees covered by collective bargaining agreements, with equal weight to be given to changes affecting employees in the transportation industry (excluding the off-shore maritime industry) and to changes affecting employees in private non-agricultural industries other than transportation. However, such base period cost shall not be less than a minimum, nor more than a maximum amount, determined as a percentage of the collective bargaining cost computed for January 1 of such base period in accordance with the following schedule:

	Minimum (percent)	Maximum (percent)
Base period following a:		
2-year cycle	97½	102½
3-year cycle	96¼	103¾
4-year cycle	95	105

(3) *Collective bargaining cost (CBC)* means the annual cost, calculated on the basis of the per diem rate of expense, as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required by the operator through a collective bargaining or other agreement, covering the employment of the approved manning complement of the subsidized vessel, including payments required by law to assure old-age pensions, unemployment benefits or similar benefits, and taxes or other governmental assessments on crew payrolls.

(4) *Approved manning complement* means the complement approved by the Board for subsidy.

(5) *U.S. wage cost (WC)* means the annual cost, calculated on the basis of the per diem rate of expense as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required of the operator through a collective bargaining or other agreement, covering the employment of the normal manning complement of the subsidized vessel, including payments required by law to assure old-age pensions, unemployment benefits or

similar benefits, and taxes or other govrernmental assessments on crew payrolls.

(6) *Normal manning complement* means the crew complement established by a collective bargaining or other agreement with the officers and unlicensed crew of the vessel. In cases where the complement may vary in number, the lowest number shall be the normal manning complement. When ratings of different salaries are in the same job during the year, the base wages of the rating carried most of the time shall be used.

(7) *Subsidizable wage cost* means, (i) with respect to a base period, the base period cost, and (ii) in any fiscal period other than a base period, the most recent base period cost, increased or decreased by the change from January 1 of the base period to January 1 of the non-base period in the index described above. The subsidizable wage cost shall not be less than 90 percent nor greater than 110 percent of the collective bargaining cost as of January 1 of such period.

(8) *Unpredictably timed costs* are collective bargaining costs that are not regularly incurred. Examples of unpredictably timed costs are such costs as severance pay, shortfalls, special assessments, and war zone bonuses.

(b) *Method of calculating collective bargaining cost (CBC).* CBC shall be determined by pricing out, for the approved crew complement, the per diem total of fixed costs specified in the collective bargaining agreement and adding a per diem total of variable costs obtained from the cost experience of the subsidized vessel during the first nine months of the preceding calendar year.

(1) *Fixed Costs.* The per diem total of fixed costs shall include all costs that are stated in specific or determinable amounts per time period and, based on operating experience, do not vary. In cases where a monthly amount is specified in the agreement, the per diem amount shall be determined by dividing the monthly amount by 30. When a daily amount is specified it shall be used. Example of fixed costs are:

(i) Base wages;

(ii) Non-watch pay;

(iii) Vacation pay (including contributions to vacation funds);

(iv) Tool allowance;

(v) Clothing and uniform allowances; and

(vi) Per diem contributions for pension, training, welfare, unemployment, including unallocated contributions placed in escrow.

(2) *Variable costs.* Variable costs are regularly incurred employment costs which vary with ship operating experience. The per diem aggregate of variable costs as of January 1 shall be determined by applying a ratio to the per diem aggregate of base wage costs as of January 1, the numerator of which shall be the total of variable costs for the first nine months of the preceding calendar year and the denominator of which shall be the total of base wage costs for the first nine months of the preceding calendar year. Variable costs include but are not limited to:

(i) Payroll taxes (including social security taxes);

(ii) Overtime and penalty pay;

(iii) Variable pension, training, welfare, unemployment, and vacation costs;

(iv) Pay in lieu of time off;

(v) Transportation and travel allowances;

(vi) Payments to relief officers and crews;

(vii) Wages and other expenses of USMMA cadets and extra messmen;

(viii) Board and lodging allowances;

(ix) Overlap in wages (a maximum of two days); and

(x) Penalty cargo bonuses.

(c) *Method of calculating U.S. wage cost (WC)* Two different calculations of WC are necessary—a per diem amount for every ship type on the service and a per month amount for the predominant ship type (most voyages) on the service. The purpose of the per month calculation is to make a comparison with the monthly foreign wage costs. The relationship of WC to foreign costs for the predominant ship is applied to the per diem WC for other ship types in the service to estimate comparable foreign costs for them.

(1) *Calculation of per diem WC.* The per diem WC shall be calculated by the same method that applies to CBC, except that the normal manning complement shall be used.

(2) *Calculation of per month WC.* The costs and manning level used in this calculation shall be the same as those used for the per diem WC.

(d) *Data submission requirements.* For purposes of calculating CBC and WC the operator shall each year submit Form MA–790 and, as appropriate, current copies of all collective bargaining or other agreements, memoranda of understanding, and arbitration awards, which specify the fixed costs as of January 1. Schedule A of Form MA–790, which covers wage costs on voyages terminated during the first nine months of the previous calendar year, shall be submitted by January 1 of the subsidized year. Schedule B of Form MA–790—normal manning complement, rates of pay, and contributions in effect on January 1 of the current year—shall be submitted by January 31. Form MA–790, Schedules A and B, shall be submitted to the Director, Office of Ship Operating Costs, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590.

(e) *Example calculation.* The following is a sample of calculation of CBC and WC:

ABC STEAMSHIP COMPANY

January 1, 1985, Collective Bargaining Costs (CBC) and U.S. Wage Cost (WC)

	Per diem	
	WC	CBC
Crew complement	[1] 35	[2] 31
Fixed costs as of January 1, 1985:		
Base wages and non-watch pay	$1,789.79	$1,571.60
Allowances (radio, telephone, clothing, etc.)	5.75	5.75
Vacation pay	1,189.60	1,109.65
Pension, welfare, training, unemployment fund contributions	1,280.80	1,171.75
Total fixed	$4,265.94	$3,858.75
Variable costs as of January 1, 1985:		
Variable cost factor (based on 1984 cost experience) (in percent)	104.69	104.69
Total variable costs (January 1, 1985, base wages x variable cost factor)	$1,873.73	$1,645.31
Total wage costs as of January 1, 1985	$6,139.67	$5,504.06

[1] Normal manning complement.
[2] Approved manning complement.

(f) *Method of calculating foreign wage costs.* The foreign wage cost (FC) of the principal foreign-flag competitors and the comparable WC of the subsidized vessel are matched as of January 1 of the subsidized fiscal year for purposes of determining the wage cost of the principal foreign flags. The following procedures are used:

(1) *Manning.* The foreign manning complement in number and nationality for the principal foreign-flag competitors shall be constructed for the subsidized vessel type using the manning scales and practices of the competitors as developed through an examination of alien crew manifests, payrolls, and other reliable information. The commonly used crew complement of the competitors shall be adjusted to fit the predominant vessel type, in recognition of differences in physical characteristics that would affect manning scales. Where the manning complement cannot be estimated with reasonable substantiation, it will be deemed to be identical with that of the subsidized vessel.

(2) *Method.* The method of calculating FC shall be the same as that used for WC, provided that it is possible to obtain foreign cost data on the same basis as wage cost data. Preference shall be given to pricing out for fixed costs and to cost experience for variable

costs. Where applicable, foreign currencies shall be converted into U.S. currency equivalents by using the average of end-month exchange rates for July through January, unless they consistently change in one direction by twenty-five (25) percent or more during the period, in which case the January exchange rate shall be used. The exchange rates shall be obtained from the publication, "International Financial Statistics," published monthly by the International Monetary Fund. If exchange rates for particular foreign currencies are not available in this publication, they shall be obained from the United States Department of the Treasury.

(3) *Foreign wage cost.* The per diem composite foreign wage cost is determined by multiplying the per diem WC for the U.S. ship type by the ratio of FC to WC for the foreign-flag competitors. The following is a sample calculation of the foreign cost percentage.

ABC STEAMSHIP COMPANY, INC., TRADE ROUTE 21—JANUARY 1, 1985—FOREIGN WAGE COST (FC)

	United States	Belgium	United States	Germany		Netherlands	United States	Norway
Crew Complement	35	35	35	23		22	35	28
Base Wages	[1]53,687	[1]24,779	[1]53,687	[1]25,192		[1]23,127	[1]53,687	[1]27,257
Allowances	[1]1,074	[1]4,584	[1]1,074	[1]8,879		[1]3,097	[1]1,074	[2]289
Vacation Pay (leave)	[1]35,681	[1]13,009	[1]35,681	[1]9,912		[1]9,499	[1]35,681	[1]11,976
Pension and Welfare	[1]38,407	[1]2,065	[1]38,407	[1]124		[1]3,923	[3]36,342	[1]124
Social Security	[2]6,608	[2]7,227	[1]3,717	[1]6,814		[1]4,584	[2]6,608	[2]10,118
Overtime and other variable costs (not elsewhere included)	[2]48,732	[2]10,944	[2]48,732	[2]10,325		[2]7,021	[2]48,732	[2]12,389
Repatriation								[2]413
Total wage costs	184,189	62,608	181,298	61,246		51,251	182,124	62,566
Unweighted Percentage FC to WC		33.99%		33.78%		28.27%		34.35%
Competition Weight Factor		22.1%		19.6%		19.1%		39.2%
Weighted Percentage		7.51%		6.62%		5.40%		13.47%
Composite Weighted Percentage					33.00%			

[1]Based on Jan. 1 priced out cost.
[2]Based on cost experience.
[3]Excludes training costs—foreign data not available.

(g) *Determination of daily wage rate.* The foreign wage cost is deducted from subsidizable wage costs to determine the daily wage subsidy rate. Table 1 is an example calculation of a daily wage subsidy rate using the procedures described in this section.

(h) *Unpredictably timed costs (UTC)* are subsidized by calculating costs incurred during the previous six months and converting them into a daily rate or, in the alternative, a lump sum amount will be paid for special lump sum assessments or for per man-day increases to benefit plans which become effective during the six months following the establishment of the daily rate. In either case, the percentage subsidy rate—which is the differential percentage between the subsidizable wage cost and the foreign wage cost—is used to establish the amount of subsidy payable for UTC incurred.

(1) UTC expenses such as severance pay and area bonuses are eligible for subsidy payment without obtaining prior approval and subsidy shall be paid as a lump sum amount.

(2) Expenses such as shortfalls in benefit fund contributions, special assessments for benefit funds, and retroactive wage increases may be treated as UTC if the cost increase was not negotiated. Such costs must be approved as UTC by the Director, Office of Ship Operating Costs. To the extent such expenses qualify for UTC, the Director shall determine the appropriate method of paying subsidy—added to the per diem wage subsidy rate and/or as a lump sum amount treated separately.

TABLE 1.—ABC STEAMSHIP CO., INC., TRADE ROUTE 21

[Calculation of wage subsidy rates*]

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Base period	Interim period	U.S. wage cost	Collective bargaining cost	Application of BLS index to base period cost	Averaging in base periods (4)+(5) / 2	Appropriate limits	Base period cost	Subsidizable wage cost	Composite weighted percentage	Composite foreign wage cost	Wage subsidy daily rate	Wage subsidy percentage rate (12)+(9)
1981		4,162.60	3,850.29				3,850.29	3,850.29	32.99	1,373.24	2,477.05	64.33
	1982	4,578.24	4,230.15	3,850.29×1.0845=4,175.64		.9×(4)=3,807.14		4,175.64	32.98	1,509.90	2,665.74	63.84
						1.1×(4)=4,653.17						
	1983	5,013.80	4,560.38	3,850.29×1.1816=4,549.50		.9×(4)=4,104.34		4,549.50	36.15	1,812.49	2,737.01	60.16
						1.1×(4)=5,016.42						
	1984	5,539.40	4,966.90	3,850.29×1.2992=5,002.30		.9×(4)=4,470.21		5,002.30	34.77	1,926.05	3,076.25	61.50
						1.1×(4)=5,463.59						
1985		6,139.57	5,504.06	3,850.29×1.4044=5,407.35	5,455.71	.95×(4)=5,228.86	5,455.71	5,455.71	33.00	2,026.06	3,429.65	62.86
						1.05×(4)=5,779.26						

*This computation is based on a new vessel entering subsidized service in May 1981.

§ 282.22 Maintenance (upkeep) and repairs.

(a) *Basis for subsidy.* The fair and reasonable maintenance and repair costs not compensated by insurance, if eligible for subsidy under the ODSA and the regulations in 46 CFR Part 272, shall be used for determining the daily amount of subsidy. The U.S.-foreign cost differential shall be determined from price estimates of representative items of maintenance and repair work and by using the repair practices of the foreign-flag competition.

(b) *U.S.-foreign cost differential.* MARAD shall use the following procedures for calculating the U.S.-foreign cost differential for M&R.

(1) *Cost Survey.* MARAD shall select a sample of jobs which are representative of the various types of maintenance and repair work—drydocking and underwater repairs, machinery repairs, hull and deck repairs, electrical repairs, exterior painting and interior painting, etc. The jobs shall be described fully and combined into a standard set of specifications based on a particular type of vessel. The same specifications shall be used for obtaining all price estimates. MARAD shall request reliable and mutually acceptable ship repair cost

experts to ascertain the U.S. and foreign M&R prices. MARAD shall survey foreign countries during a three-year cycle. The survey year prices shall be adjusted in the years between surveys by price adjustments estimated by the ship repair cost experts.

(2) *Country cost differential.* A country cost differential shall be determined for each country where work was performed on the competitive vessels. The country cost differential shall be 100 percent minus the ratio of the estimated foreign price to the U.S. price estimate. The U.S. price estimate shall be representative of the coastal area included in the subsidized service (for example East Coast) or, if more than one coast is served, the coast where the company is home based. For example:

DETERMINATION OF COUNTRY COST DIFFERENTIAL—YEAR—1985—U.S. EAST COAST—FOREIGN COUNTRY—UNITED KINGDOM

Repair category	Foreign price	U.S. price
Drydocking & Underwater Repairs	$49,598	$70,662
Boiler Repairs	18,938	20,287
Machinery Repairs	33,004	36,193
Hull and Deck Repairs	16,729	20,853
Electrical Repairs	11,868	11,117
Exterior Painting	5,456	7,974
Interior Painting	681	1,162
Estimate Totals	$136,274	$168,248

Foreign/U.S. Price Ratio—81%
Country Cost Differential (100-81)—19%.

(3) *Distribution of repairs.* The distribution of repairs refers to the countries where M&R work was performed on the vessels of the foreign-flag competitor. When data on the repairing practices are obtained directly from the foreign competitor, they be used. If information about such practices is unavailable—or only partially available—data, published by the classification societies and Lloyd's Voyage Record, reporting the dates and localities of drydocking and completion of the various types of vessel surveys, shall be used for determining the geographical distribution of the unknown repairing practices. For diesel vessels, there are three basic types of surveys—drydocking, machinery, and hull. For steam vessels, there is a fourth survey—boiler—in addition to the other three surveys. Since these surveys may be performed in different countries, they are weighted in order to determine the distribution of repairs. The weighting factors shall be: drydocking—20 percent, machinery—40 percent (10 percent allocated to boiler survey on steam vessels), and hull—40 percent.

(4) *Proportionate cost differential.* A proportionate cost differential for each principal foreign-flag competitor shall be determined by multiplying the percentage distribution of repairs for each country where repair work was performed by the country cost differential for that country and by adding the resulting weighted percentages for all countries where repair work was performed.

(5) *U.S.-foreign cost differential.* The U.S.-foreign cost differential shall be determined by multiplying the proportionate cost differential for each principal foreign-flag competitor by the competition weight factor for that competitor, and by adding the resulting differentials for all principal foreign-flag competitors, as shown in the following example.

ABC STEAMSHIP COMPANY, INC.—TRADE ROUTE—X—U.S.-FOREIGN COST DIFFERENTIAL FOR MAINTENANCE (UPKEEP) AND REPAIRS SUBSIDY RATE—1985

Principal competitors	(1) Distribution of repairs: Country	(1) Distribution of repairs: (Percent)	(2) Country cost differential (percent)	(3) Proportionate cost differential (1) X (2) (percent)	(4) Competition weight factor (Percent)	(5) Weighted differential (3) X (4) (Percent)
Japan	Japan	85	36.21	30.78		
	U.S.	15	0	0		
		100		30.78	23.4	7.20
Norway	Norway	15	44.72	6.71		
	Netherlands	20	43.23	8.65		
	Japan	45	36.21	16.29		
	U.S.	20	0	0		
		100		31.65	31.1	9.84
United Kingdom	U.K	80	19.00	15.20		
	Hong Kong	15	50.35	7.55		
	U.S.	5	0	0		
		100		22.75	45.5	10.35
U.S.-Foreign Cost Differential						27.39

(c) *Calculation.* The appropriate U.S.-foreign cost differential shall be applied to the subsidizable and audited maintenance and repair costs for the three-year period, discussed in paragraph (c)(1) of this section, to establish a relationship of the cost differentials between M&R and wages. This relationship shall be used to establish the M&R subsidy on a current basis by applying the percentage relationship to the per diem wage subsidy rate.

(1) *Historical period.* The relationship of calendar period M&R subsidy to fiscal period wage subsidy shall be measured for the three-year period commencing five years prior to January 1 of the subsidized year. The M&R subsidy and the wage subsidy shall be expressed as an amount per voyage day for purposes of establishing the relationship. This ratio shall be established for each subsidized service and applied to the per diem wage rate of each ship type in the service to factor a daily amount of subsidy for M&R. The following is an example of the determination of the relationship and the daily amount of subsidy for M&R.

DETERMINATION OF DAILY AMOUNT OF SUBSIDY FOR M&R

T.R. 98 item	Calender Year 1980	Calender Year 1981	Calender Year 1982	Total
M&R C.Y. Expenses	$1,700,000	$2,000,000	$1,900,000	
Subsidy Rate	40.00%	44.00%	50.00%	
Subsidy	$680,000	$880,000	$950,000	$2,510,000
Voyage Days	1,100	1,225	1,175	3,500

Average Subsidy Per Voyage Day ($2,510,000÷3,500 days)=$717.14

	Fiscal Year 1980	Fiscal Year 1981	Fiscal Year 1982	Total
Wages F.Y. Per Diem Rate	$7,700	$8,050	$8,200	
Voyage Days	1,160	1,230	1,060	3,470
Subsidy	$9,086,000	$9,901,500	$8,692,000	$27,679,500

Average Subsidy Per Voyage Day ($27,679,500÷3,470 days)=$7,976.80
Ratio M&R ODS to Wage ODS $717.14÷$7,976.80=8.99%

T.R. 98 ship type	Daily wage ODS 1/ 1/85	Ratio M&R to wage ODS (percent)	Daily M&R ODS 1/ 1/85
C4-A	$9,000	x 8.99	$809.10
C5-B	$9,300	x 8.99	$836.07
C6-C	$9,600	x 8.99	$863.04

(2) *Data submission requirement.* The operator is required to submit annually a certified statement of eligible and audited M&R expenses, segregated by service, for the historical period referred to in paragraph (c)(1) of this section. The report shall be submitted to the Director, Office of Ship Operating Costs no later than January 1 of the subsidized year.

§ 282.23 Hull and Machinery Insurance.

(a) *Subsidy items.* The fair and reasonable net premium costs (including stamp taxes) of hull and machinery, increased value, excess general average, salvage, and collision liability insurance against risks and liabilities covered under the tems and conditions of policies approved as to form and coverage by MARAD, less lay-up returns, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential. Port risk premiums are eligible for subsidy but not for determining the U.S.-foreign cost differential.

(b) *U.S.-foreign cost differential.* A U.S.-foreign cost differential shall be calculated for each service. Due to the difficulty of comparing forms and costs of hull and machinery insurance coverages, the following assumptions shall be used for estimating the composite premium cost of the foreign-flag competitor.

(1) *Coverage.* The foreign competitive vessels have the same types and amounts of insurance coverages and deductible averages as the subsidized vessels.

(2) *Premium rate.* The foreign competitive vessels are insured in the British market and the rate for such vessels is the same as the British market rate for the subsidized vessels. If the operator carries all of its insurance in the American market, the American market rate shall be assumed to be the same as the British market rate.

(3) *Repairs.* Insurable repairs of the foreign competitive vessels are performed in the same countries and in the same distribution as non-insurable repairs, and the cost differential for such repairs shall be the same as the maintenance and repair percentage differential.

(4) *Particular average.* The percentage of particular average repair claims for the foreign competitive vessels is the same as the percentage of particular average repair claims for the subsidized vessels. The particular average portion of the premium cost for the subsidized vessels shall be determined as follows:

(i) *Percentage.* The particular average portion of the premium cost shall be determined by applying a percentage to the hull and machinery premium cost after deducting the estimated total loss premium. The percentage is based on insured claims experience. The percentage shall be determined by dividing the total of underwriter's absorptions for particular average domestic repair claims paid and estimated by the total of underwriter's absorptions for all claims paid and estimated (excluding total loss and constructive total loss claims) under the hull and machinery portion of the insurance coverage, except that such percentage shall not exceed eighty-five (85) percent. The percentage is based on the claims experience of the subsidized vessels for the five (5) calendar year period preceding the subsidized year. For subsidized operators that do not have five years of claims experience, the average percentage of particular average domestic repair claims for all similar subsidized vessels shall be used unless the operator can submit data to substantiate its own claims cost experience on similar vessels.

(ii) *Data submission requirement.* The operator shall submit the five year claims experience, invoices showing net premium costs and coverages for the subsidized year, and lay-up returns for the previous year to the Director, Office of Ship Operating Costs, not later than sixty (60) days after the cost of each calendar year.

(c) *Calculation.* In calculating the subsidized premium cost, the following steps shall be taken:

(1) The particular average portion of the premium cost shall be adjusted in order to give effect to the repair cost differential for the foreign competitive vessels by applying the complement of the maintenance and repairs percentage cost differential (100 percent minus the differential) to the particular average portion of the premium cost. The adjusted particular average foreign premium cost shall be added to the net premium cost excluding the particular average portion to determine the composite foreign premium cost.

(2) The foreign premium cost shall be substracted from the operator's total premium cost to determine the difference in dollars. The percentage

differential is detemined by dividing the dollar difference by the operators' total premium cost. An example calculation is included in Table 2.

(3) The net premium cost of the subsidized vessels shall be divided by the number of days in the calendar year and the resultant daily insurance cost shall be multiplied by the U.S.-foreign cost differential percentage applicable to the most recent year to determine the daily amount of subsidy for hull and machinery insurance.

TABLE 2.—ABC STEAMSHIP COMPANY, INC.; CARGO VESSELS—TRADE ROUTE—X, U.S./FOREIGN COST DIFFERENTIAL FOR HULL AND MACHINERY INSURANCE

[1985]

1. *COMPOSITE FOREIGN PREMIUM COST:*			
A. *Hull and Machinery,* Total coverage		$92,741,996	
Average Premium Rate in British Market		1.00966%	
Premium Cost in British Market			$936,379
(Estimated Total Loss Payment $92,741,966@ .46500% [1]		$431,250)	
B. *Increased Value,* Total Coverage		$1,083,325	
Average Premium Rate in British Market		.32550%	
Premium Cost in British Market			$3,526
C. *Excess Liability,* Total Coverage			None
D. *Total Premium Cost if Insured 100% in British Market*			$939,905
E. *Deduct Particular Average Portion:*			
$936,379 Less $431,250 = $505,129 × 62% [2]			313,180
F. *Net Premium Cost Exclusive of Particular Average*			$626,725

	Trade Route No. X Line A	Trade Route No. X Line B	Trade Route No. X Line C
Particular Average Adjustment:			
P/A Portion of Premium Cost	$313,180	$313,180	$313,180
M & R Subsidy Rate Complement [3]	84.48%	86.63%	87.34%
Adjusted P/A Foreign Premium Cost	$264,574	$271,308	$273,531
Add: Net Premium Cost (Excluding P/A)	$626,725	$626,725	$626,725
2. *Composite Foreign Premium Cost*	$891,299	$898,033	$900,256
3. *TOTAL PREMIUM COST TO SUBSIDIZED OPERATORS*	$1,068,998	$1,068,998	$1,068,998
4. DIFFERENTIAL IN DOLLARS [4]	177,699	170,965	$168,742
5. *COMPOSITE WEIGHTED DIFFERENTIAL* [5]	16.62%	15.99%	15.79%
6. *U.S.—FOREIGN COST DIFFERENTIAL*	16.62%	15.99%	15.79%

[1] Estimated gross total loss rate adjusted for broker's discounts, policy tax and other costs, as necessary.
[2] Percentage of particular average.
[3] 100% minus M&R subsidy rate of the same calendar year.
[4] Line 3 less line 2.
[5] Line 4 divided by line 3.

§ 282.24 Protection and indemnity insurance.

(a) *Subsidy items.* Items eligible for determination of subsidizable costs and the U.S.-foreign cost differential are:

(1) *Premiums.* The fair and reasonable net premium costs (including stamp taxes) of protection and indemnity, excess insurance, second seamen's insurance, "tovalop" or other forms of pollution insurance, bumbershoot (only that portion identified as applicable to P&I insurance), cargo liability if excluded from the primary policy, supplemental calls against liabilities covered under the terms and conditions of policies approved as to form and coverage by MARAD, less lay-up return premiums, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential.

(2) *Deductibles.* The fair and reasonable cost of crew claims paid by and pending with the operator under the deductible provision of the protection and indemnity insurance policy approved as to form and coverage by MARAD, to the extent that such cost would have been paid by the insurance underwriter under the terms of the policy, except for the fact that it did not exceed the deductible provision of the policy, shall be eligible for subsidy. For subsidy purposes, the deductible absorption shall not exceed $50,000 for each accident or occurrence, provided however, that benefits paid on unearned wages, if excluded from coverage under the protection and indemnity insurance policy, shall be eligible, notwithstanding that the deductible provisions of the policy may be exceeded.

(b) *Assumption made in calculation.* For purposes of determining subsidy for protection and indemnity insurance, it shall be assumed that the cost differential between the subsidized vessels and the foreign competitive vessels is limited to those portions of premium costs and deductible absorptions which are related to crew liability and that the cost of all other liabilities is the same for both the subsidized vessels and the foreign competitive vessels.

(c) *Calculation.* The following is the method of calculating the U.S.-foreign cost differential for premiums:

(1) *General.* A differential shall be calculated for each subsidized service of the vessel. Since the premium cost for all other liabilities is assumed to be the same for both the U.S. and foreign competitive vessels, the calculation of the differential for protection and indemnity insurance premiums is in effect based on the difference between U.S. and foreign premium costs for crew liabilities. Premium costs are determined in costs per gross registered ton (GRT).

(2) *Reporting Requirement.* The operator shall submit the total premium cost for the subsidized year, plus any supplemental calls and lay-up return premiums not previously reported, to the Director, Office of Ship Operating Costs, not later than 60 days after the beginning of such year. The data shall

be supported by invoices from the insurance underwriter.

(3) *U.S. crew liability cost.* The crew liability portion of the total premium cost shall be determined by applying a percentage to the total premium cost based on five (5) years of claims experience for the five years commencing six years prior to January 1 of the subsidized year. The percentage shall be determined by dividing the total of underwriter's absorptions for crew claims, paid and estimated, by the total of underwriter's absorptions for all claims, paid and estimated. The crew claims portion shall be limited to eighty-five (85) percent unless the operator can substantiate a higher percentage as a result of having crew liability and all other liabilities insured with different underwriters. The operator shall submit the five-year claims experience not later than 60 days following the close of each calendar year.

(4) *All other liabilities cost—U.S. and foreign.* The all other liabilities portion of the U.S. premium cost shall be determined by subtracting the crew liability portion from the total premium cost. The same cost shall be used for the all other liabilities portion of the foreign-flag competitor's premium cost.

(5) *Foreign crew liability cost.* The crew liability cost of each principal foreign-flag competitor shall be used, if reliable cost data can be obtained. If such data cannot be obtained for a principal competitor, and it is determined that such competitor has a non-national crew, the crew liability cost for similar vessels registered under the flag of the crew's nationality may be used, at the Maritime Administrator's discretion, provided reliable cost data are obtained. If no reliable cost data are obtained for a competitor, the crew liability cost for that competitor shall be estimated by multiplying the subsidized operator's crew liability portion of the total premium cost by the ratio of that competitor's wage costs (FC) to the subsidized operator's wage costs (WC), as determined in the calculation of the wage differential.

(6) *U.S.-foreign cost differential.* The U.S.-foreign cost differential shall be the excess of the operator's total premium cost over the principal foreign-flag competitor's estimated total premium cost, expressed as a percentage, calculated in the following manner.

ABC Steamship Company, Inc., Trade Route X, Protection and Indemnity Insurance Premiums, 1985

Premium cost (per GRT)	United States	Greece	Pakistan	South Africa
Crew liability	[1] $3.98	[2] $1.27	[3] $0.45	[2] 0.08
All other liability	$1.06	$1.06	$1.06	$1.06
Total costs	$5.04	$2.33	$1.51	$1.14
Differential—Excess of U.S. cost over foreign cost	$2.71	$3.53	3.90	
Unweighted differential (percent)	53.77	70.04	77.38	
Competition weight factor (percent)		24.3	24.9	50.8
Weighted differential (percent)		13.07	17.44	39.31
U.S.-foreign cost differential (percent)				69.82

[1] Determined by applying 79.03 percent (based on 5-year claims experience) to total GRT premium rate of $5.04.
[2] Crew liability data obtained by Maritime Administration.
[3] The unweighted percentage of Pakistani to U.S. wage costs of 11.23% was applied to $3.98 to estimate the foreign cost.

(d) *Daily Subsidy Rate.* The daily subsidy rate shall be calculated in the following manner:

(1) *Premiums.* The net premium costs per calendar day for the subsidized year shall be multiplied by the U.S.-foreign cost differential percentage determined for the most recent year. The product shall be the daily amount of subsidy for P&I premiums.

(2) *Deductibles.* (i) The eligible illness and injury crew claims paid and pending for each calendar year of a three-year period commencing six years prior to January 1 of the subsidized year shall be recalculated, if necessary, to reflect the operator's current deductible levels. These expenses, after audit, shall be multiplied by the percentage wage differential, as determined in the calculation of wage subsidy for the appropriate fiscal period. The resulting calendar period P&I deductible subsidy for the three-year period shall be divided by the voyage days for the period to arrive at an aggregate daily P&I deductible subsidy. The aggregate fiscal period wage subsidy accrued in the service for the three-year period shall be divided by the voyage days for the period to arrive at an aggregate daily wage subsidy amount. The aggregate daily P&I deductible subsidy for the three-year calendar period shall be divided by the aggregate daily wage subsidy for the three-year fiscal period. The resulting percentage shall be applied to the wage per diem calculated for each ship type in the service to derive the daily amount of subsidy for P&I deductibles. As to pending claims previously recognized in the historical period, only the amount of changes in cost with respect to such claims shall be subsequently recognized. The following methodology shall be used to determine subsidy for P&I deductibles.

Determination of Daily Amount of Subsidy for P&I Deductibles

T.R. 98 item	Calendar year 1979	Calendar year 1980	Calendar year 1981	Total
P&I Deductible C.Y. Expenses	$1,680,000	$1,220,000	$1,400,000	
Diff. Foreign/U.S. Wage Cost	26.00%	23.00%	20.00%	
Subsidy	$436,800	$280,600	$280,000	$997,400
Voyage Days	1,140	1,100	1,225	3,465

Average Subsidy Per Voyage Day ($997,400÷3,465 days)=$287.85

	Fiscal year 1979	Fiscal year 1980	Fisal year 1981	Total
Wages F.Y. Per Diem Rate	$7,660	$7,700	$8,050	
Voyage Days	1,090	1,180	1,230	3,500
Subsidy	$8,349,400	$9,086,000	$9,901,500	$27,336,900

Average Subsidy Per Voyage Day ($27,336,900÷3,500 days)=$7,810.54
Ratio P&I Deductible ODS to Wage ODS $287.85÷$7,810.54=3.69%

T.R. 98 ship type	Daily wage ODS 1/1/85	Ratio P&I ded. to wage ODS (percent)	Daily P&I ded. ODS 1/1/85
C4-A	$9,000	×3.69	$332.10
C5-B	9,300	×3.69	343.17
C6-C	9,600	×3.69	354.24

(ii) In cases where national insurance schemes cover crew claims costs in their entirety, resulting in no cost to the foreign competitor for deductible absorptions, the composite percentage differential for wages shall be adjusted by substituting a zero cost for such foreign competitor in the calculation of the differential. The adjustment of the wage percentage differential shall not be used for Japan, where operators incur minimal costs for deductible absorptions, rather than no costs. For Japan, the insurance related costs which are normally included in the calculation of Japanese wage costs shall be excluded in adjusting the wage percentage differential for this purpose.

(3) *Data submission requirement.* The operator is required to submit annually a certified statement of eligible and audited crew claims, as identified in paragraph (d)(2) of this section, for the historical period identified therein. The report shall be submitted to the Director, Office of Ship Operating Costs no later than January 1 of the subsidized year.

Subpart D—Subsidy Payment and Billing Procedures

§ 282.30 Payment of subsidy.

Submission of voucher. At the close of each calendar month, the subsidized operator may submit a voucher, and include for payment in such voucher the amount of ODS accrued for the voyages terminated during the period.

§ 282.31 Subsidy billing procedures.

(a) *Subsidy voucher*—(1) *Form.* Requests for payment of ODS shall be submitted on a public voucher, Standard Forms 1034 and 1034A, which can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402.

(2) *Copies.* The operator shall submit the original and 3 copies of the voucher to the MARAD Region Director for payment. The original and 2 copies must be supported by schedules and an affidavit. The third copy is the payee's copy and need not be supported.

(b) *Schedules and affidavit.* (1) The following schedules shall be used for calculating the amount of ODS payable:

Schedule A

(Company)
ODSA No.
ODS Accrued During Fiscal Year 198__
ODS Payable for the Month of

	Current voucher	Previous voucher	Total
Total Accrued ODS (Sched. B)	$	$	$
Less ODS Reductions: DTR/Deviations (Sched. C)	$		
Reduced Crew (Sched. D)	$		
Net ODS Accrued	$	$	$
Less Previous Payments			$
ODS Payable			$

Schedule B

(Company)
ODS Accrued for the Month of
Trade Area

Vessel name	Voy. No.	Voyage dates From	Voyage dates To	Voy. days [1]	Per diem rates [1]	Net subsidy
					$.....	$
ODS payable for unpredictably timed expenses not included in daily amount (attach supporting information)						$
Total accrued subsidy (enter on Schedule A)						$

[1] Place* next to applicable "Voy. days" or "Per diem rate" of vessel and voyage requiring reduction of ODS because of domestic trade operations or voyage deviations.

Schedule C

(Company)
Domestic Trade and Voyage Deviation ODS Reductions

Domestic Trade Reduction (DTR):

Vessel name	Voy. no.	Gross voyage revenue	Domestic revenue	% of dom. to gross revenue	Per diem rate	Per diem reduction	DTR days	ODS reduction
	.....	$.....	$.....	.....%	$.....	$.....	.....	$

Deviation Reduction:

Vessel name	Voy. no.	Deviation days or % of day	Per diem rate	ODS reduction
	.....	.....	$.....	$

(Enter total Reductions on Schedule A).

Schedule D

(Company)
Reduced Crew Period

Vessel	Reduced crew dates From	Reduced crew dates To	No. of reduced crew days (a)		No. of crew reduced	Man-days	Man-day amount	Reduced crew reduction
.....	.....	.....		×	=	×	$=	$
.....	.....	.....		×	=	×	$=	$
.....	.....	.....		×	=	×	$=	$
.....	.....	.....		×	=	×	$=	$
Total Reduced Crew Reduction (Enter on Schedule A)								

(a) If licensed crew, indicate (a), (b) If unlicensed crew, include (b).

(2) A notorized affidavit as shown below shall be signed by an official of the subsidized operator who is familiar with the ODSA, these regulations, the operation of the subsidized vessel and the accounts, books, records, and disbursements of the subsidized operator relating to such operation:

Affidavit

State of _____
City of _____
County/Parish of _____

I, _____, being duly sworn, depose and say, that I am (title) of the _____ (herein referred to as the "Operator"), and as such am familiar with (a) provisions of the Operating-Differential Subsidy Agreement, Contract No. _____, dated as of _____, as amended, to which the Operator is a party; and (b) the regulations governing the payment of operating-differential subsidy for liner vessels, PART 282, Title 46, CFR; and (c) the operation of the vessels covered by said Agreement and regulations; and (d) the accounts, books, records, and disbursements of the Operator relating to such operation.

Referring to the public voucher dated _____, covering voyage days allowed for subsidy during the periods commencing _____ and ending _____, and attached, submitted by said Operator concurrent herewith for a payment on account in the sum of _____, under said Agreement, I further depose and say that, to the best of my knowledge and belief, the Operator has fully complied with the terms and conditions of said Agreement and regulations, applicable orders, rulings and provisions of the Merchant Marine Act, 1936, as amended, and is entitled, under the provisions of said Agreement and regulations, orders and rulings applicable thereof, to the amount of the payment on account requested; and further depose and say that the vessels named in the attached schedules were in authorized service for the vessel operating days on which the payment is requested and has not included in the calculation of the amount of subsidy claimed in the attached voucher any costs of a character that the Maritime Administration, or Secretary of Transportation acting by and through the Maritime Subsidy Board or any predecessor or successor, had advised the Operator to be ineligible to be so included, or any costs collectible from insurance, or from any other source.

Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval of the correctness of the amount stated to have been due, nor a waiver of any right of remedy the Maritime Administration, or Secretary of Transportation, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said Agreement, or otherwise.

I further depose and say that this affidavit is made for and on behalf and at the direction of the Operator for the purpose of inducing the Maritime Administration to make a

payment pursuant to the provisions of the aforesaid Operating-Differential Subsidy Agreement, as amended.

Subscribed and sworn to before me, a Notary Public, in and for the aforesaid County and State, this _____ day of _____.

My commission expires _____
Notary Public _____

(3) The subsidized operator shall furnish its own supply of supporting schedules and affidavit.

§ 282.32 Appeal procedures.

(a) *Appeals of annual or special audits.* An operator who disagrees with the findings, interpretations or decisions in connection with audit reports of the Office of the Inspector General and who cannot settle said differences by negotiation with the Contracting Officer may submit an appeal to the Maritime Administrator from such findings, interpretations or decisions in accordance with Part 205 of this chapter.

(b) *Appeals of administrative determinations*—(1) *Policy.* An operator who disagrees with the findings, interpretations or decisions of the Contracting Officer with respect to the administration of this part may submit an appeal from such findings, interpretations or decisions as follows:

(i) Appeals shall be made in writing to the Secretary, Maritime Subsidy Board, Maritime Administration, within 60 days following the date of the document notifying the operator of the administrative determination of the Contracting Officer. In the appeal to the Secretary, the operator shall indicate whether or not a hearing is desired.

(ii) MARAD will notify the appellant in writing if a hearing is to be held and whether the operator is required to submit additional facts for consideration in connection with the appeal.

(iii) When a decision has been rendered, the Board shall notify the appellant in writing.

(2) *Appeal to the Secretary of Transportation.* An operator who disagrees with the Board may appeal such findings and determinations by filing with the Secretary of Transportation, a written petition for review of the Board's action. The petition shall be filed in accordance with provisions of the Department of Transportation pertaining to Secretarial review.

(3) *Hearings.* MARAD shall follow the Rules of Practice and Procedure (46 CFR Part 201, Subpart M) for hearings granted under 46 U.S.C. 1176 and 46 CFR 282.32.

Dated: September 22, 1986.

By Order of the Maritime Administrator.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 86-21965 Filed 9-29-86; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Update of OMB Information Collection Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's list of OMB approved information collection requirements contained in the Commission's Rules.

This action is necessary to comply with the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

This action will provide the public with a current list of information collection requirements in the Commission's Rules which have OMB approval.

EFFECTIVE DATE: September 30, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jerry Cowden, Office of Managing Director (202) 632-7513.

SUPPLEMENTARY INFORMATION:

Order

In the matter of editorial amendment of § 0.408 of the Commission's Rules.

Adopted: September 16, 1986.
Released: September 18, 1986.

1. Section 3507(f) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(f)) requires agencies to display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the Commission's information collection requirements. OMB control numbers assigned to Commission forms are not listed in this section since those numbers appear on the forms.

3. This Order amends § 0.408 to remove listings of information collections which the Commission has eliminated or to add listings of new information collections which OMB has approved.

4. Authority for this action is contained in section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and § 0.231(d) of the Commission's Rules. Since this amendment is editorial in nature, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

5. Accordingly, it is ordered, that § 0.408 of the rules is amended in accordance with the attached appendix, effective on the date of publication in the **Federal Register.**

6. Persons having questions on this matter should contact Jerry Cowden at (202) 632-7513.

List of Subjects in 47 CFR Part 0

Reporting and recordkeeping requirements.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

PART 0—COMMISSION ORGANIZATION

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 0 continues to read:

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

2. In 47 CFR 0.408, paragraph (b) is amended by removing the following sections and their corresponding OMB control numbers:

47 CFR part or section where identified and described:	*Current OMB Control No.*
1.1305	3060-0004
18.80	3060-0328
18.105(c)-(d)	3060-0328
18.141(d)	3060-0328
18.142(b)	3060-0328
18.182	3060-0328
18.183	3060-0328
21.203	3060-0206
73.157	3060-0154
73.546	3060-0145
73.1515	3060-0177
73.3598	3060-0186
78.75	3060-0279
81.36(d)	3060-0317
81.74	3060-0286
81.76	3060-0294
81.115	3060-0306
81.193	3060-0276
81.223	3060-0277
81.224	3060-0278
81.313	3060-0296
81.314	3060-0285

	Current OMB Control No.
81.352	3060-0297
81.403	3060-0325
81.704	3060-0268
83.42(b)	3060-0231
83.48	3060-0230
83.72	3060-0228
83.115	3060-0252
83.184	3060-0255
83.184	3060-0256
83.334	3060-0255
83.339	3060-0257
83.367	3060-0267
83.368	3060-0256
83.405	3060-0266
83.501	3060-0265
83.819	3060-0264
90.135(c)(1)	3060-0226
90.477(b)	3060-0291
94.25	3060-0284

§ 0.408 [Amended]

3. In 47 CFR 0.408, paragraph (b) is amended by adding the following sections and their corresponding OMB control numbers:

47 CFR part or section where identified and described:	Current OMB Control No.
1.1307	3060-0004
1.1308	3060-0004
25.392	3060-0359
63.701	3060-0357
76.619	3060-0356
80.29	3060-0361
80.31	3060-0365
80.59	3060-0228
80.110	3060-0276
80.302	3060-0286
80.401	3060-0362
80.409(c)	3060-0360
80.409(d)-(e)	3060-0364
80.413	3060-0264
80.503	3060-0297
80.605	3060-0325
80.868	3060-0265
90.135(c)(2)-(3)	3060-0226
90.477	3060-0291
94.25 (f)-(g), and (i)	3060-0284

[FR Doc. 86-21915 Filed 9-29-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-110; FCC 86-385]

Broadcast Services; Telecommunications Transmissions in the Vertical Blanking Interval

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action eliminates the timetable for use of lines 10, 11, 12, 13, and 14 to transmit teletext information during the television vertical blanking interval (VBI). It is needed to allow the use of additional VBI lines to satisfy the need for such new and enhanced teletext and other telecommunication services.

EFFECTIVE DATE: October 27, 1986.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Policy and Rules Division, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order (Report)* in MM Docket 86-110, adopted September 10, 1986, and released September 18, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230, 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The *Report* eliminates the timetable for transmission on lines 10-14 of the television VBI.

Regulatory Flexibility Information

2. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this action will not have a significant economic impact on a substantial number of small entities because it merely provides greater flexibility in the operation of television stations.

3. The Secretary shall cause a copy of this *Report of Order*, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq*), (1981).

Paperwork Reduction Act Statement

4. The *Report and Order* contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Order Clauses

5. Accordingly, it is ordered, that under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934 as amended, Part 73 of the Commission's Rules is amended as set forth below.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Amendatory Text

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

6. The authority citation for Part 73 continues to read as follows:

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

7. Section 73. 682 is amended by revising paragraphs (a)(23)(i) and (a)(23)(v) to read as follows, and by removing Schedule I:

§ 73.682 TV transmission standards.

(a) * * *

* * * * *

(23) * * *

(i) Telecommunications may be transmitted on Lines 10-18 and 20, all of Field 2 and Field 1. Modulation level shall not exceed 70 IRE on lines 10, 11, and 12; and, 80 IRE on lines 13-18 and 20.

* * * * *

(v) A reference pulse for a decoder associated adaptive equalizer filter designed to improve the decoding of telecommunications signals may be inserted on any portion of the vertical blanking interval authorized for data service, in accordance with the signal levels set forth in paragraph (a)(23)(i) of this section.

* * * * *

William J. Tricarico,
Secretary.

[FR Doc. 86-21916 Filed 9-29-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Parts 73, 74 and 76

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order updates and corrects the alphabetical indexes in 47 CFR Parts 73, 74 and 76.

EFFECTIVE DATE: September 30, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:
Steve Crane, Policy and Rules Division, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

Order

In the matter of Oversight of the Radio and TV Broadcast Rules.

Adopted: September 19, 1986.
Released: September 23, 1986.

By the Chief, Mass Media Bureau.

1. In this *Order*, the Commission adds or deletes listings in the alphabetical indexes of Parts 73, 74, and 76 (no modifications in Part 78), pursuant to changes adopted in Commission rulemakings in the past 12 months. These corrections are made in September of each year for inclusion in the upcoming October edition of Title 47 of the Code of Federal Regulations.

2. Our experience in alphabetically indexing the broadcast rules clearly indicates that this data makes possible the location of regulations quickly and easily. This fast access has brought about a better understanding of our rules by broadcasters and practitioners. Providing easy access to the rules has reduced considerably the number of letters and phone calls to the FCC requesting help in rule location, thereby minimizing paperwork and administrative workload on the FCC staff, broadcasters and their legal and engineering advisors.

3. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions to Parts 73, 74, and 76 will serve the public interest.

4. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are inapplicable pursuant to the Administrative Procedure Act. 5 U.S.C. 553(b)(3)(B).

5. Since general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

6. Therefore, it is ordered, That pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73, 74 and 76 of the FCC Rules and Regulations are amended as set forth in the attached Appendix, effective on the date of publication in the **Federal Register.**

7. For further information on this *Order*, contact Steve Crane, Mass Media Bureau, (202) 632-5414.

List of Subjects

47 CFR Parts 73 and 74

Alphabetical index, Radio broadcasting, Television broadcasting.

47 CFR Part 76

Alphabetical index, Cable television.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

47 CFR Parts 73, 74 and 76 are amended as follows:

1. The authority citation for Parts 73, 74 and 76 continues to read as follows:

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

PART 73—[AMENDED]

2. The alphabetical index of 47 CFR Part 73 is amended by removing index entries as follows:

Under "Advertising":
- Billing, fraudulent 73.1205
- Combination rates; Joint sells practices. ..... 73.4065(*)
- AM and FM programming, Duplication of. 73.242
- AM technical standards, Introduction. 73.181
- AM transmission system installation and safety requirements. 73.49
- AM transmission system, performance requirements. 73.40

Automatic transmission system facilities:
- AM 73.142
- FM 73.342
- NCE-FM 73.542

Automatic transmission system monitoring and alarm points:
- AM 73.146
- FM 73.346
- NCE-FM 73.546

Automatic transmission system, Fail-safe transmitter control for:
- AM 73.144
- FM 73.344
- NCE-FM 73.544

Automatic transmission system (ATS), Use of:
- AM 73.140
- FM 73.340
- NCE-FM 73.540
- Billing practices, Fraudulent. 73.1205

Control, transmitter, Fail-safe, for automatic transmission systems:
- AM 73.144
- FM 73.344
- NCE-FM 73.544
- Duplication of AM and FM programming. 73.242

Fail-safe transmitter control for automatic transmission systems:
- AM 73.144
- FM 73.154
- NCE-FM 73.544
- Fences, Antenna base 73.49

Field strength measurements:
- Partial and skeleton proofs of performance. 73.154
- FM multiplex technical standards. 73.319
- Fraudulent billing practices. (Policy). ..... 73.4115(*)
- Fraudulent billing practices. (Rule). 73.1205
- Installation and safety requirements, AM transmission systems. 73.49
- Introduction (AM technical standards). 73.181
- Law violations by station applicants. ..... 73.4280(*)

Under "Location of transmitter":
- AM 73.188
- Measurements, Field strength, skeleton and partial proofs of performance (AM). 73.154
- Multiplex subcarrier, technical standards (FM). 73.319
- Network clipping ..... 73.4155(*)
- Under "Ownership, Multiple". 73.3555
- AM 73.35
- FM 73.240
- TV 73.636
- Partial and skeleton proofs of performance, Field strength measurements (AM). 73.154
- Programming, Duplication of AM and FM. 73.242
- Safety and installation requirements, AM transmission systems. 73.49
- Skeleton and partial proofs of performance, Field strength measurements (AM). 73.154
- Station "trafficking" 73.3597
- Subcarrier, multiplex, technical standards (FM). 73.319
- (Technical standards, AM broadcast) Introduction. 73.181
- Trafficking in stations 73.3597

Transmission system, Automatic, monitoring and alarm points:
- AM 73.146
- FM 73.346
- NCE-FM 73.546

Transmission system facilities, Automatic:
- AM 73.142
- FM 73.342
- TV 73.542

Transmission systems, automatic, Fail-safe transmitter control for:
- AM 73.144
- FM 73.344
- TV 73.544

Transmission systems, automatic (ATS) Use of:
AM 73.140
FM 73.340
TV 73.540
Transmitter control, Fail-safe, for automatic transmission system:
AM 73.144
FM 73.344
NCE–FM 73.544
Under "Transmitter, Location":
AM 73.188
Use of automatic transmission systems (ATS):
AM 73.140
FM 73.340
NCE–FM 73.540
Violation of law by station applicants. 73.4280(*)

3. The alphabetical index of 47 CFR Part 73 is amended by adding index entries as follows:

[Following "AM transmission system emission limitations"]:
AM transmission system fencing requirements. 73.49
[Preceding "Assigment, Involuntary"]:
Assign or transfer unbuilt facility. 73.3535
[Preceding "Modified station license"]:
Modify authorized-unbuilt facility. 73.3535
[Following "Transfer of control, Voluntary"]:
Transfer or assign unbuilt facility. 73.3535
[Preceding "Use of former main antenna as auxiliary"]:
Unbuilt facilities: modify, assign or transfer. 73.3535
[Preceding "Assignment of stations to channels (AM)"]:
Assignment, FM Increasing availability of. 73.4107 (*)
[Preceding "Attacks, Personal"]:
ATS-Automatic transmission system. 73.1500
[Following "Authorizations, Special temporary (STA)"]:
Automatic transmission system (ATS). 73.1500
[Preceding "Charts, Engineering"]:
Character evaluation of broadcast applicants. 73.4280 (*)
[Preceding "Doctrine, Fairness"]:
Distress sales and tax certificates, Minority ownership. 73.4140*
[Preceding "Exclusivity, Territorial (network"]:
Evaluation of broadcast applicant character. 73.4280 (*)
[Following "FCC, Station inspections by"]:
Fencing requirements, AM transmission system. 73.49
[Preceding "Foreign broadcast station * * *"]:
FM assignments, increasing availability. 73.4107 (*)
[Following "FM multiplex subcarriers, Use of"]:
FM multiplex subcarriers transmission technical standards. 73.319
[Following "Multiple ownership"]:
Multiplex subcarrier transmission technical standards, FM. 73.319
[Preceding "Public inspection file"]:
Proxy statements and tender offers. 73.4266(*)
[Preceding "Restrictions on use of Channels"]:
Responses and statements to Commission inquiries. 73.1015
[Following "State-wide plans (NCE–FM"]:
Statements and responses to Commission inquiries. 73.1015
[Following "Stereophonic sound transmission standards—AM, FM, TV"]:
Studio location, Main 73.1125
[Preceding "Subcarrier, multiplex, Use of—FM, TV,"]: Subcarrier multiplex, transmission standards, FM 73.319
[Following "Taped, filmed or recorded material Broadcast of"]:
Tax certificates and distress sales; Minority sales. 73.4140(*)
[Following "Temporary authorizations, Special (STA)"]:
Tender offers and proxy statements. 73.4266(*)
[Following "Transmission standards (TV)"]:
Transmission system, Automatic (ATS). 73.1500
Under Transmitter, Location-FM:" TV. 73.685

PART 74—[AMENDED]

4. The alphabetical index of 47 CFR Part 74 is amended by removing index entries as follows:

Under "Licenses Posting of":
Remote pickups 74.467
Low power auxiliaries 74.867
Under "Postings of licenses":
Remote pickups 74.467
Low power auxiliaries 74.867

5. The alphabetical index of 47 CFR Part 74 is amended by adding index entries as follows:

Under "Definitions": [Preceding "Remote pickup]:
General 74.2
[Preceding "Remote control operation"]:
Remote pickup broadcast frequencies 74.402

6. The alphabetical index of 47 CFR Part 76 is amended by removing index entries as follows"

Equal employment opportunities 76.311
Performance tests 76.601

7. The alphabetical index of 47 CFR Part 76 is amended by adding index entries as follows:

Following "Enforcement, Lockbox"]:
Equal employment opportunity:
Scope 76.71
General Policy 76.73
Program requirements 76.75
Reporting requirements 76.77
Public inspection of records 76.79
[Preceding "Leakage, Signal, performance Criteria"]:
Leakage measurements, Signal 76.601
[Following "Measurements, Performance"]:
Measurements, Signal leakage.. 76.601
[Preceding "Signal leakage performance criteria"]:
Signal leakage measurements... 76.601

PART 76—[AMENDED]

8. The alphabetical index of 47 CFR Part 76 is amended by revising the section number for Signal leakage performance criteria to correctly read 76.611.

[FR Doc. 86–21921 Filed 9–29–86; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR PART 1043

CLARIFICATION OF INSURANCE REGULATIONS

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a final rule to clarify its regulations under § 1043.7(d), Title 49 of the Code of Federal Regulations. The change would clarify the fact that Forms BMC–35 and BMC–36 are the prescribed forms for use in cancelling certificates of insurance and surety bonds filed with this

Commission in behalf of motor carriers and freight forwarders and property brokers, respectively. No other *notice* will be accepted by the Commission; furthermore notice to state bodies, carriers, forwarders or brokers, will not constitute a notice to the Commission, with regard to our thirty (30) days notice of cancellation requirement. This requirement cannot be waived. The appropriate revision in the Code of Federal Regulations will be made to reflect this action.

EFFECTIVE DATE: This decision is effective on September 30, 1986.

FOR FURTHER INFORMATION CONTACT:

Heber P. Hardy, (202) 275–7148

or

Alice K. Ramsay, (202) 275–0854.

SUPPLEMENTARY INFORMATION: Section 1043.7(d) of Title 49 of the Code of Federal Regulations does not specify that Forms BMC–35, Notice of Cancellation, Motor Carrier policies of insurance under 49 U.S.C. 10927, or BMC–36, Notice of Cancellation, Motor Carrier and Broker surety bonds are required to be used in notifying the Commission of cancellation of such coverage. Because of this omission, it appears that there could be some confusion with respect to the Commission's intentions in this regard.

Since the referenced forms are included in Part 1003 List of Forms (1003.3 Insurance and surety bond forms) of the CFR, we assumed it would be clearly understood that these forms (BMC–35 and BMC–36) are required to be used in cancelling the respective insurance coverages. However, to eliminate any possible confusion in this regard, we will revise the applicable section of the CFR to clearly reflect our intentions.

Accordingly, under 49 U.S.C. 10927, we shall revise the regulations at 49 CFR 1043.7(d), as set forth in the appendix, to reflect this action. Because this rule revision is intended merely to clarify our regulations, it is issued here in final form. In addition, comment is not required (5 U.S.C. 553(b)(A)).

This action does not significantly affect the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1043

Insurance, Motor carriers, Surety Bonds.

Dated: September 22, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

Appendix

Part 1043 of the CFR is amended as follows:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

1. The authority citation for 49 CFR Part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

2. Paragraph (d) of § 1043.7 is revised to read as follows:

§ 1043.7 Forms and procedures.

* * * * *

(d) Cancellation notice. Except as provided in paragraph (e) of this section, surety bonds, certificates of insurance and other securities or agreements shall not be cancelled or withdrawn until 30 days after written notice has been submitted to the Commission at its offices in Washington, DC, on the prescribed form (Form BMC–35, Notice of Cancellation Motor Carrier Policies of Insurance under 49 U.S.C. 10927, and BMC–36, Notice of Cancellation Motor Carrier and Broker Surety Bonds, as appropriate) by the insurance company, surety or sureties, motor carrier, broker or other party thereto, as the case may be, which period of thirty (30) days shall commence to run from the date such notice on the prescribed form is actually received by the Commission.

* * * * *

[FR Doc. 86–22053 Filed 9–29–86; 8:45 am]

BILLING CODE 7035–01–M

Fish and Wildlife Service

50 CFR PART 20

Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule and correction.

SUMMARY: This rule prescribes the late open seasons, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl seasons; special restrictions to reduce the black duck harvest; special seasons for scaup and goldeneyes; extra scaup and teal in regular seasons; additional sandhill crane seasons in the Central Flyway and in Arizona; coots, common moorhens, and snipe in the Pacific Flyway; and additional special extended falconry seasons. Taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The rules will permit taking of the designated species during the 1986–87 season within specified periods of time beginning as early as September 25 and benefit the public by opening the seasons which are presently closed.

This rule also revises § 20.106 of 50 CFR to correct the boundary description of North Dakota sandhill crane hunting zone number 1.

EFFECTIVE DATE: September 25, 1986.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, Matomic Building Room 536, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC, telephone 202–254–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

On March 21, 1986, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (51 FR 9854) a proposal to amend 50 CFR Part 20, with comment periods ending June 19, July 14 and August 25, 1986, respectively, for the 1986–87 hunting season frameworks proposed for Alaska, Hawaii, Puerto Rico, and the Virgin Islands; other early seasons; and the late hunting-season frameworks. That document dealt with the establishment of hunting seasons, hours, areas, and limits for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. On June 6, 1986, the Service published in the **Federal Register** (51 FR 20677) a second document consisting of a supplemental proposed rulemaking dealing with both the early- and late-season frameworks. On July 3, 1986, the Service published for public comment in the **Federal Register** (51 FR 24415) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On July 25, 1986, the Service

published in the **Federal Register** (51 FR 26712) a fourth document containing final frameworks for Alaska, Puerto Rico, and the Virgin Islands. On August 13, 1986, the Service published a fifth document (51 FR 28946) containing final frameworks for other early season migratory bird hunting regulations from which State wildlife conservation agency officials selected early-season hunting dates, shooting hours, areas and limits for 1986–87. On August 15, 1986, the Service published in the **Federal Register** (51 FR 29274) a sixth document consisting of proposed frameworks for the late-season migratory bird hunting regulations. On August 28, 1986, the Service published in the **Federal Register** (51 FR 30646) a seventh document consisting of a final rule amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas, and limits for mourning doves, white-winged doves, band-tailed pigeons, rails, woodcock, snipe, and common moorhens and purple gallinules; September teal seasons; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; Canada geese in September in portions of Michigan; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and special extended falconry seasons. On September 12, 1986, the Service published in the **Federal Register** an eighth document (51 FR 32460) consisting of a final rulemaking for the late-season frameworks for migratory game bird hunting regulations from which State wildlife conservation agency officials selected late season hunting dates, hours, areas, and limits for 1986–87.

The final rule described here is the ninth in a series of proposed supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas and limits for species subject to late hunting regulations.

On August 28, 1986, the Service published in the **Federal Register** seasons, areas, limits and shooting hours for certain migratory game birds in the contiguous United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands. In § 20.106 paragraph (e), the west boundary of Zone 1 in North Dakota is given as the area east of a line starting on the east shore of Lake Oahe at the South Dakota border, then north on this shore to Bismarck, then north on U.S. Highway 83 to Canada. The boundary description should read the area east of a line starting on the east shore of Lake Oahe at the South Dakota border then north on this shore to Bismarck, then north on U.S. Highway 83 to the north shore of Lake Sakakawea, then west along the north shore of Lake Sakakawea to North Dakota (ND) 23, then east on ND 23 to ND 8, then north on ND 8 to Canada.

Migratory Bird Hunting on Indian Reservations

In an August 31, 1986, letter that included proposed hunting regulations on the Fort Hall Indian Reservation, Fort Hall, Idaho, and in two telephone conversations, John D. Ross, III, Tribal Attorney, raised a number of concerns regarding the duck zone that has been established on and around the reservation for the 1986–87 hunting season. Mr. Ross urged the Service to point out that the duck hunting season dates in the zones were established to accommodate the Shoshone-Bannock Tribes and not the State of Idaho, and that it should not be identified as a State zone. Mr. Ross stated that the zone is larger than is necessary, and he requested that the Service make it clear that the new zone does not resolve jurisdictional disputes but is a temporary solution designed to avoid confrontation between the tribes and the State. The jurisdictional problems concern the regulatory authority over waterfowl hunting by non-Indians on the reservation, hunting by contribal on members on lands owned by non-Indians within the reservation, and the exact boundaries of the reservation.

Response: While recognizing legitimate State concerns, the Service gave serious consideration to tribal interests when duck hunting regulations were established on the Fort Hall Indian Reservation in the 1985–86 and 1986–87 hunting seasons, in accordance with the guidelines published in the September 3, 1985, **Federal Register** (at 50 FR 35762). The Service clarified its position in regard to "full wildlife management authority" of Indian tribes in the August 29, 1986, **Federal Register** (at 51 FR 31085).

The present duck hunting zone was established as a means of accommodating the interests of both the tribes and the State in time for the 1986–87 hunting season, and it does not establish a binding precedent for future hunting seasons. The Service notes that the hunting regulations established in the zone are in accord with those requested by the tribes for the reservation, and the Service believes it unlikely that the duck hunting regulations in this new zone will result in increased harvest. In fact, the later opening date and earlier closing date of the duck season should cause a reduced hunting kill of pintails and mallards, species for which there is a particular concern regarding population status. The Service recognizes that the zone does not resolve tribal and State differences regarding jurisdiction over hunting on lands owned by non-Indians, or the boundary issue. However, the Service believes that the approaches used thus far have been of mutual benefit, and the Service intends to consult again with tribal and State officials in establishing hunting regulations for the 1987–88 hunting season.

It should be noted that Mr. Ross' letter was received after the comment period closed, and under usual circumstances, his comments would not be published in this document. His comments are included because the Shoshone-Bannock Tribes did not have adequate time to comment on the proposed new duck hunting season zone before it was made final for the 1986–87 hunting season.

Nontoxic Shot Regulations

In the September 3, 1986, **Federal Register** (51 FR 31429) the Service published a list of zones and areas where nontoxic shot will be required for waterfowl hunting in the 1986–87 hunting season. Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 24241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement.

Copies of assessments are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act "[and shall]" insure that any action

authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or adverse modification of [critical] habitat . . . ." The Service therefore initiated section 7 consultation under the Endangered Species Act for the proposed hunting season regulations frameworks.

On June 23, 1986, the Acting Chief, Office of Endangered Species (OES), concluded that the proposed actions were not likely to jeopardize the continued existence or listed species of result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate changes of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under Section 7 is considered a public document and is available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, Department of the Interior, Washington, DC.

Regulatory Flexibility Act, Executive Order 12291 and Paperwork Reduction Act

In the **Federal Register** dated March 21, 1986 (at 51 FR 9854), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated July 25, 1986 (at 51 FR 26712).

Authorship

The primary author of this final rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

After analysis of the migratory game bird survey data obtained through investigations conducted by the Service, State conservation agencies, and other sources, and consideration of all comments received on the late season proposals (51 FR 9854, March 21, 1986; 51 FR 20677, June 6, 1986; and 51 FR 29274, August 15, 1986), the Service published in the **Federal Register** on September 12, 1986 (51 FR 32460) final late-season frameworks. Copies of the final frameworks were sent to the officials of the State conservation agencies who were invited to submit recommendations for hunting seasons which complied with the season times and lengths, hours, areas, and limits specified in the frameworks.

The taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The following amendments will permit taking of the designated species within specified time periods beginning as early as September 25 and will benefit the public by relieving existing restrictions.

The rulemaking process for migratory game bird hunting, must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemakings were published on March 21, June 6, and August 15, 1986, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select their season dates, shooting hours, hunting areas, and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C.(d)(3) (Administrative Procedure Act), and these regulations will, therefore, take effect September 25, 1986.

Accordingly, each State conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of Title 50, Chapter I, Subchapter B, Part 20, Subpart K, are hereby corrected and amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Dated: September 25, 1986.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

BILLING CODE 4310-55-M

PART 20 - [AMENDED]

For the reasons set out in the preamble, Title 50, Chapter I, Subchapter B, Part 20, Subpart K is revised as follows.

1. The authority citation for Part 20 continues to read as follows:
Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65-186, 40 Stat. 755 (16 U.S.C. 701-708h); sec. 3(h), Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103-04.

Note - The following annual hunting regulations provided for by §§20.104, 20.105, 20.106, 20.107 and 20.109 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. The Service corrects paragraph (e) of §§20.106 of 50 CFR Part 20 at 51 FR 30654 by revising the description of the west boundary of Zone 1 for sandhill crane hunting in North Dakota as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes

Central Flyway

* * * * *

(e) In North Dakota, in Zone 1 (the area east of a line starting on the east shore of Lake Oahe at the South Dakota border, then north on this shore to Bismarck, then north on U.S. Highway 83 to the north shore of Lake Sakakawea, then west along the north shore of Lake Sakakawea to North Dakota (ND) 23, then east on ND 23 to ND 8, then north on ND 8 to Canada; * * *

* * * * *

Section 20.104 is revised to read as follows:
§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.
Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Daily bag limit	25 (1)	See footnote (2)	5 (3)	8
Possession limit	25 (1)	See footnote (2).	10 (3)	16

Shooting and hawking hours: One-half hour before sunrise until sunset daily on all species, except as noted otherwise.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Seasons in the Atlantic Flyway:

Connecticut	Sept. 1-Nov. 8.	Sept. 1-Nov. 8.	Oct. 18-Dec. 1.	Oct. 18-Dec. 1.
Delaware	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Nov. 17-Dec. 31.	Nov. 17-Jan. 31.
Florida	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Dec. 13-Jan. 26.	Nov. 1-Feb. 15.
Georgia	Sept. 17-Nov. 25.	Sept. 17-Nov. 25.	Nov. 29-Jan. 12.	Nov. 20-Feb. 28.
Maine	Sept. 1-Nov. 9.	Closed.	Oct. 1-Nov. 14.	Sept. 1-Dec. 16.
Maryland	Sept. 1-Nov. 8.	Sept. 1-Nov. 8.	Oct. 15-Nov. 28.	Oct. 1-Jan. 15.
Massachusetts	Sept. 1-Nov. 8.	Closed.	Oct.10-Nov. 22.	Sept. 1-Dec. 13.
New Hampshire	Closed.	Closed.	Oct. 1-Nov. 14.	Oct. 1-Dec. 4.
New Jersey (4):				
North Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Oct. 11-Nov. 14.	Oct. 4-Jan. 17.
South Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Nov. 8-Dec. 6 & Dec. 20-Dec. 25.	Oct. 4-Jan. 17.
New York (4):				
Long Island	Closed.	Closed.	Oct. 1-Nov. 14.	Closed.
Remainder of State	Sept. 1-Nov. 9.	Closed.	Oct. 1-Nov. 14.	Sept. 1-Dec. 16.
North Carolina	Sept. 15-Nov. 22.	Sept. 15-Nov. 22.	Nov. 22-Jan. 5.	Nov. 14-Feb. 28.
Pennsylvania	Sept. 1-Nov. 8.	Closed.	Oct. 18-Nov. 8.	Oct. 18-Dec. 13.
Rhode Island	Sept. 15-Nov. 23.	Sept. 15-Nov. 23.	Oct. 18-Dec. 1.	Sept. 15-Dec. 5 & Dec. 15-Jan. 8.
South Carolina	Sept.15-Oct. 19 & Nov. 1-Dec. 5.	Sept. 15-Oct. 19 & Nov. 1-Dec. 5.	Nov. 27-Jan. 10.	Nov. 14-Feb. 28.
Vermont	Sept. 27-Dec. 5.	Closed.	Oct. 1-Nov. 14.	Sept. 27-Dec. 5.
Virginia	Sept. 8-Nov. 15.	Sept. 8-Nov. 15.	Nov. 3-Nov. 24 & Dec. 22-Jan. 13.	Oct. 17-Jan. 31.
West Virginia	Sept. 1-Nov. 8.	Closed.	Oct. 18-Dec. 1.	Sept. 1-Dec. 16.

Seasons in the Mississippi Flyway:

Alabama (5)	Nov. 12-Jan. 20.	Nov. 12-Jan. 20.	Nov. 28-Jan. 31.	Nov. 14-Feb. 28.
Arkansas	Sept. 1-Nov. 9.	Closed.	Nov. 8-Dec. 14 & Jan. 10-Feb. 6.	Sept. 13-Sept. 21 & Nov. 22-Feb. 27.
Illinois	Sept. 1-Nov. 9.	Closed.	Oct. 1-Dec. 4.	Sept. 13-Dec. 28.
Indiana	Sept. 1-Nov. 9.	Closed.	Sept.20-Sept.26 & Oct. 4-Nov. 30.	Sept. 1-Dec. 16.
Iowa (6)	Sept. 6-Nov. 14.	Closed.	Sept. 20-Nov. 23.	Sept. 6-Dec. 21.
Kentucky	Nov. 27-Jan. 20.	Closed.	Oct. 1-Dec. 4.	Oct. 1-Dec. 4.
Louisiana	Sept. 20-Sept. 28 & Nov. 8-Jan. 7	Sept.20-Sept.28 & Nov. 8-Jan. 7.	Dec. 6-Feb. 8.	Nov. 8-Feb. 22.
Michigan (7)	Sept. 15-Nov. 14.	Closed.	Sept. 15-Nov. 14.	Sept. 15-Nov. 14.
Minnesota	Sept. 1-Nov. 4.	Closed.	Sept. 1-Nov. 4.	Sept. 1-Nov. 4.
Mississippi	Oct. 18-Dec. 26.	Oct. 18-Dec. 26.	Dec. 26-Feb. 28.	Nov. 14-Feb. 28.
Missouri	Sept. 1-Nov. 9.	Closed.	Oct. 15-Dec. 18.	Sept. 1-Dec. 16.
Ohio	Sept. 1-Nov. 8.	Closed.	Sept. 26-Nov. 29.	Sept. 1-Nov. 29 & Dec. 8-Dec. 24.
Tennessee	Dec. 10-Jan. 18.	Closed.	Oct. 11-Nov. 16 & Feb. 1-Feb. 28.	Nov. 14-Feb. 28.
Wisconsin:				
North Duck Zone	Oct. 4(13)-Nov. 12.	Closed.	Sept. 13-Nov. 16.	Oct. 4(13)-Nov. 12.
South Duck Zone	Oct. 4(13)-Oct. 10& Oct. 17-Nov. 18.	Closed.	Sept. 13-Nov. 16.	Oct. 4(13)-Oct. 10 & Oct. 17-Nov. 18.

Seasons in the Central Flyway:

Colorado (8)	Sept. 1-Nov. 9.	Closed.	Closed.	Sept. 1-Dec. 1.
Kansas	Sept. 13-Nov. 21.	Closed.	Oct. 4-Dec. 7.	Sept. 13-Dec. 28.
Montana (4)	Closed.	Closed.	Closed.	Oct. 4-Dec. 2.
Nebraska (9)	Sept. 1-Nov. 9	Closed.	Sept. 15-Nov. 18.	Sept. 1-Dec. 15.
New Mexico (4)	Sept. 1-Oct. 31.	Closed.	Closed.	Sept. 1-Nov. 30.
North Dakota	Closed.	Closed.	Closed.	Oct. 4-Nov. 23.
Oklahoma	Sept. 1-Nov. 9.	Closed.	Nov. 27-Jan. 30.	Oct. 20-Feb. 3.
South Dakota(10)	Closed.	Closed.	Closed.	Sept. 1-Oct. 31.
Texas	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Nov. 22-Jan. 25.	Nov. 1-Feb. 15.
Wyoming (4)	Sept. 20-Nov. 28.	Closed.	Closed.	Sept. 20-Jan. 4.

Seasons in the Pacific Flyway:

Arizona (11)	Closed.	Closed.	Closed.	Oct. 10-Nov. 30 & Dec. 16-Jan. 11.
California:				
Northeastern Zone (4)	Closed.	Closed.	Closed.	Oct. 11-Dec. 28.
Colorado River Zone (4)	Closed.	Closed.	Closed.	Oct. 10-Nov. 30 & Dec. 16-Jan. 11.
Southern Zone (5)	Closed.	Closed.	Closed.	Oct. 18-Nov. 30 & Dec. 8-Jan. 11.
Balance of the State Zone	Closed.	Closed.	Closed.	Oct. 25-Jan. 11.
Colorado (8)	Sept. 1-Nov. 9.	Closed.	Closed.	Sept. 1-Dec. 1.

Idaho (4)				
Zone 1	Closed.	Closed.	Closed.	Oct. 11-Dec. 28.
Zone 2	Closed.	Closed.	Closed.	Oct. 4-Nov. 5 & Nov. 27-Jan. 11.
Montana (8)	Closed.	Closed.	Closed.	Oct. 4-Jan. 4.
Nevada (12):				
Clark County	Closed.	Closed.	Closed.	Oct. 25-Jan. 11.
Remainder of State	Closed.	Closed.	Closed.	Oct. 18-Jan. 4.
New Mexico (8) ...	Sept. 1-Oct. 31.	Closed.	Closed.	Sept. 1-Nov. 30.
Oregon:				
Morrow and Umatilla Counties	Closed.	Closed.	Closed.	Oct. 18-Jan. 11.
Remainder of State	Closed.	Closed.	Closed.	Oct. 18-Nov. 30 & Dec. 8-Jan. 11.
Utah (12).....	Closed.	Closed.	Closed.	Oct. 4-Dec. 21.
Washington:				
Eastern Washington (4),(12)	Closed.	Closed.	Closed.	Oct. 11-Jan. 4.
Western Washington (4),(12)	Closed.	Closed.	Closed.	Oct.11-Nov. 7 & Nov. 15-Jan. 4.
Wyoming (8)	Sept. 20-Nov. 28.	Closed.	Closed.	Sept. 20-Dec. 21.

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these two species.

(2) In addition to the limits on sora and Virginia rails, in Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, there is a daily bag limit of 10 and possession limit of 20 clapper and king rails, singly or in the aggregate of these two species, except that the season is closed on king rails in New Jersey by State regulation. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, there is a daily bag limit of 15 and possession limit of 30 clapper and king rails, singly or in the aggregate of these two species.

(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.

(4) For description of zones or management units within a State, see State regulations.

(5) In Alabama, the rail limits are 15 daily and 15 in possession.

(6) In Iowa, the rail limits are 15 daily and 25 in possession. Shooting hours are sunrise to sunset.

(7) See State regulations for listing of certain Great Lakes waters where the season is to open concurrently with the duck season.

(8) The Central Flyway portion consists of: Colorado and Wyoming — the area lying east of the Continental Divide; Montana — the area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties; New Mexico — the area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation. The remaining portions of these States are in the Pacific Flyway.

(9) In Nebraska, the rail limits are 10 daily and 20 in possession.

(10) In South Dakota, the snipe limits are 5 daily and 15 in possession.

(11) In Arizona, Ashurst Lake in Unit 5B is closed to common snipe hunting.

(12) In Nevada, the shooting hours are 8 a.m. to sunset on opening day and sunrise to sunset thereafter. In Utah, on October 4, the shooting hours are 12 noon to sunset, and on November 1 the shooting hours are 8 a.m. to sunset. Shooting hours on opening day are 12 noon to sunset in Eastern Washington and 8 a.m. to sunset in Western Washington.

(13) In Wisconsin, on opening day the shooting hours are 12 noon to sunset.

4. Section 20.105 is amended to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) Waterfowl, coots and gallinules in Atlantic, Mississippi, Central, and Pacific Flyways.

ATLANTIC FLYWAY

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

Flywaywide Restrictions.

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted.

Canvasbacks – All areas of the Flyway are closed to canvasback hunting.

Black ducks — When the black duck is permitted in the daily bag, it is part of the daily and possession limits for ducks.

Wood ducks — No more than 2 wood ducks may be taken daily nor more than 4 wood ducks may be possessed. Exceptions: during duck seasons prior to October 15, in Georgia, North Carolina, South Carolina, and Virginia. See State footnotes.

Hooded mergansers — In States selecting conventional regulations, no more than 1 hooded merganser may be taken daily nor more than 2 hooded mergansers may be possessed.

Redheads — The limit on redheads throughout the flyway is 2 daily. The possession limit on redheads is twice the daily bag limit under conventional regulations. Under the point system, redheads flywaywide count 70 points each.

Sea ducks — In all areas outside of special sea duck areas, sea ducks are included in the regular duck season conventional or point-system daily bag and possession limits.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

The season dates for mergansers and coots are the same as those for ducks in the following tables:

	Season Dates	Limits Bag	Limits Possession
Connecticut			
Ducks:			
North Zone (1)			
Black Ducks	Nov. 26-Dec. 27.	1	2
Ducks	Oct. 18-Oct. 25 & Nov. 26-Dec. 27.	4(2)	8(2)
Extra teal during regular season	Oct. 18-Oct. 25.	2(3)	4(3)
South Zone (1)			
Black Ducks	Dec. 8-Jan. 15.	1	2
Ducks	Oct. 18 & Dec. 8-Jan. 15.	4(2)	8(2)
Extra teal during regular season	Oct. 18.	2(3)	4(3)
Scaup-only season (4)	Jan. 16-Jan. 31.	5	10
Sea ducks (5)(6)(7)	Sept. 19-Jan. 3.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 8.	15 (8)	30(8)
Geese:			
Canada			
North Zone	Oct. 18-Jan. 15.	3	6
South Zone	Oct. 18 & Nov. 10-Jan. 15.	3	6
	Jan. 16-Feb. 5.	5	10
Snow (including blue)		4	8
North Zone	Oct. 18-Jan. 15.		
South Zone	Oct. 18 & Nov. 4-Jan. 31.		
Brant:		2	4
North Zone	Dec. 17-Jan. 15.		
South Zone	Dec. 22-Jan. 20.		
Delaware			
Ducks:			
Black Ducks	Nov. 25-Nov. 29 & Dec. 6-Jan. 3.	1	2
Ducks	Nov. 3-Nov. 8 & Nov. 25-Nov. 29 & Dec. 6-Jan. 3.	4(2)	8(2)
Extra teal during regular season	Nov. 3-Nov. 8 & Nov. 25-Nov. 27.	2(3)	4(3)
Extra scaup during regular season	Nov. 3-Nov. 8 & Nov. 25-Nov. 29 & Dec. 6-Jan. 3.	2(3)	4(3)
Sea ducks(5)(6)(7)	Sept. 20-Jan. 3.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(8)	30(8)
Geese:			
Canada	Nov. 3-Nov. 29.	2	6
	Dec. 6-Jan. 24.	3	6
Snow (including blue)	Nov. 3-Nov. 29 & Dec. 6-Jan. 24.	4	8
Brant	Dec. 22-Jan. 20.	2	4
Florida			
Ducks, no more than 1 of which may be a species other than teal or wood duck, and the possession limit will be double the daily bag limit	Sept. 20-Sept. 24.	4	8
Ducks:	Nov. 26-Nov. 30 & Dec. 15-Jan. 18.	Point system.	
Scaup-only season(4)	Jan. 19-Jan. 31.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(8)	30(8)
Geese	Closed.	-	-
Georgia			
Ducks	Nov. 27-Nov. 29 & Dec. 13-Jan. 18.	4(2)	8(2)
Extra teal during regular season	Dec. 13-Dec. 21.	2(3)	4(3)
Extra scaup during regular season (21)	Nov. 27-Nov. 29 & Dec. 13-Jan. 18.	2(3)	4(3)
Sea ducks(5)(6)(7)	Nov. 27-Jan. 18.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Nov. 27-Nov. 29 & Dec. 13-Jan. 18.	15(8)	30(8)
Geese	Closed.	-	-
Brant	Closed.	-	-
Maine			
North Zone (Wildlife Management Units 1-5)			
Black Ducks:		1	2
Units 1-3	Oct. 6-Oct. 20.		
Units 4 & 5	Oct. 16-Nov. 14.		
Ducks	Oct. 6-Nov. 14.	4(2)	8(2)
Extra teal during regular season	Oct. 6-Oct. 14.	2(3)	4(3)
South Zone (Wildlife Management Units 6-8)			
Black Ducks	Nov. 17-Dec. 13.	1	2
Ducks	Oct. 6-Oct. 18 & Nov. 17-Dec. 13.	4(2)	8(2)
Extra teal during regular season	Oct. 6-Oct. 14.	2(3)	4(3)
Scaup only season (4)	Oct. 31-Nov. 15.	5	10
Sea ducks(5)(6)(7)	Oct. 1-Jan. 15.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(8)	30(8)
Geese:			
Canada	Oct. 6-Dec. 13.	3	6
Snow (including blue)	Oct. 6-Jan. 3.	4	8
Brant	Oct. 6-Nov. 4.	2	4
Maryland			
Ducks:			
Black Ducks	Nov. 24-Nov. 28 & Dec. 8-Jan. 3.	1	2
Ducks	Oct. 10-Oct. 11 & Nov. 18-Nov. 28 & Dec. 8-Jan. 3.	4(2)	8(2)
Extra teal during regular season	Nov. 18-Nov. 26.	2(3)	4(3)
Extra scaup during regular season	Oct. 10-Oct. 11 & Nov. 18-Nov. 28 & Dec. 8-Jan. 3.	2(3)	4(3)
Sea ducks(5)(6)(7)	Oct. 6-Jan. 20.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 8.	15(8)	30(8)

Geese:			
Canada:			
Delmarva Peninsula (10)	Nov. 14-Nov. 28 & Dec. 8-Jan. 31.	3	6
Remainder of State	Nov. 3-Nov. 28 & Dec. 8-Jan. 20.	3	6
Snow (including blue)	Oct. 25-Nov. 28 & Dec. 8-Jan. 31.	4	8
Brant	Nov. 26-Nov. 28 & Dec. 8-Jan. 3.	2	4
Massachusetts			
Ducks:			
Western (Berkshire) Zone (1)			
Black Ducks	Oct. 14-Nov. 22.	1	2
Ducks	Oct. 14-Nov. 22.	4(2)	8(2)
Extra teal during regular season	Oct. 14-Oct. 22.	2(3)	4(3)
Coastal Zone (1)			
Black Ducks	Oct. 20-Oct. 25 & Nov. 24-Dec. 27.	1	2
Ducks	Oct. 20-Oct. 25 & Nov. 24-Dec. 27.	4(2)	8(2)
Extra teal during regular season	Oct. 20-Oct. 25.	2(3)	4(3)
Central Zone (1)			
Black Ducks	Oct. 20-Nov. 1 & Nov. 22-Dec. 18.	1	2
Ducks	Oct. 20-Nov. 1 & Nov. 22-Dec. 18.	4(2)	8(2)
Extra teal during regular season	Oct. 20-Oct. 28.	2(3)	4(3)
Scaup-only season(4)	Jan. 2-Jan. 17.	5	10
Sea ducks(5)(6)(7)	Oct. 3-Jan. 17.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Closed		
Geese:			
Western (Berkshire) Zone (1)	Oct. 14-Nov. 29 & Dec. 11-Jan. 2.		
Coastal Zone (1)	Oct. 20-Oct. 31 & Nov. 24-Jan. 20.		
Central Zone (1)	Oct. 20-Nov. 1 & Nov. 22-Jan. 17.		
Canada		3	6
Snow (including blue)		4	8
Brant:			
Inland & Central Zone	Closed		
Coastal Zone	Nov. 24-Dec. 23.	2	4
New Hampshire			
Ducks:			
Inland Zone (1)			
Black Ducks	Oct. 8-Nov. 16.	1	2
Ducks	Oct. 8-Nov. 16.	4(2)	8(2)
Extra teal during regular season	Oct. 8-Oct. 16.	2(3)	4(3)
Coastal Zone (1)			
Black Ducks	Nov. 1-Nov. 30.	1	2
Ducks	Oct. 22-Nov. 30.	4(2)	8(2)
Extra teal during regular season	Oct. 22-Oct. 30.	2(3)	4(3)
Scaup only season (4)	Dec. 6-Dec. 21.	5	10
Sea ducks(5)(6)(7)	Sept. 15-Dec. 30.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Closed.		
Geese:			
Canada		3	6
Inland Zone	Oct. 8-Dec. 16.		
Coastal Zone	Oct. 22-Dec. 30.		
Snow (including blue)		4	8
Inland Zone	Oct. 8-Jan. 3.		
Coastal Zone	Oct. 22-Jan. 3.		
Brant:		2	4
Inland Zone	Oct. 8-Nov. 6.		
Coastal Zone	Oct. 22-Nov. 20.		
New Jersey			
Ducks:			
North Zone (1)			
Black Ducks	Oct. 11-Oct. 25 & Nov. 26-Dec. 20.	1	2
Ducks	Oct. 11-Oct. 25 & Nov. 26-Dec. 20.	4(2)	8(2)
Extra teal during regular season	Oct. 11-Oct. 18.	2(3)	4(3)
South Zone (1)			
Black Ducks	Oct. 11-Oct. 18 & Nov. 26-Dec. 27.	1	2
Ducks	Oct. 11-Oct. 18 & Nov. 26-Dec. 27.	4(2)	8(2)
Extra teal during regular duck season	Oct. 11-Oct. 18.	2(3)	4(3)
Coastal Zone (1)			
Black Ducks	Nov. 1-Nov. 8 & Nov. 26-Dec. 27.	1	2
Ducks	Nov. 1-Nov. 8 & Nov. 26-Dec. 27.	4(2)	8(2)
Extra teal during regular duck season	Nov. 1-Nov. 8.	2(3)	4(3)
Scaup only season (4)	Jan. 2-Jan. 17.	5	10
Sea ducks(5)(6)(7)	Oct. 4-Jan. 17.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 8.	10(8)	20(8)
Geese:			
Canada		4	8
North Zone (1)	Oct. 11-Nov. 1 & Nov. 18-Jan. 24.		
South Zone (1)	Oct. 11-Nov. 1 & Nov. 26-Jan. 31.		
Coastal Zone (1)	Oct. 11-Nov. 8 & Nov. 26-Jan. 24.		
Snow (including blue)	Oct. 11-Jan. 8.	4	8
Brant	Nov. 1-Nov. 8 & Nov. 26-Dec. 17.	2	4
New York			
Long Island Zone:			
Ducks:			
Black Ducks	Nov. 22-Nov. 30 & Dec. 10-Jan. 9.	1	2
Ducks	Nov. 22-Nov. 30 & Dec. 10-Jan. 9.	4(2)	8(2)
Scaup only season(4)	Jan. 10-Jan. 25.	5	10
Extra teal during regular season	Nov. 22-Nov. 30.	2(3)	4(3)
Sea ducks (5)(6)(7)	Oct. 6-Jan. 20.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Geese:	Nov. 3-Jan. 31.		
Canada		3	6
Snow (including blue)		4	8
Brant	Dec. 10-Jan. 8.	2	4
Lake Champlain Zone: (11)			
Ducks:			
Black Ducks	Oct. 8-Oct. 12 & Oct. 25-Nov. 28.	1	2
Ducks	Oct. 8-Oct. 12 & Oct. 25-Nov. 28.	4(2)	8(2)
Special scaup and goldeneye season (12)	Nov. 29-Dec. 14.	3	6
Extra teal during regular season	Oct. 8-Oct. 12.	2(3)	4(3)
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 27-Dec. 5.	15(8)	30(8)
Geese	Oct. 8-Dec. 16.		
Canada		3	6
Snow (including blue)		4	8
Brant	Oct. 18-Nov. 16.	2	4
Northeastern Zone (1):			
Ducks:			
Black Ducks	Oct. 6-Oct. 19 & Nov. 5-Nov. 16.	1	2
Ducks	Oct. 6-Oct. 19 & Nov. 5-Nov. 30.	4(2)	8(2)
Extra teal during regular season	Oct. 6-Oct. 14.	2(3)	4(3)
Extra scaup during regular season	Oct. 6-Oct. 19 & Nov. 5-Nov. 30.	2(3)	4(3)
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(8)	30(8)
Geese:	Oct. 6-Jan. 3.		
Canada		3	6
Snow (including blue)		4	8
Brant	Oct. 18-Nov. 16.	2	4
Southeastern Zone (1):			
Ducks:			
Black Ducks	Nov. 8-Dec. 7.	1	2
Ducks	Oct. 10-Oct. 19 & Nov. 8-Dec. 7.	4(2)	8(2)
Extra teal during regular season	Oct. 10-Oct. 18.	2(3)	4(3)
Extra scaup during regular season	Oct. 10-Oct. 19 & Nov. 8-Dec. 7.	2(3)	4(3)
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(8)	30(8)
Geese:	Oct. 1-Dec. 29.		
Canada		3	6
Snow (including blue)		4	8
Brant	Oct. 18-Nov. 16.	2	4

Western Zone (1):			
Ducks:			
Black Ducks	Oct. 15-Nov. 13.	1	2
Ducks	Oct. 15-Nov. 13 & Dec. 26-Jan. 4.	4(2)	8(2)
Extra teal during regular season	Oct. 15-Oct. 23.	2(3)	4(3)
Extra scaup during regular season	Oct. 15-Nov. 13 & Dec. 26-Jan. 4.	2(3)	4(3)
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(8)	30(8)
Geese:	Oct. 1-Nov. 16 & Nov. 30-Jan. 11.		
Canada		3	6
Snow (including blue)		4	8
Brant	Oct. 15-Nov. 13.	2	4
North Carolina			
Ducks:			
Black Ducks	Oct. 9-Oct. 11 & Nov. 27-Nov. 29 & Dec. 15-Jan. 17.	1	2
Ducks	Oct. 9-Oct. 11 & Nov. 27-Nov. 29 & Dec. 15-Jan. 17.	4(2)(9)	8(2)(9)
Extra scaup during regular season (13)	Oct. 9-Oct. 11 & Nov. 27-Nov. 29 & Dec. 15-Jan. 17.	2(3)	4(3)
Extra teal during regular season	Oct. 9-Oct. 11 & Nov. 27-Nov. 29 & Dec. 15-Jan. 17.	2(3)	4(3)
Sea ducks(5)(6)(7)	Oct. 3-Jan. 17.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 15-Nov. 22.	15(8)	30(8)
Geese:			
Canada	Jan. 1-Jan. 17.	1	2
Snow (including blue)	Nov. 3-Jan. 31.	4	8
Brant	Dec. 19-Jan. 17.	2	4
Tundra swan	Nov. 3-Jan. 31.	only by permit: 1 swan per season	
Pennsylvania			
Ducks:			
North Zone (1)			
Black Ducks	Nov. 1-Nov. 22.	1	2
Ducks	Oct. 15-Nov. 22.	4(2)	8(2)
Extra teal during regular season	Oct. 15-Oct. 22.	2(3)	4(3)
South Zone (1)			
Black Ducks	Nov. 25-Dec. 13.	1	2
Ducks	Oct. 22-Oct. 29 & Nov. 25-Dec. 26.	4(2)	8(2)
Extra teal during regular season	Oct. 22-Oct. 29.	2(3)	4(3)
Northwest Zone (1)			
Black Ducks	Nov. 5-Nov. 29.	1	2
Ducks	Oct. 15-Oct. 22 & Nov. 5-Dec. 6.	4(2)	8(2)
Extra teal during regular season	Oct. 15-Oct. 22.	2(3)	4(3)
Lake Erie Zone (1)			
Black Ducks	Nov. 4-Dec. 13.	1	2
Ducks	Nov. 4-Dec. 13.	4(2)	8(2)
Extra teal during regular season	Nov. 4-Nov. 12.	2(3)	4(3)
Extra scaup during regular season	Nov. 4-Dec. 13.	2(3)	4(3)
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 8.	15(8)	30(8)
Geese:			
Canada		3(22)	6
Snow (including blue)		3	6
North Zone (1)	Oct. 8-Dec. 15.		
South Zone (1)	Oct. 26-Dec. 27.		
Northwest Zone (1)	Oct. 8-Dec. 16.		
Lake Erie Zone (1)	Oct. 8-Dec. 16.		
Southeastern Zone (1)	Oct. 20-Jan. 17.		
Brant	Oct. 20-Nov. 17.	2	4
Rhode Island			
Ducks:			
Black Ducks	Oct. 10-Oct. 13 & Nov. 26-Nov. 30 & Dec. 6-Jan. 5.	1	2
Ducks	Oct. 10-Oct. 13 & Nov. 26-Nov. 30 & Dec. 6-Jan. 5.	4(2)	8(2)
Extra teal during regular season	Oct. 10-Oct. 13 & Nov. 26-Nov. 30.	2(3)	4(3)
Scaup-only season (4)	Jan. 10-Jan. 25.	5	10
Sea ducks(5)(6)(7)	Oct. 10-Jan. 28.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 15-Nov. 23.	15(8)	30(8)
Geese:	Oct. 10-Oct. 13 & Nov. 7-Jan. 31.		
Canada		3	6
Snow (including blue)		4	8
Brant	Dec. 7-Jan. 5.	2	4
South Carolina(14)(15)			
Ducks:			
Black Ducks (16)	Dec. 13-Jan. 17.	1	2
Ducks	Nov. 26-Nov. 29 & Dec. 13-Jan. 17.	4(2)	8(2)
Extra teal during regular season	Jan. 9-Jan. 17.	2(3)	4(3)
Extra scaup during regular season (17)	Nov. 26-Nov. 29 & Dec. 13-Jan. 17.	2(3)	4(3)
Mottled duck	Closed.	-	-
Sea ducks(5)(6)(7)	Oct. 4-Jan. 18.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 15-Oct. 19 & Nov. 1-Dec. 5.	15(8)	30(8)
Geese:			
Canada	Closed		
Snow (including blue)	Nov. 26-Nov. 29 & Dec. 13-Jan. 17.	4	8
Brant	Dec. 19-Jan. 17.	2	4
Vermont (11)			
Lake Champlain Zone (1)			
Black Ducks	Oct. 8-Oct. 12 & Oct. 25-Nov. 28.	1	2
Ducks	Oct. 8-Oct. 12 & Oct. 25-Nov. 28.	4(2)	8(2)
Extra teal during regular season	Oct. 8-Oct. 12.	2(3)	4(3)
Special scaup and goldeneye season(12)	Nov. 29-Dec. 14.	3	6
Interior Vermont Zone (1)			
Black Ducks	Oct. 8-Nov. 16.	1	2
Ducks	Oct. 8-Nov. 16.	4(2)	8(2)
Extra teal during regular season	Oct. 8-Oct. 16.	2(3)	4(3)
Extra scaup during regular season	Oct. 8-Nov. 16.	2(3)	4(3)
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 27-Dec. 5.	15(8)	30(8)
Geese (18):			
Canada		3	6
Snow (including blue)		4	8
Lake Champlain Zone	Oct. 8-Dec. 16.		
Interior Vermont Zone	Oct. 8-Dec. 16.		
Brant		2	4
Lake Champlain Zone	Oct. 18-Nov. 16.		
Interior Vermont Zone	Oct. 18-Nov. 16.		
Virginia			
Ducks:			
Black Ducks	Oct. 9-Oct. 11 & Nov. 27-Nov. 29 & Dec. 15-Jan. 17.	1	2
Ducks	Oct. 9-Oct. 11 & Nov. 27-Nov. 29 & Dec. 15-Jan. 17.	4(2)(9)	8(2)(9)
Extra teal during regular duck season	Oct.9-Oct. 11 & Nov. 27-Nov. 29 & Dec. 15-Dec. 17.	2(3)	4(3)
Scaup only season(4)	Jan. 19-Jan. 31.	5	10
Sea ducks(5)(6)(7)	Oct. 6-Jan. 20.	7	14
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Gallinules/Moornens	Oct. 9-Oct. 11 & Nov. 27-Nov. 29 & Dec. 15-Jan. 17.	15(8)	30(8)
Geese:			
Canada:			
Back Bay Area(19)	Nov. 27-Nov. 29 & Dec. 4-Dec. 13 & Dec. 15-Jan. 20.	2	4
Delmarva Peninsula Area	Nov. 1 & Nov. 3-Nov. 8 & Nov. 10-Jan. 31.	4	8
Remainder of State	Nov. 10-Nov. 15 & Nov. 17-Nov. 22 & Nov.24-Jan. 20.	3	6
Snow (including blue):			
Back Bay Area (20)	Nov. 27-Nov. 29 & Dec. 15-Jan. 17.	4	8
Remainder of State	Nov. 1 & Nov. 3-Nov. 8 & Nov. 10-Jan. 31.	4	8

Brant	Dec. 17-Dec. 20 & Dec. 22-Dec. 27 & Dec. 29-Jan. 17.	2	4
West Virginia			
Ducks:			
Allegheny Mountain Upland Zone (Zone 2) (1)			
Black Ducks	Oct. 4-Oct. 18 & Nov. 1-Nov. 25.	1	2
Ducks	Oct. 4-Oct. 18 & Nov. 1-Nov. 25.	4(2)	8(2)
Extra teal during regular season	Oct. 4-Oct. 11.	2(3)	4(3)
Extra scaup during regular season	Oct. 4-Oct. 18 & Nov. 1-Nov. 25.	2(3)	4(3)
Remainder of State (Zone 1)(1)			
Black Ducks	Oct. 4-Oct. 18 & Dec. 24-Jan. 17.	1	2
Ducks	Oct. 4-Oct. 18 & Dec. 24-Jan. 17.	4(2)	8(2)
Extra teal during regular season	Oct. 4-Oct. 11.	2(3)	4(3)
Extra scaup during regular season	Oct. 4-Oct. 18 & Dec. 24-Jan. 17.	2(3)	4(3)
Gallinules/Moorhens	Oct. 8-Oct. 19 & Dec. 17-Jan. 13.	15(8)	30(8)
Mergansers	Same as for ducks.	5	10
Coots	Same as for ducks.	15	30
Geese:			
Allegheny Mountain Upland Zone (1)	Oct. 4-Oct. 18 &		
Remainder of State	Oct. 4-Oct. 18 & Oct. 20-Dec. 13.		
Canada		3	6
Snow (including blue)		4	8
Brant		2	4
Allegheny Mountain Upland Zone	Nov. 1-Nov. 25.		
Remainder of State	Dec. 24-Jan. 17.		

Point system — Ducks, mergansers and coots. The Atlantic Flyway States selecting the point system bag limits on designated species are listed in the table above.

The daily bag limit is reached when the point value of the last bird taken added to the sum of the point values of the other birds already taken during that day reaches or exceeds 100 points. The possession limit is the maximum number of birds of species and sex which could have legally been taken in 2 days. The shooting (including hawking) hours are one-half hour before sunrise until sunset daily unless otherwise indicated.

The point values assigned to the species and sexes are as follows:

Atlantic Flyway

100 points	70 points	20 points	35 points
Female mallard	Wood duck	Blue-winged teal	Male mallard
Black duck	Redhead	Green-winged teal	Pintail
Fulvous tree duck (only in Florida)	Hooded merganser	Shoveler	Ring-necked duck
Mottled duck (except South Carolina)		Gadwall	Bufflehead
		Wigeon	and all other species of ducks
		Scaup	
		Sea ducks	
		Mergansers (except hooded)	

Note: All areas of the Flyway are closed to canvasback hunting.

(1) Described in the September 12, 1986, Federal Register (51 FR 32460). See State Regulations for zone/area boundaries.

(2) The daily bag limit may include no more than 3 mallards of which only 1 may be a hen, 2 pintails, 1 black duck, 2 wood ducks, 2 redheads and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

(3) The daily bag and possession limits specified here are in addition to any other bag and possession limits specified elsewhere.

(4) A special hunting season for scaup only is prescribed in those areas which are described, delineated and designated in the hunting regulations of the State.

(5) An open season for taking scoter, eider, and oldsquaw ducks is prescribed according to the following table during the period between September 15, 1986, and January 20, 1987, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut; in those coastal waters of New York lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the Town of Riverhead to Red Cedar Point in the Town of Southampton, including any ocean waters of New York lying south of Long Island; in any waters of the Atlantic Ocean and, in addition, in any tidal waters of any bay which are separated by at least one mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and/or in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks.

(6) The daily bag limit is 7 and possession limit is 14, singly or in the aggregate of these species. During the regular duck season in the Atlantic Flyway, States may set, in addition to the regular limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

(7) Notwithstanding the provisions of this Part 20 the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as being open to sea duck hunting.

(8) Bag and possession limits given for common moorhens and purple gallinules, are singly or in the aggregate of the two species. In Florida, the gallinule season applies to the common gallinule only. There is no open season on the purple gallinule in Florida.

(9) No special daily bag and possession limit restrictions apply to wood ducks in North Carolina during October 9-October 11, and in Virginia during October 8-October 11.

(10) In Maryland, the Delmarva Peninsula includes the counties of Caroline, Cecil, Dorchester, Kent, Queen Annes, Somerset, Talbot, Wicomico and Worcester.

(11) Throughout Vermont and in that part of New York in the Lake Champlain Zone, on opening day, October 8, shooting hours are from 7 a.m. to sunset. Shooting hours are one-half hour before local sunrise to local sunset throughout the remainder of the season.

(12) In the Lake Champlain Zone (described and delineated in the hunting regulations of New York and Vermont) a special hunting season for scaup and goldeneye is prescribed with a daily bag limit of 3 scaup or 3 goldeneyes or 3 in the aggregate and 6 scaup or 6 goldeneyes or 6 in the aggregate in possession.

(13) Only in waters east of U.S. Highway 17, except Currituck Sound north of U.S. Highway 158.

(14) Except on January 4 and January 11 there will be no Sunday hunting in Georgetown County or Charleston County from the Georgetown County line (South Santee River) to the Wando River, east of Highway U.S. 17. The shooting hours in this area will be 1/2 hour before sunrise to 12:00 noon daily, except on November 29 and January 17, when shooting hours will be 1/2 hour before sunrise to sunset.

(15) Except on November 29 and January 17, the shooting hours are 1/2 hour before sunrise to 12 noon daily on all lands and waters of that portion of Lake Marion and Santee Swamp west of Interstate 95 bridge upstream to the confluence of the Wateree and Congaree Rivers. The affected area being further described as all land west of I-95 within or adjacent to Lake Marion which is owned by Santee Cooper or the State of South Carolina in the Counties of Clarendon, Sumter, Orangeburg and Calhoun. This regulation shall apply to all land in the area described above, whether such land shall be exposed or inundated.

NOTE: These regulations shall apply to land owned by Santee-Cooper or the State of South Carolina ONLY.

In Hampton, Colleton, Dorchester, Jasper, Beaufort and Charleston (that area not covered above) Counties: The shooting hours in this area will be 1/2 hour before sunrise to 12 noon daily except on November 29, and January 17 when shooting hours will be 1/2 hour before sunrise to sunset.

(16) In South Carolina, there is no open season on black ducks in Georgetown, Charleston, Colleton, and Beaufort Counties.

(17) Only in waters east of U.S. Highway 17, north of Charleston, and east of the old Seaboard Railroad bed south of Charleston.

(18) See State regulations for further limit restrictions for Dead Creek Area, Addison County, Vermont.

(19) In Virginia, the Back Bay Area is defined for Canada geese as those portions of the cities of Virginia Beach and Chesapeake lying east of U.S. Highway 17 and Interstate 64. Canada geese may only be taken on the waters of Back Bay, November 27-29 and December 15-January 17.

(20) In Virginia, the Back Bay Area is defined for snow (including blue) geese as the waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Lake Tecumseh and Red Wing Lake and the marshes adjacent thereto.

(21) East of Intercoastal Waterway in Chatham, Bryan, Liberty, McIntosh, Glynn and Camden Counties.

(22) In Crawford County, Pennsylvania the Canada goose daily bag limit is 2.

MISSISSIPPI FLYWAY

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee and Wisconsin.

Flywaywide Restrictions

Shooting hours: One-half hour before sunrise to sunset daily except as otherwise restricted.

Canvasbacks – All areas of the Flyway are closed to canvasback hunting.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

The season dates for mergansers and coots are the same as those for ducks in the following tables.

	Season Dates	Limits Bag	Limits Possession
Alabama			
Ducks:		Point system.	
North Zone (1)	Dec. 10-Jan. 18.		
South Zone (1)	Nov. 14-Nov. 23 & Dec. 20-Jan. 18.		
Coots		15	30
Gallinules/Moorhens	Nov. 12-Jan. 20.	15(11)	15(11)
Geese:	Nov. 12-Jan. 20.	5	5
Limits include no more than:			
Canada and white-fronted		2	4
Snow (including blue) and brant		5	5
Arkansas			
Ducks	Nov. 22-Dec. 7 & Dec. 20-Jan. 12.	Point system.	
Coots		15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(11)	30(11)
Geese:		5	10
Canada	Closed.	-	-
Snow (including blue)	Nov. 22-Jan. 30.	5	10
White-fronted geese	Nov. 22-Jan. 20.	2	4
Brant	Nov. 22-Jan. 20.	5	10
Illinois:			
Ducks:		Point system.	
North Zone (2)	Oct. 15-Nov. 23.		
Central Zone (2)	Oct. 23-Dec. 1.		
South Zone (2)	Oct. 30-Dec. 8.		
Coots		15	30
Geese (3):		5	10
Canada:		2	4
North Zone (1):			
McHenry, Lake, Kane, DuPage, Cook, Kendall, Grundy, Will & Kankakee Counties	Sept. 25-Sept. 30.	2	4
	Oct. 15-Nov. 23.	1	2
Tri-County Area (1)	Oct. 23-Nov. 16.	1	4
Remainder of North Zone	Oct. 15-Nov. 23.	1	4
Central Zone (1):			
Tri-County Area (1)	Oct. 23-Nov. 16.	1	4
Remainder of Central Zone	Oct. 23-Dec. 1.	1	4
South Zone (1):			
Southern Illinois Quota Zone (Alexander, Jackson, Union, and Williamson Counties)(4)(5)	Nov. 17-Jan. 5.	2	4
Rend Lake Quota Zone (Franklin and Jefferson Counties)(4)	Nov. 12-Dec. 31.	1	4
Remainder of South Zone	Oct. 30-Dec. 8.	1	4
Other Geese:			
North Zone (1)	Oct. 15-Nov. 23.		
Central Zone (1)	Oct. 23-Dec. 1.		
South Zone (1)	Oct. 30-Dec. 8.		
Limits include no more than:			
White-fronted geese		2	4
Snow (including blue) and brant		5	10
Indiana			
Ducks:		Point system.	
North Zone (1)	Oct. 10-Oct. 13 & Nov. 1-Dec. 6.		
South Zone (1)	Oct. 18-Oct. 22 & Nov. 22-Dec. 26.		
Ohio River Zone (1)	Nov. 27-Nov. 30 & Dec. 6-Jan. 10.		
Scaup-only season (Lake Michigan only) (6)	Dec. 13-Dec. 28.	5	10
Coots		15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(11)	30(11)
Geese:		5	10
Canada:		2	4
North Zone(1)	Oct. 10-Oct. 13 & Nov. 1-Jan. 5.	2	4
South Zone(1):			
Posey County	Dec. 2-Jan. 20.	2	4
Remainder of South Zone	Oct. 18-Oct. 22 & Nov. 17-Jan. 20.	2	4
Ohio River Zone(1):			
Posey County	Dec. 2-Jan. 20.	2	4
Remainder of Ohio River Zone	Nov. 12-Jan. 20.	2	4
Other Geese:			
North Zone(1)	Oct. 10-Oct. 13 & Nov. 1-Jan. 5.		
South Zone(1)	Oct. 18-Oct. 22 & Nov. 17-Jan. 20.		
Ohio River Zone(1)	Nov. 12-Jan. 20.		
Limits include no more than:			
White-fronted geese		2	4
Snow (including blue) and brant		5	10
Iowa			
Ducks:		Point system.	
North Zone(1)	Oct. 18-Nov. 21.		
South Zone(1)	Oct. 25-Nov. 30.		
Coots		15	30
Geese:		5	10
Southwest Zone (1)	Oct. 18-Dec. 26.		
Remainder of State	Oct. 4-Dec. 12.		
Limits include no more than:			
Canada		2	4
White-fronted		2	4
Snow (including blue) and brant		5	10
Kentucky			
Ducks	Nov. 27-Nov. 30 & Dec. 14-Jan. 18.	Point system.	
Coots		15	30
Gallinules/Moorhens	Nov. 27-Jan. 20.	15(11)	30(11)
Geese(3):		5	10
Canada:		2	4
Western Zone (1)(4)	Dec. 13-Jan. 31. (12)	2	4
Remainder of State	Nov. 12-Jan. 20.	2	4
Other geese:			
Western Zone (1)	Nov. 27-Jan. 20.		
Remainder of State	Nov. 12-Jan. 20.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Louisiana			
Ducks:		Point system.	
East Zone (1)	Nov. 22-Dec. 1 & Dec. 20-Jan. 18.		
West Zone (1)	Nov. 8-Nov. 30 & Dec. 20-Jan. 10.		
Scaup only season (6)	Jan. 19-Jan. 31.	5	10
Coots		15	30
Gallinules/Moorhens	Sept. 20-Sept. 28 & Nov. 8-Jan. 7.	15(11)	30(11)
Geese:			
Canada	Closed.	-	-
Other Geese:		5	10
East Zone(1)	Nov. 22-Jan. 30.		
West Zone (1)	Nov. 8-Nov. 30 & Dec. 20-Feb. 4.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Michigan			
Ducks:		Point system.	
North Zone (1)	Oct. 4-Nov. 12.		
Middle Zone (1)	Oct. 4-Nov. 12.		
South Zone (1)	Oct. 11-Nov. 19.		
Scaup only season:			
South Zone (1)(6)	Nov. 20-Dec. 5.	5	10
Remainder of State(6)	Nov. 13-Nov. 28.	5	10
Coots		15	30
Gallinules/Moorhens:		15(11)	30(11)
North Zone(1)	Oct. 4-Nov. 12		
Middle Zone(1)	Oct. 4-Nov. 12.		
South Zone(1)	Oct. 11-Nov. 19.		
Geese:		5	10
Canada:		2	4
North Zone (1):			
Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, and Ontonagon Counties	Sept 26-Oct. 15.	1	2
Seney Goose Management Area (2)(4)	Oct. 4-Nov. 12.	2	4
Remainder of North Zone	Oct. 4-Oct. 23.	1	2
Middle Zone (1)	Oct. 4-Nov. 2.	1	2
South Zone (1):			
Allegan County Zone(1)(4)	Oct. 18-Nov. 30.	1	2
Muskegon Wastewater Zone (2)(4)	Oct. 18-Nov. 13.	2	4
Saginaw County Goose Management Area (2)(4)	Oct. 4-Nov. 19.	2	4
Southern Michigan Goose Management Area(2):			
East of U.S. Highways 27 and 127	Oct. 11-Nov. 19 & Jan. 1-Feb. 15.	2	4
West of U.S Highways 27 and 127	Oct. 11-Nov. 9.	1	2
	Jan. 1-Feb. 15.	2	4
Remainder of South Zone:			
East of U.S. Highways 27 and 127	Oct. 11-Nov. 19.	2	4
West of U.S. Highways 27 and 127	Oct. 11-Nov. 9.	1	2

Other geese:			
North Zone (1):			
Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, Ontonagon Counties	Sept. 26-Nov. 12.		
Remainder of North Zone	Oct. 4-Nov. 12.		
Middle Zone (1)	Oct. 4-Nov. 12.		
South Zone (1)	Oct. 11-Nov. 19.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Minnesota (7)			
Ducks:	Oct. 4-Nov. 12.	4	8
Limits include no more than:			
Mallards (no more than 1 female mallard daily or 2 in possession)		2	4
Pintails		2	4
Black ducks		1	2
Wood ducks		2	4
Redheads		1	2
Mergansers (no more than 1 hooded merganser daily or 2 in possession)		5	10
Coots		15	30
Gallinules/Moorhens	Oct. 4-Nov. 12.	15(11)	30(11)
Geese:		5	10
Canada:		2	4
Lac qui Parle Quota Zone (2) (4)	Oct. 4-Nov. 22.	1	2
Southeastern Zone (2)	Oct. 4-Dec. 12.	2	4
Remainder of State	Oct. 4-Nov. 22.	1	2
Other geese:			
Southeastern Zone(2)	Oct. 4-Dec. 12.		
Remainder of State	Oct. 4-Nov. 22.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Mississippi			
Ducks	Dec. 6-Dec. 7 & Dec. 12-Jan. 18.	Point system.	
Coots		15	30
Gallinules/Moochens	Oct. 18-Dec. 26.	15(11)	30(11)
Geese:		5	10
Canada:		2	4
Sardis Zone (2)	Dec. 5-Dec. 14 & Jan. 12-Jan. 31.	1	2
Remainder of State	Jan. 4-Jan. 18.	1	2
Other geese	Nov. 12-Jan. 20.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Missouri			
Ducks:		Point system.	
North Zone (1)	Nov. 1-Dec. 10.		
South Zone (1)	Nov. 22-Dec 14 & Dec. 27-Jan. 12.		
Coots		15	30
Geese(3):		5	10
Canada:		2	4
North Zone (1):			
Swan Lake Zone (2) (4)	Nov. 1-Dec. 20.	2	4
Southeastern Zone (east of U.S. Highway 67 and south of Crystal City)	Dec. 2-Jan. 20.	1	2
Remainder of North Zone	Nov. 1-Dec. 20.	1	2
South Zone (1):			
Southeastern Zone (1)	Dec. 2-Jan. 20.	1	2
Remainder of South Zone	Nov. 22-Dec. 16 & Dec. 27-Jan. 20.	1	2
White-fronted	Nov. 1-Jan. 9.	2	4
Snow (including blue) and brant	Nov. 1-Jan. 9.	5	10
Ohio			
Pymatuning Area (1):			
Ducks:			
Black Ducks	Nov. 5-Nov. 29.	1	2
Other Ducks	Oct. 15-Oct. 22 & Nov. 5-Dec. 6.	4	8
Limits include no more than:			
Mallards (no more than 1 female daily or 2 in possession)		3	6
Black Ducks		1	2
Pintails		2	4
Wood Ducks		2	4
Redheads		2	4
Extra teal during regular season	Oct. 15-Oct. 22.	2(2)	4(2)
Coots		15	30
Gallinules/Moorhens	Sept. 1-Nov. 8.	15(11)	30(11)
Mergansers (except hooded)		5	10
Hooded mergansers		1	2
Geese:			
Brant	Oct. 20-Nov. 17.		
Other Geese	Oct. 8-Dec. 16.		
Limits include no more than:			
Canada		3	6
Snow (including blue)		3	6
Brant		2	4
Remainder of State:			
Ducks:		4	8
North Zone (1)	Oct. 20-Nov. 22 & Dec. 8-Dec. 13.		
South Zone (1)	Oct. 20-Nov. 1 & Dec. 8-Jan. 3.		
Ohio River Zone (1)	Oct. 20-Nov. 1 & Dec. 22-Jan. 17.		
Limits include no more than:			
Mallards (no more than 1 female mallard daily or 2 in possession		2	4
Pintails		2	4
Black ducks		1	2
Wood ducks		2	4
Redheads		1	2
Scaup-only (North Zone only) (6)	Dec. 15-Dec. 30.	5	10
Coots		15	30
Gallinules/Moorhens	Sept. 1-Nov. 8.	15(11)	30(11)
Geese	Oct. 20-Nov. 29 & Dec. 8-Jan. 5.	5	10
Limits include no more than:			
Canada:		2	4
Ashtabula, Auglaize, Erie, Lucas, Marion, Mercer, Ottawa, Sandusky, Trumbull, and Wyandot Counties		1	2
Remainder of State		2	4
White-fronted		2	4
Snow (including blue) and brant		5	10
Tennessee			
Ducks:		Point system	
Reelfoot Zone (1)	Nov. 1-Nov. 4 & Dec. 14-Jan. 18.		
State Zone (1)	Dec. 10-Jan. 18.		
Coots		15	30
Gallinules/Moorhens	Dec. 10-Jan. 18.	15(11)	30(11)
Geese:		5	10
Canada(8):		2	4
Northwest Zone (1) (4)	Dec. 13-Jan. 31. (12)	2	4
Southwest Zone (1)	Jan. 4-Jan. 18.	1	2
Remainder of State	Nov. 12-Jan. 20.	2	4
Other geese	Nov. 12-Jan. 20.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Wisconsin			
Ducks:		Point system (10)	
North Duck Zone (1)	Oct. 4 (9)-Nov. 12.		
South Duck Zone (1)	Oct. 4 (9)-Oct. 10 & Oct. 17-Nov. 18.		
Scaup-only season:			
North Duck Zone (1)(6)	Nov. 13-Nov. 28.	5	10
South Duck Zone (1)(6)	Nov. 19-Dec. 4.	5	10
Coots		15	30
Gallinules/Moorhens:			
North Duck Zone (1)	Oct. 4(9)-Nov. 12.	15(11)	30(11)
South Duck Zone (1)	Oct. 4(9)-Oct. 10 & Oct. 17-Nov. 18.	15(11)	30(11)
Geese:		5	10
Canada:		2	4
Northeast Goose Zone(1):			
Brown County	Oct. 4(9)-Oct. 15.	1	2
	Dec. 1-Dec. 31.	2	4
Remainder of Northeast Zone	Oct. 4(9)-Oct. 15.	1	2
Southeast Goose Zone (1):			
Horicon and Central Zones (1)(4)	Oct. 1-Oct. 3 & Oct. 4(9)-Nov. 9 & Dec. 1-Dec. 10.	Tag System - see State Regulations	
Theresa Subzone (2)(4)	Oct. 1-Oct. 3 & Oct. 4(9)-Nov. 19.		
Rock Prairie Zone (2)	Oct. 25-Nov. 5 & Nov. 8-Dec. 7.	1	2
Remainder of Southeast Zone	Oct. 25-Nov. 5.	1	2

Northwest Goose Zone(1):			
Mississippi River Zone(1)	Oct. 4(9)-Nov. 24.	1	2
	Nov. 25-Dec. 12.	2	4
Remainder of Northwest Zone	Oct. 4(9)-Oct. 23.	1	2
Southwest Goose Zone (1):			
Mississippi River Zone (1)	Oct. 4(9)-Oct. 10 & Oct. 17-Nov. 24.	1	2
	Nov. 25-Dec. 18.	2	4
Remainder of Southwest Zone	Oct. 4(9)-Oct. 10 & Oct. 17-Oct. 29.	1	2
Other geese:			
North Duck Zone(1):			
Brown County	Oct. 4(9)-Nov. 12 & Dec. 1-Dec. 30.		
Mississippi River Zone (1)	Oct. 4(9)-Dec. 12.		
Remainder of North Zone	Oct. 4(9)-Nov. 12.		
South Duck Zone (1):			
Rock Prairie Zone (2)	Oct. 4(9)-Oct. 10 & Oct. 17-Dec. 7.		
Mississippi River Zone (1)	Oct. 4(9)-Oct. 10 & Oct. 17-Dec. 18.		
Remainder of South Zone	Oct. 4(9)-Oct. 10 & Oct. 17-Nov. 18.		
Limits include no more than:			
White-fronted snow (including blue) and brant		2	4
		5	10

The point values assigned to the species and sexes are as follows:

Mississippi Flyway (10)

100 points	70 points	20 points	35 points
Black duck	Wood duck	Blue-winged teal	Male mallard
Female mallard	Redhead	Green-winged teal	Pintail
	Hooded merganser	Cinnamon teal	and all other species of ducks.
		Wigeon	
		Shoveler	
		Gadwall	
		Scaup	
		Mergansers (except hooded).	

Note: All areas of the Flyway are closed to canvasback hunting.

(1) Described in the September 12, 1986, Federal Register (51 FR 32460).

(2) Zone/Area boundaries described in State regulations.

(3) Geese taken in Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

(4) Harvests of Canada geese will be limited as follows:

Illinois:
- Southern Illinois Quota Zone - 24,000
- Rend Lake Quota Zone - 7,200
- Remainder of State - 16,800

Kentucky:
- West Kentucky Zone:
  - Ballard Subzone - 9,500
  - Henderson-Union Subzone - 3,000
  - Remainder of West Kentucky Zone - 2,500

Wisconsin:
- Horicon and Central Zones - 30,000
- Remainder of State - 15,000

Missouri: Swan Lake Zone - 16,000

Minnesota: Lac qui Parle Zone- 4,500

Michigan:
- Seney Goose Management Area - 500
- Allegan County Zone - 3,000
- Muskegon Wastewater Zone - 500
- Saginaw County Goose Management Area - 5,000
- Remainder of State - 44,000

Tennessee:
- Northwest Zone:
  - Reelfoot Subzone - 4,500
  - Remainder of Northwest Zone - 2,000

Indiana:
- Posey County - 4,400
- Remainder of State - 10,600

Illinois, Missouri, Indiana, Minnesota, Kentucky and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, the Swan Lake Zone in Missouri, Posey County in Indiana, the Lac qui Parle Zone in Minnesota, the Ballard and Henderson-Union Subzones in Kentucky and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

(5) Shooting hours for geese are sunrise until 3 p.m.

(6) A special hunting season for scaup only is prescribed in those areas which are described, delineated and designated in the hunting regulations of the State.

(7) In Minnesota, the shooting hours for waterfowl vary as follows: October 4—12 noon to 4 p.m.; October 5 through October 17 - 1/2 hour before sunrise to 4 p.m.; and October 18-December 12 - 1/2 hour before sunrise to sunset.

(8) Local restrictions, including closures, apply in specified areas. Consult State regulations. Tagging of Canada geese is required in designated zones.

(9) On the first day the season opens at 12 noon.

(10) In Wisconsin, point values for some species change during the season. See State Regulations.

(11) The daily bag and possession limit for purple gallinules and common moorhens is singly or in the aggregate of the two species.

(12) See State regulations for possible additional restriction on season length.

CENTRAL FLYWAY

The Central Flyway consists of Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Geese include all species of geese and brant.

Dark Geese include Canada geese, white-fronted geese, and "black" brant.

Light Geese include all other species.

Flywaywide Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise noted.

Canvasbacks — All areas of the Flyway are closed to canvasback hunting.

Mergansers — All mergansers are to be included within the daily bag and possession limits under conventional and point system regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS WITHIN STATES. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Season Dates	Limits Bag	Limits Possession
Colorado			
Ducks	Oct. 4-Oct. 18 & Nov. 1-Nov. 30 & Dec. 13-Jan. 3.	Point system.	
Coots	Same as for ducks.	15	30
Geese:		2	4
North-Central Unit (1) West of I-25	Oct. 4-Oct. 11 & Oct. 25-Jan. 11.		
Remainder of North Central Unit	Oct. 25-Jan. 11.		
South Park Unit (1) (special permit)	Oct. 4-Oct. 11 & Oct. 25-Dec. 31.		
San Luis Valley Unit (1) (special permit)	Nov. 1-Dec. 31.		
Remainder of State in Central Flyway	Nov. 1-Jan. 17.		
Kansas			
Ducks:		Point system.	
High Plains Area (west of U.S. 283)	Oct. 18-Nov. 2 & Nov. 8-Dec. 14 & Dec. 20-Jan. 2.		
Low Plains Area (east of U.S. 283)	Oct. 25-Nov. 2 & Nov. 8-Dec. 7 & Dec. 24-Jan. 4.		
Coots	Same as for ducks.	15	30
Dark geese (2) including no more than:	Nov. 1-Jan. 11.	2	4
White-fronted	Nov. 1-Jan. 11.	1	2
Canada	Dec. 1-Jan. 11.	1	2

Light geese			
Unit 1 (east of U.S. 75 and north of I-70)	Nov. 15-Dec. 10 & Dec. 18-Feb. 15.	5	10
Unit 2 (remainder of State)	Nov. 8-Jan. 4 & Jan. 10-Feb. 6.	5	10
Montana			
Ducks			
Zone 1 (3)	Oct. 4-Nov. 23 & Dec. 13-Dec. 28.	Point system	
Zone 2 (3)	Oct. 4-Oct. 12 & Nov. 1-Dec. 28.		
Coots	Same as for ducks.	15	30
Geese:	Oct. 4-Jan. 4.		
Sheridan County		2	4
Remainder of State in Central Flyway		3	6
Tundra swans	Oct. 4-Jan. 4.	Only by permit; 1 swan per season	
Nebraska			
Ducks:		Point system.	
High Plains Area	Oct. 11-Nov. 30 & Dec. 20-Jan. 4.		
Low Plains Area			
Zones 1 and 2 (4)	Oct. 18-Oct. 26 & Nov. 1-Dec. 12.		
Zones 3 and 4 (4)	Oct. 11-Nov. 30.		
Coots	Same as for ducks.	15	30
Dark geese			
North Unit (5)	Oct. 4-Dec. 21.	2	4
including no more than:			
White-fronted	Oct. 4-Dec. 21.	1	2
Canada	Oct. 4-Nov. 14.	1	2
East Unit (5)	Oct. 4-Dec. 14.	2(6)	4(6)
including no more than:			
White-fronted	Oct. 4-Dec. 14.	1	2
Canada	Nov. 24-Dec. 14.	1	2
Central Unit (5)	Oct. 25-Jan. 4.	2	4
including no more than:			
White-fronted	Oct. 25-Jan. 4.	1	2
Canada	Nov. 24-Jan. 4.	1	2
Panhandle Unit (5)	Nov. 10-Jan. 4.	2	4
including no more than:			
White-fronted	Nov. 10-Jan. 4.	1	2
Canada	Nov. 24-Jan. 4.	1	2
Sandhills Unit(5)	Nov. 1-Dec. 31.	Only by permit - 1 Canada goose per season.	
Light Geese	Oct. 4-Dec. 14 & Feb. 2-Feb. 15.	5	10
New Mexico			
Ducks:		Point system.	
Zone 1 (7)	Oct. 11-Dec. 16.		
Zone 2 (7)	Nov. 13-Jan. 18.		
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Oct. 13-Dec. 21.	15(18)	30(18)
Geese:			
Dark geese (8)	Oct. 18-Jan. 18.	2	4
Light geese:			
Rio Grande Valley Unit(9)	Nov. 1-Jan. 11 & Jan. 24-Feb. 27.	5	20
Remainder of Central Flyway Portion of State	Nov. 1-Dec. 28 & Jan. 24-Feb. 27.	5	10
North Dakota			
Ducks:	Oct. 4-Nov. 23.	4	8
including no more than:			
Mallards (no more than 1 female mallard daily and 1 in possession)		3	6
Pintails (no more than 1 female pintail daily and 2 in possession)		3	6
Redheads		1	2
Wood ducks		2	4
Hooded Mergansers		1	2
Additional blue-winged teal	Oct. 4-Oct. 12.	2(9)	4(9)
Additional scaup	Oct. 25-Nov. 23.	2(9)	4(9)
Coots	Same as for ducks.	15	30
Dark geese (10)	Oct. 4-Nov. 16.	2	4
including no more than:			
Canada	Oct. 4-Nov. 2.	1	2
Light geese (10)	Oct. 4-Nov. 30.	5	10
Oklahoma			
Ducks:		Point system.	
High Plains Area (11)	Oct. 11-Nov. 9 & Nov. 22-Dec. 28.		
Low Plains			
Zone 1 (11)	Oct. 25-Nov. 16 & Nov. 22-Dec. 19.		
Zone 2 (11)	Nov. 3-Nov. 28 & Dec. 6-Jan. 4.		
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(18)	30(18)
Dark geese(19)		2	4
including no more than:			
White-fronted		1	2
Unit 1 (12)	Nov. 8-Jan. 18.		
Unit 2 (12)	Oct. 25-Nov. 9 & Nov. 24-Jan. 18.		
Light geese	Oct. 25-Nov. 9 & Dec. 6-Feb. 13.	5	10
South Dakota			
Ducks:		Point system	
High Plains Area (13)	Oct. 4-Nov. 23 & Dec. 16-Dec. 31.		
Low Plains Area			
North Zone (13)	Oct. 4-Nov. 23.		
South Zone (13)	Oct. 18-Dec. 7.		
Coots	Same as for ducks.	15	30
Dark geese (14)			
Missouri River Unit (15)	Oct. 4-Dec. 21.	2	4
including no more than:			
Canada	Oct. 4-Nov. 14.	1	2
White-fronted	Oct. 4-Dec. 14.	1	2
	Dec. 15-Dec. 21.	Closed.	
Remainder of State	Oct. 1-Dec. 14.	2	4
including no more than:			
Canada		1	2
White-fronted		1	2
Light geese (14)	Oct. 4-Dec. 28.	5	10
Texas			
Ducks (except masked duck):		Point system.	
High Plains Area (16)	Nov. 1-Nov. 9 & Nov. 22-Jan. 18.		
Remainder of State	Nov. 1-Nov. 5 & Nov. 22-Nov. 30 & Dec. 13-Jan. 18.		
Masked duck	Closed season.	-	-
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(18)	30(18)
Geese:			
East of U.S. Highway 81:			
Dark geese	Nov. 1-Dec. 5 & Dec. 13-Jan. 18.	2	4
including no more than:			
Canada		1	2
White-fronted		1	2
Light geese	Nov. 1-Jan. 25.	5	10
West of U.S. Highway 81:			
Geese:	Oct. 18-Jan. 18.	5	10
including no more than:			
Dark geese		2	4
Wyoming			
Ducks and coots		Point system.	
Zone 1 (17)	Oct. 4-Nov. 13 & Dec. 6-Dec. 31.		
Zone 2 (17)	Oct. 11-Nov. 30 & Dec. 13-Dec. 28.		
Zone 3 (17)	Oct. 4-Nov. 23 & Dec. 13-Dec. 28.		
Zone 4 (17)	Oct. 4-Nov. 13 & Dec. 6-Dec. 31.		
Geese:		2	4
Zone 1 (17)	Oct. 4-Dec. 31.		
Zone 2 (17)	Nov. 15-Jan. 11.		
Zone 3 (17)	Oct. 4-Dec. 31.		
Zone 4 (17)	Oct. 4-Jan. 4.		

Point system - Ducks, mergansers and coots. The Central Flyway States selecting the point system bag limits on designated species are listed in the table above.

The daily bag limit is reached when the point value of the last bird taken added to the sum of the point values of the other birds already taken during that day reaches or exceeds 100 points. The possession limit is the maximum number of birds of species and sex which could have legally been taken in 2 days. The shooting (including hawking) hours are one-half hour before sunrise until sunset daily unless otherwise indicated.

The point values assigned to the species and sexes are as follows:

Central Flyway

100 points	70 points	20 points	35 points
Female mallard	Wood duck	Blue-winged teal	Male mallard
Mottled duck	Redhead	Green-winged teal	Pintail
Black duck	Hooded merganser	Cinnamon teal	and all other
	Texas only:	Shoveler	species of
	Black bellied	Gadwall	ducks*
	and fulvous	Wigeon	
	whistling (tree)	Scaup	
	ducks	Merganser (except hooded).	

* In Texas only, there is no open season on the Masked duck.
Note: All areas of the Flyway are closed to canvasback hunting.

(1) North Central unit: Bounded by the Continental Divide, the northern State line, and highways US-85 to I-76, I-76 to I-25, I-25 to I-70, and I-70 to the Continental Divide. South Park Unit: Chaffee, Fremont, Lake, Park, and Teller Counties. San Luis Valley Unit: Alamosa, Conejos, Costilla, and Rio Grande Counties and the portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

(2) Dark geese may not be hunted in (a) an area, including the Marais des Cygnes Waterfowl Refuge, bounded by the eastern State line and highways K-68 to US-169, US-169 to K-7, K-7 to K-31, K-31 to US-69, US-69 to K-239, and K-239 to the State line and (b) an area southwest of Emporia bounded by highways K-57 to US-75, US-75 to K-39, K-39 to K-96, K-96 to US-77, US-77 to US-50, and US-50 to K-57.

(3) Zone 1: The Central Flyway portion, except Zone 2, of Montana. Zone 2: The counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure, and Wibaux.

(4) High Plains: West of Highways US-183 and US-20 from the northern State line to Ainsworth, N-7 and N-91 to Dunning, N-2 to Merna, N-70 to Arnold, N-40 and N-47 and N-47 through Gothenburg to N-23, N-23 to Elwood, and US-283 to the southern State line. Zone 1: Keya Paha (east of US-183) and Boyd Counties including all waters of the Niobrara River. Zone 2: Bounded by Highways and political boundaries starting at the State line near Falls City, US-73 north to N-67; north through Nemaha to US-73-75; north to US-34; west to the Alvo Road; north to US-6; northeast to N-63; north and west to US-77; north to N-92; west to US-81; south to N-66; west to N-14; south to I-80; west to US-34; west to N-10; south to the State line; west to US-283; north to N-23; west to N-47; north to US-30; east to N-14; north to N-52; northwesterly to N-91; west to US-281; north to and including Wheeler, Garfield, and Loup (east US-183) Counties; east on N-70 from Wheeler County to N-14; south to N-39; southeast to N-22; east to US-81; southeast to US-30; east to US-73; north to N-51; east to the State line; and south and west along the State line to US-73. Zone 3: The area, excluding Zone 1, north of Zone 2. Zone 4: The area south of Zone 2.

(5) North Unit: Boyd (west of US-81), Keya Paha (east of US-183), and Knox Counties. East Unit: The area, excluding the North Unit, east of highways US-183 and US-20 from the northern State line to Atkinson, N-11 to Burwell, N-91 to near Taylor, US-183 to Ansley, N-2 to Grand Island, and US-281 to the southern State line. Panhandle Unit: South and west of the northern boundaries of Scotts Bluff, Morrill, and Garden Counties and highways N-2 from Garden County to N-61, N-61 to Grant, and N-23 to the State line. Central Unit: The remainder of the State.

(6) Only 1 Canada goose and 1 white-fronted goose are allowed each day for the entire season in Dodge, Platte and Colfax Counties; in those parts of Butler, Saunders and Polk Counties north of Nebr. 92; and Merrick County along the Platte River where it borders Polk County.

(7) Zone 1: North of highways I-40 and US-54. Zone 2: South of highways I-40 and US-54.

(8) Dark geese may not be hunted in Bernalillo, Sandoval, Sierra, Socorro, and Valencia Counties.

(9) The daily bag and possession limits specified here are in addition to any other bag and possession limits specified elsewhere.

(10) Goose hunting is permitted daily only before 1:00 PM CDT through October 25 and only before 2:00 PM CST the remainder of the season.

(11) High Plains: Beaver, Cimarron, and Texas Counties. Zone 1: Northwestern Oklahoma, except the Panhandle, bounded by highways OK-33 from the western State line to Roll, OK-47 to US-183, US-183 to Clinton, I-40 to US-177, US-177 to Perkins, OK-33 to Guthrie, I-35 to US-60, US-60 to US-64, US-64 to Nash, and OK-132 to the northern State line. Zone 2: The remainder of the State south and east of Zone 1.

(12) Unit 1: West and south of highways US-77 from the northern State line to Ponca City, US-177 to Perkins, OK-33 to US-75, US-75 and the Indian Nation Turnpike to Hugo, and US-271 to the southern State line. Unit 2: East and north of Unit 1.

(13) High Plains: West of highways and political boundaries starting at the State line north of Herreid; US-83 and US-14 to Blunt, Blunt-Canning Road to SD-34, a line across the Missouri River to the northwestern corner of the Lower Brule Indian Reservation, the Reservation Boundary and Lyman County Road through Presho to I-90, and US-183 to the southern State line. North Zone: East of the High Plains except the South Zone. South Zone: The Counties of Gregory, Charles Mix (south and west of highways SD-50 from the northern County line to Geddes, CFAS-6198 and FAS-3207 to Lake Andes, and SD-50 to Choteau Creek), Bon Homme (south of highway SD-50), and Yankton (south and west of highways SD-50 and US-81).

(14) In Codington County the season on Canada geese is October 11 - December 14. Goose hunting is permitted only until 12:00 noon daily through October 31 in the Counties of Brookings, Brown, Clark, Codington, Day, Deuel, Edmunds, Grant, Hamlin, Kingsbury, Marshall, McPherson, and Roberts. Canada geese may not be hunted in the Counties of Clark (south of US-212), Lake, McCook, Minnehaha and Moody. Canada goose hunting is by special permit only in the Counties of Bennett, Brookings, Deuel, Edmunds (north and west of highways US-12 and SD-45), Grant (south of highway SD-20), Hamlin, Kingsbury, McPherson (west of highways SD-45 and County 19) and Perkins.

(15) Missouri River Unit: The Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson (east of highway SD-65), Dewey, Gregory, Haakon (north of Kirley Road and part of Plum Creek), Hughes, Hyde, Lyman (north and east of highways I-90 and US-183), Potter, Stanley, Sully, Tripp (east of highway US-183), Walworth, and Yankton (west of highway US-81).

(16) High Plains: West of highways US-183 from the northern State line to Vernon, US-283 to Albany, T-6 and T-351 to Abilene, US-277 to Del Rio, and the Del Rio International Toll Bridge access road.

(17) Zone 1: The Counties of Campbell, Converse, Crook, Johnson, Natrona, Niobrara, Sheridan, and Weston. Zone 2: The Counties of Goshen, Laramie, and Platte. Zone 3: The Counties of Albany and Carbon. Zone 4: The Counties of Big Horn, Fremont, Hot Springs, Park and Washakie. Goose management units, respectively, coincide with duck zones.

(18) The daily bag and possession limit of purple gallinules and common moorhens is singly or in the aggregate of the two species.

(19) See State regulations for areas closed to Canada goose hunting except by State permit.

PACIFIC FLYWAY

The Pacific Flyway includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Flywaywide Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily, except as noted for Montana, Nevada, Utah and Washington.

Aleutian Canada Geese: The season is closed on Aleutian Canada geese throughout the Flyway.

White Geese and Dark Geese: Unless otherwise noted, seasons and limits for white geese are for snow, including blue, and Ross' geese, either singly or in the aggregate; and seasons and limits for dark geese are for Canada and white-fronted geese, brant, and all other species of geese, either singly or in the aggregate, except in Washington, Oregon, and California where there are separate seasons and limits on brant.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATION OF GEOGRAPHICAL AREAS OR ZONES WITHIN STATES. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Season Dates	Limits	
		Bag	Possession
Arizona (2)			
Ducks	Oct. 10-Nov. 30 & Dec. 16-Jan. 11.	See footnote (1).	
Geese:	Nov. 15-Jan. 18.	6	6
Including no more than:			
Dark (no more than 2 Canada geese)		3	3
White		3	3
Coots and common moorhens (singly or in the aggregate)	Same as for ducks.	25	25
Common Snipe	Same as for ducks.	8	16
Sandhill cranes (only in Game Management Units 30A, 30B, 31, and 32)	Nov. 8-Nov. 10 & Nov. 15-Nov. 17.	Only by permit; 2 cranes per season.	
California			
Ducks:			
Northeastern Zone (3)	Oct. 11-Dec. 28.	See footnote (1)	
Colorado River Zone (3)	Oct. 10-Nov. 30 & Dec. 16-Jan 11.	See footnote (1)	
Southern Zone (3)	Oct. 18-Nov. 30 & Dec. 8-Jan. 11.	See footnote (1)	
Balance of State Zone (3)	Oct. 25-Jan. 11.	See footnote (1)	
Geese (except cackling Canada, Aleutian Canada and brant):			
Northeastern Zone (3)	Oct. 11-Jan. 11.	3	6
Including no more than:			
Canada geese (except Aleutian and Cackling)		2	4
White fronted geese (except that the season shall be Oct. 11-Nov. 2).		1	2
White geese		3	6
Colorado River Zone (3)	Nov. 15-Jan. 18.	6	6
Including no more than:			
Dark (but no more than 2 Canada geese)(4)		3	3
White		3	3

Southern Zone (3)	Oct. 18-Jan. 18.	6	6
Including no more than:			
Dark (except that Canada geese shall not exceed 2 in the daily bag and possession limits; but in that portion of District 22 within the Southern Zone, Canada geese may not exceed 1 in daily bag and 2 in possession; and the season on Canada geese shall be Oct. 25-Jan. 18) (4)		3	3
White		3	3
Balance-of-the-State Zone(3)	Nov. 1-Jan. 18.	3	3
Including no more than:			
Dark (4)(5):		1	1
Except that the season on Canada geese (4)(5) shall be:			
Counties of Del Norte and Humboldt	Closed.	-	-
Sacramento Valley Area (6)	Closed.		
San Joaquin Valley Area (7)	Nov. 1-Nov. 23.		
Except that the season on white-fronted geese shall be:	Nov. 1-Jan. 4.		
Sacramento Valley Area (6)	Nov. 1-Nov. 30.		
Remainder of Zone	Nov. 1-Jan. 4.		
White		3	3
Cackling Canada geese and Aleutian Canada geese:	Closed.	-	-
Brant	Oct. 18-Nov. 30.	2	4
Coots and common moorhens, singly or in the aggregate.	Same as for ducks.	25	25
Common snipe	Same as for ducks.	8	16
Colorado			
Ducks (8)	Oct. 4-Oct. 11 & Nov. 8-Jan. 11.	See footnote (1)	
Geese (8):			
Brown's Park, Moffat County	Oct. 25-Dec. 7.	1	2
Delta and Montrose Counties	Nov. 15-Jan. 4.	Only by permit; 2 geese per day; 3 per season.	
Mesa County	Nov. 15-Jan. 4.	Only by permit; 2	4 6 geese per season.
Dolores, Gunnison, LaPlata and Montezuma Counties	Closed.	-	-
Remainder of State in Pacific Flyway	Oct. 4-Oct. 17 & Oct. 25-Jan. 4.	2	4
Coots (8)	Same as for ducks.	25	25
Common snipe(8)	Sept. 1-Dec. 1.	8	16
Sora and Virginia rails(8)	Sept. 1-Nov. 9.	25	25
Idaho (8)			
Ducks			
Zone 1 (20)	Oct. 11-Dec. 28.	See footnote (1)	
Zone 2 (20)	Oct. 4-Nov. 5 & Nov. 27-Jan. 11.	See footnote (1)	
Geese:		3	6
Goose Area 1 (9)(10)	Oct. 11-Jan. 4.		
including no more than: Dark		2	4
Goose Area 2 (9)(10)	Oct. 25-Jan. 4		
including no more than: Dark		2	4
Goose Area 3 (9)	Oct. 11-Dec. 7.		
including no more than: Dark		2	4
Goose Area 4 (9)(10)	Oct. 11-Nov. 9 & Nov. 10-Dec. 14 & Dec. 15-Jan. 4.		
including no more than: Dark	Oct. 11-Nov. 9.	1	2
	Nov. 10-Dec. 14.	2	4
	Dec. 15-Jan. 4.	1	2
Coots	Same as for ducks.	25	25
Common snipe	Same as for ducks.	8	16
Montana			
Ducks(8)	Oct. 4-Dec. 21.	See footnote (1)	
Geese (8):			
East of the Continental Divide	Oct. 4-Jan. 4.	6	6
Including no more than: Dark		3	6
White		3	6
West of the Continental Divide	Oct. 4-Jan. 4.	5	6
Including no more than: Dark		2	2
White		3	6
Coots	Same as for ducks.	25	25
Common snipe	Same as for ducks.	8	16
Whistling swans, only in Teton and Cascade Counties	Oct. 4-Dec. 21.	Only by permit; 1 swan per season.	
Nevada			
Ducks (11):			
Clark County	Oct. 25-Jan. 11.	See footnote (1)	
Remainder of State	Oct. 18-Jan. 4.	See footnote (1)	
Dark geese (11):			
Clark County	Nov. 22-Jan. 18.	2	2
Elko County, and that portion of Ruby Lake National Wildlife Refuge in White Pine and Elko Counties	Oct. 4-Jan. 4.	2	4
Remainder of State	Oct. 18-Jan. 18.	2	4
White geese(11):			
Clark County	Nov. 22-Jan. 18.	3	3
Elko County except Ruby Valley	Oct. 4-Jan. 4.	3	3
Ruby Valley in Elko and White Pine Counties	Closed.	-	-
Remainder of State	Oct. 18-Jan. 18.	3	3
Coots and common moorhens, singly or in the aggregate	Same as for ducks.	25	25
Common snipe	Same as for ducks.	8	16
Whistling swans, only in Churchill, Lyon, and Pershing Counties (11)	Oct. 18-Jan. 4.	Only by permit; 1 swan per season	
New Mexico			
Ducks	Oct. 11-Oct. 26 & Nov. 11-Jan. 11.	See footnote (1)	
Geese:			
North of Interstate 40	Jan. 10-Jan. 18.	2 geese per season.	
South of Interstate 40	Oct. 25-Jan. 18.	6	6
Including no more than: Dark (no more than 2 Canada geese)		3	3
White		3	3
Coots and common moorhens (singly or in the aggregate)	Same as for ducks.	25	25
Common snipe	Sept. 1-Nov. 30.	8	16
Virginia and sora rails (singly or in the aggregate)	Sept. 1-Oct. 31.	25	25
Oregon			
Ducks:			
Entire State, except Morrow and Umtaillia counties	Oct. 18-Nov. 30 & Dec. 8-Jan. 11.	See footnote (1)	
Morrow and Umatilla counties	Oct. 18-Jan. 11.	See footnote (1)	
Geese (except cackling Canada, Aleutian Canada and brant):			
Western Oregon (4)(13)(14)	Oct. 18-Jan. 18.	2	4
Eastern Oregon (13), except Baker, Malheur, Klamath, and Lake Counties	Oct. 18-Jan. 18.	6	6
Including no more than: Dark(4)		3	6
White		3	6
Baker and Malheur Counties(4)	Oct. 18-Jan. 4.	2	2
Klamath and Lake Counties		6	6
Including no more than: Dark (4), except the season on white-fronted geese does not open until Nov. 1.	Oct. 18- Jan. 18.	3	6
White	Oct. 18-Jan. 18.	3	6
Cackling Canada geese, Aleutian Canada geese and Brant	Closed.	-	-
Coots	Same as for ducks	25	25
Common snipe	Same as for ducks	8	16
Utah			
Ducks (14)	Oct. 4-Dec. 21.	See footnote (1)	
Geese (14)(15):			
General Season:	Oct. 11-Jan. 4.	5	6
Including no more than: Dark geese		2	4
White geese		3	6
Special Seasons:			
Daggett County east of U.S. Highway 191	Oct. 25-Dec. 7.		
Including no more than: Canada geese		1	2

Washington County Including no more than: Canada geese	Oct. 18-Jan. 11.	2	2
Coots (14)	Same as for ducks.	25	25
Common snipe (14)	Same as for ducks.	8	16
Whistling swans (14)	Oct. 4-Dec. 21.	Only by permit; 1 swan per season.	
Washington			
Ducks (16):			
Eastern Washington (17)	Oct. 11-Jan. 4.	See footnote (1)	
Western Washington (17)	Oct. 11-Nov. 7 & Nov. 15-Jan. 4.	See footnote (1)	
Geese (except cackling Canada Aleutian Canada and brant)			
Eastern Washington (16)(17): Adams, Benton, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogon, Spokane, and Walla Walla Counties, and east of Satus Pass (Highway 97) in Klickitat County	Oct. 11-Jan. 11 (18).	3	6
Remainder of Eastern Washington (4)	Oct. 11-Jan. 11.	3	6
Western Washington (16)(17): Island, Skagit, Snohomish and Whatcom Counties	Oct. 11-Dec. 28.	3	6
Clark, Cowlitz, Pacific and Whakiakum Counties	See footnotes (4) & (19)		
Remainder of Western Washington (4)	Oct. 11-Jan. 11.	3	6
Cackling Canada geese, Aleutian Canada geese and Brant:	Closed.	-	-
Coots (16)	Same as for ducks.	25	25
Common snipe (16)	Same as for ducks.	8	16
Wyoming			
Ducks and coots, singly or in the aggregate	Oct. 4-Dec. 21.	See footnote (1)	
Canada Geese	Oct. 4-Dec. 21.	3	6
Common snipe	Sept. 20-Dec. 21.	8	16
Sora and Virginia rails, singly or in the aggregate	Sept. 20-Nov. 28.	25	25

(1) Duck Limits. Basic daily bag and possession limits on ducks (including mergansers, and in Wyoming including coots) throughout the entire Flyway is 5, including no more than 4 mallards but only 1 female (hen) mallard, 4 pintails but only 1 female (hen) pintail and either 2 canvasbacks or 2 redheads or 1 of each. The possession limit is twice the daily limit. Additionally, the following restrictions apply to limits in Arizona and Idaho. In Arizona, the daily limit may include no more than either 1 female (hen) mallard or 1 Mexican-like duck, but not both; and not more than 2 female (hen) mallards or 2 Mexican-like ducks may be in possession. In Idaho, in the counties of Benewah, Bonner, Boundary, Kootenai, and Shoshone, the daily bag and possession limits, each, may not include more than two wood ducks.

(2) The Imperial, Cibola, Buenos Aires and Havasu National Wildlife Refuges, Arizona, are open to waterfowl hunting except for posted portions. Ashurst Lake in Game Management Unit 5B is closed to all waterfowl and common snipe hunting. Unit 1, Unit 27, and those portions Units 3A and 3B lying east of Highways 77 and 260 are closed to the taking of Canada geese and its subspecies.

(3) Zone/Area boundaries described in State regulations.

(4) The season on both cackling Canada geese and Aleutian Canada geese is closed.

(5) The dark goose limits may be expanded to 2 per day and 4 in possession provided they are Canada geese, except for cackling Canada and Aleutian Canada geese for which the season is closed.

(6) The Sacramento Valley Area is bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacramento River, then southerly on the Sacramento River to the Tisdale By-pass; then easterly on the Tisdale By-pass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45-162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows.

(7) The San Joaquin Valley Area is bounded by a line beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate 5; then southerly on Interstate 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 59; then northerly on State Highway 59 to the junction of State Highway 99 at Merced; then northerly and westerly on State Highway 99 to the point of beginning in Modesto.

(8) See State regulations for special closures and/or exceptions to the general hunting seasons. Special regulations established by the Shoshone-Bannock Tribes apply on the Fort Hall Indian Reservation.

(9) Goose Area 1 includes Bannock, Benewah, Bingham, Blaine County north and west of U.S. Highway 93, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Clark, Clearwater, Custer, Franklin, Fremont County EXCEPT that portion within the North Fork of the Snake River drainage above the new Wendell bridge near Ashton, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Power, Shoshone, Teton, and Valley Counties; Goose Area 2 includes Blaine County south and east of U.S. Highway 93, Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls Counties; Goose Area 3 includes Fremont County within the North Fork of the Snake River drainage above the new Wendell bridge near Ashton; Goose Area 4 includes Ada, Adams, Canyon, Elmore, Gem, Owyhee, Payette, and Washington Counties.

(10) The season on white geese is closed in Fremont and Teton Counties.

(11) The shooting hours for ducks, coots, common moorhens, common snipe and tundra swans are from 8 a.m. to sunset opening day and sunrise to sunset thereafter. The shooting hours for geese are 8 a.m. to sunset opening day and sunrise to sunset thereafter in all Counties except Clark and Elko and that portion of Ruby Lake National Wildlife Refuge in White Pine and Elko Counties where the shooting hours for geese are sunrise to sunset daily.

(12) Western Oregon consists of all counties west of the summit of the Cascades excluding Kalmath and Hood River Counties. Eastern Oregon consists of all counties east of the simmit of the Cascades, including all of Kalmath and Hood River Counties. Those portions of Coos, Curry, Douglas and Lane Counties lying west of U.S. Highway 101, that portion of western Oregon north of Highway 126 and west of Interstate 5 are closed to all goose hunting, except for a special Northwest Oregon permit goose hunt.

(13) Northwest Oregon Special Permit Goose Season - November 15-November 30 and December 8-January 18 on Sauvie Island Wildlife Area (excluding North Unit and Columbia River Beaches), Private lands of Sauvie Island (including Scappoose Flat), Ankeny NWR, Private lands adjacent to William L. Finley NWR, and Private lands adjacent to Baskett Slough NWR. See State regulations for specific places, times, days and other conditions of the permit season.

(14) Shooting hours are from 12 noon through sunset on October 4, from 8 a.m. through sunset on November 1, and from one-half hour before sunrise through sunset on all other days of the seasons.

(15) Goose hunting is prohibited within the boundaries of the Desert Lake Waterfowl Management Area in Emery County, Fish Springs National Wildlife Refuge in Juab County, and Ouray National Wildlife Refuge in Uintah County.

(16) In Western Washington the shooting hours are from 8 a.m. through sunset on the opening day, and in Eastern Washington the shooting hours are from 12 noon through sunset the opening day.

(17) Eastern Washington includes all areas lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County. Western Washington includes all areas lying to the west of Eastern Washington.

(18) Geese may be hunted only on Saturdays, Sundays, and Wednesdays, and on November 11, 27 and 28, and December 25 and January 1 in Adams, Benton, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanagan, Spokane, and Walla Walla Counties and east of Satus Pass (U.S. Highway 97) in Klickitat County. Geese may be hunted every day during January 13-19 in Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla, and Yakima Counties.

(19) The hunting season for all geese except Canada geese in Clark, Cowlitz, Pacific and Whakiakum Counties is October 11 thorugh January 11; 3 geese may be taken daily and 6 may be in possession. The Canada goose season is closed in Clark, Cowlitz, Pacific and Whakiakum Counties except in the following areas: (a) in Clark and Cowlitz Counties all lands south of the Kalama grain elevator in Cowlitz County and west of Interstate 5 in Clark and Cowlitz Counties, and (b) in Pacific County all lands west of Highway 101. Canada goose hunting in these two areas is by permit only. See State regulations for times, days and specific conditions of the permit hunts.

(20) In Idaho, Zone 1 includes all lands and waters within the Fort Hall Indian Reservation, Bannock County, Bingham County except that portion within the Blackfoot Reservoir drainage, and Power County east of State Highway 37 and State Highway 39. Zone 2 includes the remainder of the State.

5. Section 20.106 is amended to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Central Flyway: Subject to the applicable provisions of the preceding sections of this part, open seasons are prescribed for taking sandhill cranes with a daily bag limit of 3 and a possession limit of 6 cranes, and with shooting (including hawking) hours from one-half hour before sunrise until sunset, in the following areas for the dates indicated:

(a) In Colorado (the Central Flyway portion except the San Luis Valley and North Park) the inclusive season dates are October 4 through November 30, 1986.

(b) In the New Mexico counties of Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt the inclusive dates are October 25, 1986, through January 25, 1987.

(c) In Oklahoma (that portion west of I-35) the inclusive dates are October 11, 1986, through January 11, 1987.

(d) In Texas, in Zone A the inclusive dates are November 8, 1986, through February 8, 1987. In Zone B the inclusive dates are November 29, 1986, through February 8, 1987. In Zone C the inclusive dates are January 3, 1987, through February 8, 1987. In the remainder of the State, the season is closed. See State regulations for description of zones.

(e) In North Dakota, sandhill crane hunting shall be from one-half hour before sunrise to 1:00 p.m. each day from the opening day through October 25 and from one-half hour before sunrise to 2:00 p.m. from October 26 through the remainder of the season. In Zone 1, the inclusive season dates are September 6 through November 2, 1986. In Zone 2, the inclusive season dates are September 6 through October 3, 1986. In the remainder of the State, the season is closed. See State regulations for description of zones and prohibited means of hunting sandhill cranes.

(f) In South Dakota, the inclusive dates are September 28 through November 2, 1986.

(g) In Montana (the Central Flyway), the inclusive season dates are October 4 through November 30, 1986; except in that area south and west of I-90 and the Bighorn River, the season is closed and in Sheridan County the inclusive season dates are November 1 through November 30, 1986.

(h) In Wyoming, in Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, the inclusive season dates are September 20 through November 16, 1986.

Each hunter participating in the regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to an authorized law enforcement official upon request.

Pacific Flyway: In Arizona (within Game Management Units 30A, 30B, 31, and 32), the season dates are November 8-10 and November 15-17, 1986. Hunting will be by special permit to be issued by the State. Each permittee may take 2 sandhill cranes per season.

6. Section 20.107 is revised as follows.

§20.107 Seasons, limits, and shooting hours for tundra (whistling) swans.

Whistling swans may be taken only by State-issued permit. Permittees may take only one whistling swan per season. Successful permittees must immediately validate their harvest by that method required in State regulations. Shooting hours are from one-half hour before sunrise to sunset daily except as noted below. Seasons are:

Central Flyway: (a) In Montana, tundra swans may be hunted from October 4, 1986, through January 4, 1987.

Pacific Flyway: (a) In Montana, whistling swans may be hunted only in Teton and Cascade Counties from October 4 through December 21, 1986;

(b) In Nevada, tundra swans may be hunted only in Churchill, Lyon and Pershing Counties from October 18, 1986, through January 4, 1987.

(c) In Utah, tundra swans may be hunted from October 4 through December 21, 1986. Shooting hours on October 4 are from noon to sunset, and on November 1 are from 8 a.m. to sunset.

Atlantic Flyway: (a) In North Carolina, tundra swans may be hunted from November 3, 1986 through January 31, 1987.

7. Section 20.108 Non-toxic shot zones.

* * * * *

8. Section 20.109 is revised as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Daily bag limit	3 singly or in the aggregate(1).
Possession limit	6 singly or in the aggregate(1).

These limits apply during both regular hunting seasons and extended falconry seasons.

Hawking hours: One-half hour before sunrise until sunset daily.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS.

Atlantic Flyway

Florida:	
Mourning and white-winged doves	Sept. 27-Dec. 5.
Woodcock	Oct.25-Dec. 8.
Snipe	Nov. 1-Feb. 15.
Rails and common moorhens	Sept.27-Dec. 5.
Ducks, mergansers and coots	Oct. 7-Nov. 21.
Georgia:	
Ducks, coots, mergansers and gallinules/moorhens	Oct. 4-Jan. 18.
Maine:	
Ducks, coots and mergansers (1)	
North Zone	Oct 4 & Nov. 15-Jan. 15.
South Zone	Oct. 4 & Oct. 20-Nov. 15 & Dec. 15-Jan. 15.
Maryland:	
Mourning doves	Sept.1-Oct. 25 & Nov. 15-Jan. 5.
Rails and gallinules/moorhens	Sept. 1-Dec. 16.
Woodcock	Oct. 15-Jan. 29.
Snipe	Oct. 1-Jan. 15.
Ducks, coots, and mergansers	Oct. 4-Jan. 18.
Canada geese	
Eastern Shore	Oct.17-Jan. 31.
Remainder of State	Oct. 6-Jan. 20.
Snow geese	Oct. 17-Jan. 31.
Brant	Oct. 6-Jan. 20.
Massachusetts:	
All permitted ducks, geese, mergansers and coots	Oct. 12-Jan. 13.
New York:	
Ducks, coots and geese	
Western Zone	Oct. 4-Oct. 14 & Nov. 14-Nov. 16.
Southeastern Zone	Oct. 4-Oct. 9 & Oct. 20-Oct. 27.
Northeastern Zone	Oct. 4-Oct. 5 & Oct. 20-Oct. 31.
Long Island Zone	Nov. 8-Nov. 21.
Pennsylvania:	
Mourning doves	Sept. 1-Dec. 13.
Ducks and geese	Oct. 15-Jan. 17.
South Carolina:	
Ducks, coots and mergansers	Oct. 4-Nov. 25 & Nov. 30-Dec. 12.
Virginia:	
Mourning doves	Sept. 1-Nov. 30 & Dec. 19-Jan. 3.
Rails	Sept. 1-Nov. 30 & Dec. 19-Jan. 3.
Woodcock	Oct. 17-Jan. 31.
Snipe	Oct. 17-Jan. 31.
Ducks	Oct. 4-Jan. 18.
All geese	Oct. 4-Jan. 18.

Mississippi Flyway

Illinois:	
Mourning doves, rails, and woodcock	Sept. 1-Dec. 16.
Snipe	Sept. 13-Dec. 30.
Ducks, mergansers, and coots	Oct. 4-Jan. 9.
Teal	Sept. 13-Sept. 21.
Indiana:	
Ducks, mergansers, and coots	
North Zone	Oct. 4-Oct 9 & Oct. 14-Oct. 31 & Dec. 7-Jan. 9.
South Zone	Oct. 4-Oct. 17 & Oct. 23-Nov. 21 & Dec. 27-Jan. 9.
Ohio River Zone	Oct. 5-Nov. 26 & Dec. 1-Dec. 5.
Woodcock	Sept. 1-Sept. 19.
Mourning doves	Oct. 27-Nov. 26.
Iowa:	
Ducks	Sept. 20-Sept. 30 & Oct. 4-Jan. 7.
Geese	Oct. 4-Jan. 7.
Kentucky:	
Ducks, mergansers, coots	Nov. 1-Nov. 26 & Dec. 1-Dec. 13.
Rails, and gallinules/moorhens	Nov. 1-Nov. 26.
Geese	
Western Zone	Nov. 1-Dec. 12.
Eastern Zone	Nov. 1-Nov. 11.
Michigan:	
Woodcock, rails, and snipe	Sept. 1-Dec. 16.
Gallinules/moorhens	Sept. 1-Dec. 16.
Ducks	Oct. 4-Jan. 18.
Geese	Oct. 4-Jan. 18.
Minnesota:	
Woodcock, rails, and snipe	Sept.1-Dec. 16.
Ducks, geese, coots and gallinules/moorhens	Oct. 4-Jan. 18.
Mississippi:	
Mourning doves	Sept. 29-Oct. 12 & Nov. 21-Dec. 12.
Ducks, mergansers, and coots	Nov. 1-Dec. 12.
Missouri:	
Mourning doves	Sept.1-Dec. 16.
Ducks, mergansers, coots, and geese	Nov. 1-Jan. 13.
Wisconsin:	
Rails, woodcock, snipe, and gallinules	Sept. 1-Dec. 16.
Ducks, mergansers, and coots	Oct. 4-Jan. 18.

Central Flyway

Colorado:	
Ducks, mergansers, coots, and geese	Oct. 19-Oct. 31 & Dec. 1-Dec. 12.
Montana:	
Mourning doves	Sept. 1-Oct. 12.
Ducks(1)	Oct. 4-Jan. 18.
Nebraska:	
Ducks, coots, mergansers and geese	Oct. 4-Jan. 18.
New Mexico:	
Mourning doves and white-winged doves	Sept. 1-Nov. 6 & Nov. 22-Dec. 30.
Band-tailed pigeons	Sept. 1-Nov. 30.
Sandhill cranes only in Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties	Oct. 13-Jan. 26.
Ducks, mergansers and coots	Oct. 16-Jan. 18.
Common moorhens and purple gallinules	Oct. 16-Jan. 18.
Canada and white-fronted geese	Oct. 16-Jan. 18.
Snow, blue, and Ross' geese	Nov. 1-Jan. 11 & Jan. 24-Feb. 27.
Oklahoma:	
Ducks, mergansers, and coots	Oct. 11-Jan. 16.
Texas:	
Mourning doves	Sept. 1-Nov. 30 & Jan. 3-Jan. 18.
Rails and gallinules/moorhens	Sept. 1-Dec. 16.
White-winged doves	Sept. 1-Nov. 30 & Jan. 3-Jan. 18.
Ducks, geese, and coots	Oct. 20-Jan. 18.
Sandhill cranes (Zones A, B, and C)	Nov. 1-Feb. 15.
Woodcock	Nov. 1-Feb. 15.
Snipe	Nov. 1-Feb. 15.
Wyoming:	
Ducks, merganser, geese, and coots (1)	Oct. 4-Jan. 4.
Mourning doves	Sept. 1-Oct. 15.
Snipe and rails	Sept. 20-Nov. 28.

Pacific Flyway

Colorado:	
Ducks, mergansers, coots, and geese	Oct. 18-Nov. 7.
Idaho:	
Ducks, merganser, coots, and snipe	Oct. 4-Jan. 11.
Geese	Oct. 4-Jan. 4.
Montana:	
Ducks (1)	Oct. 4-Jan. 11.
Mourning doves	Sept. 1-Oct. 12.
New Mexico:	
Mourning doves, and white-winged doves	Sept. 1-Nov. 6 & Nov. 22-Dec. 30.
Band-tailed pigeons	Sept. 1-Nov. 30.
Common moorhens and purple gallinules	Oct. 7-Jan. 11.
Ducks, coots, mergansers	Oct. 7-Jan. 11.
Geese	Oct. 5-Jan. 18.
Oregon:	
Mourning doves and band-tailed pigeons	Sept. 1-Dec. 16.
Snipe	Oct. 4-Jan. 11.
Ducks, geese, and coots	Oct. 4-Jan. 11.
Utah:	
Ducks, geese, mergansers. coots, and snipe	Oct. 4-Jan. 11.
Washington:	
Ducks, geese, mergansers and coots	Oct. 7-Jan. 11.
Wyoming:	
Mourning doves	Sept. 1-Oct. 15.
Rails and snipe	Sept. 20-Nov. 28.
Ducks, mergansers, coots and geese (1)	Oct. 4-Jan. 4.

(1) In Maine, the daily bag and possession limits may not include more than 1 and 2 black ducks, respectively. In Montana, the aggregate daily bag and possession limits of all duck species are 2 and 6, respectively. In Wyoming, the aggregate daily bag and possession limits of all ducks, mergansers, coots and geese are 2.

Note: See waterfowl season footnotes for descriptions of zones. For some States, the extended falconry season dates also include general season dates.

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DEPARTMENT OF THE INTERIOR

50 CFR Part 23

List of Species Included in Higher-Taxon Listings in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species. Appendices I, II, and III to CITES list those species for which trade is controlled. Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other Parties in the control of trade.

Presently both species and higher taxa are listed in 50 CFR Part 23 as being in Appendix III. The CITES Secretariat, in carrying out Resolution Conf. 5.22 passed at the Fifth Meeting of the Conference of the Parties in 1985, has provided an updated list of Appendix III species. In accordance with the resolution, the list includes only those species that are native to the country having requested their inclusion in Appendix III and that are not listed in Appendix I or II.

A previous notice published May 12, 1986 (51 FR 17366, identified the species listed on Appendix III in place of higher taxa previously listed. The CITES Secretariat does not consider this amended listing as an additional listing and the Service after reviewing the supporting information agrees with this interpretation. This document incorporates these taxon listing changes as well as editorial changes to the way that regulated parts and derivatives of Appendix III species are identified in the regulations of the Fish and Wildlife Service (Service) implementing CITES.

EFFECTIVE DATE: This rule is effective on September 30, 1986.

ADDRESSES: Please send correspondence concerning this notice to the Office of Scientific Authority, Mail stop: Room 527, Matomic Building, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. Background materials will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 537, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane at the address given above, or telephone (202) 653–5948.

SUPPLEMENTARY INFORMATION:

Background

At the Fifth Meeting of the Conference of the Parties held on April 22–May 3, 1985, in Buenos Aires, Argentina, the Parties passed Resolution Conf. 5.22. This resolution clarified Resolution Conf. 1.5., and recommended that only those species that are native to the country requesting such inclusion be included in Appendix III, and requested the CITES Secretariat to compile an updated list of Appendix III species including those that are native to the country having requested their inclusion in Appendix III and that are not listed in Appendix I or II. In accordance with this resolution, the CITES Secretariat has provided an updated Appendix III. In updating this Appendix, the Secretariat has queried Parties who had higher-taxon listings included at their request to identify the species native to those countries. Consequently, the species native to Ghana will be individually listed in Appendix III in lieu of the higher taxa, *Anomalurus* spp., *Idiurus* spp., *Hystrix* spp., Anatidae, Columbidae, Musophagidae, Fringillidae, Ploceidae and *Pelusios* spp.

Prior to Ghana's request to add Ploceidae to Appendix III, and to its listing there in 1976, as well as prior to the Service listing of Ploceidae in 50 CFR Part 23 in 1977, Ghanaian legislation included estrildid finches in the family Ploceidae. When Ghana requested that this taxon be added to Appendix III, no standard nomenclature for birds had been adopted by the Parties to CITES. The CITES Secretariat informed the Service that Ghana intended to include estrildid finches in the original listing of Ploceidae. This intention is substantiated by the specific mention in Ghana's Wildlife Conservation Regulations of 1971 of common names of groups of species, e.g., waxbills, cordon bleus, and mannikins, under the family Ploceidae. These groups of species represent a major segment of the estrildid finches, and are now nomenclaturally included in the family Estrildidae.

A standard nomenclature for birds was adopted by the Parties in 1983. This taxonomy used separate family names for Ploceidae and Estrildidae, but the CITES Secretariat has not previously revised its Appendix III accordingly nor has the United States previously revised its list in 50 CFR Part 23. Nevertheless, as the above changes and listing of species below are not intended to reflect new inclusions in Appendix III, but rather a new presentation of existing listings, the Service finds it reasonable to treat their entry into force as immediate. If these changes were construed as representing additional listings, the United States could have entered reservations within 90 days after the date of the Secretariat's communication that provided the updated Appendix III with the list of species specifically included in the higher-taxon listings originally requested by Ghana. No comments were received in response to the **Federal Register** notice published May 12, 1986 (51 FR 17366), and the Service did not endeavor to enter reservations on any of these species.

Quelea quelea, which is native to Ghana and which would have been covered under the higher-taxon listing, is omitted from the species list by the Secretariat in agreement with the Management Authority of Ghana. The Secretariat has also replaced, in the udpated Appendix III, the listing of *Tetracentron* spp. with *Tetracentron sinense* at the request of Nepal; this is the only species in the genus.

This notice identifies the species listed in Appendix III in place of higher taxa previously listed and provides common names for those species listed only by scientific name in the previous notice.

The CITES Secretariat declared in the March 5, 1986, notification that inasmuch as these listings "do not reflect new inclusions in Appendix III, but [rather] a new presentation of existing listings, its entry into force may be considered as immediate." Therefore, this rule is effective immediately upon publication.

Because the Service has previously interpreted Resolution Conf. 1.5 to restrict Appendix III to species native to the country requesting the inclusion of a species in Appendix III, this updated listing does not result in any change on the part of the United States in the number of species covered by CITES except for the removal of *Quelea quelea* from the provisions of Appendix III.

The trade in specimens of species included in Appendix III requires export permits from the nation that has requested the inclusion of the species in Appendix III. The import of specimens of these species from nations other than the nation that included that species in Appendix III requires prior presentation of a certificate of origin or, in the case of re-export, a certificate from the nation of re-export. For the export or re-export of any Appendix III species from the

United States to CITES Party nations, these certificates must be obtained from the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, 1000 North Glebe Road, Room 611, Arlington, Virginia 22201.

Presently 50 CFR 23.23(f) lists after the scientific name for all Appendix III species, except snakes from India, the phrase "(all parts and derivatives)". With regard to the snakes, India has specified that any readily recognizable part or derivative of these species is covered by the provisions of Appendix III (49 FR 13529, April 5, 1984).

Repeating the phrase "(all parts and derivatives)" for each of the 115 Ghanian vertebrates and the Nepalese tree listed below is unnecessarily cumbersome inasmuch as this phrase applies to all species now listed in Appendix III. Furthermore, all parts and derivatives of any future Appendix III listings are likely to be included under CITES inasmuch as Resolution Conf. 2.18 recommends that when proposing amendments to Appendix III species "it be accepted that all readily recognizable parts and derivatives are to be regulated unless particular parts or derivatives are specified as being exempt". Consequently, the Service is revising 50 CFR 23.23(d) and 23.23(f) to present the information more efficiently.

Note.—The Department has determined that amendments to CITES appendices, which result from actions of the Parties to CITES, do not require the preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321–4347); 516 DM 2, Appendix I, section 1.10. The Department also has determined that this listing action is not a rule for purposes of Executive Order 12291, and that the Regulatory Flexibility Act (5 U.S.C. 601) and the Paperwork Reduction Act of 1980 (Pub. L. 96–511) do not apply to this listing process.

This rule implements changes in the listings in Appendix III of CITES that already have been approved by the Parties, that coincide with our current regulatory practice, and that the United States is bound to accept. An earlier **Federal Register** publication informed the public about these changes, which are not considered to be additional listings, and allowed an opportunity for comment on them. Therefore, the Department of the Interior has determined that good cause exists for proceeding directly to a final rule and for making this rule effective upon publication (5 U.S.C. 553(d)).

List of Species

The species listed below replace the higher-taxon listings referred to above and identified again in the amendment to 50 CFR 23.23(f). These species, whether live or dead, and any readily recognizable parts or derivatives thereof, except plant seeds, spores, and tissue cultures (Resolution Conf. 4.24), are covered by the provisions of CITES. In addition, those species that would have been included under the higher-taxon listing and are native to the requesting country but that are included separately in either Appendix I or Appendix II are not included in Appendix III. Finally, the species *Quelea quelea*, which would have been included in the revised listing, has been omitted in agreement with the Management Authority of Ghana (as per the CITES Secretariat's notification).

This notice was prepared by Dr. Charles W. Dane, Chief, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

Regulation Promulgation

For the reasons set out above, the Service amends the list of species contained in § 23.23 of Title 50 of the Code of Federal Regulations as follows:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531–43.

2. The last sentence of paragraph (d) of 50 CFR 23.23 is revised to read as follows:

§ 23.23 Species listed in Appendices I, II, and III.

* * * * *

(d) * * * All living or dead animals and plants included in Appendix III, and readily recognizable parts and derivatives thereof (unless specified otherwise for particular species in the list) are subject to the regulations of this part.

* * * * *

3. Amend paragraph (f) of § 23.23 by removing the phrase "(all parts and derivatives)" wherever it appears after the scientific names of species in Appendix III, which are highlighted by having a country's name in the Appendix column.

4. Amend paragraph (f) of § 23.23 by removing entries in CLASS MAMMALIA, Order Rodentia, for "*Anomalurus* spp.", "*Idiurus* spp.", and "*Hystrix* spp."; in CLASS AVES, Order Anseriformes, for "Anatidae"; in CLASS AVES, Order Columbiformes for "Columbidae"; in CLASS AVES, Order Cuculiformes for "Musophagidae"; in CLASS AVES, Order Passeriformes for "Fringillidae" and "Ploceidae"; in CLASS REPTILIA, Order Testudinata for "*Pelusios* spp."; and in the PLANT KINGDOM, Family Tetracentraceae for "*Tetracentron* spp.".

5. Amend paragraph (f) of § 23.23 by adding to the list the following species in alphabetical order under the indicated taxonomic categories:

Species	Common name	Appendix	Date listed (month/days/year)
Class Mammalia:			
Order Rodential:			
Anomalurus beecrofti	Beecroft's scaly-tailed flying squirrel	III (Ghana)	2/26/76
Anomalurus derbianus	Lord Derby's scaly-tailed flying squirrel	III (Ghana)	2/26/76
Anomalurus peli	Pel's scaly-tailed flying squirrel	III (Ghana)	2/26/76
Hystrix cristata	Crested porcupine	III (Ghana)	2/26/76
Idiurus macrotis	Long-eared pygmy flying squirrel	III (Ghana)	2/26/76
Class Aves:			
Order Anseriformes:			
Alopochen aegyptiacus	Egyptian goose	III (Ghana)	2/26/76
Anas acuta	Northern pintail	III (Ghana)	2/26/76
Anas capensis	Cape wigeon	III (Ghana)	2/26/76
Anas clypeata	Northern shoveler	III (Ghana)	2/26/76
Anas crecca	Green-winged teal	III (Ghana)	2/26/76
Anas penelope	Eurasian wigeon	III (Ghana)	2/26/76
Anas querquedula	Garganey	III (Ghana)	2/26/76

Species	Common name	Appendix	Date listed (month/days/year)
Aythya nyroca	White-eyed pochard	III (Ghana)	2/26/76
Dendrocygna bicolor	Fulvous whistling-duck	III (Ghana)	2/26/76
Dendrocygna viduata	White-faced whistling-duck	III (Ghana)	2/26/76
Nettapus auritus	African pygmy goose	III (Ghana)	2/26/76
Plectropterus gambensis	Spur-winged goose	III (Ghana)	2/26/76
Pteronetta hartlaubii	Hartlaub's duck	III (Ghana)	2/26/76
Order Columbiformes:			
Columba guinea	Speckled pigeon	III (Ghana)	2/26/76
Columba iriditorques	Bronze-necked pigeon or Bronze-naped pigeon	III (Ghana)	2/26/76
Columba livia	Rock dove	III (Ghana)	2/26/76
Columba unicincta	African wood pigeon	III (Ghana)	2/26/76
Oena capensis	Namaqua dove or Masked dove	III (Ghana)	2/26/76
Streptopelia decipiens	African mourning dove or Mourning collared dove	III (Ghana)	2/26/76
Streptopelia roseogrisea	African turtle dove or African collared dove	III (Ghana)	2/26/76
Streptopelia semitorquata	Red-eyed dove	III (Ghana)	2/26/76
Streptopelia senegalensis	Laughing dove	III (Ghana)	2/26/76
Streptopelia turtur	Turtle dove	III (Ghana)	2/26/76
Streptopelia vinacea	Vinaceous dove	III (Ghana)	2/26/76
Treron calva	African green pigeon	III (Ghana)	2/26/76
Treron waalia	Yellow-bellied green pigeon	III (Ghana)	2/26/76
Turtur abyssinicus	Black-billed wood dove	III (Ghana)	2/26/76
Turtur afer	Blue-spotted wood dove	III (Ghana)	2/26/76
Turtur brehmeri	Blue-headed wood dove	III (Ghana)	2/26/76
Turtur tympanistria	Tambourine dove	III (Ghana)	2/26/76
Order Cuculiformes:			
Crinifer piscator	Gray plantain estes	III (Ghana)	2/4/77
Corythaeola cristata	Great blue turaco	III (Ghana)	2/4/77
Musophaga violacea	Violet turaco	III (Ghana)	2/4/77
Tauraco macrorhynchus	Black-tip crested turaco	III (Ghana)	2/4/77
Order Passeriformes:			
Amadina fasciata	Cut-throat	III (Ghana)	2/26/76
Amandava subflava	Zebra waxbill	III (Ghana)	2/26/76
Amblyospiza albifrons	Grosbeak weaver	III (Ghana)	2/26/76
Anomalospiza imberbis	Parasitic weaver	III (Ghana)	2/26/76
Bubalornis albirostris	Buffalo weaver	III (Ghana)	2/26/76
Estrilda astrild	Common waxbill	III (Ghana)	2/26/76
Estrilda caerulescens	Lavender fire-finch	III (Ghana)	2/26/76
Estrilda melpoda	Orange-cheeked waxbill	III (Ghana)	2/26/76
Estrilda troglodytes	Black-rumped waxbill	III (Ghana)	2/26/76
Euplectes afer	Yellow-crowned bishop	III (Ghana)	2/26/76
Euplectes ardens	Red-collared whydah	III (Ghana)	2/26/76
Euplectes hordeaceus	Black-winged red bishop	III (Ghana)	2/26/76
Euplectes macrourus	Yellow-mantled whydah	III (Ghana)	2/26/76
Euplectes orix	Red bishop	III (Ghana)	2/26/76
Lagonosticta larvata	Vinaceous waxbill	III (Ghana)	2/26/76
Lagonosticta rara	Black-bellied waxbill	III (Ghana)	2/26/76
Lagonosticta rubricata	African waxbill	III (Ghana)	2/26/76
Lagonosticta rufopicta	Bar-breasted waxbill	III (Ghana)	2/26/76
Lagonosticta senegala	Red-billed waxbill	III (Ghana)	2/26/76
Lonchura bicolor	Black-and white mannikin	III (Ghana)	2/26/76
Lonchura cucullata	Bronze mannikin	III (Ghana)	2/26/76
Lonchura fringilloides	Magpie mannikin or pied mannikin	III (Ghana)	2/26/76
Lonchura malabarica	White-throated munia	III (Ghana)	2/26/76
Malimbus cassini	Cassin's malimbe	III (Ghana)	2/26/76
Malimbus malimbicus	Crested malimbe	III (Ghana)	2/26/76
Malimbus nitens	Gray's malimbe	III (Ghana)	2/26/76
Malimbus rubriceps	Red-headed malimbe	III (Ghana)	2/26/76
Malimbus rubricollis	Red-headed weaver	III (Ghana)	2/26/76
Malimbus scutatus	Red-vented malimbe	III (Ghana)	2/26/76
Mandingoa nitidula	Green-backed twin-spot	III (Ghana)	2/26/76
Nesocharis capistrata	Gray-headed olive-back	III (Ghana)	2/26/76
Nigrita bicolor	Chestnut-breasted negro-finch	III (Ghana)	2/26/76
Nigrita canicapilla	Gray-headed negro-finch	III (Ghana)	2/26/76
Nigrita fusconota	White-breasted negro-finch	III (Ghana)	2/26/76
Nigrita luteifrons	Pale-fronted negro-finch	III (Ghana)	2/26/76
Ortygospiza atricollis	Common quail-finch	III (Ghana)	2/26/76
Parmoptila woodhousei	Flowerpecker weaver-finch	III (Ghana)	2/26/76
Passer griseus	Gray-headed sparrow	III (Ghana)	2/26/76
Petronia dentata	Bush petronia	III (Ghana)	2/26/76
Pholidornis rushiae	Tit-hylia	III (Ghana)	2/26/76
Plocepasser superciliosus	Chestnut-crowned sparrow-weaver	III (Ghana)	2/26/76
Ploceus albinucha	White-naped black weaver	III (Ghana)	2/26/76
Ploceus aurantius	Orange weaver	III (Ghana)	2/26/76
Ploceus cucullatus	Black-headed weaver	III (Ghana)	2/26/76
Ploceus heuglini	Heuglin's masked weaver	III (Ghana)	2/26/76
Ploceus luteolus	Little weaver	III (Ghana)	2/26/76
Ploceus melanocephalus	Yellow-backed weaver	III (Ghana)	2/26/76
Ploceus nigerrimus	Viellot's weaver	III (Ghana)	2/26/76
Ploceus nigricollis	Black-necked weaver	III (Ghana)	2/26/76
Ploceus pelzelni	Slender-billed weaver	III (Ghana)	2/26/76
Ploceus preussi	Golden-backed weaver	III (Ghana)	2/26/76
Polceus superciliosus	Compact weaver	III (Ghana)	2/26/76
Ploceus tricolor	Yellow-mantled weaver	III (Ghana)	2/26/76
Ploceus velatus	Vitelline masked weaver	III (Ghana)	2/26/76
Pyrenestes ostrinus	Black-bellied seedcracker	III (Ghana)	2/26/76
Pytilia hypogrammica	Yellow-winged pytilia	III (Ghana)	2/26/76
Pytilia phoenicoptera	Red-winged pytilia	III (Ghana)	2/26/76
Quelea erythrops	Red-headed quelea	III (Ghana)	2/26/76
Serinus gularis	Streaky-headed seedeater	III (Ghana)	2/26/76
Serinus leucopygius	White-rumped seedeater	III (Ghana)	2/26/76
Serinus mozambicus	Yellow-fronted canary	III (Ghana)	2/26/76
Spermophaga haematina	Blue-bill	III (Ghana)	2/26/76

Species	Common name	Appendix	Date listed (month/days/year)
Sporopipes frontalis	Speckled-fronted weaver	III (Ghana)	2/26/76
Uraeginthus bengalus	Red-cheeked cordon-bleu	III (Ghana)	2/26/76
Vidua chalybeata	Village indigobird	III (Ghana)	2/26/76
Vidua chalybeata	Village indigobird	III (Ghana)	2/26/76
Vidua interjecta	Uelle paradise whydah	III (Ghana)	2/26/76
Vidua larvaticola	Bako indigobird	III (Ghana)	2/26/76
Vidua macroura	Pin-tailed whydah	III (Ghana)	2/26/76
Vidua paradisaea	Paradise whydah	III (Ghana)	2/26/76
Vidual ranicola	Jambandu indigobird	III (Ghana)	2/26/76
Vidua togoensis	Togo paradise whydah	III (Ghana)	2/26/76
Vidua wilsoni	Wilson's indigobird	III (Ghana)	2/26/76
Class Reptilia:			
Order Testudinata:			
Pelusios adansonii	Adanson's hinged terrapin	III (Ghana)	2/26/76
Pelusios castaneus	Brown hinged terrapin or swamp hinged terrapin	III (Ghana)	2/26/76
Pelusios gabonensis	Gaboon hinged terrapin	III (Ghana)	2/26/76
Pelusios niger	Black hinged terrapin	III (Ghana)	2/26/76
Plant Kingdom: I11Family Tetracentraceae:			
Tetracentron sinense	Tetracendron	III (Nepal)	11/16/75

Dated: September 24, 1986.

P. Daniel Smith,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-22113 Filed 9-29-86; 8:45 am]

BILLING CODE 4310-53-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 60625-6125]

Atlantic Sea Scallop Fishery

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

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: An emergency rule amending the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP) is in effect until October 1, 1986. The Secretary of Commerce (Secretary) extends this emergency rule for an additional 90 days, through December 29, 1986, because the conditions requiring the emergency measures still exist. The extension continues the regulations which implement the FMP. It also provides for exemptions from the regulations for research purposes. At the present time, the regulations result in the imposition of a 30 average meat count standard and the corresponding minimum shell height requirement of 3½ inches for scallops landed in the shell.

EFFECTIVE DATE: October 1, 1986 through December 29, 1986.

FOR FURTHER INFORMATION CONTACT: Carol J. Kilbride (Resource Policy Analyst), 617-281-3600, extension 331.

SUPPLEMENTARY INFORMATION: Under section 305(e)(2) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary issued an emergency rule (51 FR 24841, July 9, 1986), effective July 3, 1986, amending the FMP. This rule extends the management measures for an additional 90 days. A detailed discussion of the background, the issues and regulations, and the classification of the rulemaking is set forth in the preamble to the original emergency rule.

The New England Fishery Management Council has voted to extend this emergency rule for an additional 90 days, since the conditions within the fishery requiring the original emergency rule still exist. This action is authorized by section 305(e)(3)(B) of the Magnuson Act.

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided for in section 8(a)(1) of that Order. This rule is being reported to the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 650

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: September 25, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-22116 Filed 9-29-86; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 651

[Docket No. 60599-6141]

Northeast Multispecies Fishery

Correction

In FR Doc. 86-18815 beginning on page 29642 in the issue of Wednesday, August 20, 1986, make the following correction:

§ 651.23 [Amended]

On page 29650, in the third column in § 651.23(a)(1), the fourth entry should read "American plaice (dab) . . . . . 12 inches".

BILLING CODE 1505-01-M

50 CFR Part 655

[Docket No. 60107-6045]

Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Notice of *Loligo* increase, establishment of squid ratios, 1986.

SUMMARY: NOAA issues this notice, as required by the regulations, to increase the Optimum Yield (OY) specification for *Loligo* squid by 1,442 metric tons (mt). This increase is assigned to the Total Allowable Level of Foreign Fishing (TALFF), based on recommendations of the New England and Mid-Atlantic Fishery Management Councils (Councils). This notice also announces the Northeast Regional Director's decision to allocate TALFF based on purchase ratios of 1:1 and 1:2 for TALFF/U.S.-processed and TALFF/harvested joint venture squid, respectively. This action is intended to foster the objectives of the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) of creating benefits for the U.S. fishing industry.

DATES: This notice is effective September 25, 1986. Comments are invited until October 10, 1986.

ADDRESSES: Send comments to Salvatore A. Testaverde, Northeast Regional Office, NMFS, 2 State Fish Pier, Gloucester, MA 01930-3097. Mark on the outside of the envelope "Comments on Squid Notice."

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600, ext 273.

SUPPLEMENTARY INFORMATION: Under 50 CFR 655.22, final initial annual specifications for squid were published on May 9, 1986 (51 FR 17189) for the fishing year April 1, 1986, to March 31, 1987. Amendment 2 of the FMP (51 FR 10547, March 27, 1986) changed the fishing year for squid to begin on January 1. On July 9, 1986, proposed adjustments to the final initial annual specifications were published (51 FR 24880) for the transitional squid fishing year ending December 31, 1986.

The regulations at § 655.21(b)(1)(v) provide that final initial annual specifications may be adjusted by the Director, Northeast Region, NMFS (Regional Director) after consultation with the Mid-Atlantic Fishery Management Council.

The current OY for *Loligo* squid is 24,867 mt, of which 10 mt results from a one percent bycatch associated with an increase of 1000 mt of TALFF for *Illex* squid (51 FR 31774, September 5, 1986), and the remainder from the bycatch associated with a 30,000 mt TALFF for Atlantic mackerel (51 FR 24881, July 9, 1986). This 10 mt of bycatch also increases the original 107 mt of TALFF for *Loligo* squid to 117 mt.

In accordance with § 655.22(f), notice is hereby given that the current OY for *Loligo* squid of 24,867 mt is increased by 1,442 mt to 26,309 mt. This increase is assigned to the *Loligo* TALFF, which is increased from 117 mt to 1,559 mt. The proposed specifications, OY, and TALFF for the transitional fishing year are likewise adjusted by 1,442 mt for *Loligo*.

At recent meetings, both Councils recommended that the Regional Director increase the *Loligo* OY to allow an increase of TALFF. Allocations to foreign countries are based on the available TALFF and result from demonstrated purchases of U.S.-processed products from shoreside or at-sea processors of U.S.-harvested squid.

The Regional Director has solicited views from both Councils and listened to various segments of the U.S. fishing industry to determine the level of TALFF, if any, that would best benefit the industry while recognizing contributions of certain foreign nations toward the development of the U.S. fishing industry. After reviewing the record on this question, the Regional Director has determined that the squid ratios, both for *Loligo* and *Illex*, for the fishing year 1986, should be established at one mt of TALFF for purchasing one mt of U.S.-processed squid (either species) and one mt of TALFF for purchasing two mt of U.S.-harvested squid "over-the-side."

The amounts of additional squids that could be made available for domestic harvest or TALFFs generated by applying these ratios may not exceed the differences in amounts of *Loligo* and *Illex* squids which remain between the allowable biological catches and the existing OYs.

The TALFF amounts are the result of applying the performance of prior purchases of U.S.-processed or harvested squid by foreign joint venture partners to the possibility of future development of the U.S. fishing industry as a result of additional TALFF. This issue was debated before both Councils. An additional opportunity for public comment is not possible before making this adjustment of TALFF. Delaying the release of the additional 1,442 mt of *Loligo* to TALFF may potentially disadvantage U.S. harvesters without benefiting interested members of the industry, most of whom have participated fully in this decisionmaking process. However, public comments on whether the adjustment or the established squid ratios should be continued, modified, or rescinded are invited for 15 days after the effective date of this notice.

Other Matters:

This action is taken under 50 CFR Part 655 and is in compliance with Executive Order 12291.

In view of the need to avoid unnecessary disruption of domestic and foreign fisheries, NOAA has determined that delaying the effective date of this notice is impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 50 CFR 655

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 25, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86–22082 Filed 9–25–86; 4:17 pm]

BILLING CODE 3510–22–M

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50 CFR Part 663

[Docket No. 51192–5219]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of fishing restrictions and request for comments.

SUMMARY: NMFS issues this notice establishing restrictions which further reduce the levels of fishing for widow rockfish taken off the coasts of Washington, Oregon, and California, and seeks public comments on this action. This action is authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and is necessary to help prevent the optimum yield for widow rockfish from being reached before the end of 1986. The action is intended to lower fishing rates, reduce the risk of biological stress, and reduce the probability of fishery closure before the end of the year.

DATES: Effective 0001 hours (Pacific Daylight Time), September 28, 1986, until modified, superseded, or rescinded. Comments will be accepted through October 15, 1986.

ADDRESSES: Send comments on this action to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or to E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

The aggregate data upon which this notice is based are available for public inspection at the Office of the Director, Northwest Region, at the address above, during business hours until the end of the comment period.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150, or E. Charles Fullerton, 213–548–2575.

SUPPLEMENTARY INFORMATION:

Background

Landings of widow rockfish off Washington, Oregon, and California have been restricted by trip limits each year since 1982 when the Pacific Coast Groundfish Fishery Management Plan (FMP) was implemented. In 1986, the limit on widow rockfish has been 30,000 pounds per vessel per trip with only one trip permitted each week (December 31, 1985, 50 FR 53325); the action announced in this notice supersedes the provisions published in that **Federal Register** notice.

At its April 1986 meetings in Eureka, California, the Pacific Fishery Management Council (Council) recommended further reducing the trip limit to 3,000 pounds when the 9,300 metric tons (mt) estimate of acceptable biological catch (ABC) is landed. This limit is intended to slow the achievement of OY, prevent early closure of the fishery, and thus reduce

the discards that would result if the OY were reached.

The best scientific data available on September 9, 1986, indicated that 9,200 mt of widow rockfish will be landed in late September. Accordingly, the trip limit for widow rockfish is reduced to 3,000 pounds per vessel per fishing trip. The States of Oregon, Washington, and California are taking similar action effective September 28, 1986.

This reduction virtually will eliminate the directed fishery for widow rockfish for the remainder of 1986, while allowing incidental catches from other fisheries to be landed. However, if the 10,200 mt optimum yield (OY) quota is reached before the end of the calendar year, all further landings will be prohibited as stated at § 663.21(d).

This reduction applies to all U.S. fishing vessels operating seaward of Washington, Oregon, and California, including U.S. vessels delivering to foreign processors. For U.S. vessels delivering to foreign processors the trip limits are applied on a haul-by-haul basis. Foreign fishing and processing vessels already are subject to incidental catch and retention allowance percentages which are more restrictive than the limits placed on U.S. fisheries.

Secretarial Action: For the reasons stated above, the Secretary announces that:

(1) No more than 3,000 pounds (round weight) of widow rockfish catch may be taken and retained, or landed, per vessel per fishing trip; and

(2) This restriction applies to all widow rockfish taken and retained in ocean waters offshore of, or landed in, Washington, Oregon, and California, regardless of the place of taking.

Classification

The determination to impose these fishing restrictions is based on the most recent data available.

These actions are taken under the authority of 50 CFR 663.22 and 663.23 and are in compliance with Executive Order 12291. The actions are covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of proposed reduction in fishing levels unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to the public interest. Because of the immediate need to limit the harvest of widow rockfish and thereby reduce catch levels which could otherwise result in overharvest and closure of the fishery, further delay of this action is impracticable and contrary to the public interest. If fishing for widow rockfish continues at current rates, OY will be reached in late October. Prompt action to reduce those fishing rates is necessary to alleviate the necessity for closure before the end of the year. Consequently, this action is effective 0001 hours on September 28, 1986. The States of Oregon, Washington, and California are implementing similar regulations.

These restrictions require no collection of information for purposes of the Paperwork Reduction Act.

The public has had opportunity to comment on these management measures. The public participated in the Council meeting on April 8–10, 1986, in Eureka, California, that generated the decision to impose a 3,000-pound trip limit per vessel per trip for widow rockfish when the ABC is reached. The public also attended the meeting of the Council's Groundfish Management Team on September 3–5, 1986, in Seattle, Washington, when the projected catches of widow rockfish were announced and discussed, and the September 17–18, 1986, Council meeting in Portland, Oregon, where these projections were reviewed. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register**.

List of Subjects in 50 CFR Part 663

Fisheries

(16 U.S.C. 1801 *et seq.*)

Dated: September 25, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-22092 Filed 9-25-86; 4:17 pm]

BILLING CODE 3510-22-M

Proposed Rules

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-38-AD]

Airworthiness Directives; Empresa Brasileira De Aeronautics S.A. (EMBRAER) Models EMB-110P1 and EMB-110P2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to EMBRAER Models EMB-110P1 and EMB-110P2 airplanes, which would require inspection of the main landing gear wheel axle/piston tube support junction for cracks and the proper fillet radius, and replacement or rework of these parts as required. There have been three reports of cracks or complete failures of the axle. The proposed action will detect these cracks and cause the wheel axle/piston tube assembly to be removed from service before failure could result in loss of control of the airplane.

DATE: Comments must be received on or before December 1, 1986.

ADDRESSES: EMBRAER Service Bulletins (S/B) No. 110-032-0071, dated July 29, 1986, and No. 110-032-0068, dated December 20, 1985, applicable to the AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), Post Office Box 343-CEP, 12,200, Sao Jose dos Campos, Sao Paulo Brazil or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-38-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis A. Jackson, ACE-120A, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7407.

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 should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of 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.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-38-AD, Room 1558, 601 East 12th Street, Kanses City, Missouri 64106.

Discussion

There have been three reports of cracks or complete failures of the main landing gear wheel axle/piston tube supports on EMBRAER Models EMB-110P1 and EMB-110P2 airplanes which could result in loss of control of the airplane during takeoff or landing. As a result, to prevent failure of the main landing gear wheel axle, EMBRAER has issued S/B No. 110-032-0068, dated December 20, 1985, which provides instructions for the inspection of the wheel axles/piston tube support junctions for cracks on airplanes with 6,000 or more landings. The Centro Technico Aeroespacial (CTA) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Brazil issued CTA AD 86-01-01 and has classified the service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Brazilian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. EMBRAER has also issued S/B No. 110-032-0071, dated July 29, 1986, which provides instructions for inspection within the next 500 hours time-in-service and rework, if necessary, of the fillet in the main landing gear wheel axle/piston tube support junction area. The FAA relies upon the certification of the CTA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of EMBRAER S/B No. 110-032-0068, the mandatory classification of this service bulletin by CTA Directive (AD) dated January 15, 1986, and the issuance of EMBRAER S/B No. 110-032-0071).

Based on the foregoing, the FAA considers that the conditions addressed by these service bulletins are an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require on EMBRAER Models EMB-110P1 and EMB-110P2 airplanes: (1) Inspection of the main landing gear wheel axle/piston tube support assembly for cracks, and if cracked, replacement of the wheel axle/piston tube support assembly, and (2) inspection of the axle/piston tube fillet and rework if necessary.

The FAA has determined there are approximately 124 airplanes affected by the proposed AD. The cost of inspecting these airplanes as required by the proposed AD is estimated to be $590 per airplane or an estimated total cost of $73,160 to the private sector. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact

on any small entities operating these airplanes.

Therefore, I certify that this section (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the captain "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

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

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

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

2. By adding the following new AD:

Empresa Brasileira De Aeronautica S.A. (Embraer) Applies to Models EMB-110P1 and EMB-110P2 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure of the main landing gear wheel axle/piston tube assembly, accomplish the following:

(a) Within the next 1000 landings after the effective date of this AD:

(1) Inspect the fillet area in the main landing gear wheel axle/piston tube support junction area for cracks in accordance with instructions contained in EMBRAER Service Bulletin (S/B) No. 110-032-0068, dated December 20, 1985, using eddy current, dye penetrant, or magnetic particle inspection methods. Prior to further flight, if a crack is found during this inspection, replace the wheel axle/piston tube assembly with an airworthy assembly, and inspect the replacement assembly in accordance with paragraph (a)(2) of this AD.

(2) Visually inspect the fillet radius in the main landing gear wheel axle/piston tube support junction area in accordance with EMBRAER S/B No. 110-032-0071 dated July 29, 1986.

(i) If the fillet is in accordance with Figure 1A of S/B No. 110-032-0071 return the axle to service in accordance with EMBRAER S/B No. 110-032-0071.

(ii) If the fillet is in accordance with Figure 1B of S/B No. 110-032-0071:

(A) Rework the fillet area within the next 1,000 landings in accordance with this service bulletin, or

(B) Re-inspect for cracks at intervals not to exceed 1,000 landings in accordance with paragraph (a)(1) of this AD until the rework is accomplished.

(iii) Prior to further flight, if a crack is found during this inspection, replace the wheel axle/piston tube assembly with an airworthly assembly, and inspect the replacement assembly in accordance with paragraph (a)(2) of the AD.

(b) If the actual number of landings is unknown for the purpose of complying with this AD, one landing may be substituted for each ½ hour of flight unless the operator substantiates a different flight hours to landing ratio. This substantiation must be submitted to and approved by the Manager, Atlanta Aircraft Certification Office, address below.

(c) Report in writing the results of each inspection within 7 calendar days to the Federal Aviation Administration, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7407. This report must include the following by aircraft serial number: (a) if the fillit needs rework, (b) if cracks were found, (c) the number of landings for each main gear. For airplanes modified for SFAR 41A operation, provide the number of landings on each gear assembly before and after the SFAR 41A modification. (Reporting approved by the Office of Management and Budget under OMB No. 2120-0056.)

(d) Airplanes may be flown in accordance with Federal Aviation Regulation 21.197 to a location where the AD may be accomplished.

(e) An equivalent method of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, FAA, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7428.

All persons affected by this directive may obtain the documents referred to herein upon request to EMBRAER, Post Office Box 343-CE, 12.200 Sao Jose dos Campos, Sao Paulo, Brazil, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 16, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-22009 Filed 9-29-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AWA-39]

Proposed Establishment of Airport Radar Service Areas

Correction

In FR Doc. 86-21234 beginning on page 33490 in the issue of Friday, September 19, 1986, make the following corrections:

1. On page 33490, in the third column, in the first complete paragraph, eighth line, "Washington 20951" should read "Washington, DC 20591"; and

2. On page 33494, in the third column, in the Airport Radar Service Area description for Knoxville McGhee Tyson Airport, sixteenth line, insert "clockwise" after "airport".

BILLING CODE 1505-01-M

14 CFR Part 71

[Airspace Docket No. 86-AWA-22]

Proposed Alteration and Establishment of VOR Federal Airways—Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of V-276, V-30, V-403, V-445 and establish two new Federal Airways V-601 and V-613. This proposal is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

DATE: Comments must be received on or before October 30, 1986.

ADDRESSES: Send comments on the proposal in triplicate to:

Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWA-22, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours

at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter V-276, V-30, V-403, V-445 and establish new VOR Federal Airways V-601 and V-613. Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. The FAA has developed an Expanded East Coast Plan (EECAP) to alleviate this congestion and reduce delays to and from terminals in the eastern United States. The airway actions proposed are part of this plan. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

PART 71—[AMENDED]

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

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

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

§ 71.123 [Amended]

2. Section 71-123 is amended as follows:

V-276—[Amended]

By removing the words "Sea Isle, NJ, 050° radials" and by substituting the words "Sea Isle, NJ, 050°T(060°M) radials; INT Robbinsville 112°T(122°M) and Coyle, NJ, 090°T(100°M) radials"

V-30—[Amended]

By removing the words "East Texas, PA; to Solberg, NJ." and by substituting the words "East Texas, PA; INT East Texas 095°T(104°M) and Solberg, NJ, 264°T(274°M) radials; to Solberg."

V-403—[Revised]

From Albany, NY; INT Albany 209°T(222°M) and Huguenot, NY, 008°T(019°M) radials; Huguenot; INT Huguenot 196°T(207°M) and Robbinsville, NJ, 351°T(001°M) radials; to Robbinsville.

V-445—[Revised]

From INT Washington, DC, 065°T(074°M) and Baltimore, MD, 197°T(205°M) radials; INT Baltimore 093°T(101°M) and Dupont, DE, 223°T(233°M) radials; Dupont; Yardley, PA; INT Yardley 065°T(075°M) and La Guardia, NY, 209°T(221°M) radials; to La Guardia.

V-601—[New]

From Norwich, CT; to Deer Park, NY.

V-613—[New]

From Allentown, PA, to Wilkes-Barre, PA.

Issued in Washington, DC, on September 23, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-22010 Filed 9-29-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWA-20]

Proposed Alteration of VOR Federal Airways—Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Federal Airways V-188, V-36, V-39 and V-433. This proposal is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

DATES: Comments must be received on or before October 31, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWA-20, Federal Aviation Administration, JKF International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW, Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-188, V-36, V-39 and V-433. Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. The FAA has developed an Expanded East Coast Plan (EECP) to alleviate this congestion and reduce delays to and from terminals in the eastern United States. The airway actions proposed are part of this plan. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

PART 71—[AMENDED]

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

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-188—[Amended]

By removing the words "INT Wilkes-Barre 094° and Sparta, NJ, 290° radials; Sparta" and substituting the words "INT Wilkes-Barre 084°T(094°M) and Sparta, NJ, 300°T(311°M) radials; to Sparta"

V-36—[Amended]

By removing the words "INT Lake Henry 136° and Sparta, NJ, 290° radials; Sparta; Kennedy, NY" and substituting the words "Sparta, NJ; LaGuardia, NY; INT LaGuardia 133°T(145°M) and Deer Park, NY, 209°T(211°M) radials; to Deer Park"

V-39—[Amended]

By removing the words "to East Texas, PA. From Chester, MA;" and substituting the words "East Texas, PA; Sparta, NJ; Carmel, NY; INT Carmel 046°T(058°M) and Deer Park, NY, 359°T(011°M) radials; INT Deer Park 359°T(011°M) and Chester, MA, 223°T(236°M) radials; Chester;"

V-433—[Amended]

From INT Washington, DC 065°T(074°M) and Baltimore, MD, 197°T(205°M) radials; INT Washington, DC, 065°T(074°M) and Dupont, DE, 223°T(233°M) radials; Dupont; Yardley, PA; INT Yardley 047°T(057°M) and Kennedy, NY, 253°T(265°M) radials; INT Kennedy 253°T(265°M) and LaGuardia, NY, 209°T(221°M) radials; to LaGuardia.

Issued in Washington, DC, on September 23, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-22011 Filed 9-29-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 86-AWA-59]

Proposed Alteration and Establishment of Jet Routes—Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Jet Routes J-78, J-110, J-146 and J-584 and establish new J-220. This proposal is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

DATE: Comments must be received on or before October 30, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 86–AWA–59, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW, Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–AWA–59." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J–78, J–110, J–146 and J–584 and establish new J–220. Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. The FAA has developed an Expanded East Coast Plan (EECP) to alleviate this congestion and reduce delays to and from terminals in the eastern United States. The jet route actions proposed are part of this plan. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

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

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 135(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–78—[Amended]

By removing the words "INT Philipsburg 083° and Keating, PA, 099° radials; to Kennedy, NY," and by substituting the words "to Milton, PA."

J–110—[Amended]

By removing the words "Bellaire, OH; Coyle, NJ; to Kennedy, NY," and by substituting the words "Bellaire, OH; to Modena, PA."

J–146—[Amended]

By removing the words "to Kennedy, NY," and by substituting the words "Milton, PA; Allentown, PA; to Kennedy, NY,"

J–220—[New]

From Armel, VA, INT Armel 001°T(009° M) and Wellsville, NY, 160° T(169° M) radials; Wellsville; to Buffalo, NY.

J–584—[Amended]

By removing the words after "Slate Run, PA;" and by substituting the words "Williamsport, PA; to Broadway, NJ."

Issued in Washington, DC, on September 23, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division

[FR Doc. 86–22012 Filed 9–29–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 86–AWA–58]

Proposed Alteration and Establishment of Jet Routes—Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Routes J–48, J–80 and J–563 and establish new J–228. This proposal is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

DATE: Comments must be received on or before October 30, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 86–AWA–58, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–AWA–58." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communiciations must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of Jet Routes J–48, J–80 and J–563 and establish new J–228. Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. The FAA has developed an Expanded EastCoast Plan (EECP) to alleviate this congestion and reduce delays to and from terminals in the eastern United States. The jet route actions proposed are part of this plan. Section 75.100 pf Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.bB dated January 2, 1986.

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

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (15 CFR Part 75) as follows:

1. The authority citation for Part 75 continues to read as follows:

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

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–48—[Revised]

From Boston, MA; INT Boston 252°T(268°M) and Carmel, NY, 044°T(056°M) radials; Carmel; INT Carmel 238°T(250°M) and Pottstown, PA, 050°T(059°M) radials; Pottstown; Westminister, MD; Casanova, VA, to Pulaski, VA.

J–228—[New]

From Sparta, NJ; Broadway, NJ; Lancaster, PA; INT Lancaster 239°(248°M) and Linden, VA, 042°T(048°M) radials; INT Linden 234°T(240°M) and Beckley, WV, 070°T(076°M) radials; to Beckley.

J–80—[Amended]

By removing all the words after "Bellaire, OH;" and substituting the words "INT Bellaire, 090°T(094°M) and Sparta, NJ, 241°T(252°M) radials; Sparta; Barnes, MA; to Bangor, ME."

J–563—[Revised]

From LaGuardia, NY; Kingston, NY; Albany, NY; INT Albany 008°T(021°M) and Sherbrooke, PQ, Canada, 217°T(234°M) radials; to Sherbrooke, excluding the airspace over Canada.

Issued in Washington, DC, on September 23, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–22013 Filed 9–29–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 86–AWA–60]

Proposed Alteration and Establishment of Jet Routes—Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Jet Routes J–70 and J–75 and establish two new Jet Routes J–217 and J–221. This proposal is part of the Expanded East Coast Plan (EECP).

The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States., The EECP is being implemented in several segments until completed.

DATE: Comments must be received on or before October 30, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 86–AWA–60, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–AWA–60." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J–70 and J–75 and establish two new Jet Routes J–217 and J–221. Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. The FAA has developed an Expanded East Coast Plan (EECP) to alleviate this congestion and reduce delays to and from terminals in the eastern United States. The jet route actions proposed are part of this plan. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

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

List of Subjects in 14 CFR Part 75

Aviation safety, jet routes.

The Proposed Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

1. The authority citation for Part 75 continues to read as follows:

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

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–70—[Amended]

By removing the words "Sparta, NJ; to Kennedy, NY." and by substituting the words "Wilkes-Barre, PA; LaGuardia, NY; to Kennedy, NY."

J–217—[New]

From Hancock, NY, via Keating, PA; Clarion, PA; to INT Clarion 222°T(228°M) and Franklin, PA, 175°T(181°M) radials.

J–221—[New]

From Sparta, NJ, via Lake Henry, NY; Wellsvile, NY; to Buffalo, NY.

J–75—[Revised]

From Biscayne Bay, FL; Fort Myers, FL; INT Fort Myers 345°T(344°M) and Taylor, FL, 175°T(178°M) radials; Taylor; Columbia, SC; Greensboro, NC; Gordonsville, VA; Westminister, MD; Modena, PA; INT Modena 047°T(056°M) and Carmel, NY, 232°T(244°M) radials; Carmel; INT Carmel 044°T(056°M) and Boston, MA, 252°T(268°M) radials; to Boston.

Issued in Washington, DC, on September 23, 1986.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86–22014 Filed 9–29–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 51

[LR–225–81]

Windfall Profit Tax; Rules Relating to Production From a Unitized Property of Imputed Stripper Well Crude Oil, Imputed Heavy Crude Oil, and Imputed Newly Discovered Crude Oil

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the production from a unitized property of imputed stripper well crude oil, imputed heavy crude oil, and imputed newly discovered crude oil for purposes of the windfall profit tax. changes to the applicable law were made by the Crude Oil Windfall Profit Tax Act of 1980. The regulations would provide guidance for determining whether all or a portion of the production from a unitized property will be treated as crude oil from a stripper well property, heavy oil, or newly discovered oil.

DATES: Written comments and requests for a public hearing must be delivered or mailed by December 1, 1986. The amendments are proposed to be effective for crude oil removed after February 29, 1980. However, the special rule contained in paragraph (e)(1) of proposed § 51.4996–5 would be effective for months beginning after November 30, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–225–81), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Gail H. Morse of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3297).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980 (26 CFR Part 51).

Under the windfall profit tax taxable crude oil is divided into three tiers. The windfall profit tax rate depends, in part, on the tier of the crude oil. In order to determine the tier of taxable crude oil it is often necessary to determine the "property" from which the crude oil is produced. For example, the determinations of whether crude oil qualifies as crude oil from a stripper well property, newly discovered oil, or heavy oil (all these types of oil receive preferred treatment under the windfall profit tax) are made on a property-by-property basis.

"Property" is defined for windfall profit tax purposes in § 150.4996–1(i) of the Temporary Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980 (26 CFR Part 150) as promulgated by Treasury decision 7846, published on November 10, 1982 (47 FR 50858). The text of that Treasury decision also served as the text of a notice of proposed rulemaking published on the same day (47 FR 50924). Section 150.4996–1(i) provides that "property" generally is determined by reference to the geographical boundaries of the right to produce crude oil as such right existed on January 1, 1972, provided such right was in production in commercial quantities on that date. If such right was not in production in commercial quantities on January 1, 1972, the determination of "property" is generally made by reference to the geographical boundaries of the right to produce crude oil when crude oil is first produced thereafter in commercial quantities.

Although § 150.4996–1(i) provides the general rule for determining "property," paragraph (i)(4) of that section, which relates to unitizations, was reserved for subsequent publication. On September 25, 1986, a new notice of proposed rulemaking was published in the **Federal Register** (51 FR 34095) which generally provides that a unitization is treated as a single property. A new § 51.4996–5 is added by this document which would provide rules for imputing stripper well oil, heavy oil, and newly discovered oil to a unitized property.

Explanation of Provisions

Imputed Oil

Because a unitization is generally treated as a single "property" for windfall profit tax purposes, the rules for determining whether crude oil produced from the unitized property qualifies as crude oil from a stripper well property, newly discovered oil, heavy oil, or incremental tertiary oil generally must be applied to the unitized property. For example, in order for all potential crude oil production from a unitized property to qualify as newly discovered oil, crude oil could not have been produced in commercial quantities during 1978 from the unitized property or from any portion of a property now included in the unitized property if the unitization occurred during or after 1978. Applying these rules to a unitized property can create a tax disincentive to unitizing properties. For example, the operator of newly discovered crude oil property would not voluntarily unitize its property with properties that produced crude oil in commercial quantities during 1978 if the operator would not retain a benefit equal to the preferred tax treatment it has for crude oil produced from then newly discovered crude oil property without its inclusion within the unitized property.

The proposed rules provide that all or a portion of the crude oil produced from a unitized property within which is included a property that qualified as a stripper well property, newly discovered crude oil property, or heavy crude oil property before the unitization will be treated as crude oil from a stripper well property, newly discovered oil, or heavy oil, respectively. The portion of crude oil treated as crude oil from a stripper well property, newly discovered oil, or heavy oil is referred to as imputed stripper well crude oil, imputed newly discovered crude oil, or imputed heavy crude oil, respectively. The proposed rules generally determine the amount of imputed oil on the basis of the historical production levels for the properties composing the unitized property. However, several limitations apply. First, the proposed rules provide that for any particular month beginning after December 1, 1986 imputed oil is limited to the amount of crude oil allocated during that month by the unitization agreement to the properties (before inclusion within the unitization) or interests therein that give rise to the imputed oil. Second, the district director may adjust the amount allocated to certain newly discovered crude oil properties if the district director determines that the method of allocation used by the producers has as a principal purpose the avoidance of windfall profit tax. Finally, the district director may adjust the amount of any imputed oil if the district director determines that any of the properties composing the unit did not produce at its maximum feasible rate of production during the 12-month period immediately preceding the unitization.

Imputed Stripper Well Crude Oil

The proposed rules provide that, in determining imputed stripper well crude oil, condensate produced from a well other than an oil-producing well is not counted as crude oil produced during the 12-month period immediately preceding the establishment of the unit base production control level or the occurrence of the unitization.

Imputed Newly Discovered Crude Oil

Determining imputed oil on the basis of historical production levels may yield an undesirable result if a right to produce crude oil had no production before inclusion within the unit. Therefore, a special rule is provided in the case of a unitized property that contains a right to produce crude oil that was unitized before it produced crude oil in commercial quantities (referred to as a "newly discovered separate right to

produce"). In this case, imputed newly discovered crude oil is determined by comparing the surface acreage within the unitized property of the newly discovered separate rights to produce to the total surface acreage of the unitized property. For this purpose, surface acreage that is not underlain by proved developed or undeveloped oil and gas reserves affected by the unitization shall be disregarded.

For this purpose, the terms "proved developed oil and gas reserves" and "proved undeveloped oil and gas reserves" are defined in proposed § 51.4996–5(g)(3) and (4), respectively, and have the same meaning as the terms have in regulations promulgated by the Securities and Exchange Commission. See 17 CFR 201.4–10(a)(3) and (4). It is anticipated that these definitions generally will be applied for windfall profit tax purposes in a manner similar to the manner in which they are applied for financial reporting purposes.

If data is ascertained after the surface acreage is determined and such data would result in a more accurate determination of the surface acreage at the time of the unitization, the surface acreage must be redetermined using such data. For purposes of determining imputed newly discovered crude oil, the proposed rules provide that the term "newly discovered crude oil property" has the same meaning as that term has in proposed § 51.4996–1(m)(2). Proposed § 51.4996–1(m)(2) is contained in a notice of proposed rulemaking published in the Federal Register on November 5, 1982 (47 FR 50306).

Proposed § 51.4996–5(e) (3) and (4) contains three special rules relating to imputed newly discovered crude oil. Under the rules for determining imputed stripper well crude oil, all production from a unitized property is treated as crude oil from a stripper well property if a stripper well property is unitized with a property that did not produce crude oil during the 12-month period immediately before the unitization. However, the rules for determining imputed newly discovered crude oil provide that if a right to produce crude oil that has never produced crude oil in commercial quantities is unitized with other properties, imputed newly discovered crude oil resulting from such right to produce is determined by comparing the surface acreage of such right to produce to the total surface acreage of the unitized property. The first special rule makes clear that imputed oil includes imputed newly discovered crude oil determined under the surface acreage method even though all production from the unitized property would be treated as crude oil from a stripper well property under the imputer stripper well crude oil provisions.

Although the first special rule provides that a certain portion of the production from the unitized property will be treated as imputed newly discovered crude oil even though all production would be treated as crude oil from a stripper well property under the imputed stripper well crude oil provisions, the second special rule permits producers who held an economic interest in the newly discovered separate rights to produce before the unitization to treat a certain portion of the production from the unitized property allocated to it as imputed stripper well crude oil. Finally, if a newly discovered crude oil property met the requirements of a stripper well property before the unitization, a producer may treat a certain portion of newly discovered crude oil allocated to that property after the unitization as crude oil produced from a property that qualifies as a stripper well property. Thus, an independent producer who treated its share of production from the property before the unitization as exempt stripper well oil generally may continue to treat its share of imputed newly discovered crude oil allocated to that property after the unitization as exempt stripper well oil.

Incremental tertiary recovery project

Proposed § 51.4996–5(f) provides that, solely for purposes of determining incremental tertiary oil and the effects of that determination on imputed oil, if a qualified tertiary recovery project (as defined in proposed paragraph (c) of § 51.4993–1) is located on a unitized property and the unitized property is treated as more than one property under section 4993(d)(3) and proposed paragraph (e)(4) of § 51.4993–1 (relating to a tertiary project which only affects a portion of a property), imputed oil will be determined by treating each property (as determined under sections 4993(d)(3) and proposed paragraph (e)(4) of § 51.4993–1) as a separate unitized property. Proposed paragraphs (c) and (e)(4) of § 51.4993–1 are contained in a notice of proposed rulemaking published in the **Federal Register** on September 10, 1984 (49 FR 35517).

Comments and Request for the Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is to be held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Special Analysis

The Commissioner of the Internal Revenue has determined that these final rules are not major rules as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking which solicits comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these proposed regulations was Douglas W. Charnas of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 51

Excise tax, Petroleum, Crude Oil Windfall Profit Tax Act of 1980.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 51 are as follows:

Paragraph 1. The authority for Part 51 continues to read in part:

Authority: 26 U.S.C. 4997 and 7805. * * *

Par. 2. Paragraph (c)(1) of § 51.4989–1 is amended by removing "150.4996–1(i)" and inserting in lieu thereof "51.4996–4."

Par. 3. Paragraph (m)(3) of § 51.4996–1 (as proposed on November 5, 1982, in 47 FR 50307) is revised to read as follows:

§ 51.4996–1 Definitions.

* * * * *

(m) *Newly discovered oil.* * * *

(3) *Imputed newly discovered oil.* For rules relating to imputed newly discovered oil see paragraph (d) of § 51.4996–5.

Par. 4. A new § 51.4995–5 is added immediately after § 51.4996–4, to read as follows:

§ 51.4996–5 Special rules for production from unitized properties.

(a) *Imputed oil.* For purposes of chapter 45 of the Code, any imputed stripper well crude oil, imputed heavy crude oil, or imputed newly discovered crude oil shall be treated as crude oil from a stripper well property, heavy oil, or newly discovered oil respectively. However, see the special rules contained in paragraph (e) of this section.

(b) *Imputed stripper well crude oil—*(1) *Unitizations with BPCL established before August 1, 1977.* In the case of a unitized property for which a unit base production control level was established before August 1, 1977, the term "imputed stripper well crude oil" means, in a particular month, the number of barrels of crude oil equal to the total number of barrels of crude oil produced and sold during the 12-month period immediately preceding the establishment of a unit base production control level for the unitized property from all properities that constitute the unitized property that qualified as stripper well properties before inclusion within the unitized property mulitplied by a fraction the numerator of which is the number of days in that particular month and the denominator of which is the number of days in that 12-month period. The number of barrels of imputed stripper well crude oil determined under this subparagraph shall not exceed the number of barrels of crude oil removed from the premises of the unitized property during that particular month.

(2) *Unitizations that occur after February 29, 1980, or with BPCL established after July 31, 1977.* In the case of a unitized property for which a unit base production control level was established after July 31, 1977, or for which the unitization occurs after February 29, 1980, provided a unit base production control level was not required, the term "imputed stripper well crude oil" means, in a particular month, the greater of:

(i) The number of barrels of crude oil equal to the total number of barrels of crude oil removed from the premises of the unitized property during that particular month multiplied by a fraction the numerator of which is the total number of barrels of crude oil produced and sold during the 12-month period immediately preceding the establishment of a unit base production control level or the occurrence of the unitization for the unitized property from all properties that constitute the unitized property that qualified as stripper well properties before inclusion within the unitized property and the denominator of which is the total number of barrels of crude oil produced and sold during that 12-month period from all properties that constitute the unitized property (including those that qualified as stripper well properties), or

(ii) The number of barrels of crude oil equal to the total number of barrels of crude oil produced and sold during the 12-month period immediately preceding the establishment of a unit base production control level or the occurence of the unitization for the unitized property from all properties that constitute the unitized property that qualified as stripper well properties before inclusion within the unitized property mulitplied by a fraction the numerator of which is the number of days in that particular month and the denominator of which is the number of days in that 12-month period. The number of barrels of crude oil determined under this subdivision shall not exceed the number of barrels of crude oil removed from the premises of the unitized property during that particular month. For purposes of this paragraph, condensate produced from a well other than an oil-producing well is not counted as crude oil produced during the 12-month period immeidately preceding the establishment of a unit base production control level or the occurrence of the unitization.

(c) *Imputed heavy crude oil.* The term "imputed heavy crude oil" means, in a particular month, a portion of crude oil production of a unitized property for which a unit base production control level was established after August 16, 1979, or for which the unitization occurs after February 29, 1980, provided a unit base production control level was not required. That portion is the greater of:

(1) The number of barrels of crude oil equal to the total number of barrels of crude oil removed from the premises of the unitized property during that particular month multiplied by a fraction the numerator of which is the total number of barrels of crude oil produced and sold during the 12-month period immediately preceding the establishment of a unit base production control level or the occurrence of the unitization for the unitized property from all properties that constitute the unitized property that qualify as heavy crude oil properties (within the meaning of paragraph (g)(2) of this section) before inclusion within the unitized property and the denominator of which is the total number of barrels of crude oil produced and sold during that 12-month period from all properties that constitute the unitized property (including those that qualified as heavy crude oil properties), or

(2) The number of barrels of crude oil equal to the total number of barrels of crude oil produced and sold during the 12-month period immediately preceding the establishment of a unit base production control level or the occurrence of the unitization for the unitized property from all properties that constitute the unitized property that qualified as heavy crude oil properties before inclusion within the unitized property multiplied by a fraction the numerator of which is the number of days in that particular month and the denominator of which is the number of days in that 12-month period. The number of barrels of crude oil determined under this subparagraph shall not exceed the number of barrels of crude oil removed from the premises of the unitized property during that particular month.

For purposes of this paragraph, the 12-month period prior to the inclusion of a heavy crude oil property within a unitized property may be reduced to the number of days in the months in that period in which heavy crude oil was produced and sold.

(d) *Imputed newly discovered crude oil—*(1) *In general.* The term "imputed newly discovered crude oil" means, in a particular month, a portion of the crude oil production of a unitized property for which a unit base production control level was established after January 1, 1979, or for which the unitization occurs after February 29, 1980, provided a unit base production control level was not required. That portion is the sum of:

(i) The greater of:

(A) The number of barrels of crude oil equal to the total number of barrels of crude oil removed from the premises of the unitized property during that particular month multiplied by a fraction the numerator of which is the total number of barrels of crude oil produced and sold during the 12-month period immediately preceding the

establishment of a unit base production control level or the occurrence of the unitization for the unitized property from all properties that constitute the unitized property that qualified as newly discovered crude oil properties (within the meaning of paragraph (m)(2) of § 51.4996–1) before inclusion within the unitized property and the denominator of which is the total number of barrels of crude oil produced and sold during that 12-month period from all properties that constitute the unitized property (including those that qualified as newly discovered crude oil properties), or

(B) The number of barrels of crude oil equal to the total numer of barrels of crude oil produced and sold during that 12-month period from all properties that constitute the unitized property that qualified as newly discovered cruide oil properties before inclusion within the unitized property multiplied by a fraction the numerator of which is the number of days in that particular month and the denominator of which is the number of days in that 12-month period, plus

(ii) The number of barrels of crude oil equal to the total number of barrels of crude oil removed from the premises of the unitized property during that particular month multiplied by a fraction the numerator of which is the surface acreage within the unitized property of the separate rights to produce crude oil that were first included within the unitized property after 1978 and before they produced crude oil in commercial quantities (hereinafter referred to as "newly discovered separate rights to produce") and the denominator of which is the total surface acreage of the unitized property.

The number of barrels of crude oil determined under paragraph (d)(1)(i)(B) of this section shall not exceed the number of barrels of crude oil removed from the premises of the unitized property during that particular month. For purposes of making a determination under paragraph (d)(1)(ii) of this section, surface acreage that is not underlain by proved developed or undeveloped oil and gas reserves (within the meaning of paragraph (g) (3) and (4) of this section, respectively) affected by the unitization shall be disregarded. Also for purposes of this paragraph, the 12-month period immediately preceding the inclusion of newly discovered crude oil properties within a unitized property may be reduced to the number of days in the month in that period during which newly discovered crude oil was produced and sold. If, at any time, the operators of the unitized property ascertain data that would result in more accurate determination of the surface acreage of the unitized property underlain by the reseroir at the time of the unitization that the determination that was previously made for such surface acreage, the operators must promptly redetermine the surface acreage underlain by the reservoir at the time of the unitization using the newly ascertained data and must notify the first purchasers and producers of any change since the unitization in the number of barrels of imputed oil resulting from the redetermination of the surface acreage.

(2) *Statement by petroleum engineer.* If any crude oil produced from a unitized property is determined to be imputed newly discovered crude oil under paragraph (d)(1)(ii) of this section, each operator of crude oil production from that unitized property shall keep in its records a statement, signed under penalties of perjury by a petroleum engineer (who has been duly registered or certified in accordance with applicable state law, if any) setting forth the following information:

(i) The operator's name and identifying number (employer identification number or, if none, social security number),

(ii) A description of the unitized property including the location, identifying number (if any), and the names and identifying numbers or, if none, other information sufficient to identify the constituent properties (within the meaning of paragraph (e)(6)(i)(B) of this section) composing the unitized property,

(iii) The name and identifying number (employer identification number or, if none, social security number) of each producer holding or operating mineral interest (within the meaning of section 614(d)) in the unitized property,

(iv) The surface acreage of that portion of each newly discovered separate right to produce that is underlain by a reservoir of the unitized property affected by the unitization, and

(v) A statement that the portion of the reservoir underlying the surface acreage of each newly discovered separate right to produce contains proved undeveloped oil and gas reserves.

The statement shall be made at the time the newly discovered separate right to produce is included in the unitized property, or, if later, by the date that is 90 days after the date of publication of this paragraph in the **Federal Register** in a Treasury decision, shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

(e) *Special rules*—(1) *Limitation on imputed oil*—(i) *In general.* In a particular month beginning after November 30, 1986, the amount of imputed stripper well crude oil determined under paragraph (b) of this section, imputed heavy crude determined under paragraph (c) of this section, or imputed newly discovered crude oil determined under paragraph (d) of this section shall not exceed the number of barrels of crude oil removed from the premises of the unitized property during that month allocated by the unitization agreement to the constituent properties (within the meaning of paragraph (e)(6)(i)(B) of this section) or interests therein that qualified as stripper well properties, heavy crude oil properties, or newly discovered crude oil properties (including newly discovered separate rights to produce), respectively, before inclusion within the unitized property. However, if the unitized property includes only newly discovered separate rights to produce or properties that qualified as stripper well properties, heavy crude oil properties, or newly discovered crude oil properties before inclusion within the unitized property, the excess of any imputed oil determined under this section without regard to this subparagraph for a particular month over the amount determined with regard to this subparagraph shall be allocated among and treated as imputed stripper well crude oil, imputed heavy crude oil, and imputed newly discovered crude oil on the basis of each such imputed oil's proportionate share of production determined under this section without regard to this subparagraph for the particular month.

(ii) *District director's authority in the case of newly discovered separate rights to produce.* If the district director determines, based on all the facts and circumstances, that—

(A) The amount of crude oil allocated for a particular month by the unitization agreement to a constituent property that qualifies as a newly discovered separate right to produce exceeds the amount which would be allocated to such constitutent property if the allocation were determined by multiplying total production from the unitized property for that month by a fraction the numerator of which is the proved undeveloped oil and gas reserves contained in the portion of the reservoir affected by the unitization underlying such constituent property and the denominator of which is the sum of the

proved developed oil and gas reserves (within the meaning of paragraph (g)(3) of this section) and proved undeveloped reserves contained in the entire reservoir affected by the unitization, and

(B) A principal purpose of such allocation is the avoidance of windfall profit tax,

the district director may adjust such allocation, solely for purposes of applying the rule in paragraph (e)(1)(i) of this section, to more closely reflect the amount which results by multiplying total production from the unitized property for that month by such fraction. If the district director makes such an adjustment, the rule in paragraph (e)(1)(i) of this section shall be applied by using the amount allocated by the unitization agreement as adjusted by the district director.

(2) *Limitation of imputed oil based on district director's authority.* If the district director determines, based on all the facts and circumstances, that production on any constituent property was not maximum total potential production for the full 12-month period immediately preceding the establishment of a unit base production control level or the occurrence of the unitization (whichever is applicable in determining imputed oil), the district director may adjust the amounts of imputed oil from the unitized property to more closely reflect the maximum total potential production for the constitutent properties during that 12-month period. In order for production from a constituent property to qualify as maximum total potential production, each oil-producting well (within the meaning of paragraph (b)(2) of this section) on the property must have been maintained for the full 12-month period at its maximum feasible rate of production in accordance with recognized conservation practices, and not have been significantly curtailed by reason of mechanical failure or other disruption in production, or insertion of devices that restrict the flow of production from any well.

(3) *Unitization including rights to produce from which no crude oil was produced before the unitization.* (i) The amount of each type of imputed oil for a particular month shall be determined under this section by first determining the amount of imputed newly discovered crude oil under paragraph (d)(1)(ii) of this section (subject to the limitation contained in paragraph (e)(1)(i) of this section). After the amount of imputed newly discovered crude oil is so determined, imputed oil is determined for the remaining crude oil production of the unitized property for the particular month by applying the rules of this section other than the rule contained in paragraph (d)(1)(ii) of this section. For example, if stripper well properties are unitized with a newly discovered separate right to produce and half of the production from the unitized property is determined to be imputed newly discovered crude oil under paragraph (d)(1)(ii) of this section (after application of the rules contained in paragraph (e)(1)(i) of this section), half of the crude oil removed from the unitized property shall be treated as newly discovered crude oil even though all of the production from the unitized property would be treated as crude oil from a stripper well property under paragraph (b) of this section.

(ii) If stripper well properties are unitized with newly discovered separate rights to produce, a producer may treat as imputed stripper well crude oil a certain amount of the producer's share of the imputed newly discovered crude oil determined under paragraph (d)(1)(ii) of this section (subject to the limitation contained in paragraph (e)(1)(i) of this section) that is allocated to the newly discovered separate rights to produce in which the producer (or a person for whom the producer is a successor in interest) held an economic interest in the crude oil in place in the ground immediately before the unitization. That amount is equal A in the following formula:

$$A = B \times \frac{C \times \frac{D}{E}}{F}$$

In which:

A = An amount during a particular month that a producer may treat as crude oil from a stripper well property.

B = The amount of the producer's share of imputed newly discovered crude oil determined under paragraph (d)(1)(ii) of this section (subject to the rules contained in paragraph (e)(1)(i) and (e)(6) of this section) that is allocated to the newly discovered separate rights to produce in which the producer (or a person for whom the producer is a successor in interest) held an economic interest in the crude oil in place in the ground immediately before the unitization. However, this amount shall not exceed the product of the amount of imputed stripper well crude oil determined under this section without regard to paragraph (e)(1)(i) of this section multiplied by the percentage equal to the producer's share of the production allocated by the unitization agreement to the newly discovered separate rights to produce in which the producer (or a person for whom the producer is a successor in interest) held an economic interest in the crude oil in place in the ground immediately before the unitization. See example (5) in paragraph (e)(7) of this section.

C = The amount of total production from the unitized property during that month which would be treated as imputed stripper well crude oil under this section without regard to paragraphs (d)(1)(ii) and (e)(1)(i) of this section.

D = The surface acreage (as limited by paragraph (d)(1) of this section) within the unitized property of the newly discovered separate rights to produce.

E = The total surface acreage (as limited by paragraph (d)(1) of this section) of the unitized property.

F = The amount of production during that month from the unitized property that is allocated to such newly discovered separate rights to produce.

(4) *Properties that meet the requirements of both newly discovered crude oil properties and stripper well properties.* (i) Except as otherwise provided in paragraph (e)(4)(ii) of this section, if a unitized property includes any newly discovered crude oil properties that met the requirements of a stripper well property before inclusion within the unitization, a producer may threat as imputed stripper well crude oil a certain amount of the producer's share of certain imputed newly discovered crude oil that is allocated to such newly discovered crude oil properties in which the producer (or a person for whom the producer is a successor in interest) held an economic interest in the crude oil in the ground immediately before the unitization. For purposes of the preceding sentence, certain imputed newly discovered crude oil includes only imputed newly discovered crude oil that is attributable to production from newly discovered crude oil properties that also met the requirements of a

stripper well property before the unitization. Such amount shall be equal to A in the following formula:

$$A = G \times C \times \frac{H}{I} \div J$$

In which:

A = An amount during a particular month that a producer may treat as crude oil from a stripper well property.

G = The amount of the producer's share of imputed newly discovered crude oil attributable to the newly discovered crude oil properties that also met the requirements of a stripper well property before the unitization that is allocated to such newly discovered curde oil properties in which the producer (or a person for whom the producer is a successor in interest) held an economic interest in the crude oil in place in the ground immediately before the unitization.

C = The amount of total production from the unitized property during that month which would be treated as imputed stripper well crude oil (subject to the rules contained in this paragraph other than the rule in paragraph (e)(3)(ii) of this section) if the newly discovered crude oil properties that also met the requirements of a stripper well property before the unitization were treated as stripper well properties for purposes of determining imputed oil under this section.

H = The amount of crude oil produced and sold during the 12-month period immediately preceding the unitization from such newly discovered crude oil properties.

I = The amount of crude oil produced and sold during that 12-month period from all properties that constitute the unitized property.

J = The amount of production during that month from the unitized property that is allocated to such newly discovered crude oil properties.

For purposes of this subparagraph, the 12-month period immediately preceding the unitization may be reduced to the number of days in the months in that period in which all such newly discovered crude oil properties each met the requirements of a stripper well property.

(ii) If a unitized property is composed solely of stripper well properties and newly discovered crude oil properties that also met the requirements of a stripper well property before the unitization, a producer may treat all of its share of production from the unitized property as imputed stripper well crude oil.

(5) *Inclusion of less than entire property in unitization.* If less than an entire property is included in a unitization, only crude oil production from wells located on the portion of the property included in the unitization shall be counted as production from that property during the 12-month period immediately preceding the unitization for the purposes of determining the amount of imputed oil.

(6) *Allocation of crude oil among constituent properties*—(i) *In general.* Except as otherwise provided in paragraph (e)(6)(ii) of this section, in the case of a unitized property that produces crude oil of different categories, a constituent property's share of crude oil in each category shall be determined by the unitization agreement. For purposes of this paragraph, any amendment to a unitization agreement shall be effective for the first taxable period beginning after the amendment is made or, if later, the effective date stated in the amendment. If the unitization agreement does not explicitly allocate crude oil in a particular category among the constituent properties, crude oil in that category produced during the particular month shall be allocated among the constituent properties on the basis of each constituent property's proportionate share of crude oil produced in that category during the 12-month period immediately preceding the establishment of the unit base production control level or, in the absence thereof, occurrence of the unitization, but only to the extent of the amount of the production of the unitized property during that month that is allocated to such constituent property by the unitization agreement. If one or more of the constituent properties had no crude oil production during that 12-month period, the amount of imputed newly discovered crude oil determined under paragraph (d)(1)(ii) of this section (subject to the limitation contained in paragraph (e)(1) of this section) shall be allocated among the constituent properties on the basis of each constituent property's share of total production from the unitized property as established by the unitization agreement. However, no such imputed newly discovered crude oil shall be allocated to a constituent property for which an amount equal to such constituent property's share of production from the unitized property as established by the unitization agreement for the particular month has been allocated after applying the rule contained in the second preceding sentence. Any amount of crude oil in a category that has not been allocated to constituent properties for the particular month after applying the rules contained in the three preceding sentences shall be allocated among the constituent properties on the basis of each constituent property's proportionate share of production for that month from the unitized property as established by the unitization agreement for which crude oil in any category has not been allocated after applying the rules contained in the three preceding sentences. For purposes of this paragraph—

(A) The categories of crude oil are tier 1 oil, crude oil from a stripper well property, tier 2 oil other than crude oil from a stripper well property, newly discovered oil, heavy oil, incremental tertiary oil, and exempt oil.

(B) The term "constituent property" refers to a portion of a unitized property that was a separate right to produce crude oil or a portion thereof immediately before the unitization.

(ii) *District director's authority.* If the district director determines, based on all the facts and circumstances, that the allocation of any category of crude oil produced from the unitized property among the constituent properties does not reflect the manner in which the constituent properties share the production of the unitized property, the district director may adjust such allocation to reflect the manner in which the constituent properties share the production of the unitized property unless it is established by clear and convincing evidence that such allocation does not have as one of its principal purposes the avoidance of windfall profit tax. For example, such an adjustment would be appropriate in a situation in which a unitization agreement allocates to a constituent property production in excess of its proportionate share of production before the unitization and burdens such constituent property with a disproportionately large share of expenses. An allocation of crude oil in a particular category among the constituent properties on a basis other than each constituent property's proportionate share of crude oil produced in that category during the 12-month period immediately preceding the establishment of a unit based production control level or occurrence of the unitization (whichever is applicable in determining imputed oil) is evidence that the allocation has as one of its principal purposes the avoidance of windfall profit tax.

(7) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). On January 1, 1983, property K is unitized with property L. A single crude oil reservoir underlies K and L. At the time of the unitization, K qualified as a stripper well property, but all production from L was tier 1 oil. During the 12-month period immediately preceding the unitization, K and L each produced 50,000 barrels of crude oil. The unitization agreement provides that K will be allocated 40 percent of production and L will be allocated 60 percent of production from the unitized property. During February of 1983, the unitized property produced 10,000 barrels of crude oil. Although 5,000 barrels would be treated as imputed stripper well crude oil under paragraph (b) of this section, paragraph (e)(1)(i) of this section limits imputed stripper well crude oil to 4,000 barrels because that is the amount allocated to K, the constituent property that qualified as a stripper well property before the unitization. The remaining production, 6,000 barrels, is tier 1 oil.

Example (2). Assume the same facts as example (1) except that L qualified as a newly discovered crude oil property before the unitization. Imputed stripper well crude oil is limited to 4,000 barrels as in example (1). Imputed newly discovered crude oil is not limited by paragraph (e)(1)(i) of this section, and, therefore, equals 5,000 barrels. Because the unitized property only includes a property that qualified as a stripper well property and a property that qualified as a newly discovered crude oil property before the unitization, the excess of imputed stripper well crude oil determined without regard to paragraph (e)(1)(i) of this section (5,000 barrels) over such imputed oil determined with regard to paragraph (e)(1)(i) (4,000 barrels) is allocated between imputed stripper well crude oil and imputed newly discovered crude oil on the basis of the proportionate share of production of such imputed oils determined under this section without regard to paragraph (e)(1)(i). Thus, of the 1,000 barrel excess, 500 barrels are treated as imputed stripper well crude oil and 500 barrels are treated as imputed newly discovered crude oil.

Example (3). Assume the same facts as in example (1) except that L is a newly discovered separate right to produce and that the surface acreage of L underlain by proved undeveloped oil and gas reserves is 80 acres and the entire surface acreage of the unitized property underlain by proved developed or undeveloped oil and gas reserves is 160 acres. Although all of the production from the unitized property during February would be treated as imputed stripper well crude oil under the rules of paragraph (b) of this section, paragraph (e)(1)(i) provides that imputed stripper well crude oil, imputed heavy oil, and imputed newly discovered crude oil shall be determined by first including the amount determined under paragraph (d)(1)(ii) of this section (subject to the limitatioin in paragraph (e)(1)(i) of this section). The amount of imputed newly discovered crude oil determined under paragraph (d)(1)(ii) of this section is not limited by paragraph (e)(1)(i) of this section. Thus, as in example (2), the amount of imputed newly discovered crude oil is 5,000 barrels for February. Also as in example (2), paragraph (e)(1)(i) of this section limits imputed stripper well crude oil to 4,000 barrels. The 1,000 barrel excess is allocated between imputed stripper well crude oil and imputed newly discovered crude oil because the unitized property only includes a property that qualified as a stripper well property before the unitization and a newly discovered separate right to produce. The excess is equally allocated between K and L because imputed oil determined without regard to paragraph (e)(1)(i) of this section would be 50 percent imputed stripper well crude oil and 50 percent newly discovered crude oil.

Example (4). Assume the same facts as in example (3). In addition, assume that the unitization agreement does not explicitly allocate imputed stripper well crude oil and imputed newly discovered crude oil between K and L. As in example (3), 4,500 of the barrels produced during February are treated as imputed stripper well crude oil, and 5,500 barrels are treated as imputed newly discovered crude oil. Because the unitization agreement does not explicitly allocate these types of imputed oil, the imputed stripper well crude oil is allocated on the basis of K's and L's proportionate share of production from a stripper well property during the 12-month period immediately preceding the unitization. Because K was the only stripper well property before the unitization, imputed stripper well crude oil is allocated to K, but only to the extent of production allocated to K. Accordingly, 4,000 barrels of imputed stripper well crude oil are allocated to K. Because L was a newly discovered separate right to produce before the unitization, imputed newly discovered crude oil determined under paragraph (d)(1)(ii) of this section (5,000 barrels) is allocated on the basis of each constituent property's proportionate share of production from the unitized property as established by the unitization agreement. Accordingly, L is allocated 3,000 barrels of such imputed newly discovered oil. However, because K has already had allocated to it an amount of imputed stripper well crude oil equal to its share of production from the unitized property, no imputed newly discovered crude oil is allocated to it. The remaining 500 barrels of imputed stripper well crude oil and 2,500 barrels of imputed newly discovered crude oil are allocated to L because it is the only constituent property that has production allocated to it by the unitization agreement in excess of the production in the categories of crude oil allocated to the constituent properties after applying the rules contained in the third, fourth, and fifth sentences of paragraph (e)(6)(i) of this section.

Example (5). Assume the same facts as in example (4). In addition, assume that M holds a working interest in L that entitles M to 50 percent of the production allocated to L. Under paragraph (e)(3)(ii) of this section, the number of barrels of imputed newly discovered crude oil M is permitted to treat as imputed stripper well crude oil is determined by the following formula:

$$A = B \times C \times \frac{D}{E} \Big/ F$$

Although M's share of imputed newly discovered crude oil (factor B in the formula) would, in the absence of the second sentence describing factor B in paragraph (e)(3)(ii), be 2,750 barrels (50% of the 5,500 barrels of imputed newly discovered crude oil allocated to L as explained in example (4)), paragraph (e)(3)(ii) limits this amount (for purposes of permitting M to treat a portion of the imputed newly discovered crude oil as imputed stripper well crude oil) to the product of the amount of imputed stripper well crude oil determined under this section without regard to paragraph (e)(3)(i) of this section (5,000 bbls. = 10,000 bbls. × 80 acres/160 acres) multiplied by M's percentage of the share of the production allocated to L (50%). Thus, paragraph (e)(3)(ii) limits the amount to 2,500 barrels (5,000 bbls. × 50%). Accordingly, the formula is applied as follows:

$$A = 2{,}500 \text{ bbls.} \times \frac{10{,}000 \text{ bbls} \times \frac{80 \text{ acres}}{160 \text{acres}}}{6{,}000 \text{ bbls.}}$$

A = 2,083 ⅓ bbls.

Example (6). Assume the same facts as in example (2) except that L also met the requirements of a stripper well property before the unitization. In addition, assume the M holds a working interest in L that entitles M to 50 percent of the production allocated to L. Under paragraph (e)(4)(ii) of this section, M is permitted to treat all of her share of the production from the unitized property as imputed stripper well crude oil.

Example (7). (i) On Janaury 1, 1983, properties N and O are unitized with P, a newly discovered separate right to produce. A single crude oil reservoir underlies N, O, and P. At the time of the unitization, N qualified as a stripper well property, but all unitization, N qualified as a stripper well property, but all production from 0 was tier 1 oil. During the 12-month period immediately preceding the unitization, N and O each produced 50,000 barrels of crude oil. The surface acreage of P underlain by proved undeveloped oil and gas reserves is 60 acres, and the entire surface acreage of the unitized property underlain by proved developed or undeveloped oil and gas reserves is 180 acres. Q holds a working interest in P that entitles Q to 50 percent of the production allocated to P. The unitization agreement provides that N and O will each be allocated 30 percent of the production from the unitized property and P will be allocated 40 percent of the production. The unitization agreement also provides that P will be allocated all the imputed stripper well crude oil of the unitized property, and that imputed newly discovered crude oil will be allocated as follows: 35 percent each to N and O and 30 percent to P. (Assume for purposes of this example that it is established by clear and convincing evidence that the allocation of imputed newly discovered crude oil among N, O, and P, and the allocation of all the imputed stripper well

crude oil to P do not have as one of their principal purposes the avoidance of windfall profit tax.) During February of 1983, the unitized property produces 12,000 barrels of crude oil. Paragraphs (e)(3)(i) of this section provides that imputed oil is determined by first determining the amount of imputed newly discovered crude oil under paragraph (d)(1)(ii) of this section (subject to the limitation contained in paragraph (e)(1)(i) of this section). Thus, 4,000 barrels are treated as imputed newly discovered crude oil.

$$12{,}000 \text{ bbls.} \times \frac{60 \text{ acres}}{180 \text{ acres.}}$$

Paragraph (e)(1)(i) of this section does not limit imputed newly discovered crude oil because production from the unitized property allocated to P exceeds 4,000 barrels (40% × 12,000 = 4,800). Imputed oil for the remaining 8,000 barrels of production from the unitized property is determined under the rules of this section without regard to paragraph (d)(1)(ii) of this section. Under pargraph (b) of this section 4,000 of the remaining 8,000 barrels produced in February from the unitized property would be imputed stripper well crude oil.

$$8{,}000 \text{ bbls.} \times \frac{50{,}000 \text{ bbls.}}{100{,}000 \text{ bbls.}}$$

However, O is allocated only 30 percent of the production from the unitized property. Thus, paragraph (e)(1)(i) of this section limits imputed stripper well crude oil to 3,600 barrels. 30% × 12,000 bbls. The remaining 4,400 barrels of production for February are tier 1 oil (12,000 bbls. − (4,000 bbls. + 3,600 bbls.))

(ii) Under the unitization agreement P is allocated 40 percent of production, which is 4,800 barrels for February. Of this amount, 3,600 barrels are imputed stripper well crude oil because the unitization agreement allocates all imputed stripper well crude oil to P, and 1,200 barrels are imputed newly discovered crude oil because the unitization agreement allocaets 30 percent of the imputed newly discovered crude oil to P (30% × 4,000 bbls). Because the unitized property includes a newly discovered separate right to produce in which Q held an economic interest in the crude oil in place in the ground immediately before the unitization, Q may treat as imputed stripper well crude under paragraph (e)(3)(ii) of this section a certain amount of his share of the imputed newly discovered crude oil allocated to P. That amount is 250 barrels determined as follows:

$$250 \text{ bbls.} = 600 \text{ bbls.} \times \frac{6{,}000 \text{ bbls.} \times \frac{60 \text{ acres}}{180 \text{ acres}}}{4{,}800 \text{ bbls.}}$$

The 600 barrels are Q's share of the 1,200 barrels of imputed newly discovered crude oil determined under paragraph (d)(1)(ii) of this section allocated to P. The 6,000 barrels are the barrels of imputed stripper well crude oil determined without regard to paragraphs (d)(1)(ii) and (e)(1)(i) of this section. The 4,800 barrels are the total barrels allocated to P.

Example (8). On January 1, 1983, a unitized property is formed which is composed of properties R and S and the north halves of T and U. U qualified as a newly discovered crude oil property before the unitization. Fifty percent of the crude oil produced from T and U before the unitization came from wells located on the north halves of T and U and 50 percent from wells located on the south halves. Only crude oil produced from the north halves of T and U during the 12-month period immediately preceding the unitization is counted for purposes of determining the amount of imputed newly discovered crude oil.

(f) *Imputed oil for unitized property with incremental tertiary recovery project.* Solely for the purposes of determining incremental tertiary oil under section 4993 and the effects of that determination on imputed oil, if a qualified tertiary recovery project (as defined in paragraph (c) of § 51.4993–1) is located on a unitized property and the unitized property is treated as more than one property under section 4993(d)(3) and paragraph (e)(4) of § 51.4993–1 (relating to a tertiary project which only affects a portion of a property), each property (as determined under paragraph (e) (4) of § 51.4993–1) is treated as a separate property. The principles of this paragraph may be illustrated by the following example:

Example. (i) Properties A, B, and C were unitized in 1982. During the 12-month period immediately preceding the unitization, A produced 40,000 barrels of tier 1 oil, B produced 40,000 barrels of tier 2 oil, and C produced 160,000 barrels of newly discovered oil. During the 6-month period ending March 31, 1979, properties A and B each produced an average of 4,000 barrels per month, and C had no production during that period. On January 1, 1984, a qualified tertiary recovery project is begun on A. The project can reasonably be expected to significantly increase the ultimate recovery of crude oil from A and B, but not from C. Because the project cannot reasonably be expected to significantly affect the production from C, A and B are treated as separate unitized property for incremental tertiary oil purposes. During January of 1984 the unitized property without regard to section 4993(d)(3) (the A, B, and C unitized property) produces 24,000 barrels of crude oil, 16,000 barrels of which are produced from C. The base level for incremental tertiary oil is determined by reference only to A and B. The aggregate monthly levels of A and B during the 6-month period (8,000 bbls.) are reduced by one percent per month for 1979, 1980, 1981, 1982 and 1983 for a total reduction of 4,800 bbls. (8,000. × 60%). Thus, the base level is 3,200 bbls. (8,000 bbls. − 4,800 bbls.). Incremental tertiary oil for January of 1984 equals the excess of the January production of the A and B deemed unitized property over the base level or 4,800 barrels. (8,000 bbls. − 3,200 bbls. = 4,800 bbls.) The incremental tertiary oil is allocated between the tier 1 and tier 2 oil produced from the A and B deemed unitized property during January. Production for the A and B deemed unitized property would be 50 percent tier 1 oil and 50 percent tier 2 oil (assuming the rules under paragraph (e) of this section do not apply). Thus, for the A and B deemed unitized property, 1,600 barrels are treated as tier 1 oil (4,000 bbls.— (4,800 bbls. × 4,000 bbls./8,000 bbls.)), 1,600 barrels are treated as tier 2 oil, and 4,800 barrels are treated as tier 3 incremental tertiary oil.

(ii) Assume that without regard to the incremental tertiary oil provisons production from the A, B, and C unitized property for January would be treated under this section as 4,000 barrels of tier 1 oil, 4,000 barrels of tier 2 oil, and 16,000 barrels of tier 3 newly discovered oil. Because of the incremental tertiary oil provisions, production from the A, B, and C unitized property for January is treated as 1,600 barrels of tier 1 oil, 1,600 barrels of tier 2 oil, 4,800 barrels of tier 3 incremental tertiary oil, and 16,000 barrels of tier 3 newly discovered oil.

(g) *Definitions.* For purposes of this section—

(1) *Unit base production control level.* The term "unit base production control level" has the same meaning that term had under § 212.75 of the energy regulations (10 CFR 212.75) before its removal effective March 30, 1981.

(2) *Heavy crude oil property.* The term "heavy crude oil property" means a property if crude oil produced and sold from that property during either—

(i) The last month before July 1979 in which crude oil was produced and sold from that property, or

(ii) The taxable period, had a weighted average gravity of 16.0 degrees API or less (corrected to 60 degrees Fahrenheit).

(3) *Proved developed oil and gas reserves.* For purposes of this section, "proved developed oil and gas reserves" are reserves that can be expected to be recovered through existing wells with existing equipment and operating methods. Additional oil and gas expected to be obtained through the application of fluid injection or other improved recovery techniques for supplementing the natural forces and mechanisms of primary recovery should be included as "proved developed oil and gas reserves" only after testing by a pilot project or after the operation of an installed program has confirmed through production response that increased recovery will be achieved.

(4) *Proved undeveloped oil and gas reserves.* For purposes of this section, "proved undeveloped oil and gas reserves" are reserves that are expected to be recovered from new wells on undrilled acreage, or from existing wells where a relatively major expenditure is required for recompletion. Reserves on undrilled acreage shall be limited to those drilling units offsetting productive units that are reasonably certain of production when drilled. Proved reserves for other undrilled units can be claimed only where it can be demonstrated with certainty that there is continuity of production from the existing productive formation. Under no circumstances should estimates for proved undeveloped oil and gas reserves be attributable to any acreage for which an application of fluid injection or other improved recovery technique is contemplated, unless such techniques have been proved effective by actual tests in the area and in the same reservoir.

These proposed amendments are to be issued under the authority of Code section 4997(b) (94 Stat. 250, 26 U.S.C. 4997(b)), which grants the Secretary of the Treasury or his delegate authority to prescribe regulations necessary or appropriate to carry out the purpose of the windfall profit tax (including changes in the application of the energy regulations), and the more general regulatory authority contained in Code section 7805 (68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86-21957 Filed 9-29-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 755

Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education issues a Notice of Proposed Rulemaking for the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages in order to amend current program regulations by implementing the technical amendments contained in the National Science, Engineering, and Mathematics Authorization Act of 1986, Pub. L. 99-159, and by establishing procedures for the funding of unsolicited proposals. The intended effect of this proposed rule is to enhance the capacity of the program to accomplish the objectives of the Act by providing the Secretary with a wider range of possible responses to promising ideas and proposals for the improvement of teaching and instruction in mathematics, science, computer learning, and critical foreign languages.

DATE: Comments must be received on or before October 30, 1986.

ADDRESS: All comments concerning the proposed regulations should be addressed to Patricia Alexander, Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Avenue, SW., Room 1011, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Patricia Alexander, (202) 732-3599.

SUPPLEMENTARY INFORMATION: On November 22, 1985, the President signed into law the National Science, Engineering, and Mathematics Authorization Act of 1986, making certain technical amendments to Title II of the Education for Economic Security Act (EESA), Pub. L. 98-377. Specifically, section 212(a) of the EESA, which authorizes the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages, was amended to allow the Secretary to carry out projects in these four areas directly or through cooperative agreements.

Current regulations apply solely to the awarding of grants under this program. The proposed rule will amend the regulations so that they also apply to the awarding of cooperative agreements. The provision indicating that these regulations do not apply to contracts is amended to indicate that these regulations also do not apply to projects carried out directly by the Secretary.

These proposed regulations establish procedures for funding any unsolicited project in any area of education within the purpose of section 212 of the EESA. These procedures would support the statutorily broad discretion of the Secretary to exercise leadership in education by focusing national attention on national needs, and would enable the Secretary to support a wider range of innovative and promising ideas to improve the quality of teaching and instruction in mathematics, science, computer learning, and critical foreign languages.

This notice of proposed rulemaking does not apply to the grant competition announced in the **Federal Register** on September 17, 1986 (50 FR 33003). The current regulations at 34 CFR Part 755 will govern that competition.

Summary of Major Revisions

The proposed rule conforms current program regulations to the technical amendments contained in section 229 of the National Science, Engineering, and Mathematics Authorization Act of 1986, Pub. L. 99-159. Specific changes include:

(1) A new § 755.5 is proposed to distinguish between the two types of awards the Secretary may make under these regulations, i.e., grants and cooperative agreements. Proposed § 755.5 also establishes the same review and evaluation procedures for applications for cooperative agreements as those procedures used to evaluate applications for grants.

(2) A new § 755.31 is proposed to establish the process by which the Secretary may accept and consider for funding unsolicited applications for projects that do not meet an established priority, but do meet the purposes of the Act.

(3) Under proposed §§755.32 and 755.33, the point values for selection criteria used in evaluating applications for nationally significant projects and critical foreign language projects, respectively, have been revised, placing greater emphasis upon those criteria which are most important in attaining the objectives of the program, such as §755.32(f), Improvement of the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages; §755.32(g), National significance; and §755.33(f), Improvement or expansion of instruction in critical foreign languages. Technical changes have been made in the selection criteria for nationally

significant projects and critical foreign languages projects.

(4) Proposed §755.34(b) adds an additional special consideration which the Secretary may use in selecting applications for funding. The Secretary may select applications, other than the most highly rated applications, if doing so would improve the diversity of activities or projects under a particular competition or under this program.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

This is a relatively small program that awards a limited number of grants each year. These proposed regulations would not impose excessively burdensome or unnecessary requirements. Rather, the proposed regulations would impose only minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 755.32 and 755.33 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. 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: Joseph F. Lackey, Jr.

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 1011, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 755

Education, Grants program—Education, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Number 84.168, Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages.)

Dated: August 28, 1986.

William J. Bennett,

Secretary of Education.

The Secretary proposes to revise Part 755 of Title 34 of the Code of Federal Regulations to read as follows:

PART 755—SECRETARY'S DISCRETIONARY PROGRAM FOR MATHEMATICS, SCIENCE, COMPUTER LEARNING, AND CRITICAL FOREIGN LANGUAGES

Subpart A—General

Sec.

755.1 What is the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages?
755.2 What parties are eligible for a grant under this program?
755.3 What What regulations apply to this program?
755.4 What definitions apply to this program?
755.5 What types of awards does the Secretary make under this program?

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

755.10 What types of grants does the Secretary award under this program?
755.11 What types of projects does the Secretary assist under a nationally significant project grant?
755.12 What types of projects does the Secretary assist under a critical foreign language grant?
755.13 How does the Secretary establish priorities for this program?

Subpart C—How Does One Apply for a Grant?

755.20 What assurance must an applicant make?

Subpart D—How Does the Secretary Make a Grant?

755.30 How does the Secretary evaluate applications for nationally significant project grants and critical foreign language grants?
755.31 How does the Secretary evaluate applications for unsolicited project grants?
755.32 What are the selection criteria for nationally significant project grants?
755.33 What are the selection criteria for critical foreign language grants?
755.34 What special considerations may the Secretary use in selecting an application for funding?
755.35 Are there restrictions on the use of funds for equipment under this program?

Authority: 20 U.S.C. 3972, unless otherwise noted.

Subpart A—General

§ 755.1 What is the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages?

The Secretary's Discretionary Program for Mathematics, Science, Computer Leaning, and Critical Foreign Languages assists projects of national significance in—

(a) Mathematics and science instruction, computer learning, and instruction in critical foreign languages, designed to improve the skills of teachers and instruction in these areas and to increase the access of all students to this instruction; and

(b) Critical foreign languages, designed to improve and expand instruction in those languages.

(Authority: 20 U.S.C. 3972)

§ 755.2 What parties are eligible for a grant under this program?

(a) The Secretary may award nationally significant project grants under § 755.11 to State educational agencies, local educational agencies, institutions of higher education, and nonprofit organizations, including museums, libraries, educational television stations, and professional science, mathematics, and engineering societies and associations.

(b) The Secretary may award critical foreign language grants under § 755.12 to institutions of higher education only.

(Authority: 20 U.S.C. 3972)

§ 755.3 What regulations apply to this program?

(a) The following regulations apply to grants made under this program:

(1) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in this Part 755.

(b) The regulations in this Part 755 do not apply to contracts awarded under this program or to projects carried out directly by the Secretary.

(Authority: 20 U.S.C. 3972)

§ 755.4 What definitions apply to this program?

(a) *Definitions in the Education for Economic Security Act.* The following terms used in this part are defined in section 3 of the Education for Economic Security Act:

Elementary school
Institution of higher education
Local educational agency
Secondary school
Secretary
State
State agency for higher education
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Fiscal Year
Grant
Nonprofit
Private
Project
Public

(c) *Additional definitions.* The following terms are used in this part:

"Critical foreign languages" means languages designated by the Secretary in a notice published in the **Federal Register** as critical to national security, economic, or scientific needs.

"EESA" means the Education for Economic Security Act, Public Law 98-377.

"Gifted and talented student", for the purpose of Title II of the EESA, means a student, identified by various measures, who demonstrates actual or potential high performance capability, particularly in the fields of mathematics, science, foreign languages, or computer learning.

"Historically underserved and underrepresented populations" includes females, minorities, handicapped persons, persons of limited-English proficiency, and migrants.

"Magnet school programs for gifted and talented students," as used in § 755.13(a)(1), means programs for gifted and talented students in magnet schools or magnet programs in regular schools that attract gifted and talented students from other schools. For the purpose of Title II, a magnet school is a school or education center that offers a special curriculum, including but not limited to schools or education centers capable of attracting substantial numbers of students of different racial backgrounds.

(Authority: 20 U.S.C. 3972)

§ 755.5 What types of awards does the Secretary make under this program?

(a) The Secretary may award grants and cooperative agreements under this program, depending upon the intended nature of the relationship between the recipient and the Department.

(b) The Secretary evaluates applications for cooperative agreements using the same procedures and criteria as those used to evaluate applications for grants.

(Authority: 20 U.S.C. 3972)

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

§ 755.10 What type of grants does the Secretary award under this program?

The Secretary awards two types of grants under this program:

(a) Nationally significant project grants, as described in § 755.12.

(b) Critical foreign language grants, as described in § 755.12.

(Authority: 20 U.S.C. 3972)

§ 755.11 What types of projects does the Secretary assist under a nationally significant project grant?

(a) The Secretary funds applications proposing projects of national significance in mathematics and science instruction, computer learning, and instruction in critical foreign languages.

(b) Projects funded under this section may include, but are not limited to, those designed to—

(1) Improve teacher recruitment and retention in the fields of mathematics, science, computer learning, and critical foreign languages; and

(2) Improve teacher qualifications and skills in the fields of mathematics, science, computer learning, and critical foreign languages; and

(3) Improve curricula in mathematics, science, computer learning, and critical foreign languages, including the use of new technologies.

(c) The Secretary does not provide operating revenue to meet local needs to any applicant under this program.

(Authority: 20 U.S.C. 3972)

§ 755.12 What types of projects does the Secretary assist under a critical foreign language grant?

(a) The Secretary funds applications proposing projects that are designed to improve or expand instruction in critical foreign languages.

(b) Projects to improve instruction in critical foreign languages may include, but are not limited to, those designed to—

(1) Provide short- or long-term advanced training to foreign language instructors;

(2) Provide training in new teaching methods and proficiency evaluation techniques; and

(3) Improve teaching methods through curriculum development, including the use of new technologies.

(c) Projects to expand instruction in critical foreign languages may include, but are not limited to, those designed to—

(1) Add to the curriculum languages not currently offered;

(2) Add to the curriculum advanced language courses;

(3) Devise instructional approaches suited to diverse student populations and learning needs; and

(4) Use technology to increase access to instruction in critical foreign languages.

(d) The Secretary does not provide operating revenue to meet local needs to any applicant under this program.

(Authority: 20 U.S.C. 3972)

§ 755.13 How does the Secretary establish priorities for this program?

(a) With respect to nationally significant project grants, the Secretary gives priority to—

(1) Local educational agencies, or consortia thereof, proposing to establish or improve magnet school programs for gifted and talented students; and

(2) Applicants proposing to provide special services to historically underserved and underrepresented populations in the fields of mathematics and science.

(b) In addition to the priorities established in paragraph (a) of this section, each year the Secretary may select as a priority one or more of the types of projects listed in § 755.11 or § 755.12.

(c) The Secretary may limit any priority to particular subject areas (mathematics, science, computer learning, or critical foreign languages), particular critical foreign languages, particular educational levels, or any

combination of these subject areas, languages, or educational levels.

(d) The Secretary selects priorities by taking into consideration the unmet national needs to improve the quality of teaching and instruction in mathematics, science, computer learning, and critical foreign languages and the unmet national needs to improve or expand instruction in critical foreign languages.

(Authority: 20 U.S.C. 3972)

Subpart C—How Does One Apply for a Grant?

§ 755.20 What assurances must an applicant make?

(a) An applicant that is a State (including a State educational agency or a State agency for higher education) or a local educational agency shall comply with the provisions of section 211 of the EESA, governing the equitable participation of private schoolchildren and teachers in the purposes and benefits of the EESA.

(b) An applicant described in paragraph (a) of this section shall include an assurance in its application that, in accordance with section 211 of the EESA, it will provide for the equitable participation of children and teachers in private elementary or secondary schools if the applicant proposes to use grant funds to provide benefits to children and teachers in public elementary or secondary schools, including the provision of services, materials, equipment, and inservice or teacher training and retraining.

Note.—EDGAR establishes requirements for participation of private schoolchildren. See 34 CFR 75.650.

(Authority: 20 U.S.C. 3972)

Subpart D—How Does the Secretary Make a Grant?

§ 755.30 How does the Secretary evaluate applications for nationally significant project grants and critical foreign language grants?

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the applicable selection criteria in § 755.32 or § 755.33.

(b) The Secretary awards up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the applicable criteria in § 755.32 or § 755.33.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion in § 755.32 or § 755.33 is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary distributes the reserved 15 points among the applicable criteria listed in § 755.32 or § 755.33.

(Authority: 20 U.S.C. 3972)

§ 755.31 How does the Secretary evaluate unsolicted applications?

(a) At any time during a fiscal year, the Secretary may accept and consider for funding an unsolicted application for a project that does not meet a priority established in accordance with § 755.13(b) if the project—

(1) Furthers the purposes and objectives of the program, as described in § 755.1; and

(2) Satisfies all other requirements for funding under this program.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the **Federal Register**.

(c) The Secretary may select unsolicited applications for funding in accordance with the procedures contained in § 755.30 (a)–(c).

(d) The Secretary reviews and evaluates an unsolicited application on the basis of the selection criteria in § 755.32.

(e) The Secretary assigns the reserved 15 points under § 755.30(b) to the selection criterion at § 755.32(g) (National significance) so that the maximum number of possible points for this criterion is 35.

(Authority: 20 U.S.C. 3972)

§ 755.32 What are the selection criteria for nationally significant project grants?

The Secretary uses the following criteria in evaluating each application for a nationally significant project grant under § 755.11:

(a) *Plan of operation.* (10 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 is effective and insures 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 plans to use its resources and personnel to achieve each objective;

(5) The extent to which the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly; and

(6) For an applicant who makes an assurance under § 755.20 as to the equitable participation of children and teachers in private elementary or secondary schools, how well the applicant will provide that equitable participation.

(b) *Quality of key personnel.* (5 Points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as past of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine personnel qualifications under paragraphs (b)(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 quality of the project.

(c) *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; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *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; and

(2) To the extent possible, are objective and produce data that are quantifiable.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

(e) *Adequacy of resources.* (5 Points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(f) *Improvement of the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages.* (25 Points) The Secretary reviews each application to determine the extent to which the project will contribute to the improvement of teaching and instruction in mathematics, science, computer learning, or critical foreign languages, including—

(1) The objectives of the project; and

(2) The manner in which the objectives of the project further the purposes of improving the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages.

(g) *National significance.* (20 Points)

(1) The Secretary reviews each application to determine the national significance of the project.

(2) The Secretary considers the extent to which the project makes a contribution of national significance, as measured by factors such as—

(i) A demonstrated national need for the project in terms of the recommendations to improve the quality of education in the Report of the National Commission on Excellence in Education, other national reports on the status of American education, or current research findings on ways to improve the effectiveness of schools.

(ii) The extent to which the project meets specific national needs as shown by—

(A) The national needs addressed by the project;

(B) The benefits to be gained by meeting the objectives of the project; and

(C) The potential benefit to others from successfully addressing the needs;

(iii) The extent to which the project involves creative or innovative techniques to improve the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages;

(iv) The extent to which the project builds upon and adds to current educational information and research; and

(v) The extent to which the project will provide a model or other information that could be used by others to solve educational problems.

(h) *Applicant's commitment and capacity.* (10 Points) The Secretary considers the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Authority: 20 U.S.C. 3972)

§ 755.33 What are the selection criteria for critical foreign language grants?

The Secretary uses the following criteria in evaluating each application for a critical foreign language grant under § 755.12:

(a) *Plan of operation.* (15 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and insures 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 plans to use its resources and personnel to achieve each objective;

(5) The extent to which the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority changes;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly; and

(6) For an applicant who makes an assurance under § 755.20 as to the equitable participation of children and teachers in private elementary or secondary schools, how well the applicant will provide that equitable participation.

(b) *Quality of key personnel.* (10 Points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(1)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine personnel qualifications under paragraphs (b)(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 quality of the project.

(c) *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; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *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; and

(2) To the extent possible, are objective and produce data that are quantifiable.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

(e) *Adequacy of resources.* (5 Points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(f) *Improvement or expansion of instruction in critical foreign languages.* (30 Points) The Secretary reviews each application to determine the extent to which the project contributes to the improvement or expansion of instruction in one or more critical foreign languages, including—

(1) The objectives of the project;

(2) The manner in which the objectives of the project further the purpose of improving or expanding instruction in critical foreign languages;

(3) The extent to which the project involves techniques that are innovative;

(4) The extent to which the project builds upon and adds to current educational information in and research on instruction in critical foreign languages; and

(5) The extent to which the project will provide a model or other information that could be used by others to solve educational problems.

(g) *Applicant's commitment and capacity.* (15 Points) The Secretary considers the extent of the applicant's commitment to the project, its capacity

to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Authority: 20 U.S.C. 3972)

§ 755.34 What special considerations may the Secretary use in selecting an application for funding?

(a) After evaluating applications according to the criteria contained in § 755.32 or § 755.33, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation for each competition or under this program.

(b) The Secretary may select other applications for funding if doing so would improve—

(1) The geographical distribution of projects funded under a particular competition or under this program; or

(2) The diversity of activities or projects funded under a particular competition or under this program.

(c) The Secretary may decline to fund a project that is eligible for funding by the Secretary under a different, specific Department of Education competition or program.

(d) The Secretary does not fund a project that receives Federal funds for the same project activities under Title II of the EESA.

(Authority: 20 U.S.C. 3972.)

§ 755.35 Are there restrictions on the use of funds for equipment under this program?

Of the funds made available through a grant under this program, the Secretary may restrict the amount of funds used under Part 755 to purchase equipment.

(Authority: 20 U.S.C. 3972.)

[FR Doc. 86-22081 Filed 9-29-86; 8:45 am]
BILLING CODE 4000-01-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 83-4A]

Registration of Claims to Copyright; Deposit Requirements for Computer Programs Containing Trade Secrets

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed rulemaking.

SUMMARY: This notice of proposed rulemaking is issued to inform the public that the Copyright Office of the Library of Congress is considering adoption of new regulations amending the deposit requirements for Copyright registration of computer programs containing trade secrets. The amendments address concerns about the revelation of trade secrets through registration and public inspection of deposit copies of computer programs.

DATES: Comments should be received on or before December 1, 1986.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department D.S., Washington, DC 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, (202) 287-8380.

SUPPLEMENTARY INFORMATION: Under section 408 of Title 17 of the United States Code, the Copyright Act, copyright registration of both published and unpublished works requires a deposit of a copy, phonorecord, or other material to identify the work for which registration is sought and to permit examination of the claim by the Copyright Office, in accordance with section 410 of the Act. Except as provided by subsection (c) of section 408, subsection (b) generally requires the deposit of one complete copy or phonorecord in the case of an unpublished work, or two complete copies or phonorecords of the best edition in the case of a published work. For works first published outside the United States, the Act requires deposit of one complete copy or phonorecord as so published. Subsection (c) of section 408 authorizes the Register to specify administrative classes of works for purposes of deposit and registration, to determine the nature of the copies to be deposited, and to permit or require the deposit of identifying materials in lieu of actual copies.

In reliance on this authorization, the Copyright Office established regulations governing deposit for registration of claims to copyright at 37 CFR Ch. II §§ 202.20 and 202.21. Section 202.20 provides a number of modifications to the deposit requirement in the case of certain works. Among the works having special provisions are machine-readable works (§ 202.20(c)(2)(vii)), and secure tests (§ 202.20(c)(2)(vi)). In addition, section 202.20(d) established a procedure for special relief in cases where the normally applicable deposit requirements pose an undue hardship.

Section 705(b) of the copyright law requires all deposits retained under the control of the Copyright Office to be available for public inspection. As a result of the public inspection requirement, some copyright claimants have asserted that the deposit of material containing trade secrets jeopardizes trade secret protection under state law. No court, however, has specifically ruled on this issue.

On May 23, 1983, the Copyright Office published a Notice of Inquiry in the **Federal Register** requesting public comments on the deposit of material containing trade secrets. (48 FR 22951) The notice summarized the statutory framework of the deposit requirement and discussed the special deposit provisions for secure tests and the nature of trade secret protection. The notice closed by posing twelve questions of particular interest to the Copyright Office.

The Copyright Office received a total of 41 responses from the notice of inquiry. The vast majority of the responses were from members of the computer industry and the overwhelming sentiment was in favor of establishing special deposit procedures to mitigate the alleged uncertainties associated with depositing in a public office, material containing trade secrets.

A number of the comments addressed public policy issues concerning the establishment of special deposit provisions. Several of the comments expressed the view that trade secret protection and copyright advance similar societal goals, and therefore it is completely consistent to modify the deposit requirement in a way that would preserve trade secret protection fully. The Association of American Publishers argued that the deposit requirement was not intended to delineate the scope of a copyright claim through public disclosure, citing the Register's authority to determine the nature of deposited material under section 408(c)(1) and *National Conference of Bar Examiners v. Multistate Legal Studies, Inc.*, 692 F.2d 478 (7th Cir. 1982), concerning deposit of secure tests. Only two comments argued in favor of a deposit that fully discloses and copyrightable content of registered material. One asserted that public disclosure through deposit was intended as a trade-off for receiving copyright protection, and the other argued owners of intellectual property should elect either copyright protection or trade secret protection.

On the basis of the comments received, the Copyright Office has concluded that a case has not been made for establishment of a broad deposit exemption covering all material which could conceivably contain trade secrets. Of the submitted comments, only one came from outside of the computer industry. That comment came from a manufacturer of spare parts who argued that public inspection should be

restricted on deposits of technical drawings and specifications.

On narrower grounds, however, the Copyright Office finds that particular problems of the computer industry do merit special attention. Many in the computer industry are concerned that the availability of registered computer programs for public inspection in the Copyright Office gravely jeopardizes trade secret protection. While no court has directly addressed the issue, it is clear that computer programs are valuable intellectual property whose owners are rightfully concerned about adequate protection for their works.

Another factor is the extensive use by the computer industry of the special relief provisions of the deposit regulations in order to avoid making a deposit that reveals trade secrets. The Examining Division of the Copyright Office has found the frequent requests for special relief administratively burdensome. In order to speed handling of such requests, the Examining Division often suggested depositing under special relief in accordance with one of three alternatives: (1) The first and last 25 pages of source code with some portions blocked out, provided that the blocked-out portions are proportionately less than the material still remaining; (2) At least the first and last ten pages of source code alone with no blocked-out portions; or (3) The first and last 25 pages of object code plus any ten or more consecutive pages of source code with no blocked-out portions. When Compendium II of Copyright Office Practices was published in 1985, these three alternatives were listed at § 324.05(a).

Frequently mentioned among the submitted comments was the proposal that the Copyright Office merely restrict public access to deposits of computer programs and other material containing trade secrets. The Copyright Office has concluded that such an approach would clearly violate section 705(b) mandating public inspection of deposits retained by the Copyright Office. As a result, this proposal has not been adopted.

Some comments contended that the deposit requirements inhibited the registration of computer programs. The authors of these comments, however, may have been unaware of the extensive use of special relief in the computer software area. Although registrations for computer programs are not separately tabulated, the Copyright Office estimates over 10,000 registrations are made for computer programs anually. The Copyright Office therefore concludes that the present deposit requirements, as set forth in the regulations and Compendium II, do not necessarily inhibit the registration of computer programs.

A controversial matter addressed by commentators was the subject of depositing object code. As explained in the Notice of Inquiry, the Copyright Office has taken the position that the source code format of a copyright program constitutes the best representation of the authorship in the program for examining purposes. Registration on the basis of an object code deposit is only considered under the "rule of doubt" because authorship can not ordinarily be determined. A number of commentators criticized this policy, arguing that computer programs are frequently exploited in object code format.

Despite the criticism of Copyright Office practice in this area, no clear consensus arose. Commentators generally agreed that object code could not be examined for copyrightable authorship. Some thought such a determination was not necessary under the copyright law, but could not adequately support that view in the face of the examination requirement of 17 U.S.C. 410. Opinions were mixed as to whether an object code deposit had any public record value in representing the authorship contained in the program.

Section 410(a) requires the Register to examine claims to copyright and ascertain that material deposited "constitutes copyrightable subject matter." In light of this clear statutory responsibility, and the lack of any consensus regarding alternative policies, the Copyright Office has decided to continue its present policy of requesting source code deposit as the best representation of the authorship in a computer program.

In its comment, a law firm suggested that the identifying material include an indication of the number of lines contained in the program. The Copyright Office believes it is useful to know the size of the program which is registered. In some cases the number of lines in the program will be apparent from the identifying portions which are deposited. In other cases the size of the program will be unclear. The Copyright Office wants to encourage applicants to provide information as to the size of the program being registered, and has proposed a modification in the regulation requiring this disclosure.

The Copyright Office also proposes modifying present regulation 202.20(c)(2)(vii) to include alternative deposits in the case of computer programs containing trade secrets. It is hoped that knowledge of these alternatives will lessen the demand for administratively burdensome special relief. The three alternatives suggested in Compendium II of the Copyright Office Practices have been tested by experience, and they adequately balance public record concerns with the desires of applicants to withhold certain information. The Copyright Office additionally proposes a fourth alternative specifically addressing small computer programs of 25 pages or less.

Finally, while the Copyright Office is not now proposing any amendment of the existing "secure test" regulation (37 CFR 202.20(c)(2)(vi)), the Office hereby gives notice that as part of the policy review of deposit requirements for computer programs containing trade secrets, it is considering changes in the procedures for processing secure tests and and in the nature of the "sufficient portions, description, or the like . . . to constitute a sufficient archival record of the deposit" which must be deposited for retention by the Office.

This document issued under 17 U.S.C. 407, 408, and 702.

List of Subjects in 37 CFR Part 202

Claims, Claims to Copyright, Copyright, Registration requirements.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend Part 202 of 37 CFR, Chapter II.

PART 202—[AMENDED]

1. The authority citation for Part 202 would continue to read as follows:

Authority: Copyright Act, Pub. L. 94–553, 90 Stat. 2541 (17 U.S.C. 702).

§ 202.20 [Amended]

2. Section 202.20(c)(2)(vii) introductory text and (A) would be revised to read as follows:

* * * * *

(vii) *Computer programs and databases embodied in machinereadable copies.* In cases where a computer program, database, compilation, statistical compendium or the like, if unpublished is fixed, or if published is published only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, semiconductor chip products, or the like) from which the work cannot ordinarily be perceived except with the aid of a machine or device, the deposit shall consist of:

(A) for published or unpublished computer programs, one copy of identifying portions of the program, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes, "identifying portions" shall mean one of the following:

(*1*) The first and last 25 pages or equivalent units of the program if reproduced on paper, or at least the first and last 25 pages or equivalent units of the program if reproduced in microform, together with the page or equivalent unit containing the copyright notice, if any, except that if the program is 50 pages or less, the required deposit will be the entire work. In addition, the deposit should include a special statement as to the total number of lines in the program unless the size of the program is apparent from the identifying portions. In the case of revised versions of computer programs, if the revisions occur throughout the entire program, the deposit of the first and last 25 pages will suffice; if the revisions are not contained in the first and last 25 pages, the deposit should consist of any 50 pages representative of the revised material; or

(*2*) Where the program contains trade secret material, the page or equivalent unit containing the copyright notice, if any, plus *one* of the following: the first and last 25 pages or equivalent units of source code with some portions blocked-out, provided that the blocked-out portions are proportionately less than the material remaining; or the first and last 10 pages or equivalent units of source code alone with no blocked-out portions; the first and last 25 pages of object code, together with any 10 or more consecutive pages of source code with no blood-out portions; or for programs consisting of or less than 25 pages or equivalent units, no more than 50% of the program is blocked-out or withheld, provided the remaining portion shows sufficient copyrightable authorship. In all cases, the deposit should include a special statement as to the total number of lines in the program if this information is not apparent from the submitted identifying portions.

* * * * *

Dated: September 15, 1986.

Ralph Oman,

Register of Copyrights.

Approved by:

Donald C. Curran,

The Librarian of Congress (Acting).

[FR Doc. 86-21923 Filed 9-29-86; 8:45 am]

BILLING CODE 1410-07-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[A-9-FRL-3085-6]

Air Quality Implementation Plans; Reasonable Extra Efforts Program for Four Post-1987 Nonattainment Areas in California

Correction

In FR Doc. 86-21628 beginning on page 34428 in the issue of Friday, September 26, 1986, make the following correction:

On page 34428, in the first column, in the DATES caption, the comment deadline was omitted. The DATES caption should have read:

DATES: Although comments on this program will be welcome at any time, comments received by November 25, 1986, will be fully considered in developing the program policies related to the REEP.

And on page 34433, in the third column, in the 15th line, "Senate" should read "State".

BILLING CODE 1505-01-M

40 CFR Part 52

[A-6-FRL-3087-4]

Approval of Implementation Plan; Oklahoma, Oklahoma County Carbon Monoxide Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice proposes approval of a revised State Implementation Plan (SIP) revision for attainment of the carbon monoxide (CO) standard in Oklahoma County. The control strategy portion of the revision was submitted by the Governor of Oklahoma on October 17, 1985. In addition, the proposed mobile source control program for Tulsa and Oklahoma Counties was submitted on July 18, 1985. These submittals were in response to the October 5, 1984, letter from EPA requesting a SIP revision because Oklahoma County was experiencing violations of the National Ambient Quality Standard (NAAOS) for CO. On December 5, 1984, at 48 FR 47488, EPA published a notice of inadequacy and call for SIP revision.

DATE: Comments must be received at the Region 6 office by October 30, 1986. Public comments on these submittals are requested and will be considered before taking final action.

ADDRESSES: Comments should be sent to: Environmental Protection Agency—Region 6, Air Programs Branch, 2101 Elm Street, Dallas, Texas 75270.

Copies of the State's submittal is contained in SIP file OK-85-4 and is available for review during normal business hours at the following locations:

Environmental Protection Agency, Region 6 Library, 1201 Elm Street, Dallas, Texas 74270.

Oklahoma State Department of Health, Air Quality Service, 1000 10th St. NE., Oklahoma City, Oklahoma 73152.

FOR FURTHER INFORMATION CONTACT: Gregg C. Guthrie, SIP New Source Section, Air Programs Branch, Air, Pesticides, Toxics Division, EPA Region 6, 1210 Elm St., Dallas, Texas 75270, (214) 767-9857.

SUPPLEMENTARY INFORMATION:

Background

Under the original 1978 section 107—Attainment Status Designations (43 FR 8962), Oklahoma County was designated as an attainment area for CO. EPA's review of monitoring data in the National Aerometric Data Bank (NADB) disclosed 10 exceedances of the 8-hour CO standard in 1984. The exceedances occurred at site 018 which monitors for microscale peak concentrations of CO.

On October 5, 1984, EPA notified the Governor of Oklahoma by letter, that a review of ambient air quality data indicated that Oklahoma Country was exceeding the NAAQS for carbon monoxide and required remedial action. EPA found the Oklahoma State Implementation Plan (SIP) substantially inadequate to achieve the CD primary NAAQS in Oklahoma County pursuant to section 110(a)(2)(H) of the Clean Air Act (CAA) 42 U.S.C. 7410(a)(2)(H). On December 5, 1984, at 49 FR 47488, EPA published a notice of inadequacy and call for SIP revision.

On October 17, 1985, the Governor of Oklahoma submitted a letter which said that the requested plan revision was being submitted under separate cover by the Oklahoma State Department of Health (OSDH) and that the only viable control technique to reduce emissions is a mobile source control program. The OSDH recommended to the Department of Public Safety (DPS) that the Oklahoma County area anti-tampering be identifical to the Tulsa County area anti-tampering program.

The OSDH submitted the proposed Oklahoma County SIP revision and it was received by EPA on November 5, 1985. The strategy portion of the SIP was presented for public hearing on July 16,

1985, by the OSDH. The DPS will conduct a public hearing on the mobile source program on May 15, 1986. The final anti-tampering program will shortly thereafter be submitted to EPA by the OSDH.

Plan review

EPA reviewed the submittal and developed an evaluation report.[1] This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 office.

The submittal for Oklahoma County was reviewed in accordance with the requirements of the January 27, 1984. Guidance Document for Correction of Part SIP's in Nonattainment Areas.

Strategy

EPA's call for a SIP for Oklahoma County was based on review of 1984 monitoring data in NADB. Oklahoma experienced 10 exceedances of the 8-hour CO Standard in 1984, and six exceedances in 1985. The 1984 CO exceedances occurred at site 372200018 which monitors for micro-scale peak concentration of CO.

The submittal states that mobile source emissions represent 97 percent of the total CO emission in Oklahoma County. Because of this, the State's control strategy to reduce CO emissions is an anti-tampering program for mobile sources. This is the same program which is now in operation in Tusla County.

The implementation of the anti-tampering program along with the continuation of the Federal Motor Vehicle Control Program (FMVCP) will reduce the CO emissions by 36.1 percent by December 31, 1988. The actual reduction needed to attain the CO standard in Oklahoma County is 32 percent.

Data and modeling analysis

OSDH developed a base year 1984 emissions inventory for CO of 286,800.7 tons. The base year CO emissions were composed of 2.7 percent from stationary sources and 97.3 percent from mobile sources. The inventory and projections were developed in accordance with EPA guidelines and are considered adequate.

The State used air quality data from 1984 at site 018 to determine the design value for modeling. In 1984, site 018 exceeded the CO standard 10 times with a high of 19.63 mg/m^3 and a second high of 14.75 mg/m^3. The design value must be the second high, therefore the State used 14.8 mg/m^3 as their design value.

[1] EPA review of Oklahoma Carbon Monoxide SIP Revision for Oklahoma County (OK-85-4)

The OSDH used the modified rollback technique to determine the reductions needed to achieve attainment of the CO standard. This technique allows the inclusion of future background concentration of CO in the calculation. The base year (1984) background concentration of CO and the future background (1990) were calculated using the methods outlined in the document titled "Carbon Monoxide Hot Spot Guidelines, Volume 1: Techniques" (EPA 450/3-78-033). The calculation used the design value of 14.8 mg/m^3 from site 018 and this resulted in a required percent reduction of 32 percent.

New source review

Oklahoma's requirements, listed in Regulation 1.4 (Air Resources Management Permits Required) in general as well as the specific requirements of section 1.4.5 (c), (d), and (e) (under 1.4.5 Major Sources-Nonattainment Areas), will ensure that the emissions should not exceed the growth allowances. Should the growth allowances be consumed, Regulation 1.4 would require trade offs with no emission increase resulting before new sources or major modifications could be approved to construct.

Transportation control measures

No reductions for Transportation Control Measurs (TCMs) were assumed in the Oklahoma County CO SIP. Credit for TCMs were used at the time of the 1979 Ozone SIP submittal for Oklahoma County.

Vehicle inspection and maintenance (I/M)

The January 27, 1984, Guidance Document for Correction of Part D SIP's for Nonattainment Areas states that, EPA presumes that in order to demonstrate that attainment will occur as expeditiously as practicable in nonattainment areas and/or to ensure long-term maintenance of the NAAOS and I/M program would need to be implemented. The requirement to implement an I/M program was based on a determination of the area's ability to attain and maintain the NAAOS as expeditiously as practicable and to insure that reasonable further progress is maintained.

EPA has developed a detailed policy governing the implementation of I/M and established the minimum requirements for an I/M program. The basic elements of this policy are summarized in the January 22, 1981, notice, and a July 17, 1978, memorandum from Assistance Administrator David Hawkins to the Regional Administrators. (This memorandum is specifically referenced in the January 22, 1981, notice. See 47 FR 7190.)

Oklahoma County, although not officially designated under section 107 as nonattainment, is an area where newly discovered violations of the NAAQS have occurred. As such, the area is required to achieve attainment as expeditiously as practicable.

Both Tulsa and Oklahoma City, Oklahoma received SIP calls in October 1984 (Tulsa for ozone; Oklahoma City for CO). Regulation development began to establish a RACT parameter I/M program in Tulsa County. The program developed as an anti-tampering program, and began in Tulsa in January 1986. The parameter I/M program meets RACT in Tulsa County because it is designed to achieve sufficient hydrocarbon reductions. A parameter I/M program like Tulsa's does not produce sufficient reductions to meet RACT for CO; however, because existing legislation authorizes anti-tampering inspections in Oklahoma the start-up date for an in-use vehicle inspection program could be accelerated by as much as six months to one year by adopting an anti-tampering program instead of a tailpipe program. A tailpipe I/M program would require passage of new authorizing legislation in the 1987 legislative session, and development of new regulations. Given the time frame for projected attainment (early to mid 1988), the anti-tampering program in operation for 14 to 18 months will produce more CO reductions if a tailpipe program were operated for two to six months. Therefore, the early implementation of an anti-tampering program in Oklahoma County represents an expeditious as practicable effort toward demonstration of attainment of the standard.

The State of Oklahoma has made a commitment to implement an anti-tampering program in Oklahoma County, Oklahoma beginning January 1, 1987. The I/M program will place emphasis on the reduction of excess emissions resulting because of tampering or misfueling of vehicles. The program will include an annual vehicle inspection for tampering and misfueling, a mechanic training program, and a public awareness program. The annual inspection will be a visual check of the components of the vehicle emission control systems, and a tailpipe test to detect lead in vehicles requiring unleaded gasoline.

- House Bill No. 13889 authorizes an anti-tampering program in Oklahoma County beginning January 1, 1987. The OSDH will submit the final anti-tampering regulations in the summer of 1986.

• EPA has reviewed the DPS final anti-tampering regulations for Tulsa County. The State has assured EPA that the anti-tampering regulations of Oklahoma County will be the same as the anti-tampering regulations for Tulsa County.

I/M program description

The Oklahoma County I/M program will consist of the following segments:

1. An annual inspection of vehicles for tampering of the emission control system, fuel-switching, and a mandatory repair requirement to correct any deficiencies.
2. A Public Information Program.
3. An Inspector Training Program.
4. Active enforcement of the inspection requirement.
5. Certification of stations and inspections.
6. An effective quality control program over the inspections and recordkeeping.

The anti-tampering program will be conducted in conjunction with the annual vehicle inspection program administered by the Department of Public Safety (DPS). The inspection program requires dealers to inspect new cars and implies that passage of that inspection is a condition necessary for the sale of the vehicles. Such a requirement appears to be technically a violation of section 209(a) of the Clean Air Act. However, EPA believes that the Oklahoma requirement does not violate Congress' reason for enacting section 209. Oklahoma's system will actually help to implement the mobile source program envisioned by Title II of the Clean Air Act.

The State legal authority for the anti-tampering program is contained in section 856 of Title 47 of the Oklahoma Statutes. Section 854 authorizes and directs the Commissioner of the DPS to make the necessary rules and regulations on the administration and enforcement of the anti-tampering inspection program. Section 856.1.B directs the Commissioner of the DPS to require a visual inspection of the emission control equipment as provided for in section 856.1.A.1.

The proposed DPS regulations regarding vehicle inspection requirements apply to all 1979 and later model year gasoline powered automobiles and trucks up to 8500 pounds gross vehicle weight owned and operated in the program area. The visual inspection is designed to identify any evidence of tampering or obvious need for service. The presence of lead in cars which should be using unleaded fuel, will also be checked.

The visual check will include the following components:

- Catalytic converter system;
- Fuel inlet restrictor;
- Evaporative emissions system;
- Air inspection system;
- Positive crankcase ventilation;
- Oxygen sensor;
- Thermostatic air cleaner; and
- Exhaust gas recirculation system.

Lead sensitive paper will be used to detect lead in the tailpipe of vehciles requiring unleaded fuel. The vehicle will fail inspection if any emission control component is missing, disconnected or shows evidence that tampering has occurred or, if the lead detection text reveals lead in the tailpipe of a vehicle requiring unleaded fuel. Vehicles that fail the inspection may be repaired by a mechanic of the owner's choice and returned for reinspection within thirty (30) days. If the vehicle passes reinspection, then a certificate of inspection will be issued. The State has committed to provide an interpretation of "proper replacements" in section 856.1(C) of the Oklahoma Statutes to mean "original equipment manufacturer (OEM) or equivalent."

The annual anti-tampering inspection requirement will be enforced through a windshield sticker system. Vehicles subject to the anti-tampering inspection will display a slightly larger and different colored windshield sticker than vehicles subject only to the safety inspection. The sticker will also have the word "EMISSION" across the front.

Although the program will be enforced by State, County and City Police Departments, primary enforcement will rest with the Oklahoma City Police Department. The City and County Police Departments must adopt the DPS regulations and must submit as part of the Enforcement Plan commitments to aggressively enforce the anti-tampering program. The City and County must also be able to issue citations with a penalty that exceeds the cost of compliance (inspection fee plus repair cost). The incentive is the revenues that will be obtained.

The DPS rules and regulations will contain provisions which require vehicles owned and operated in the program area to be inspected in that area. All inspection stations, Statewide, are required to verify the residence of the vehicle owner prior to conducting an inspection. This will be accomplished by checking the owner's driver's license as well as the certificate of insurance. The insurance certificate was determined to be the best method of verifying residence since State law requires the certificate to be carried at all times and it must be renewed every six months. If a vehicle subject to the program is presented for inspection outside the program area, the inspection station will not inspect the vehicle and will inform the owner that the vehicle must be inspected in the program area.

A vehicle which has failed an inspection will be easily identified by law enforcement officers since the sticker will be marked with a large "X". Inspection stations are required to remove stickers which have expired when the vehicle is presented for inspection. If the sticker has not expired and the vehicle failed the inspection, it will be marked with an "X". All motorists have the right to appeal to the DPS any rejection certificates issued within seven days. When an inspection decision is appealed, the DPS will re-inspect the vehicle within 30 days. A detailed Enforcement Plan will have to be submitted which discusses penalties, legal authorities, enforcement procedures, and prosecution by DPS, County and City Police Departments and the sticker program.

The DPS will train all inspectors in the I/M program area. The training will consist of inspecting the emission control systems and detecting tampering and misfueling. In order to be certified, an inspector must complete the prescribed training as well as pass a written test. They may not transfer from one station to another without being recertified and they are subject to reexamination at any time. The DPS has to provide the training prior to the January 1, 1987, startup date for the I/M program in Oklahoma County.

Each inspection station will be visited by a DPS trooper at least once every two months. The DPS has to commit to unannounced visit also. The trooper will audit the records to insure that the stickers are accountable and will observe inspections to insure compliance with the proper procedures. If deviations are noted, the station and/or inspector is subject to suspension of license or recertification by the DPS. The DPS will also investigate all complaints received from the public with regard to inspection stations or inspectors. These procedures and commitments will have to be submitted to EPA as part of the Quality Assurance/Audit Surveillance Plan.

A Public Information (PI) program will have to be implemented by the OSDH. The PI workplan will be similar to the Tulsa PI plan, that is, public service announcements, brochures describing the program, periodic news releases, press kits and free tamperig inspections. The final Public Information Plan will have to be submitted to EPA.

Reasonable further progress (RFP)

The RFP curve does demonstrate that predicted reductions will be achieved consistently with the implementation of a mobile source program and the continuation of the Federal Motor Vehicle Control Program. The curve shows that a decrease of 103,535 tons of CO or 36.1 percent, will occur in Oklahoma County between 1984 and 1988. The actual reduction needed by the end of 1988 is only 32 percent.

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

The revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish a revised NPR. If no substanial changes are made, other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by Oklahoma and submitted to EPA for incorporation into the SIP. Parallel processing will reduce the time necessary for final approval of this SIP revision by 3 to 4 months.

Proposed action

EPA is proposing full approval of the SIP revision for attainment of the CO standard in Oklahoma County. Final action will not be taken until all the required mobile source program regulations are adopted, submitted and are approvable, and the Public Information Plan, Quality Assurance-Audit Surveillance Plan and the Enforcement Plan with the necessary commitments are submitted by the State and are approvable.

Regulatory process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 1, 1986. This action may not be challenged later in proceedings to enforce its requiremets (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide.

Authority: 42 U.S.C. 7401–7642.

Dated: April 17, 1986.

Dick Whittington, P.E.,

Regional Administrator.

[FR Doc. 86–22030 Filed 9–29–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 60

[AD–FRL–3088–2]

Standards of Performance For New Stationary Sources; Residential Wood Heaters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of results of rulemaking negotiation.

SUMMARY: On August 2, 1985, (50 FR 31504), the EPA announced that it planned to develop new source performance standards (NSPS) for residential wood combustion devices (wood heaters). On March 10, 1986 (51 FR 8241), the Agency announced the formation of an advisory committee, under the Federal Advisory Committee Act, to negotiate the issues associated with the development of this proposed standard. The committee has agreed in principle to the provisions of the regulation. This announcement summarizes these agreements. Parties affected by this rulemaking, primarily manufacturers of and dealers in wood heaters, may use information in this notice to complete planning for the design and marketing of clean-burning wood heaters. EPA plans to propose the regulation in January 1987 and promulgate a final standard in January 1988.

ADDRESS: Docket. A docket, number A–p84–49, containing information considered by EPA in development of the proposed standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street SW., Washington, DC 20460. EPA may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Rick Colyer, Standards Development Branch, telephone number (919) 541–5578; or Jeff Telander, Industrial Studies Branch, (919) 541–5595. The address for both is: Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA estimates that over 12 million wood heaters were in use in 1986. As referred to here, wood heaters are closed-chambered, combustion air controlled appliances, such as freestanding woodstoves fireplace inserts, and wood burning cookstoves. The EPA estimates that sales of wood heaters are approximately 800,000 units per year.

The proposed regulation would set emission limits for particulate matter (PM) only. However, techniques which control PM, such as catalysis or secondary combustion, also reduce other pollutants found in wood smoke, such as carbon monoxide (CO), hydrocarbons, and polycyclic organic matter. The EPA projects substantial air quality benefits form the regulation of wood heaters. In the absence of a regulation, EPA estimates that PM emissions from new wood heaters would increase at a rate of about 110,000 megagrams (121,000 tons) per year. With controls, the estimated annual nationwide PM emissions would increase by approximately 31,000 megagrams (34,000 tons) per year, a reduction of more than 70 percent. These estimates are based upon assumptions regarding catalyst and noncatalyst emission control degradation as well as consumer behavior regarding proper operation and maintenance.

Wood heaters create significant air quality problems in localities where they are used in large numbers. Emissions from wood heaters are a growing problem throughout all areas of the country where wood supplies are abundant. In fact, several areas currently violate national health standards for PM and CO due, in part, to residential wood heaters.

During the past few years, several state and local governments have developed regulations controlling, and in some instances temporarily banning, wood heaters. On July 1, 1986, Oregon regulations went into effect prohibiting the sale of new wood heaters that are not state-certified. Similar regulations will go into effect in Colorado on January 1, 1987. Several local ordinances have been passed, mostly in the Rocky Mountains, to control or ban woodburing. Several other states are awaiting the development of a federal

NSPS before deciding whether to regulate on their own.

The development of a federal NSPS for wood heaters began in 1985 as a response to the growing concern that wood smoke contributes to ambient air quality health problems. The Agency has agreed to conduct a wood heater NSPS rulemaking with a proposed decision by January 31, 1987, and a final decision by January 31, 1988. *New York v. Thomas*, No. 84–1472, etc. (D.C. Cir.) (Settlement Agreement of May 9, 1986).

After gauging the interest of the various parties in the development of this standard—the wood heating industry, state governments, environmental and consumer groups—EPA established a negotiating committee (under the Federal Advisory Committee Act) to negotiate the provisions of the standard. Appendix A of this notice identifies members of the negotiating committee. The Agency believes that the regulatory negotiation will reduce the time required to propose and promulgate this standard, will improve the quality of the regulation, and, by building consensus among parties at interest, will avoid litigation or delays.

Beginning on March 19, 1986, the regulatory negotiation committee met six times on a monthly basis to discuss and reach agreements on a variety of technical and policy issues associated with the development of the standard. At the final meeting of the committee on August 21, the committee reached agreement in principle on all major provisions of the standard. Formal ratification of the agreement is expected in the near future.

This notice describes the results of the negotiations and summarizes all of the major provisions of the negotiated agreement. This notice satisfies a commitment by the EPA to the negotiating committee to publish a description of the regulation as soon as possible after the completion of the negotiations. The purpose of this notice is to inform wood heater manufacturers and others affected (e.g., testing laboratories, dealers, catalyst manufacturers, and state and local governments) of the major requirements in the negotiated agreement—particularly what the standards would be, and when and to whom they would apply, if promulgated.

The Agency will formally propose the negotiated standard in January 1987, including a preamble that explains the proposed rule and its rationale, and satisfies the various administrative requirements associated with rulemaking.

The following section provides an overview of the key provisions of the standard that will be proposed. Appendix B contains two charts to help manufacturers determine whether they would be subject to the regulation and when and how they would be required to comply.

II. Overview

In summary, the agreement would require manufacturers to certify each model line on the basis of tests conducted by an accredited laboratory on a representative wood heater. After July 1, 1988, unless otherwise exempted, all wood heaters produced would have to meet the Phase I emission limits and comply with temporary and permanent labeling requirements. More stringent emission limits would take effect on July 1, 1990 (Phase II). The program would be enforced through parameter inspections (to ensure that production line units conform to the appliance submitted for certification) and emission test audits.

Following is a section-by-section summary of the negotiated agreement.

A. Summary of Negotiated Rule

Applicability

The rule would apply to all wood heaters manufactured or imported after July 1, 1988, and sold at retail after July 1, 1990. There would be several exemptions.

- Upon written request by the manufacturer, Oregon-certified appliances that meet certain criteria would be certified by EPA as being in compliance with the first phase of the standard. The primary criterion would be that the certification test included at least one test run at a burn rate less than 1.25 kg/hr.
- In the first year of the program (July 1, 1988, through June 30, 1989) small manufacturers would be allowed to produce a number of uncertified wood heaters equal to or fewer than the number they produced in the previous 12 months (base year). For this exemption, a small manufacturer is defined as one who produced fewer than 2000 wood heaters in the base year (July 1, 1987, through June 30, 1988). Records would have to be maintained by the manufacturer for this period to apply for this exemption.
- Appliances that are exported would not have to meet the standard.
- For each model line, up to 50 non-certified units could be produced for research and development purposes.

Definition

"Wood heater" is the term used in this standard for the type of woodburning appliances covered by the standard. "Wood heater" is defined as an enclosed, woodburning appliance capable of and intended for space heating, domestic water heating, or indoor cooking, that meets all of the following criteria:

1. An air-to-fuel ratio in the combustion chamber averaging less than 35-to-1 as determined by the test procedure prescribed in the rule;
2. A usable firebox volume of less than 20 cubic feet;
3. A minimum burn rate less than 5 kg/hr; and
4. A maximum weight of 1000 kg.

This definition would include all non-industrial indoor woodburning appliances except furnaces, boilers, and fireplaces. Coalburning heaters would be covered unless they met certain design criteria and were prominently labeled for coal use only.

Emission Limits and Compliance Dates

The rule would have two phases: wood heaters manufactured after July 1, 1988, or sold at retail after July 1, 1990, would have to meet certain particulate matter emission standards (Phase I); and wood heaters manufactured after July 1, 1990, or sold at retail after July 1, 1992, would have to meet more stringent particulate matter emission standards (Phase II). At each phase there would be an emission limit for catalytic wood heaters and another for noncatalytic wood heaters. The particulate matter emission limits would be as follows:

	Phase I (July 1, 1988–June 30, 1990)	Phase II (beginning July 1, 1990)
Catalytic	5.5 grams/hour	4.1 grams/hour.
Noncatalytic	8.5 grams/hour	7.5 grams/hour.

The particulate matter emissions from a particular wood heater would be measured during an emission test consisting of four test runs at prescribed burn rates. The average emissions at the four burn rates would be calculated using a formula which would give higher weight to emissions at the lower burn rates.

Emissions at lower burn rates are given more weight in the formula because consumers tend to operate wood heaters at the lower burn rates more than at the higher burn rates. To pass the emissions test, a wood heater's calculated average emissions would have to be equal to or less than the applicable emission limit.

The NSPS 1988 particulate emission limits would be approximately equivalent to the Oregon 1988 emission limits. Because the emissions weighting

formula used in the NSPS standard is different from the weighting formula in the Oregon standard, the numerical expressions of the standard are different.

The Phase II emission limits would be approximately 15 to 25 percent more stringent than the 1988 standards for noncatalyst and catalyst wood heaters, respectively. The 1990 standards would also include a emission cap. A cap is a maximum allowable emission limit for any burn rate. It is designed to ensure that the appliance burns cleanly across the range of burn rates.

The 1990 cap for catalyst wood heaters is a function of burn rate and is calculated by the following:

For burn rates <2.82 kg/hr,
Cap $=3.55$ g/k $\times$ (burn rate) $+ 4.98$ g/hr
For burn rates >2.82 kg/hr,
Cap $=15$ g/hr.

The 1990 cap for noncatalyst wood heaters is 15 g/hr for burn rates less than or equal to 1.5 kg/hr and 18 g/hr for burn rates greater than 1.5 kg/hr.

Test Methods and Procedures

Any of the following particulate measuring methods would be permitted: EPA versions of the proposed ASTM Method, Oregon Method 7 in the stack, and Oregon Method 7 in a dilution tunnel. The method would specify how to test the appliance, including the loading and arrangement of fire wood, the selection of burn rates, the method for averaging individual test runs, and the treatment of outlying data points. Certification tests would have to include one run at or below a burn rate of 1.25 kg/hr and 1.0 kg/hr for the 1988 and 1990 standards, respectively.

Certification and Compliance

This standard would contain a certification program similar to that used in EPA's motor vehicle emission control program. A prototype, or production unit, that is representative of all others within a model line would be tested by an EPA-accredited testing laboratory. If the test results indicate that the unit meets the applicable emission limits, EPA would issue a certificate covering the entire model line to the manufacturer, who may then sell all units in that model line as long as that certificate is in effect.

In addition to the test results, the manufacturer would be required to submit an application that includes certain descriptive data. If the appliance is equipped with a catalyst, the catalyst would have to be warranted in full for at least two years and, beginning July 1, 1990, for at least three years for thermal degradation. Also, the catalyst would have to be easily accessible for inspection and replacement.

EPA would allow an alternative certification procedure for manufacturers who may be unable to obtain certification as a result of a projected six-month delay in getting the appliance tested at accredited laboratories and getting the application processed by EPA.

Manufacturers would also be required to conduct quality assurance (QA) programs consisting of parameter inspections and emission tests. For every 150 wood heaters produced, the manufacturer would be required to inspect at least one wood heater to ensure that dimensions of certain components fall within specified tolerances. Also, the manufacturer would be required to conduct emission tests on production units at a frequency that depends upon the number of units produced and the original certification test results. The manufacturer would not be required to report the results of the QA programs to EPA, but would have to maintain these records.

Test results could be corrected for altitude in the cases of alternative certification and QA programs. A formula will be provided to calculate the appropriate correction.

A firm manufacturing appliances similar in all material respects to appliances manufactured by another firm that has already certified the design could obtain a certificate without retesting. Unless revoked, certificates issued to wood heaters meeting the 1988 standards would be good until 1990, and certificates issued to wood heaters meeting the 1990 standards would be good for five years. A manufacturer would have to retest and recertify a model line if he makes physical changes to the design that are presumed to affect emissions.

Certain conditions, such as an enforcement or compliance audit failure, could result in the suspension or revocation of the certificate. Audits would consist of two elements: parameter inspections and emission testing. These audits would be performed on production units prior to retail sale. EPA would conduct both random and selective enforcement audit testing programs. The rule will provide for notification and hearing procedures when EPA is considering suspending or revoking a certificate.

Laboratory Accreditation

To be accredited by EPA, a testing laboratory would have to first be accredited by the National Voluntary Laboratory Accreditation program, demonstrate proficiency in testing by participating in an annual round robin, be free of conflict of interest regarding the testing results, and agree to establish an escrow account and pay into it funds sufficient for one audit test for every five certification tests conducted by the laboratory. Laboratories accredited by Oregon may be grandfathered, provided that they participate in the annual round robin testing and establish an escrow account. The funds in the escrow account would be used to audit wood heaters certified to meet the 1990 (Phase II) standard.

Labeling and Owner's Manual

All appliances subject to the standard and offered for sale would be required to display both a temporary label and a permanent label. The label contents, location, size, and materials will be specified. In general, the temporary label is designed to help the prospective purchaser select an appliance by providing information on relative pollution output, efficiency, and heat output. The permanent label would contain information relevant to EPA enforcement. Manufacturers would be required to provide operation and maintenance information necessary for good emissions control in the owner's manual that accompanies the appliance.

Recordkeeping and Reporting

Manufacturers would be required to maintain records of certification testing data, QA program results, production volumes, names and addresses of purchasers, and information needed to support a request for a waiver or exemption. Accredited laboratories would have to keep testing records and report periodically to EPA certain information required under logjam provisions. Retailers would have to maintain names and addresses of purchasers. All records would have to be retained for at least five years.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Wood heaters (SIC Code 3433).

Dated: September 24, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

Appendix A—Regulatory Negotiation Participant List

Negotiators/Affiliation

1. Robert Ajax, U.S. EPA
2. William Becker, STAPPA/ALAPCO
3. Larry Canaday, Woodcutters Mfg.

4. John Charles, Oregon Environmental Council
5. Donnis Corn, a-b Fabricators, Inc.
6. David Doniger, Natural Resources Defense Council, Inc.
7. Harold Garabedian, Vermont Air Pollution Control Program
8. Robert Geiter, Applied Ceramics
9. R. D. Gros Jean, Corning Glass Works
10. Brad Hollman, New York State Energy Research and Development Authority and New York State Energy Office
11. Jim King, Colorado Department of Health
12. John Kowalczyk, Oregon Department of Environmental Quality
13. Neil Martin, Brugger Exports, Ltd.
14. David Menotti, Wood Heating Alliance
15. Jay W. Shelton, Shelton Research, Inc.
16. David Swankin, Consumer Federation of America

Facilitator

Phil Harter, Esq., Consultant to EPA

Executive Secretary

Chris Kirtz, U.S. EPA

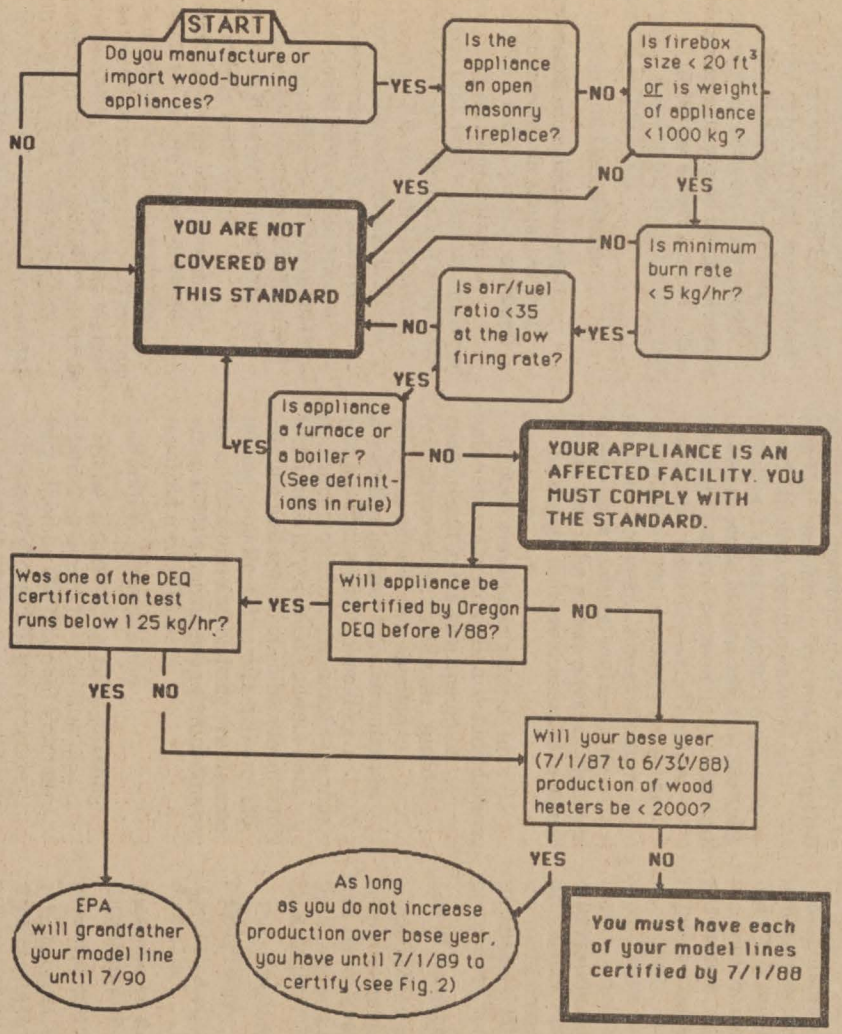
Observers

Wayne Leiss, Office of Management and Budget
George J. Lippert, U.S. Forest Service
Jean Vernet, U.S. Department of Energy

BILLING CODE 6560-50-M

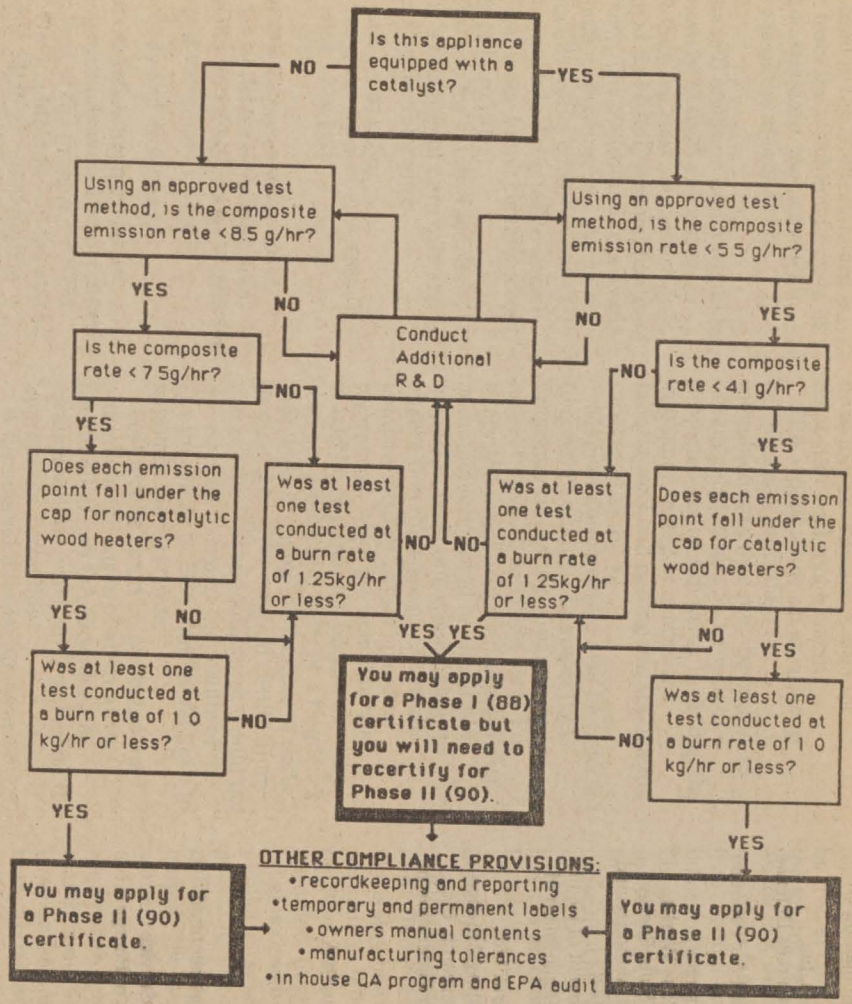
APPENDIX B

FIGURE 1. APPLICABILITY FOR MANUFACTURERS



APPENDIX B

FIGURE 2. COMPLIANCE DETERMINATION



[FR Doc. 86-22029 Filed 9-29-86; 8:45 am]
BILLING CODE 6560-50-C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[CC Docket No. 86-309]

Inquiry Into Policies To Provide Telecommunications Service Off of the Island of Puerto Rico

AGENCY: Federal Communications Commission.
ACTION: .Proposed rule; extension of time.

SUMMARY: In response to a request by the Puerto Rico Telephone Company, the Commission's Common Carrier Bureau has granted a two-day extension of time for filing comments on matters discussed in the Commission's Notice of Proposed Rulemaking, Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service off of the Island of Puerto Rico in CC Docket No. 86–309, published on July 24, 1986, 51 FR 26562. The extension also established a new date for filing reply comments. A 21-day extension of time for filing comments in the proceeding had previously been granted, Mimeo No. 6474, released August 20, 1986 (51 FR 30680, August 28, 1986).

DATES: Commens are now due by September 17, 1986, and reply comments by October 8, 1986, respectively.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dan Spiro, (202) 632–7265.

Order

In the matter of inquiry into policies to be followed in the authorization of common carrier facilities to provide telecommunications service off of the island of Puerto Rico (CC Docket No. 86–309).

Adopted: September 15, 1986.
Released: September 17, 1986.

By the Chief, Common Carrier Bureau.

1. On July 18, 1986, the Commission released a Notice of Proposed Rulemaking (NPRM) in the above captioned proceeding, FCC 86–319, 51 FR 26562 (1986). In the NPRM, the Commission set forth certain tentative conclusions regarding the development of its policies and guidelines concerning applications for facilities to provide telecommunications service between the island of Puerto Rico and off-island points. The Commission's decision called for the filing of comments by August 25, 1986, and reply comments by September 15, 1986. Upon a showing of good cause by All America Cables and Radio, Inc. (AACR), the Chief, Common Carrier Bureau, operating pursuant to delegated authority, extended the comment period in an order issued on August 20, 1986. The order established that comments and reply comments to the NPRM must be filed by Setember 15, 1986 and October 6, 1986, respectively.

2. On September 15, 1986, the Puerto Rico Telephone Company (PRTC), with the consent of AACR and the American Telephone and Telegraph Company, filed, pursuant to § 1.46(b) of the Commission's Rule and Regulations, 47 CFR 1.46(b) (1985), a request for a two-day extension of time to file comments and reply comments in this proceeding. PRTC states that its request is necessitated by the complete disruption, beginning on Thursday, September 11, 1986, of telephone service between Puerto Rico and the U.S. mainland. The disruption occurred as a result of a fire in the power supply for the main telephone equipment at the point of interconnection between PRTC, the local carrier, and AACR, the off-island carrier. PRTC argues that the service disruption prevented its counsel from transmitting the final draft of PRTC's comments to PRTC's management in Puerto Rico for final review and approval in time to meet the September 15 filing date. PRTC further notes that telephone service between Puerto Rico and the U.S. mainland has now been restored.

3. Section 1.46(b) of the Commission's Rules provides for an exception in emergency situations to the general rule that motions for extensions of time to file comments to NPRMs must be filed at least seven days before the filing date. In such situations, the rule states, the Commission shall consider a motion for a brief extension of time related to the duration of the emergency. We find that good cause has been shown for granting the requested two-day extension of time of the comment period. The service disruption, occurring late in the week immediately preceding the filing date, constitutes an emergency within the meaning of § 1.46(b). The disruption appears to have effectively prevented PRTC's counsel from coordinating with PRTC' management its draft of comments to the NPRM in time to comply with the Commission's filing date. Such coordination is vital for the preparation of adequate responses to the Commission's NPRM. Under the circumstances, were find that a two-day extension of time is appropriate.

4. Accordingly, it is ordered that, pursuant to §§ 0.291 and 1.46 of the Commission's Rules and Regulations, 47 CFR 0.291, 1.46 (1985), the request for extension of time by the Puerto Rico Telephone Company is granted.

5. It is further ordered that comments and reply comments to the Notice of Proposed Rulemaking issued in CC Docket No. 86–309 shall be filed on or before September 17, 1986 and October 8, 1986, respectively.

Federal Communications Commission.

Gerald Vaughan,

Deputy Chief, Operations, Common Carrier Bureau.

[FR Doc. 86–21920 Filed 9–29–86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 2 and 94

[P.R. Docket No. 86-174]

Radio Local Area Network Stations in the 1700–1710 MHz Band; Order Extending Reply Comment Period

AGENCY: Federal Communication Commissions.

ACTION: Order extending reply comment period.

SUMMARY: The FCC is extending the time for submission of reply comments in this Docket concerning the operation of radio local area networks in the 1700–1710 MHz band. This action is taken to allow additional interference testing and assure a complete record in this proceeding.

EFFECTIVE DATE: Reply comments will be due by November 14, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street, NW. Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

Order Extending Reply Comment Period

In the Matter of amendment of Parts 2 and 94 of the Commission's Rules to Accommodate Radio Local Area Network Stations in the 1700–1710 MHz Band; PR Docket No. 86–174, RM–5072.

Adopted: September 17, 1986.
Released: September 23, 1986.

By the Chief, Private Radio Bureau.

1. On May 1, 1986, the Commission adopted a *Notice of Proposed Rule Making Notice* in the above captioned matter. This *Notice* appeared in the **Federal Register**, 51 FR 19570, on May 30, 1986. Comments were due by August 22, 1986, and reply comments are due by September 19, 1986.

2. Motorola, Inc. has filed a request to extend the time period for filing reply comments in this proceeding to November 14, 1986. This request is supported by the National Oceanic and Atmospheric Administration (NOAA). Motorola and NOAA have conducted tests to ascertain potential interference from radio local area network transmitters to meteorological satellite data reception. Both indicate that while the intial tests yielded useful information, further testing is needed to provide relevant information for the Commission's consideration.

3. We recognize the importance of the issue of potential interference between radio local area networks and meteorological satellite receivers. Therefore, to permit the gathering of adequate information concerning interference between such systems and assure a complete record in this proceding, we are extending the reply comment period.

4. Accordingly, it is ordered, pursuant to the authority set forth in § 0.331 of the Commission's Rules and Regulations, that interested parties will have until November 14, 1986 to file reply comments in this proceeding.

Federal Communications Commission.

Robert S. Foosaner,

Chief, Private Radio Bureau.

[FR Doc. 86-22071 Filed 9-29-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

New England Fishery Management Council; American Lobster; Public Hearing

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

ACTION: American Lobster Fishery; notice of public hearings and request for comments.

SUMMARY: The New England Fishery Management Council will hold a series of public hearings and provide a comment period to solicit public input into the development of an amendment to the American Lobster Fishery Management Plan. Various measures to enhance recruitment to the resource will be discussed.

DATES: Individuals and organizations may comment in writing to the Council if they are unable to attend the hearings. The public comment period will close November 7, 1986. See **"SUPPLEMENTARY INFORMATION"** for dates, times, and locations of the hearings.

ADDRESS: All written comments should be addressed to Chairman, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 617-231-0422.

SUPPLEMENTARY INFORMATION: An amendment to the American Lobster Fishery Management Plan is under development by the New England Fishery Management Council. The amendment is being designed to expand upon the approach to lobster resource conservation already adopted in the FMP, as well as complement the initiative within the States to counteract the effects of expanding fishing effort by enhancing the reproductive viability of the overall stock. In particular, the Council is considering a 1/8 inch increase in the minimum legal size (carapace length) of lobster, to be accomplished in very small increments over a 5-year period. The Council is also considering a measure to prohibit the possession or landing of v-notched lobsters from the Gulf of Maine area. The combination of the two measures would significantly enhance egg production, offset possible increases in effort, and improve the prospects for the continued viability of the lobster resource. Any and all aspects of the developing amendment are open for comment.

The dates, times and locations of the public hearings are scheduled as follows:

Oct. 7, 1986	7 p.m.	City Hall, Church Street, Ellsworth, Maine.
Oct. 8, 1986	7 p.m.	Community Bldg., Tower Room, Recreation Department, 44 Limerock Street, Rockland, Maine.
Oct. 9, 1986	7 p.m.	Sheraton, 363 Maine Mall Road (Exit 7 off Maine Turnpike), Portland, Maine.
Oct. 9, 1986	7 p.m.	City Council Chambers, 126 Daniel Street, Portsmouth, New Hampshire.
Oct. 9, 1986	7 p.m.	Narragansett Bay Campus, University of Rhode Island, Corliss Auditorium, Watkins Bldg., South Ferry Road, Narragansett, Rhode Island.
Oct. 27, 1986	5 p.m.	College of Marine Studies, Cannon Lab Building, Room 203, 700 Pilottown Road, Lewes, Delaware.
Oct. 27, 1986	7 p.m.	Massachusetts Maritime Academy, Buzzards Bay, Massachusetts.
Oct. 28, 1986	7 p.m.	Holiday Inn, Route 36, Monmouth Parkway, West Long Branch, New Jersey.
Oct. 29, 1986	7 p.m.	Town Hall, 2nd Floor, 870 Moraine Street (Rt 3A), Marshfield, Massachusetts.
Oct. 29, 1986	7 p.m.	Holiday Inn, 1740 Expressway Drive S. (Exit 55, LI Expressway), Hauppauge, LI, New York.
Oct. 29, 1986	7 p.m.	Days Inn, 815 Lafayette Boulevard, Bridgeport, Connecticut.
Oct. 30, 1986	7 p.m.	Mystic Hilton, Coogan Boulevard, Mystic, Connecticut.
Oct. 30, 1986	7 p.m.	Holiday Inn, One Newbury Street, Peabody, Massachusetts.

Dated: September 23, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-22073 Filed 9-29-86; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 189
Tuesday, September 30, 1986

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

Farmers Home Administration

Credit Report Fee

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces an increase in the nonrefundable credit report fee charged individual loan applicants from $20 to $23 per credit report. This increase is necessary due to the increased cost to the Agency of obtaining individual credit reports. The credit report contractors, current prices geographical coverage and the nonrefundable fee are referenced in Exhibit A of Subpart B of 7 CFR Part 1910 which is available in any FmHA office.

EFFECTIVE DATE: This increase is effective on October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Raymond R. McCracken, Senior Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, 14th and Independence Avenue, SW, Washington, DC 20250, telephone (202) 382–1486.

SUPPLEMENTARY INFORMATION: The Catalog of Federal Domestic Assistance programs affected by this notice are:

10.405 Farm Labor Housing Loans and Grants.
10.410 Low Income Housing Loans.
10.417 Very Low Income Housing Repair Loans and Grants.
10.420 Rural Self-Help Housing Technical Assistance.

Dated: September 11, 1986.

Eric P. Thor,

Acting Administrator, Farmers Home Administration.

[FR Doc. 86–21855 Filed 9–29–86; 8:45 am]

BILLING CODE 3410-07-M

Soil Conservation Service

Cripple Creek Watershed, VA; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Cripple Creek Watershed, Wythe and Smyth Counties, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Norris, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240–9999, telephone (804) 771–2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. George C. Norris, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for protection of the soil resource base for sustained productivity and sediment damage reduction. The plan consists of the installation of soil conservation practices on 18,612 acres of cropland, forest land and pastureland.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. George C. Norris, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Executive Order 12372 regarding intergovernmental review of federal and federally-assisted programs and projects is applicable.)

Dated: September 11, 1986.

George C. Norris,

State Conservationist.

[FR Doc. 86–22017 Filed 9–29–86; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; The Research Foundation of SUNY et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), 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 § 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 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86–310. Applicant: The Research Foundation of SUNY, Purchasing Department, ULB 66, 1400 Washington Avenue, Albany, NY 12222. Instrument: Atmospheric Sampling System. Manufacturer: Kananaskis Centre for Environmental Research, Canada. Intended use: The instrument will be used to study concentrations and fluxes of pollutants under ambient air conditions. The techniques used will involve analysis of deposition by molecular diffusion across a velocity profile created by laminar flow. Application Received by Commissioner of Customs: September 9, 1986.

Docket Number: 86–312. Applicant: Harbor Branch Foundation, Inc., RR 1, Box 196, Fort Pierce, FL 33450.

Instrument: Remotely Operated Vehicle System, HYSUB–40. Manufacturer: I.S.E. Gulf Inc., Canada. Intended use: The instrument is intended to be used for extensive scientific exploration of aquatic environments to depths of 3,000 ft. The spectrum of physical, chemical, geological and biological processes that sustain aquatic food chains will be investigated. In addition, the instrument will be used for tutorials, seminar, laboratory-based and field-oriented opportunities for postdoctoral fellows. Application Received by Commissioner of Customs: September 10, 1986.

Docket Number: 86–313. Applicant: State University of New York at Binghamton, Vestal Parkway East, Binghamton, NY 13901. Instrument: Electron Microscope, Model H–7000 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use: The instrument is intended to be used in ultrastructural and microanalytical studies of the following materials and phenomena:

(1) Intercellular connections in red algae,

(2) Selenium deposition by selenite-tolerant bacteria,

(3) Response of mycoplasma-infecting viruses to changes in culture conditions of the host,

(4) Maturation and activation of tick and insect sperm,

(5) Characterization of a new algal species from Antarctic lake and

(6) Response of animal cells to exposure to toxic environmental contaminants.

It will also be used in a graduate course in techniques of transmission electron microscopy and will be used to prepare study materials for a lecture course in cell structure. Application Received by Commissioner of Customs: September 10, 1986.

Docket Number: 86–314. Applicant: University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. Instrument: Excimer/Dye Laser System, Model HE-IL. Manufacturer: Lumonics Inc., Canada. Intended use: The instrument will be used to study explosives and other energetic materials and their decomposition in shock-wave experiments. Specifically it will be used to determine species and concentrations of decomposition products so as to determine reaction pathways. Application Received by Commissioner of Customs: September 11, 1986.

Docket Number: 86–315. Applicant: University of Oregon, Eugene, OR 97403. Instrument: Electron Microscope, Model CM 12 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: The instrument will be used to conduct a variety of research projects including the following:

(1) Electron Crystallography of Cytochrome *c* Oxidase.

(2) Photoelectron Microscopy of Cell Membranes.

(3) Development of Characterized Neurons in Zebrafish.

(4) Cellular Role in Operant Conditioning of Modular Amine.

(5) Optic Fiber patterns.

(6) Electron Microscopy of Model Membranes.

(7) Environmental Control of Neural Crest Development.

(8) Quaternary Structure of High Molecular Weight Invertebrate Hemoglobins.

In addition, the instrument will be used in the course Biology 525, Electron Microscopy, to teach the theory and practice of electron microscopy. Application Received by Commissioner of Customs: September 12, 1986.

Docket Number: 86–316. Applicant: University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87544. Instrument: Mass Spectrometer, Model VG 354 with Accessories. Manufacturer: VG Isotopes Limited, United Kingdom. Intended use: The instrument will be used to provide rapid and accurate analyses of a variety of materials in support of numerous programs. In addition, research and development activities will be conducted with a view toward improvements in analytical methods and development of new methods and techniques of analysis. Applications Received by Commissioner of Customs: September 12, 1986.

Docket Number: 86–317. Applicant: University of Arizona, Department of Biochemistry, Biological Sciences West, Tucson AZ 85721. Instrument: Electron Microscope/SEG, Model JEM–4000EX with Accessories. Manufacturer: JEOL, Japan. Intended use: The instrument will be used to record high resolution images and diffraction patterns from protein molecules at different tilt angles during studies of the following materials:

(1) DNA from bacteriophage.

(2) DNA helix destabilizing protein from T4 bacteriophage.

(3) DNA helix destabilizing protein from E. coli.

(4) RecA protein from E. coli.

(5) Crotoxin complex protein from rattlesnake venom.

(6) Tetanus toxin from bacterial cell.

(7) Antibody protein from rabbit serum.

(8) Lysozyme protein from fungus.

(9) Muscle proteins from insect.

Application Received by Commissioner of Customs: September 15, 1986.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–22110 Filed 9–29–86; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. ITA–AB–5–84]

Clarification of Order; Intra Corp., Respondent

On August 12, 1986, I issued my Decision and Order in the above captioned proceeding. The Order was published in the **Federal Register** on August 19, 1986. The following clarifying statements are hereby added to that Order:

Insert at the end of the first paragraph in the discussion section: "Since Intraco was charged with reporting violations and not the substantive boycott activities of section 369.2, the appropriate standard is that which is set forth in 369.6(a)(2)."

Delete from the second sentence in the Discussion section: ". . . 15 C.F.R. Section 369.6 stipulates . . ." and insert in lieu thereof "15 C.F.R. 369.1(e)(3) stipulates."

Delete from the third paragraph in the Discussion section: "For this reason, it is unnecessary to reach the issue of intent."

Delete from paragraph 2(a) of the Order section: "Deputy Assistant Secretary for Trade Administration" and insert in lieu thereof "Deputy Assistant Secretary for Export Enforcement."

These clarifications in no way affect the requirements and validity of the Order.

Dated: September 23, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86–22109 Filed 9–29–86; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comment to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. C. W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523–3856.

SUPPLEMENTARY INFORMATION:

a. Purpose

1. United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. These exemptions are used whenever the anticipated savings outweigh the administrative costs associated with processing required documentation. When a Government contractor purchases foreign supplies it must notify the contracting officer and provide certain data to allow the contracting officer to determine whether the supplies should be duty-free. In addition, all shipping documents and containers must specify certain information to assure the duty-free entry of the supplies.

2. The contracting officer analyses the information submitted by the contractor to determine whether or not supplies should enter the country duty-free. The information, the contracting officer's determination, and the U.S. Customs forms are placed in the contract file.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 1330; responses 13,300; reporting and recordkeeping hours, 6,650.

Obtaining copies of proposals: Requesters may obtain copies from the FAR Secretaria (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0022, Customs and Duties.

Dated: September 18, 1986.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 86–22019 Filed 9–29–86; 8:45 am]

BILLING CODE 8820–61–M

DEPARTMENT OF DEFENSE

Engineer Corps

Coastal Engineering Research Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of committee: Coastal Engineering Research Board (CERB)

Date of meeting: October 21–22, 1986

Place: Holiday Inn, Vicksburg, Mississippi

Time: 8:30 a.m. to 4:00 p.m. on October 21; 8:00 a.m. to 12:00 p.m. on October 22.

Proposed Agenda: The October 21 session will consist of a review of previous CERB business, a review of the Coastal Engineering Research Center (CERC) programs, and presentations and discussions of the initiatives to meet the Chief of Engineers' charge to the CERB.

The October 22 session will consist of a tour of CERC facilities at the U.S. Army Engineers Waterways Experiment Station (WES), a presentation from CERC, final discussion and recommendations by members of the Board, and selection of date and place for the next CERB meeting.

This meeting is open to the public; participation by the public is scheduled for 10:15 a.m. on October 22.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Dwayne G. Lee, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39180–0631.

Dwayne G. Lee,

Colonel, Corps of Engineers, Executive Secretary.

[FR Doc. 86–22049 Filed 9–29–86; 8:45 am]

BILLING CODE 3710–GX–M

Corps of Engineers, Department of the Army

Water Resources Support Center; WCSC Available Products and Services Pamphlet

AGENCY: U.S. Army Corps of Engineers Water Resources Support Center, Waterborne Commerce Statistics Center, DOD.

ACTION: Notice of the availability of a product and services pamphlet from the Waterborne Commerce Statistics Center.

SUMMARY: The U.S. Army Corps of Engineers Water Resources Support Center announces the availability of an information pamphlet. This publication provides information on the available products and services from the Water Resources Support Center, Waterborne Commerce Statistics Center to be used by the Corps of Engineers, other Government agencies and private companies.

ADDRESS: Requests for the publication may be addressed to Ms. S. L. Plummer, Water Resources Support Center, WRSC–C, Casey Bldg., Ft. Belvoir, VA 22060.

Dated: September 18, 1986.

George R. Kleb,

Colonel, CE, Commander and Director.

[FR Doc. 86–22050 Filed 9–29–86; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.132]

Notice Inviting Applications; New Awards Under the Centers for Independent Living Program; Fiscal Year 1987

Purpose: Provides grants to State vocational rehabilitation agencies, local public agencies, or private nonprofit organizations for the support of centers for independent living.

Deadline for transmittal of applications: Marh 31, 1987 for designated State units and April 30, 1987 for local public agencies or private nonprofit organizations.

Deadline for intergovernmental review comments: June 30, 1987.

Applications available: December 1, 1986; *Available funds:* $22,000,000.

Estimated range of awards: T1$150,000–$250,000.

Estimated average size of awards: $200,000.

Estimated No. of awards: 110.

Project period: 36 months.

Applicable regulations: (a) Regulations governing the Centers for Independent Living Program (34 CFR Part 366); and (b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78 and 79).

Invitational priorities: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(1), the Secretary especially urges the submission of fiscal year 1987 applications for new projects that respond to one or both invitational priorities: (1) To provide services which assist severely disabled persons to make the transition from school or institution to work and community living; and (2) to serve a broad range of disability groups. However, an application submitted under this notice that meets an invitational priority will not be given preference over other applications. The principal eligible applicants under this program are designated State vocational rehabilitation units. Awards may also be made to local public agencies or private nonprofit organizations within a State, if the designated State unit has not submitted an application within six months after the Secretary begins accepting new applications in any fiscal year.

For applications or information contact: Judith Miller Tynes, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3326 Mary E. Switzer Building, MS 2304, Washington, DC 20202. Telepone: (202) 732–1346.

Program authority: 29 U.S.C. 796e.

Dated: September 25, 1986.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 86–22080 Filed 9–29–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate; Financial Assistance Award; Restriction of Eligibility for Grant Award

AGENCY: Department of Energy (DOE).

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: DOE announces that it plans to award a grant to Massachusetts Institute of Technology (MIT) in the amount of $248,497 in support of physical chemistry of carbothermic reduction of aluminum. Pursuant to § 600.7(b) of the Financial Assistance Rules, 10 CFR Part 600, DOE has determined that eligibility for this grant award shall be limited to MIT.

Procurement request No.: 07–86ID12467.501.

Project scope: MIT is requesting support to continue its research to: (a) Compile available thermodynamic information and seek potentially viable phsico-chemical methods to produce aluminum and aluminum-silicon alloys by carbothermic reduction. (b) Develop smelting methods to reduce alumina to aluminum and to overcome the deterimental effects of highly volatile chemical species during carbothermic reduction. (c) Develop separation methods to extract an aluminum alloy of acceptable composition from the product of the smelting operation. (d) Develop one or more physico-chemical operational strategies for the production of aluminum and aluminum-silicon alloys by carbothermic reduction.

The proposed work is essentially a continuation of previous efforts of MIT whose research staff has solved many alumina carbothermic reduction problems through carefully planned and executed scientific research. Smelting and refining of alumina and carbon under batch conditions with a solvent metal was demonstrated followed by the demonstration of smelting and refining of alumina, silica, and carbon under batch conditions with a solvent metal. The approach remains unique and innovative and the current research results continue to show promise for the successful development of a viable carbothermic reduction strategy. Some of the equipment used is currently available only at MIT.

Inasmuch as the DOE is vitally interested in the conservation of energy and natural resources and the facts about indicate that MIT is the only source so uniquely experienced and qualified, it has determined that this award to MIT on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT:

Ronald A. King, U.S. Department of Energy, Idaho Operations Office, R&D Contracts Branch, 785 DOE Place, Idaho Falls, ID 83402

Issued in Idaho Falls, Idaho, on September 16, 1986.

William C. Drake,

Acting Director, Contracts Management Division.

[FR Doc. 86–22036 Filed 9–29–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 86–42–NG]

CU Energy Marketing Inc.; Order Approving a Blanket Authorization to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Order Approving a Blanket Authorization to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to CU Energy Marketing Inc. (CU) to import Canadian natural gas on a short-term basis. The order issued in ERA Docket No. 86–42–NG authorizes CU to import 200 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery of the import.

A copy of this order is available for inspection and copying in the natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, September 23, 1986

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85–22035 Filed 9–29–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–29–NG]

Natgas (U.S.), Inc; Order Approving Blanket Authorization to Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Order Approving a Blanket Authorization to Export Natural Gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to Natgas (U.S.), Inc. (Natgas), to export natural gas to Canada on a short-term basis. The order issued in ERA Docket No. 86–29–NG authorizes Natgas to export up to 75 Bcf of natural gas over a two-year term beginning on the date of first delivery of the export.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, Room GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, September 23, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85–22034 Filed 9–29–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP84–386–000 and CP86–394–000]

ANR Pipeline Co. and Techstaff Transmission Co.; Availability of the Techstaff Pipeline Project Environmental Assessment

September 26, 1986.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the above-referenced dockets. The staff has determined that construction and operation of the proposed facilities would not constitute a major Federal action significantly affecting the quality of the human environment. The EA evaluates alternatives to the proposal and includes recommendations which may be placed on any certificate issued. The proposed Techstaff project consists of constructing 8.84 miles of 12-inch diameter pipeline in Porter County, Indiana.

The EA will be used in the regulatory decisionmaking process at the Commission and will be presented as testimony in formal hearings. Notice of the applications in Docket Nos. CP84–386–000 and CP86–394–000 were published in the **Federal Register** on May 31, 1984 (49 FR ¶ 22,682) and April 7, 1986 (51 FR ¶ 11,820), respectively. The period of time for filing motions to intervene or notice of intervention expired on June 15, 1984 and April 21, 1986, respectively. Motions to intervene in the proceedings out-of-time can be filed with the Commission in accordance with the requirements of Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 CFR 385.214(d). Anyone desiring to file or protest should do so in accordance with 18 CFR 385.211.

The EA has been placed in the public files of the Commission and is available for public inspection in the FERC Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. Copies have been sent to all parties to the proceeding; Federal, state, and local officials; newspapers of general circulation in the areas affected; and individuals who have requested it. Copies are available in limited quantities from the FERC Division of Public Information.

Anyone wishing to do so may file comments on the EA. Comments should be sent to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Comments should be filed as soon as possible, but must be received no later than November 14, 1986, to ensure consideration prior to a Commission decision on this proposal. Additional information about the proposed project is available from Mr. Chris Zerby, Project Manager, Environmental Evaluation Branch, Office of Pipeline Producer Regulation, telephone (202) 357–9037.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–22074 Filed 9–29–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP86–63–000 and RP86–114–000]

Southern Natural Gas Co.; Informal Settlement Conference

September 24, 1986.

Take notice that an informal settlement conference will be convened in this proceeding on October 1, 1986, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

The purpose of the conference is to discuss further settlement of Southern's pending section 4 rate case. The conference may also involve discussion of a potential Order No. 436 transportation program for Southern Natural Gas Company. In this case, such a program might include the establishment of section 284.7 rates for section 311 self-implementation transportation.

The parties and the Commission Staff are invited to attend; however, attendance alone will not confer party status. Persons wishing to become parties must move to intervene pursuant to the Commission's Regulations (18 CFR 385.214 (1985) and have their motion granted. Although no blanket certificate application has been filed, these discussions may also result in the filing of such an application. In the event such an application is filed, the Commission will notice the application and provide further opportunity to intervene.

For additional information contact Edward LeDuc at (202) 357–8615 or Carmen Gastilo at (202) 357–5354.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–22075 Filed 9–29–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP86–589–000]

Colorado Interstate Gas Co.; Informal Technical Conference

September 22, 1986.

On August 21, 1986, the Commission issued a notice in the above-captioned proceeding which, among other things, denied a motion to convene an informal conference filed with the Commission by Colorado Interstate Gas Company (CIG). Upon further consideration, it has been determined that an informal technical conference may be useful.

Take notice therefore that on October 15, 1986, at 10:00 a.m., an informal technical conference will be convened in this proceeding at the offices of the Federal Energy Regulatory Commission, 825 North Capital Street, NE, Washington, DC 20426. This conference is being convened by the Commission Staff for the sole purpose of discussing the degree to which CIG's application for blanket transportation authorization is in compliance with the Commission Order No. 436. This conference is not intended to be a settlement conference.

All parties to this proceeding and Commission Staff are invited to attend; however, attendance will not confer party status. Persons wishing to become parties must move to intervene pursuant to the Commission's Rules of Practice and Procedure (18 CFR 385.214 (1985)), and have their motion granted.

For additional information, contact Fred Peters, (202) 357–8458 or Paul Biancardi, (202) 357–8517.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–22085 Filed 9–29–86; 8:45 am]

BILLING CODE 6716–01–M

[Docket No. ER-699-000]

Interstate Power Co.; Amendment to Notice of Filing

September 24, 1986.

Take notice that on September 5, 1986, Interstate Power Company (Company) tendered for filing a new Electric Service Agreement between the community of Worthington, Minnesota (FERC No. 108), and Company. An amended filing was submitted on September 16, 1986.

This agreement provides for a lower transformer loss when low side metering is involved, an increase in average power factor requirements and the implementation of a late payment penalty.

The purpose of this amendment is to correct dates relating to the cancellation of the prior agreement. All other provisions of the original filing remain intact.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1986. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22086 Filed 9-29-86; 8:45 am]

BILLING CODE 6717-01-m

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city state	File No.	MM docket No.
A. Family Stations, Inc., Salt Lake City, Utah.	BPED-840625IB	86-354
B. Utah State University of Agriculture (KUSU-FM), Logan, Utah.	BMPED-840809AV	

2. Pusuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the coresponding headings at 51 F.R. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A
2. 307(b)-Noncommercial Educational, A, B
3. Contingent Comparative, A, B
4. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief Audio Services Division Mass Media Bureau.

[FR Doc. 86-22070 Filed 9-29-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM docket No.
A. Charles Ray Shinn; Hastings, Nebraska.	BPH-840801IC	86-362
B. Timothy Paul Woodward; Hastings, Nebraska.	BPH-841001IC	.....
C. Bott Communications, Inc.; Hastings, Nebraska.	BPH-850530MA	.....
D. Nebraska Partnership, a Limited Partnership; Hastings, Nebraska.	BPH-850531MG	.....
E. Denny Workman and Saye Mullen d/b/a Silverado Communications General Partnership; Hastings, Nebraska.	BPH-850531NC	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Financial, E
2. Air Hazard, A, B, C, E
3. Comparative, A, B, C, D, E
4. Ultimate, A, B, C, D, E

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief Audio Services Division Mass Media Bureau.

Appendix f

Issue

1. To determine with respect to Silverado, whether, in light of the evidence adduced, the applicant is financially qualified.

[FR Doc. 86-22069 Filed 9-29-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-774-DR]

Major Disaster and Related Determinations; Michigan

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Michigan (FEMA-774-DR), dated September 18, 1986, and related determinations.

DATED: September 18, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice

Notice is hereby given that, in a letter of September 18, 1986, the President

declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Michigan resulting from severe storms and flooding beginning on or about September 10, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Michigan.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to Section 408(b) of Pub. L. 93-288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Ronald Buddecke of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Michigan to have been affected adversely by this declared major disaster and are designated eligible as follows:

Bay, Gratiot, Huron, Isabella, Lake, Mason, Mecosta, Midland, Montcalm, Muskegon, Newaygo, Oceana, Osceola, Saginaw, Sanilac, and Tuscola Counties for Individual Assitance and Public Assistance.

Clare and Gladwin Counties for Public Assistance and as adjacent areas for Individual Assistance.

Ionia and Kent Counties for Individual Assistance only. Clinton and Ottawa Counties as adjacent areas for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director.

[FR Doc. 86-22063 Filed 9-29-86; 8:45 am]

BILLING CODE 6718-02-M

Redelegation of Authority With Respect to National Preparedness Programs Directorate

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Redelegation of Authority of Associate Director, National Preparedness Programs.

FOR FURTHER INFORMATION CONTACT: William L. Harding, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, telephone (202) 646-4096.

Notice is hereby given, until an Associate Director is appointed, that George H. Orrell, Deputy Associate Director, is hereby authorized to exercise the delegation of authority set forth at § 2.63 of Title 44 of the Code of Federal Regulations with all the powers, functions, and duties delegated or ass:gned to the Associate Director, National Preparedness Programs (NPP), including those in § 2.55.

EFFECTIVE DATE: This delegation and designation shall be effective September 30, 1986.

Julius W. Becton, Jr.,

Director.

[FR Doc. 86-22064 Filed 9-29-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 86-1044]

Application for Unlisted Trading Privileges and Opportunity for Hearing; Cincinnati Stock Exchange

Dated: September 24, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Cincinnati Stock Exchange has filed on August 29, 1986, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1, an application with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities:

Mercury Savings and Loan Association
Huntington Beach, California (FHLBB No. 6649)
Guarantee Stock, $1.00 Par Value.

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments

Any interested person may inspect the application at the Board and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the application after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202-377-6415) or at the above address.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-22104 Filed 9-29-86; 8:45 am]

BILLING CODE 6720-01-M

[No. 86-1043]

Application for Unlisted Trading Privileges and Opportunity for Hearing; Cincinnati Stock Exchange

Dated: September 24, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Cincinnati Stock Exchange has filed on August 25, 1986, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1, an application with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities:

Columbia Savings and Loan Association
Beverly Hills, California (FHLBB No. 6325)
Series "A" Preferred Stock, $1.00 Par Value

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments

Any interested person may inspect the application at the Board and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the application after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202–377–6415) or at the above address.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86–22105 Filed 9–29–86; 8:45am]

BILLING CODE 6720–01–M

[No. 86–1042]

Application for Unlisted Trading Privileges and Opportunity for Hearing; Midwest Stock Exchange

Dated: September 24, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Midwest Stock Exchange has filed on September 2, 1986, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1, an application with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities:

Mercury Savings and Loan Association

Huntington Beach, California (FHLBB No. 6649)

Common Stock, $1.00 Par Value

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments

Any interested person may inspect the application at the Board and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the application after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202) 377–6415 or at the above address.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86–22106 Filed 9–29–86; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–506]

AmeriFirst Federal Savings & Loan Association, Miami, FL; Final Action Approval of Conversion Application

Dated: September 18, 1986.

Notice is hereby given that on August 12, 1986, the Office General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of AmeriFirst Federal Savings and Loan Association, Miami, Florida (FHLBB No. 2143), for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86–22094 Filed 9–29–86; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–507]

Fidelity Federal Savings & Loan Association of Nashville, TN; Final Action Approval of Conversion Application

Dated: September 18, 1986.

Notice is hereby given that on August 12, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Fidelity Federal Savings and Loan Association of Nashville, Tennessee, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Cincinnati, Post Office Box 598, Cincinnati, Ohio 45201.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86–22095 Filed 9–29–86; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–510]

First Federal Savings & Loan Association of Camden, Camden, SC; Final Action Approval of Conversion Application

Dated: September 19, 1986.

Notice is hereby given that on August 13, 1986, the Office General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Camden, Camden, South Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-22097 Filed 9-29-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-509]

First Federal Savings & Loan Association of Harrisburg, PA; Final Action Approval of Conversion Application

Dated: August 18, 1986.

Notice is hereby given that on August 12, 1986, the Office of General Counsel of the Federal Home Loan Bank, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Harrisburg, Harrisburg, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretaries of the Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Pittsburgh, 11 Stanwix Street, 4th Floor, Gateway Center, Pittsburgh, Pennsylvania 15222.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-22096 Filed 9-29-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-520]

Honolulu Federal Savings & Loan Association, Honolulu, HI

Dated: September 25, 1986.

Notice is hereby given that on August 29, 1986, the Federal Home Loan Bank approved the application of Honolulu Federal Savings and Loan Association, Honolulu, Hawaii, for permission to convert to the stock form of organization. Requests for copies of the application and related materials may be made under the Freedom of Information Act, and may be directed to the Secretariat of the Board, 1700 G Street NW., Washington, DC 20552, or to the Office of the Supervisory Agent of the Federal Home Loan Bank of Seattle, 1501 4th Avenue, Seattle, Washington 98101-1693.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-22102 Filed 9-29-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-513]

Horizons Savings & Loan Co., Beachwood, OH; Final Action Approval of Conversion Application

Dated: August 18, 1986.

Notice is hereby given that on August 8, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Horizons Savings and Loan Company, Beachwood, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street NW, Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Cincinnati, Post Office Box 598, Cincinnati, Ohio 45201.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-22098 Filed 9-29-86; 8:45 am]
BILLING CODE 6720-01-M

Application to Withdrawal Securities From Listing and Registration on the American Stock Exchange and Opportunity for Hearing

Dated: September 24, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: On July 29, 1986, Mercury Savings and Loan Association, Huntington Beach, California (the "Association") (FHLBB No. 6649) filed with the Federal Home Loan Bank Board ("Board") an application ("Application"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) thereunder, for the withdrawal from listing and registration on the American Stock Exchange of the Association's Common Stock, $1.00 Par Value, (the "Stock"). The Association's Stock was approved for listing and registration on the New York Stock Exchange on August 1, 1986, and concurrently therewith such stock was suspended from trading on the American Stock Exchange.

The reasons stated in the Association's application for withdrawing the securities from the listing and registration on the American Stock Exchange include the following:

1. The Association has complied with Rule 18 of the American Stock Exchange by filing with such Exchange a certified copy of preambles and resolutions adopted by the Association's Board of Directors authorizing the withdrawal of the Stock from listing on the American Stock Exchange.

2. The direct and indirect costs and expenses attendant on maintaining the dual listing of the Stock on the New York Stock Exchange and the American Stock Exchange are not justified.

3. The belief that dual listing would fragment the market for the Stock without offsetting benefits.

4. The American Stock Exchange has no objection to the Association's withdrawal of the Stock from listing on the American Stock Exchange.

5. The withdrawal from listing of the Association's Stock from the American Stock Exchange shall have no effect upon the continued listing of the Stock of the New York Stock Exchange.

6. By reason of § 12(b) of the Act and the rules and regulations thereunder, the Association shall continue to be obligated to file reports under § 13 of that Act with the Federal Home Loan Bank Board and the New York Stock Exchange.

Any interested person may inspect the application at the Board and, within fifteen days of publication in the **Federal Register** submit by letter to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552, facts bearing upon whether the application has been made in accordance with the rules of the American Stock Exchange and what terms, if any, should be imposed by the Board for the protection of investors. The Board, based on the information submitted to it, will approve the application after the date mentioned above, unless the Board determines to order a hearing on the matter.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202) 377-6415 or at the above address.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-22107 Filed 9-29-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-512]

Mutual Federal Savings and Loan Association, Elkin, NC; Final Action Approval of Conversion Application

Dated: August 18, 1986.

Notice is hereby given that on August 13, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Mutual Federal Savings and Loan Association, Elkin, North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-22099 Filed 9-29-86; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-511]

Railroadmen's Federal Savings and Loan Association of Indianapolis, Indianapolis, IN

Dated: August 18, 1986.

Notice is hereby given that on August 13, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Railroadmen's Federal Savings and Loan Association of Indianapolis, Indianapolis, Indiana for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Indianapolis, Post Office Box 60, Indianapolis, Indiana 46206.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-22703 Filed 9-29-86; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-505]

Shelby Federal Savings and Loan Association, Indianapolis, IN; Final Action Approval of Conversion Application

Dated: August 15, 1986.

Notice is hereby given that on August 8, 1986, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Shelby Federal Savings and Loan Association, Indianapolis, Indiana for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Indianapolis, Post Office Box 60, Indianapolis, Indiana 46206.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-22100 Filed 9-29-86; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-508]

Tri-County Federal Savings and Loan Association of Waldorf, Waldorf, MD; Final Action Approval of Conversion Application

Dated: August 18, 1986.

Notice is hereby given that on August 12, 1986, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Tri-County Federal Savings and Loan Association of Waldorf, Waldorf, Maryland for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-22101 Filed 9-29-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Ameritrust Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection a 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 interest, 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 October 20, 1986.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *AmeriTrust Corporation,* Cleveland, Ohio, and First Indiana Bancorp, Elkhart, Indiana; to merge with The Boone Corporation, Lebanon, Indiana, and thereby indirectly acquire The Boone County State Bank, Lebanon, Indiana.

In connection with this application, Applicants also propose to acquire Indiana Benefit Life Insurance Company, Valparaiso, Indiana, and thereby engage in underwriting, as reinsurer, credit-related life and disability insurance sold in connection with extensions of credit made by Boone County State Bank and other stockholder banks pursuant to § 225.25(b)(9) of the Board's Regulation

Y. These activities will be conducted in the State of Indiana.

Board of Governors of the Federal Reserve System, September 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22039 Filed 9-29-86; 8:45 am]

BILLING CODE 6210-01-M

Barclays PLC et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 20, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays PLC*, London, England, and Barclays Bank PLC, London, England; to acquire Wall Street Clearing Company, New York, New York, and thereby engage in (i) executing, clearing and settling client orders for the account of the company's customers; (ii) clearing and settling executed transactions; (iii) providing various types of securities custodial services incidental to the clearing and settling of securities, including the safekeeping of customer's securities and accounting for dividends or interest received on such securities; (iv) extending margin credit to the company's customers for the purpose of purchasing and carrying securities; (v) providing discount brokerage services to certain customers; (vi) borrowing securities to effectuate short sales by customers and to cover or make delivery against failed transactions; and (vii) lending securities to broker/dealers or other financial institutions pursuant to § 225.25(b)(15) of the Board's Regulation Y.

2. *Credit Suisse*, Zurich, Switzerland; to acquire John M. Blewer, Inc., New York, New York, and thereby engage in acting as an investment or financial advisor by providing portfolio investment advice and portfolio management services to the full extent permitted by § 225.25(b)(4)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22040 Filed 9-29-86; 8:45 am]

BILLING CODE 6210-01-M

Independent Bankgroup, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de nova*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 16, 1986.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Independent Bankgroup, Inc.*, Springfield, Vermont; to engage *de novo* through its subsidiary, Independent Mortgagegroup, Inc., Springfield, Vermont, in purchasing mortgage loans from subsidiaries of Independent Bankgroup, Inc., Springfield, Vermont and other corporations pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in New England States and the State of New York.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays PLC*, London, England; Barclays Bank PLC, London, England; Barclays USA Inc., Wilmington, Delaware; Barclays U.S. Holdings, Inc., New York, New York; and BarclaysAmericanCorporation, Charlotte, North Carolina; to engage *de novo* through their subsidiaries, Finger Furniture Company, Inc., Houston, Texas, and Finco of Houston, Inc., Houston, Texas, in the acquisition and servicing of consumer finance receivables and credit card receivables pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22041 Filed 9-29-86; 8:45 am]

BILLING CODE 6210-01-M

James Madison Ltd., 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 othewise noted, comments regarding each of these applications must be received not later than October 20, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *James Madison Limited,* Washington, DC; to acquire 100 percent of the voting shares of First Continental Bank of Maryland, Silver Spring, Maryland.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. **FCB Corporation,** Manchester, Tennessee; to acquire 100 percent of the voting shares of The Meltons Bank, Gassaway, Tennessee. Comments on this application must be received by October 17, 1986.

C. **Federal Reserve Bank of** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. **River Forest Bancorp,** River Forest, Illinois; to merge with Commercial Chicago Corporation, Chicago, Illinois, and thereby indirectly acquire Commercial National Bank of Chicago, Chicago, Illinois.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. **Northwest Arkansas Bancshares, Inc.,** Bentonville, Arkansas; to acquire 73.49 percent of the voting shares of Bank of Pea Ridge, Pea Ridge, Arkansas; 80 percent of the voting shares of McIlroy Bank and Trust, Fayetteville, Arkansas; and 80 percent of the voting shares of Siloam Springs Bancshares, Inc., Bentonville, Arkansas, and thereby indirectly acquire First National Bank of Siloam Springs, Siloam Springs, Arkansas.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **Greenwood County Financial Services, Inc.,** Eureka, Kansas; to become a bank holding company by acquiring 93.6 percent of the voting shares of Home Bank & Trust, Co., Eureka, Kansas.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Celina Bancshares, Inc.,* Celina, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of the First State Bank, Celina Texas. Comments on this application must be received by October 22, 1986.

Board of Governors of the Federal Reserve System, September 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22042 Filed 9-29-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Regional Administrator-Regional Housing Commissioner

[Docket No. D-86-823; FR 2291]

Delegations of Authority

AGENCY: Department of Housing and Urban Development.

ACTION: Redelegation of authority.

SUMMARY: The Regional Administrator-Regional Housing Commissioner, Atlanta Regional Office, is redelegating to Field Office Managers in Region IV the authority to approve or disapprove requests by Public Housing Agencies (PHA's) for demolition, disposition or conversion of public housing.

EFFECTIVE DATE: September 8, 1986.

FOR FURTHER INFORMATION CONTACT: Michael B. Janis, Director, Office of Public Housing, Atlanta Regional Office, Department of Housing and Urban Development, Room 556, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303, 404-331-4815 (this is not a toll free number).

Authorities Redelegated

A. *Demolition or Disposition of Public Housing.* The following authority for decisions on PHA requests for the demolition or disposition of public housing under 24 CFR Part 970 is redelegated to the Managers of the Birmingham, Columbia, Greensboro, Jackson, Jacksonville, Knoxville, Louisville, and Nashville Field Offices:

(1) Authority to disapprove any such request; or

(2) Authority to approve any such request for the following actions:

(a) Demolition or disposition of not more than 100 dwelling units, or 20 percent of the total of dwelling units of a particular project, whichever number is fewer; provided that, for a particular project, this limitation shall apply cumulatively, counting all units in the project that were previously approved by HUD for demolition or disposition.

(b) Demolition or disposition of nondwelling structures.

(c) Disposition of utility systems.

(d) Disposition of non-fee interests in real estate, such as easements, rights-of-way, mineral leases or other leasehold interests.

(e) Disposition of not more than 10 acres of land, whether vacant or occupied by structures or systems within the limits stated in paragraphs (2)(a) through (d) of this section.

B. *Conversion of Public Housing.* The following authority for decisions on PHA requests for conversion of public housing under Part I of the Annual Contributions Contract is redelegated to the Managers of the Birmingham, Columbia, Greensboro, Jackson, Jacksonville, Knoxville, Louisville, and Nashville Field Offices:

(1) Authority to disapprove any request; or

(2) Authority to approve conversion of 100 dwelling units, or 20 percent of the dwelling units in a particular project, whichever number is fewer; provided that, for a particular project, this limitation shall apply cumulatively since the first such request for the project. Field Office Managers may not approve requests which shall result in the reduction in one half or more of the three-bedroom or larger units.

Authority Reserved

All authority for the approval of demolition, disposition or conversion of public housing exceeding the limitations stated in Sections A and B above is reserved to the Assistant Secretary for Public and Indian Housing.

Authority

Delegation of authority from the Secretary to the Assistant Secretary for Public and Indian Housing, effective September 7, 1983, 48 FR 41097, dated September 13, 1983; delegation of authority from the Secretary to the Assistant Secretary for Public and Indian Housing, effective July 24, 1986, 51 FR 27603, dated July 24, 1986; delegation of authority from the General Deputy Assistant Secretary for Public and Indian Housing to Regional Administrators, effective July 24, 1986, 51 FR 27604, dated July 24, 1986.

Dated: September 3, 1986.

Raymond A. Harris,

Regional Administrator-Regional Housing Commissioner, Region IV, Atlanta, GA.

[FR Doc. 86-22066 Filed 9-29-86; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted for Review

September 8, 1986.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contracting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Titles:

(1) Agreement to Reimburse for Reindeer Bureau Form Number JO-NR-3

(2) Permit to Acquire Live Reindeer Bureau Form Number JAO-1668

Abstract

In accordance with the Reindeer Industry Act of September 1, 1937 (50 Stat. 900, 25 U.S.C. 500 *et seq.*), the Secretary is authorized and directed to organize and manage the reindeer industry in a manner as to establish and maintain a complete and self-sustaining economy for Alaska Natives. The information requested on these two forms is needed to allow the authorized official of the BIA to maintain records of individuals who wish to borrow reindeer from the U.S. Government for the purpose of starting a reindeer industry, to determine the specific age and sex of reindeer borrowed, and to insure, through documentation, their proper return to the Federal Government in order that they may be held in trust for Alaska Natives.

Frequency: On occasion.

Description of Respondents: Individual Eskimo reindeer ranchers, tribal corporations

Description of Respndents: Individual Eskimo reindeer ranchers, tribal corporations

Annual Responses: 20 (each form)

Annual Burden Hours: 30 (total for both forms)

Alternate Bureau Clearance Officer: Anne Bolton (202) 343-3577.

Kristine M. Marcy,

Acting Deputy to the Assistant Secretary, Indian Affairs (Trust and Economic Development).

[FR Doc. 86-22020 Filed 9-29-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[CO-010-06-4410-08]

Availability of the Final Little Snake Resource Management Plan/ Environmental Impact Statement [INT FES 86-15]; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement on the Little Snake Resource Management Plan.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management has prepared the Final Little Snake Resource Management Plan/Environmental Impact Statement (RMP/EIS).

DATE: Protests must be received in writing within 30 days of the date the Environmental Protection Agency publishes the notice of receipt of this final environmental impact statement in the **Federal Register.**

ADDRESS: Protests should be sent to the BLM Director, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duane Johnson, Project Manager, Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625. Telephone: (303) 824-8261.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has prepared a Final RMP/EIS for the management of the Little Snake Resource Area in northwest Colorado. This statement analyzes the environmental, social, and economic impacts of six alternatives for multiple-use management of the Little Snake Resource Area. The RMP alternatives are designed to provide overall multiple-use objectives and management direction for all resource uses or values. Major issues addressed in the RMP include: management of forage for livestock, wildlife, and wild horses; suitability of eight wilderness study areas (WSAs) for designation as wilderness; determination of acceptability of lands for further consideration for federal coal leasing; and leasing of federal oil and gas. Also discussed are management of other minerals, threatened or endangered plants and animals, soils, water, forests, fire, recreation, off-road vehicles, cultural resources, rights-of-way, access to federal lands, and acquisition and disposal of federal lands.

The proposed Resource Management Plan is BLM's proposed action, which may be protested. Protests should be sent to the BLM Director, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240, within 30 days of the date the Environmental Protection Agency publishes the notice of receipt of this Final Environmental Impact Statement in the **Federal Register** and should include the following information: Name, mailing address, telephone number, and interest of the person filing the protest.

A statement of the issue or issues being protested.

A statement of the part or parts being protested.

A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the records.

A short concise statement explaining why the BLM Colorado State Director's decision is wrong.

After the end of the 30-day protest period, and following the Governor of Colorado's Consistency Review, the proposed resource management plan—excluding any portions under protest or found inconsistent—will be approved by

the State Director. Approval shall be withheld on any portion of the plan under protest until final action has been completed on such protest. The approval process and the final resource management plan will be published with the record of decision when any protests or inconsistencies have been resolved.

Availability: Single copies of the Final Little Snake RMP/EIS and Wilderness Technical Supplement may be obtained from the address listed above, or from: Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215.

Dated: September 18, 1986.

Neil F. Morck,

State Director, Colorado State Office.

[FR Doc. 86-22024 Filed 9-29-86; 8:45 am]

BILLING CODE 4310-JB-M

[ID-943-06-4220-11; I-15256 et al.]

Proposed Continuation of Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that portions of two withdrawals and the entire acreage of a third withdrawal be continued for an additional 100 years, which is the estimated remaining life of the improvements with which they are associated. Under the proposal, most of the 13,713 acres involved would remain closed to surface entry and the mining laws, but the entire acreage has been and would remain open to the mineral leasing laws.

DATE: Comments should be received by December 29, 1986.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208-334-1597.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that portions of two land withdrawals made by the Secretarial Orders of November 17, 1902, and December 20, 1907, and the entire acreage of a third withdrawal made by the Secretarial Order of January 27, 1904, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are located within the following-described townships:

Boise Meridian

T. 8 S., Rs. 24, 25, 26, 27 and 30 E.
T. 9 S., Rs. 22, 24, 25, 27, 28 and 29 E.
T. 10 S., Rs. 23 and 24 E.

The total area involved contains 13,713 acres, more or less, in Power, Cassia, Blaine and Minidoka Counties. The land is located generally from Minidoka Dam to a point several miles below American Falls Dam along the Snake River, around Lake Walcott and in the Burley-Paul-Acequia area.

The purpose of the withdrawal is to protect the lands for use as irrigation storage and power generation facilities, for fish and wildlife management consistent with the Fish and Wildlife Coordination Act and for mineral material sources used to maintain constructed Reclamation Projects in the area. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: September 19, 1986.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 86-22025 Filed 9-29-86; 8:45 am]

BILLING CODE 4310-GG-M

[ID-050-4212-14; I-22243, I-22317]

Realty Action; Direct and Competitive Sale of Public Land in Lincoln County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct and competitive sale of public land in Lincoln County, Idaho.

SUMMARY: The following described lands have been examined, and through land use planning and public input have been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976. Fair market value will be available 30 days prior to the sale date. Only sealed bids will be accepted.

Case file No.	Description	Type of sale	Acres
I-22243	T. 6S., R. 23E., sec. 30: SE¼SE¼SW¼ SW¼.	Direct	2.50
I-22317	T. 7S., R. 21E., sec. 21: S½SE¼.	Competitive	80.00

The lands when patented will be subject to the following reservations:

1. A right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. Oil and Gas shall be reserved to the United States.

3. All valid existing rights and reservations of record.

The lands are hereby segregated from appropriation under the public land laws including the mining laws as provided by 43 CFR 2711.1-2(b).

Sealed bids must be received in this office no later than 10:00 a.m. on December 12, 1986. Bids for less than the fair market value will not be accepted. A bid will constitute an application for conveyance of mineral interests of no known value. A $50 nonreturnable filing fee for processing such mineral conveyance, along with but separate from a thirty percent (30%) deposit of the bid price must accompany each bid.

If parcel I-22317 is not sold at this time the parcel will be offered the third Friday of each month following the sale at the same time and place until sold or sale is suspended.

Parcel I-22243 is a direct sale to Gregory L. Bell, who is being given a preference designation for purchase, because of large capital investments made on the land, historical use and unnecessary hardship if he were asked to remove his equipment storage shop. His bid must meet the appraised fair market value and be submitted on or before the sale date, or the lands will be withdrawn from sale and will not be available until reoffered by legal publication as required by law.

DATE AND ADDRESS: The sale offering will be held on December 12, 1986 at 10:00 a.m. in the Shoshone District Office, 400 West F Street, Shoshone, Idaho.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale and conditions, bidding procedures, and other details can be obtained by contacting Mike Austin at (208) 886-2206

or writing to BLM, P.O. Box 2B, Shoshone, Idaho 83352.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Shoshone District Manager at the above address.

Dated: September 19, 1986.

Jon Idso,

District Manager.

[FR Doc. 86-22023 Filed 9-29-86; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Gulf of Mexico Regional Technical Working Group; Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463. A meeting of the Outer continental Shelf Advisory Board's Gulf of Mexico Regional Technical Working Group will be held on November 3-6, 1986, in New Orleans, Louisiana. The agenda of the meeting is as follows:

November 3

1:00 p.m.-5:00 p.m.: Regional Technical Working Group Business Meeting
A. Gulf of Mexico Current Activities
B. Environmental Studies Program Status
C. Scoping Report for 1988 Lease Sales
D. Minerals Management Service—University of Texas Cooperative Agreement
E. Data Management of Environmental Studies (tentative)
F. Public Comments and Resolutions

November 4

9:30 a.m.-4:30 p.m.: Gulf of Mexico Information Transfer Meeting

November 5

8:30 a.m.-4:30 p.m.: Conclusion of the Information Transfer Meeting

November 6

8:30 a.m.-4:30 p.m.: Continuation of the Information Transfer Meeting

The meeting will held in the International Hotel, 300 Canal Street, New Orleans, Louisiana. All sessions are open to the public, and interested persons may make oral or written presentations at the Business Meeting upon request. Such requests, or general questions about the meeting, should be made not later than October 21, 1986, to Ms. Eileen P. Angelico, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Parkway, New Orleans, Louisiana 70123-2394, or telephone (504) 736-2959.

A taped cassette transcript and complete summary minutes of the Business Meeting will be available for public inspection in the Office of the Regional Director at the above address not later than 60 days after the meeting.

Dated: September 23, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region, Minerals Management Service.

[FR Doc. 86-22026 Filed 9-29-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Pending Nominations; Arkansas, et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 20, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by October 15, 1986.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Garland County

Hot Springs, *Brown, W.C., House*, 2330 Central Ave.

Independence County

Batesville, *Bethel African Methodist Episcopal Church*, 895 Oak St.

Jackson County

Newport, *Arkansas Bank and Trust Company*, 103 Walnut St.

Pike County

Murfreesboro, *Pike County Courthouse*, Courthouse Sq.

Pulaski County

North Little Rock, *Hempfling, Barth, House*, 507 Main St.

Woodruff County

Augusta, *Augusta Presbyterian Church*, Third and Walnut Sts.

KENTUCKY

Edmonson County

Brownsville, *Reed—Dossey House*, Upper Main Cross and Jefferson Sts.

Nelson County

Howardstown, *Howard Brothers' Store*, General Delivery

LOUISIANA

East Baton Rouge Parish

Baton Rouge, *Capital City Press Building*, 340 Florida

Rapides Parish

Tioga, *Tioga Commissary*, Tioga Rd.

MINNESOTA

Hennepin County

Minneapolis, *White Castle Building #8*, 3252 Lyndale Ave., S.

MISSISSIPPI

Rankia County

Brandon vicinity, *Brown's Box*, SE of Brandon of MS 17

NORTH CAROLINA

Buncombe County

Asheville, *Ellington, Douglas, House*, 583 Chunns Cove Rd.
Asheville, *Ottari Sanitarium*, 491 Kimberly Ave.

New Hanover County

Wrightsville Beach, *Mt. Lebanon Chapel and Cemetery*, SR 1411

Transylvania County

Lake Toxaway, *Hillmont*, 3 mi. N of jct w/US 64

OHIO

Cuyahoga County

Cleveland, *Bell, Dr. James, House*, 1822 E. Eighty-ninth St.

Gallia County

Gallispolis, *Gatewood*, 76 State St.

Licking County

Newark, *Evans-Holton-Owens House*, 162 W. Locust St.

Richland County

Mansfield *Bissman Block*, 193 N. Main St.
Mansfield, *Hancock and Dow Building*, 21 E. Fourth St.
Mansfield, *Mansfield Savings Bank*, 4 W. Fourth St.
Mansfield, *May Realty Building*, 22-32 S. Park St.

PENNSYLVANIA

Beaver County

Hookstown vicinity, *Littell, David, House*, SE of Hookstown on PA 18

Bucks County

Bristol, *Bristol Carpet Mills*, Beaver Dam and Canal Sts.
Bristol, *Dorrance Mansion*, 300 Radcliffe St.
Morrisville, *Craft, Gershom, House*, 105 Barnsley Ave.
Newtown, *Newtown Historic District (Boundary Increase: North and South Extensions)*, Parts of Congress, Chancellor and Liberty Sts. N of Washington Ave. and Chancellor St. S of Penn St. to S. State St.

Lancaster County

Lancaster, *Stauffer, Christian, House*, Millcross Rd.

Montgomery County

Philadelphia vicinity, *Wyncote Historic District*, Roughly bounded by Glenview

Ave., SEPTA RR, Webster Ave., and Church Rd.

Washington County

Deemston, *Kinder's Mill*, LR 62194 at Piper Rd.

[FR Doc. 86-22016 Filed 9-29-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 328]

Investigation of Tank Car Allowance System

AGENCY: Interstate Commerce Commission.

ACTION: Notice of adoption of National Tank Car Allowance Agreement.

SUMMARY: The Interstate Commerce Commission under the authority of 49 U.S.C. 11122 and 10747 and 10324(b) is adopting, subject to a minor modification, a revised National Tank Car Allowance Agreement, which will supercede a similar agreement approved by the Commission in a decision served June 15, 1979. The agreement addresses the manner in which tank car mileage allowances are computed and assessed.

DATES: The decision is effective on September 26, 1986. The new agreement will be effective on October 1, 1986. Petitions for reconsideration must be filed by October 20, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Shick, (202) 275-7972.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-5403.

This action will not significantly affect the quality of the human environment or energy conservation.

We certify that this action will not have a significant economic impact upon a substantial number of small entities. In this proceeding we are adopting an agreement which will make tank care allowances more market sensitive and therefore more conducive to an appropriate level of investment in tank cars.

Authority: 49 U.S.C. 10321, 10324(b), 10747, and 11122 and 5 U.S.C. 553.

Decided: September 23, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Chairman Gradison and Commissioner Andre dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 86-22159 Filed 9-29-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86-40]

John P. Daniels, M.D.; Denial of Application for Registration

On April 28, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John P. Daniels, M.D., of Highway 93 North, Arlee, Montana 59821. The Order to Show Cause sought to deny Dr. Daniels' application for registration, executed on January 23, 1986, on the ground that his registration would be inconsistent with the public interest, as evidenced by, but not limited to the fact that on October 26, 1984, in the District Court for the Fourth Judicial District of Montana, in and for the County of Missoula, Dr. Daniels was convicted of criminal sale of controlled dangerous drugs, to wit: Morphine sulfate and meperidine, Schedule II controlled substances, felony offenses as specified in sections 45-9-101 and 45-9-102 of the Montana Code Annotated. On July 14, 1986, the Order to Show Cause was amended to include lack of State authorization to handle controlled substances as a ground for denying Dr. Daniels' application for registration.

After receiving the Order to Show Cause, Dr. Daniels requested a hearing on the matter.

Government counsel filed a "Motion for Summary Disposition" in this matter based upon Dr. Daniels' lack of State authorization to handle controlled substances in Montana. In response to Government counsel's "Motion for Summary Disposition," Dr. Daniels, through counsel, consented to the denial of his application for registration. Based upon Dr. Daniels' consent, the Administrator concludes that he has waived his right to a hearing, and enters this final order based on the record as it appears. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that on October 26, 1984, Dr. Daniels was convicted of the criminal sale of dangerous drugs, to wit: Morphine sulfate and meperidine, felony offenses relating to controlled substances. As a result of his conviction, Dr. Daniels was sentenced to twenty years of imprisonment, seventeen of which were suspended in lieu of probation. As part of this probation, Dr. Daniels is prohibited from possessing or prescribing any dangerous drugs. In addition, Dr. Daniels does not have a current license to practice medicine in Montana, and consequently, is not authorized to handle controlled substances in that State.

The Administrator has consistently held that when an applicant or registrant is not authorized to handle controlled substances in the State in which he seeks to operate, DEA is without lawful authority to grant or maintain his registration. See *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34208 (1985); *Kenneth K. Birchard, M.D.*, 48 FR 33778 (1983); and *Thomas E. Woodson, D.O.*, Docket No. 81-4, 47 FR 1353 (1982). Therefore, since Dr. Daniels is not authorized to handle controlled substances in Montana, the Administrator cannot approve his registration in that State.

Further, Dr. Daniels' felony conviction relating to controlled substances is also a sufficient ground to deny his application for registration. 21 U.S.C. 824(f)(3). See also, *Coleman Preston McCown, D.D.S.*, Docket No. 82-28, 49 FR 45818 (1984).

Based on the foregoing reasons, the Administrator concludes that statutory authority exists to deny Dr. Daniels' application for registration. Further, since Dr. Daniels is not authorized to handle controlled substances in the State of Montana, his application for registration must be denied.

Therefore, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) hereby orders that the application for registration submitted by John P. Daniels be, and it hereby is denied.

This order is effective September 30, 1986.

Dated: September 23, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-22043 Filed 9-29-86; 8:45 am]

BILLING CODE 4410-09-M

Michael A. Fahey, M.D.; Denial of Application for Registration

On July 17, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued on Order to Show Cause to Michael A. Fahey, M.D., at 2110 Woodford Place, Louisville, Kentucky 40205, proposing to

deny his application for registration, executed on April 8, 1985, for registration as a practitioner under 21 U.S.C. 823(f). The Order of Show Cause sought to deny Dr. Fahey's application for registration on the ground that Dr. Fahey is not licensed to practice medicine in the State of Kentucky, and consequently, is not authorized to handle controlled substances in that State.

The Order to Show Cause was mailed registered mail, return receipt requested, to Dr. Fahey's last known address. The return receipt indicates that the Order to Show Cause was received and signed for on July 21, 1986. More than thirty days has elapsed since Dr. Fahey received the Order of Show Cause and the Drug Enforcement Administration has received no response thereto. Therefore, the Administrator concludes that Dr. Fahey has waived his right to a hearing in this matter, and enters this final order based upon the record as it appears. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that on March 20, 1986, the Kentucky State Board of Medical Licensure revoked Dr. Fahey's license to practice medicine in that State. As a result of the revocation, Dr. Fahey is without authority to handle controlled substances in the State of Kentucky.

The Administrator has consistently held that when a DEA registrant or applicant is no longer authorized to handle controlled substances in the State in which he operates, DEA is without lawful authority to issue or maintain his registration. See *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985); *Kenneth K. Birchard, M.D.*, 48 FR 33778 (1983); and *Thomas E. Woodson, D.O.*, Docket No. 81–4, 47 FR 1353 (1982). Since Dr. Fahey is no longer authorized to handle controlled substances in the State of Kentucky, the Administrator cannot approve his application for a DEA Certificate of Registration in that State.

Therefore, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) orders that the application for registration, executed by Michael A. Fahey, M.D., on April 8, 1985, be, and it hereby is denied.

This order is effective September 30, 1986.

Dated: September 23, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–22044 Filed 9–29–86; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 86–46]

Ihsan A. Karaagac, M.D.; Denial of Application for Registration

On April 24, 1986, the Deputy Assistant Adminstrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ihsan A. Karaagac, M.D. (Respondent), at P.O. Box 590909, San Francisco, California 94159. The Order to Show Cause proposed to deny Respondent's application for registration as a practitioner under 21 U.S.C. 823(f), executed on October 19, 1985, on the ground that he is not licensed to practice medicine in California, the State in which he seeks registration, and consequently, is without authorization to handle controlled substances in that State.

Respondent, acting *pro se*, submitted a request for a hearing on the issue raised in the Order to Show Cause.

In response to Respondent's request for a hearing, Government counsel filed a Motion for Summary Disposition on the ground that Respondent is not authorized to handle controlled substances in the State in which he seeks registration. Respondent filed a lengthy opposition to the Government's Motion for Summary Disposition. In his opposition, Respondent admitted that he currently is not licensed to practice medicine in California.

Based on the facts presented in the Government's Motion for Summary Disposition and Respondent's own admission that he is not authorized to handle controlled substances in California, the Administrative Law Judge granted the Motion for Summary Disposition and issued a decision recommending that the Administrator deny Respondent's application for registration on the ground that he is not authorized to handle controlled substances in the State in which he seeks registration with DEA.

No exceptions were filed in opposition to the Administrative Law Judge's Opinion and Findings of Fact, Conclusions of Law and Recommended Decision. Instead, Respondent submitted a letter to the Administrative Law Judge requesting "Judicial and constitutional review by U.S. Appeal Court" and requesting that the record from the California Board of Medical Quality Assurance be subpoenaed.

Based on the complete record in this matter, the Administrator accepts the recommended ruling of the Administrative Law Judge and concludes that Respondent's application for registration must be denied.

The only issue to be considered in this matter is whether Respondent is authorized to handle controlled substances in the State in which he seeks to conduct his business. If Respondent is not authorized to handle controlled substances in the State in which he seeks to conduct his business, the Administrator does not have the statutory authority under the Controlled Substances Act to issue him a DEA Certificate of Registration. See 21 U.S.C. 823(f); *Emerson Emory, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Kenneth K. Birchard, M.D.*, 48 FR 33778 (1983).

The record, including Respondent's own admissions, clearly indicates that Respondent currently is not licensed to practice medicine in the State of California. Consequently, he is without authority to handle controlled substances in that State. In his numerous filings, Respondent continues to assert that summary disposition and denial of his application for registration are improper because there are issues of fact and constitutional questions involved. The Administrator is not concerned with the reason why Respondent has been denied a license to practice medicine in California. Respondent must resolve that issue with the State medical licensing authorities. The Administrator's only concern in this proceeding is whether Respondent is authorized to handle controlled substantances in that State. Since Respondent clearly does not posses a license to practice medicine in the State of California and, consequently, is without authority to handle controlled substances in that State, the Administrative Law Judge acted properly in granting the Government's Motion for Summary Disposition, and Respondent's application for registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) hereby orders the Respondent's application for registration, executed on October 19, 1985, be, and it hereby is denied.

This order is effective September 30, 1986.

Dated: September 23, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–22045 Filed 9–29–86; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Bankground

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the record/keeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, telephone (202) 395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Mine Safety and Health Administration

Mine Operator Dust Data Card
1219–0011
Bimonthly
Businesses and other for profit; small businesses or organizations
5,000 respondents; 101,600 hours

Coal mine operators are required to collect and submit respirable dust samples to MSHA for analysis. Pertinent information associated with identifying and analyzing these samples is submitted on the dust data cards that accompanies the samples.

Pension and Warfare Benefits Administration

Employee Benefit Plan Annual Report (Form 5500 Series)
1210–0016
Annually
Businesses or other for-profit; Non-profit institutions; Small businesses or organization
900,000 responses; 1,306,153 hours

Section 104(a)(1)(A) of ERISA requires plan administrators to file an annual report containing the information described in section 103 of ERISA. The Form 5500 Series provides a standard format for fulfilling that requirement.

Revision

Employment Standards Administration

Report of Changes That May Affect Your Black Lung Benefits
1215–0084; CM–929
Annually
Individuals or households
90,000 responses; 8,400 hrs.; 1 form

To help determine continuing eligibility of primary beneficiaries receiving benefits from the Black Lung Disability Trust Fund. To verify and update on an annual basis factors that affect a beneficiary's entitlement to benefits, including income, marital status, receipt of State workers' compensation, and dependents' status.

Employment and Training Administration

Unemployment Compensation for Former Federal Employees Handbook No. 391 (UCFE)
1205–0179; ES–931, 931A, 933, 934, 935, 936, 939 and ETA 8–32
On Occasion
Individuals or households; State or local governments; Federal agencies or employers
391,749 respondents; 23,380 burden hours; 8 forms

Federal law (5 U.S.C. 8501–8508 et seq.) provides unemployment insurance protection to former (or partially umemployed) Federal civilian employees. It is referred to, in abbreviated form, as "UCFE". The forms contained throughout the UCFE Handbook are used in conjunction with the provision of this benefit assistance.

Contribution Operations
1205–0178; ETA 581
Quarterly
State or local governments
53 respondents; 848 hours; 1 form

Provides quarterly data on State agencies' volume and performance in wage processing, number and promptness of liable employer registration, number delinquent in filing contribution reports, number and extent of tax deliquent and results of field audit program.

Extension

Mine Safety and Health Administration

First Aid Training for Supervisory Employees
1219–0085
On occasion
Businesses or other for profit; small businesses or organizations
5,024 respondents; 2,512 hours

Requires coal mine operators to keep records of first aid training received by supervisory employees.

Signed at Washington, DC this 24th day of September, 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86–22111 Filed 9–29–86; 8:45 am]

BILLING CODE 4510–43–M

Employment and Training Administration

[TA–W–17,247]

Jack Rogers, Inc., Miami, FL; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 28, 1986 in response to a worker petition received on January 3, 1986 which was filed on behalf of workers and former workers of Jack Rogers, Incorporated, Miami, Florida.

In the course of the investigation it was discovered that the petitioner worked exclusively for the Miami

Footwear Corporation during the relevant investigative period, from 1984 up to the date of her termination on March 3, 1985. Miami Footwear was certified for Trade Adjustment Assistance on June 26, 1985 (TA–W–15,865–impact date of February 1, 1985 and an expiration date of June 27, 1987).

The investigation revealed that an active certification covering the petitioning worker remains in effect (TA–W–15,865). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 19th day of September 1986.

Marvin Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–22112 Filed 9–29–86; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Privacy Act; Transfer of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of transfer of records subject to the Privacy Act to the National Archives.

SUMMARY: Records retrievable by personal identifiers which are transferred to the National Archives of the United States are exempt from most provisions of the Privacy Act of 1974 (5 U.S.C. 552a) except for publication of a notice in the **Federal Register**. NARA publishes a quarterly notice of the records newly transferred to the National Archives of the United States which were maintained by the originating agency as a system of records subject to the Privacy Act.

DATE: Written comments must be received by October 30, 1986.

ADDRESS: Comments should be sent to Adrienne C. Thomas, Director, Program Policy and Evaluation Division (NAA), National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Dr. Trudy Peterson, Acting Assistant Archivist for the National Archives, on (202) 523–3130 or (FTS) 523–3130.

SUPPLEMENTARY INFORMATION:

In accordance with section 1(l)(3) of the Privacy Act, archival records transferred from Executive Branch agencies to the National Archives of the United States are not subject to the provisions of that Act relating to access, disclosure, and amendment. The Privacy Act does require that a notice appear in the **Federal Register** when records are transferred to the National Archives of the United States. The records of the United States Congress and all United States Courts are not subject to the Privacy Act. Consequently, when records retrievable by personal identifiers are transferred from the Congress or the Courts to the National Archives of the United States, the notice in the **Federal Register** does not include these records.

After transfer of records retrievable by personal identifiers from executive branch agencies to the National Archives of the United States, NARA does not maintain these records as separate systems of records. NARA will attempt to locate specific records about the individual. Records in the National Archives of the United States may not be amended, and NARA will not consider any requests for amendment. Archival records maintained by NARA are arranged by Record Group depending on the agency of origin. Within each Record Group, the records are arranged by series, thereunder generally by filing unit, and thereunder by document or groups of documents. The arrangement at the series level or below is generally the one used by the originating agency. Usually, a system of records corresponds to a series, and this notice uses the series title as the title of the system of records.

The following systems of records retrievable by personal identifiers have been transferred to the National Archives:

1. *System name:* National Archives Record Group 59, General Records of the Department of State, Appointment Records, Lists of Foreign Service Appointments and Promotions, 1970–77.

System location: Diplomatic Branch, Civil Archives Division, National Archives Building, 8th and Pennsylvania Avenue, NW., Washington, DC 20408.

Categories of individuals covered by the system: Presidential appointees to Foreign Service Officer and Foreign Service Information Officer positions.

Route uses of records maintained in the system, including categories of users and the purpose of such users: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(3). Further information about uses and restrictions may be found in 36 CFR Part 1256.

Categories of records in the system: Lists of names of individuals appointed to or promoted in the Foreign Service.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records in boxes.

b. Retrievability: Arranged by date of appointment.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives or to researchers only after archival review pursuant to exemption b(6) of the Freedom of Information Act and to the general restriction on information which would invade the privacy of an individual. (36 CFR 1256.16)

d. Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for the National Archives, National Archives, 8th and Pennsylvania Avenue, NW, Washington, DC 20408.

Notification Procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR Part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR Part 1253.

2. *System name:* National Archives Record Group 146, Records of the Federal Civil Service Agencies; Civil Service Commission, Oversize Personnel Investigation Case Files, 1928–72.

System location: General Branch (NNFG), Civil Archives Division, National Archives and Records Administration, Washington, DC 20408.

Categories of individuals covered by the system: Former employees or applicants for employment in the Federal Service; American citizens connected with international organizations; individuals considered for access to classified information; individuals representing the Federal government in volunteer programs;

individuals involved in Federal programs under cooperative agreements; and individuals involved in the administration of the merit system.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (1)(3). Further information about uses and restrictions may be found in 36 CFR Part 1256.

Categories of records in the system: Investigative records regarding an individual's character, conduct and behavior. Includes arrest and conviction records; reports of interviews; reports on qualifications; reports of inquires with law enforcement agencies reports of actions taken; correspondence relating to adjudication matters; and other records relating to the above.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage. Paper records stored in boxes.

b. Retrievability. Arranged alphabetically by name of individual.

c. Safeguards. Records are kept in a locked stacked area accessible only to authorized personnel of the National Archives or to researchers only after archival review pursuant to exemption b(6) of the Freedom of Information Act and to the general restriction on information which would invade the privacy of an individual. (36 CFR 1256.16)

d. Retention and disposal. Records are retained permanently.

System manager and address. The system manager is the Assistant Archivist for the National Archives, National Archives, 8th and Pennsylvania Avenue NW, Washington, DC 20408.

Notification procedure: Persons desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR Part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archieves may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR Part 1253.

3. *System name:* National Archives Record Group 443, Records of the National Institute of Health, Collaborative Perinatal Project, 1958–1974.

System location: Machine Readable Branch (NNSR), Special Archives Division, National Archives and Records Administration, Washington, DC 20408.

Categories of individuals covered by the system: Women in the 1958–1974 perinatal study of NIH during their pregnancies, their children, husbands, fathers of children and other family members

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and member of the general public. The records in the National Archives of United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (1)(3). Further information about uses and restrictions may be found in 36 CFR Part 1256.

Categories of records in the system: Medical histories and examinations.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system: a. Storage. Information is stored on reels of magnetic tape.

b. Retrievability. Records are retrieved by identifying number assigned to the mother.

c. Safeguards. Records are kept in a locked stack area accessible only to authorized personnel of the National Archives or to researchers only after archival review pursuant to exemption b(6) of the Freedom of Information Act and to the general restriction on information which would invade the privacy of an individual. (36 CFR 1256.16)

d. Retention and disposal. Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for the National Archives, National Archives, 8th and Pennsylvania Avenue, NW., Washington, DC 20408.

Notification procedures: Persons desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR Part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR Part 1253.

Dated: September 22, 1986.

Frank G. Burke,

Acting Archivist, of the United States.

[FR Doc. 86–22091 Filed 9–29–86; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3016; Licence No. SNM–1912]

Houston Lighting and Power Company, et al., Matagorda County, TX; Finding of No Significant Impact, Issuance of Special Nuclear Materials

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Special Nuclear Materials License No. SNM–1972 to Houston Lighting and Power Company, City Public Service Board of San Antonio, Texas, Central Power and Light Company, Corpus Christi, Texas, and the City of Austin, Texas, (the applicants) for the South Texas Project Eectric Generating Station (STPEGS), Unit 1, located in Matagorda County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed action would authorize the applicants to receive, possess, inspect, and store special nuclear materials in the form of unirradiated fuel assemblies. The discussion below will be limited to assessing the potential for environmental impacts resulting from the handling and the storage of new fuel at STPEGS, Unit 1.

The Need for the Proposed Action

The proposed license will allow the applicants to receive and store fresh fuel prior to issuance of the Part 50 operating

license in order to inspect the fuel and finalize fuel preparation needed to load the fuel into the reactor vessel. Actual core loading, however, will not be authorized by the proposed license.

Environmental Impacts of the Proposed Action

A. Nuclear Criticality and Radiation Safety

Once at STPEGS, Unit 1, the new fuel may be temporarily stored in their shipping containers in the new fuel inspection lay-down area and the new fuel handling area prior to placement in their designated storage locations: the new fuel storage pit and the spent fuel pool located in the Fuel Handling Building. The shipping container array to be utilized at STPEGS, Unit 1, has been analyzed under all degrees of water moderation and/or reflection and found to be critically safe.

Upon removal of the fuel assemblies from the shipping containers, they are inspected and surveyed for any external contaimation. Assuming no contamination is found, the assemblies are transferred to their designated storage location. Criticality safety of the storage location (new fuel and spent fuel racks) is maintained by limiting the interaction between adjacent fuel assemblies. This is accomplished in the new fuel storage pit such that fuel assemblies will be stored in three 2×11 modules, with a center-to-center spacing of 21 inches, providing a minimum of 12 inches between adjacent fuel assemblies. Fuel assemblies stored in the spent fuel pool will be placed in modules providing a minimum of 14 inch center-to-center spacing between adjacent fuel assemblies. The staff has determined that such storage arrangements are critically safe under all degrees of water moderation and/or reflection. Therefore, nuclear criticality safety of the storage racks is assured.

Since the fresh fuel assemblies are sealed sources, the principal exposure pathway to an individual is via external radiation. For low-enriched uranium fuel (<4 percent U–235 enrichment), the exposure level to an individual standing 1 foot from the surface of the fuel would be less than 25 percent of the maximum permissible exposure specified in 10 CFR Part 20. In addition, the applicants are committed to establishing a program for maintaining general public exposure as low as reasonably achievable. Therefore, the staff has concluded that the applicants' requested operations can be carried out with adequate radiation protection of the public and environment.

Only a small amount, if any, of radioactive waste (e.g., smear papers and/or contaminated packaged material) is expected to be generated as a result of fuel handling and storage operations. Any waste that is produced will be properly stored onsite until it can be shipped to a licensed disposal facility.

B. Transportation

In the event the applicants must return the fuel to the fuel fabricator, all packaging and transport of fuel will be in accordance with 10 CFR Part 71. No significant external radiation hazards are associated with the unirradiated fuel, because the radiation level from the clad fuel pellets is low and the shipping packages must meet the external radiation standards in 10 CFR Part 71. Therefore, shipment of unirradiated fuel by the applicants is expected to have an insignificant upon the environment.

C. Accident Analysis

In the unlikely event that an assembly (either within or outside its shipping container) is dropped during transfer, fuel cladding is not expected to rupture. Even if the fuel rod cladding were breached and the pellets were released, an insignificant environmental impact would result. The fuel pellets are composed of a ceramic UO_2 that has been pelletized and sintered to a very high density. In this form, release of UO_2 aerosol is unlikely except under conditions of deliberate grinding. Additionally, UO_2 is soluble only in acid solution so dissolution and release to the environment are extremely unlikely.

D. Conclusion

The environmental impacts associated with the handling and storage of new fuel at STPEGS, Unit 1, are expected to be insignificant. Essentially no effluents, liquid or airborne, will be released, and acceptable controls will be implemented to prevent a radiological accident. Therefore, the staff concludes that there will be no significant impacts associated with the proposed action.

Alternative to the Proposed Action: The principal alternative would be to deny the requested license. Assuming the operating license will eventually be issued, denial of the storage only license would merely postpone new fuel receipt at STPEGS, Unit 1. Although denial of the Special Nuclear Materials License for STPEGS, Unit 1, is an alternative available to the Commission, it would be considered only if significant issues of public health and safety could not be resolved to the satisfaction of regulatory authorities involved.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement (NUREG–1171) dated August 1986 related to this facility.

Agencies and Persons Contacted: The Commission's staff reviewed the applicants' request of June 14, 1985, and did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has prepared an Environmental Assessment related to the issuance of Special Nuclear Materials License No. SNM–1972. On the basis of this assessment, the Commission has concluded that environmental impacts created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Assessment. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 427–4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Silver Spring, Maryland this 23d day of September 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 86–22093 Filed 9–29–86; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition(s) for Exemption or Waiver of Compliance

In accordance with 49 CFR §§ 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petition(s) are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number RSAD–86–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before November 14, 1986 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Savannah State Docks Railroad

(Waiver Petition Docket Number RSAD–86–3)

The Savannah State Docks Railroad seeks a permanent waiver of compliance with all provisions of FRA regulations entitled Control of Alcohol and Drug Use in Railroad Operations (49 CFR Part 219).

The Savannah State Docks Railroad indicates it seeks this waiver on the grounds that: (i) The regulations undermine Federal court precedent and Georgia statutory law, (ii) because the carrier has a longstanding policy which prohibits the use of drugs or alcohol, (iii) the railroad has an outstanding safety record, (iv) compliance would have a substantial impact on the railroad, and (v) granting the petition would not have a negative impact on railroad safety.

Colonel's Island Railroad

(Waiver Petition Docket Number RSAD 86–4)

The Colonel's Island Railroad seeks a waiver of compliance with certain provisions of FRA regulations entitled Control of Alcohol and Drug Use in Railroad Operations (49 CFR Part 219). The railroad seeks a permanent waiver of compliance with Subparts B and C of the regulations. By regulation the railroad is not subject to Subparts D, E and F because it employs not more than 15 employees covered by the Hours of Service Act (see 49 CFR § 219.3(b)).

Subpart B prohibits employees from using, possessing or being under the influence of alcohol or a controlled substance while on duty in covered service. Subpart C requires post-accident toxicological testing of certain employees after major accidents.

The Colonel's Island Railroad indicates it seeks this waiver on the grounds that: (i) The regulations undermine Federal court precedent and Georgia statutory law, (ii) the carrier has a longstanding policy which prohibits the use of drugs or alcohol, (iii) the railroad has an outstanding safety record, (iv) compliance would have a substantial impact on the railroad, and (v) granting the petition would not have a negative impact on safety.

Issued in Washington, DC, on September 23, 1986.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86–22054 Filed 9–29–86; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Performance Review Board; Membership

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

DATE: Performance review effective October 17, 1986.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, PM:HR:H:E, Room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 566–4633, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives in the office of the Assistant Commissioner (Inspection) are as follows:

James Owens, Deputy Commissioner
Michael Hill, Inspector General, Department of the Treasury
M. Eddie Heironimus, Associate Commissioner (Data Processing)

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978 (43 FR 52122).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 86–22108 Filed 9–29–86; 8:45 am]

BILLING CODE 4830–01–M

Reporting and Recordkeeping Requirement Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirement submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U..C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register,** notifying the public that the agency has made such a submission. USIA is requesting approval of its informtion collection on a standarized program report.

DATE: Comments must be received by November 29, 1986.

Copies: Copies of the request for clearance (S.F. 83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Desk Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB. Attention: Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer: John Davenport, United States Information Agency, M/ASP, 301 4th Street, SW., Washington, DC 20547. Telephone (202) 485–7505, and OMB Reviewer: Bruce McConnell, Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC, 20503. Telephone (202) 395–7231.

SUPPLEMENTARY INFORMATION: Title: President's International Youth Exchange Initiative Program Report. Form Number: IAP–91. Abstract: The Agency needs accurate statistics on the impact on exchange programs of grants awarded under the President's International Youth Exchange Initiative. Current reporting does not provide this data uniformly. Information gathered on this program report will be used to report to the Congress, the President's Council, and the public on the Initiative.

Dated: September 24, 1986.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 86-22027 Filed 9-29-86; 8:45 am]

BILLING CODE 8230-01-M

UNITED STATES INFORMATION AGENCY

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Amendment to Exchange Visitor Skills List.

SUMMARY: The Exchange Visitor Skills List is amended to reflect the deletion of South Africa, addition of Iraq and changes in Group 4 in the country skill-list for the People's Republic of China, and to clarify that the country skill-list for the People's Republic of China is not applicable to exchange visitors from Taiwan.

DATES: With the establishment of a skills list for Iraq, exchange visitors from that country will be subject to the home residence requirement pursuant to the skills list 30 days after this publication in the Federal Register. With regard to the deletion of South Africa and the corrections in the Chinese skills list for the People's Republic of China, this notice shall be retroactive to December 12, 1984.

ADDRESS: Comments and requests for further information should be addressed to: Richard L. Fruchterman, Assistant General Counsel, Office of the General Counsel and Congressional Liaison, USIA, Suite 700, 301-4th Street, SW., Washington, DC 20547. Telephone (202) 485-7976.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 212(e) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(e)), the Secretary of State designated on April 25, 1972, a list of fields of specialized knowledge or skill (Referred to as the Exchange-Visitor Skills List) and those countries which clearly required the services of persons engaged in one or more of such fields. Any alien who was a national resident of one of those countries and obtained an exchange-visitor visa and/or became a participant in an Exchange Visitor Program involving a designated field of specialized knowledge or skill after the effective date of that notice was subject to the 2-year foreign residence (home-country physical presence) requirement of section 212(e) of said Immigration and Nationality Act as provided by said section and 22 CFR 41.65(b).

Pursuant to the provisions of Reorganization Plan No. 2 of 1977, section 217 of United States Information Agency Authorization Act of August 24, 1982 (Pub. L. 97-241) and Executive Orders Nos. 2038 (March 27, 1978) and 12388 (Oct. 14, 1982), the Director, United States Information Agency, on June 12, 1984 further amended the 1972 Exchange Visitor Skills List, as revised in 1978, to increase the designated fields of specialized knowledge of skills. The 1984 amendment gave notice of the addition of China and the deletion of Cambodia, Iran and Viet-Nam from the skills list as well as the indefinite suspension of Afghanistan. The Exchange Visitor Skills List, as amended in 1984, is used in conjunction with the two prior existing lists.

The Exchange Visitor Skills List, as amended in 1984, is further amended by the following changes:

1. South Africa is deleted from the list. Since South Africa was erroneously placed in the list in 1984, the change will take effect retroactively. Those exchange visitors from that country who entered the United States after June 12, 1984 are not subject to the residence requirement pursuant to the skills list.

2. Iraq is added to the list with a listing that includes the entirety of Part I, general list of Designated Fields of Specialized Knowledge or Skills, of the Exchange Visitor Skills List as amended, 1984.

3. Group 4 of the skills list for the People's Republic of China is corrected to show 4G Electrical Engineering and 4H Electronic Engineering. This list is not applicable to exchange visitors from Taiwan. There is no skills list for Taiwan.

This Notice amends Public Notice No. 356-37, 37 FR 8099-8177 April 25, 1972, Public Notice No. 591, 43 FR 5910-5912, February 10, 1978 and Public Notice, No. Vol. 49 No. 114 FR 24194-24242, June 12, 1984.

Dated: September 22, 1986.

C. Normand Poirier,

Acting General Counsel, United States Information Agency.

[FR Doc. 86-22028 Filed 9-29-86; 8:45 am]

BILLING CODE 8230-01-M

International Festivals and Exhibitions Support Initiative

In order to expand their initiative to support U.S. participation in significant international arts events, the United States Information Agency (USIA) and the National Endowment for the Arts (NEA) solicit proposals from qualified United States nonprofit organization(s) ("cooperator") which will both provide additional funds and administer a program to support United States participation abroad in a number of performing arts festivals and international exhibitions.

Federal funding for this project is limited to the amount of approximately $375,000 subject to the availability of FY '87 funds. The entire $375,000 must be used exclusively for grants to American artists, performing arts groups, museums, and visual arts organizations participating in designated international events. The Cooperator(s) will be expected to provide matching funds from private sources by the ratio of at least 1 to 1, resulting in a minimum total program budget of at least $750,000. Additionally, the cooperator will be responsible for publicizing the program to potential applicants, disbursing grant funds, providing support services, and disseminating information abroad about United States participation.

This project is divided into two components: (1) Performing arts festivals, and (2) visual arts exhibitions. Qualified nonprofit organizations may submit proposals for either, or for both components. Accordingly, one or more Cooperative Agreements may result from this solicitation. At this time it is anticipated that if two Cooperative Agreements result, one for the performing arts and one for the visual arts, approximately half of the federal funds will be allocated to visual arts exhibitions and approximately half will be allocated to the performing arts.

For applicants for the component dealing with performing arts festivals, experience with international festivals is desirable; experience in performing arts management and international exchange is necessry. For applicants for the component dealing with visual arts exhibitions, knowledge of major international exhibitions and of American museums and museum practices is very desirable; knowledge of exhibition management and international exchange is necessary.

Proposals must be submitted by November 17. The anticipated commencement for the Cooperative Agreement(s) is December 1986. The complete program solicitation may be requested until October 21 from:

Arts America Program, P/DB, United States Information Agency, 301 4th Street SW. Room 567, Washington, DC 20547, Telephone (202) 485-2783.

Dated: September 24, 1986.

William F. Thompson,

Director, Arts America.

[FR Doc. 86-22057 Filed 9-29-86; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 189
Tuesday, September 30, 1986

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).

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COPYRIGHT ROYALTY TRIBUNAL

TIME AND DATE: Monday, November 10, 1986, 1:30 p.m.

PLACE: 1111 20th Street, NW., Suite 450, Washington, DC 20036.

STATUS: Closed pursuant to a vote taken September 26, 1986.

MATTERS TO BE CONSIDERED: Adjudication of the 1984 jukebox distribution proceeding.

CONTACT PERSON FOR MORE INFORMATION: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036, 202–653–5175.

Dated: September 26, 1986.

Edward W. Ray,

Acting Chairman.

Copyright Royalty Tribunal

Certification of Closed Meeting

The General Counsel of the Copyright Royalty Tribunal hereby certifies, pursuant to 5 U.S.C. 552b(f)(1), and pursuant to § 301.14(b) of the Tribunal's rules, 37 CFR 301.14(b), that the Tribunal's deliberations concerning the hearing of the 1984 jukebox distribution proceedings scheduled to occur on November 10, 1986 (and from time to time thereafter up to 30 days as the Tribunal may, pursuant to 37 CFR 301.14(a), find appropriate) may properly be closed to public observation.

The relevant exemptions on which this certification is based are set forth in the following provision of law:

5 U.S.C. 552b(c)(10) (adjudication)
37 CFR 301.13(i) (adjudication)

The recorded vote of each Commissioner taken September 26, 1986 on the question of a closed meeting is as follows:

Chairman Edward W. Ray—Yes
Commissioner Mario F. Aguero—Yes
Commissioner J.C. Argetsinger—Yes

It is anticipated that, in addtion to the Commissioners of the Tribunal, the General Counsel and each of the Commissioners' confidential assistants will attend the Tribunal's deliberations.

Dated: October 17, 1985.

Robert Cassler,

General Counsel.

[FR Doc. 86–22214 Filed 9–26–86; 2:54 pm]

BILLING CODE 1410-09-M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 25, 1986.

TIME AND DATE: 10:00 a.m., Thursday, October 2, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Garry Goff v. Youghiogheny & Ohio Coal Co., Docket No. LAKE 84–86–D. (Issues include whether the judge properly found that the complainant was not discharged in violation of section 105(c) of the Federal Mine Safety and Health Act of 1977. 30 U.S.C. 815(c)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen 202–653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86–22168 Filed 9–26–86; 11:28 am]

BILLING CODE 6735-01-M

3

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, October 6, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of check processing equipment within the Federal Reserve System.
2. Building proposals regarding the Federal Reserve Bank of Chicago.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 26, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–22220 Filed 9–26–86; 3:30 pm]

BILLING CODE 6210-01-M

4

PAROLE COMMISSION

Pursuant to the Government in the Sunshine Act (Pub. L. 94–409 [5 U.S.C. 552b]

DATE AND TIME: Monday, October 6, 1986—1:00 p.m. to 5:00 p.m.

PLACE: Air World Center, 10920 Ambassador Drive, Suite 220, Kansas City, Missouri 64153.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 19 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.17 and appealed pursuant to 28 CFR 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Analyst, National Appeals Board, United States Parole Commission, (301) 492–5987.

Dated: September 25, 1986.

Patrick J. Glynn,

General Counsel, United States Parole Commission.

[FR Doc. 22141 Filed 9–26–86; 10:17 am]

BILLING CODE 4410-01-M

5

PAROLE COMMISSION

Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) [5 U.S.C. 552b]

PLACE: 5550 Friendship Boulevard, One North Park Building, Room 420–F, Chevy Chase, Maryland 20815.

DATE AND TIME:

Tuesday, October 7, 1986—9:00 a.m. to 5:30 p.m.
Wednesday, October 8, 1986—9:00 a.m. to 5:00 p.m.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of open business meeting of July 22 through July 23, 1986.
2. Reports from the Chairman, Vice Chairman, Commissioners, Legal, Research, Case Operations, and the Administrative Section.
3. Presentation on the financial responsibility program and the collection of fines, restitution, and court assessments.
a. Michael Quinlan, Deputy Director of the Bureau of Prisons.
b. Judge Tim Murphy, Assistant Director, Debt Collection Staff, U.S. Department of Justice.
4. Proposed revisions to the rescission guidelines: Recalculating the salient factor score and raising the severity for distributing drugs in the institution.
5. Proposed guidelines for distribution or possession with intent to distribute "Crack" (freebased cocaine)
6. Proposed revision of the dollar thresholds for property offenses.
7. Proposed inclusion of the value of the truck in theft from interstate shipment offenses.
8. Discussion of monthly notification of regions of NAB decisions and reasons.
9. Proposed procedures relating to the Ethics Program.
10. Proposed penalty for refusal to provide a urine sample.
11. Proposed guideline modification concerning unlawful sexual conduct with minors.
12. Addition to general policy statement concerning refusal to cooperate with police and investigators as an aggravating factor.

Consent Agenda

The following items are placed on the Commission's Consent Agenda. A request to discuss a particular item must be received by September 30, 1986. Items for which no such request is received shall be deemed adopted by consent and will not be discussed at the meeting.

13. Distributing drugs near an elementary school to be made an aggravating factor.
14. Modification to the confidential page of the Preliminary Interview.
15. Modification of § 2.56–03(a) relating to routine uses.

CONTACT PERSON FOR MORE INFORMATION: James L. Beck, Director of Research, United States Parole Commission, (301) 492–5980.

Dated: September 25, 1986.

Patrick J. Glynn,

General Counsel, United States Parole Commission.

[FR Doc. 86–22142 Filed 9–26–86; 10:18 am]
BILLING CODE 4410–01–M

federal register

Tuesday
September 30, 1986

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7
Labeling of Sulfites in Alcoholic Beverages, Final Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[T.D. ATF-236; Ref: Notice No. 566]

Labeling of Sulfites in Alcoholic Beverages

AGENCY: Bureau of Alcohol, Tobacco and Firearms, (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule requires the declaration in labeling of sulfites present in alcoholic beverages at a level of 10 or more parts per million (ppm), measured as total sulfur dioxide, by any method sanctioned by the Association of Official Analytical Chemists (AOAC).

The Commissioner of Food and Drugs has determined that undeclared sulfites pose a risk to public health. In the **Federal Register** of July 9, 1986, the Department of Health and Human Services and the U.S. Food and Drug Administration published a final rule establishing 10 parts per million as the threshold for declaration of sulfites in the labeling of foods, nonalcoholic beverates, and wine products containing less than seven percent of alcohol by volume.

DATES: The effective date of this final rule is January 9, 1987. Transitional rules are provided which will require full compliance by January 9, 1988.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226, (202) 566-7595.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act, 27 U.S.C. 205(e)(2), vests authority in the Director of the Bureau of Alcohol, Tobacco and Firearms, as the delegate of the Secretary of the Treasury, to prescribe regulations which will provide "adequate information" regarding the identity and quality of alcoholic beverages. Under this authority, labeling requirements are prescribed in Title 27, Code of Federal Regulations, Parts 4, 5, and 7, for wines, distilled spirits, and malt beverages, respectively.

In T.D. ATF-150, published in the **Federal Register** of October 6, 1983 [48 FR 45549], ATF required the declaration in the labeling of alcoholic beverages of the presence of FD&C Yellow No. 5 since it had been established that this colorant posed a recognized health problem. In the preamble of T.D. ATF-150, ATF stated that there was no clear evidence in the public record that any other ingredient being used in the production of alcoholic beverages posed a recognized health problem. ATF stated that it would "look at the necessity of mandatory labeling of other ingredients on a case-by-case basis" through a rulemaking initiative or by a petition for rulemaking.

Subsequent to the issuance of this regulation, ATF issued T.D. ATF-220, dated December 20, 1985 [50 FR 51851], which required the declaration of saccharin in the labeling of alcoholic beverages containing this sweetener.

Chronology of Sulfite Rulemaking Activities

Following FDA's publication in the **Federal Register** of July 9, 1982 [47 FR 29956] of a proposal to affirm the "generally recognized as safe" (GRAS) status of sulfur dioxide, sodium metabisulfite, sodium bisulfite and potassium metabisulfite, FDA initiated a comprehensive search and reexamination of all literature pertaining to the use of sulfiting agents in foods and drugs and contracted with the Federation of American Societies for Experimental Biology (FASEB) to review this data.

During the time period in which FDA was reviewing and reconsidering its proposal to affirm the GRAS listings for sulfites, ATF proposed in Notice No. 543, published in the **Federal Register** of September 24, 1984 [49 FR 37527], reductions of the 350 parts per million limitation prescribed for total sulfur dioxide in wine. These and other proposals in Notice No. 543, relating to revisions of the lists of materials and processes authorized for the treatment of juice and wine, are still under review and consideration by ATF. In the preamble of T.D. ATF-182 [49 FR 37510] which prescribed revised lists of authorized treating materials and processes, ATF stated, in part, that:

> At the present time, there is insufficient scientific data to justify ATF's delisting of the use of sulfiting agents in the treatment of wine. Accordingly, ATF is retaining sulfur dioxide as an authorized preservative agent in the treatment of wine. However, if at some future date the U.S. Food and Drug Administration were to determine that the sulfiting of foods and beverages presents a risk to public health and requires labeling disclosure, ATF would promptly propose the disclosure in labeling of sulfur dioxide and sulfiting agents.

On April 3, 1985, the Secretary of Health and Human Services and the Commissioner of Food and Drugs proposed an amendment to the food labeling regulations prescribed in Title 21, Code of Federal Regulations, Part 101, to establish 10 parts per million as the level of significance for residues of sulfiting agents added to foods and beverages [50 FR 13306]. In the preamble of this proposal, FDA stated that "sulfiting agents have been shown to produce allergic-type responses in humans and the presence of these ingredients in food may have serious health implications for those persons who are intolerant of sulfites." FDA stated further that "a label declaration of sulfites in food will enable persons intolerant to sulfites to minimize their exposure to these ingredients."

In Notice No. 566, published in the **Federal Register** of June 24, 1985 [50 FR 26001], ATF proposed the declaration in the labeling of alcoholic beverages of the presence of sulfites, whether added or produced naturally during fermentation, where the residual level of sulfite(s), measured as total sulfur dioxide by the AOAC sanctioned Monier-Williams method of analysis, equals or exceeds the level of measurable detection established by FDA for sulfiting agents added to foods and beverages.

Summary of Comments to Notice No. 566

ATF received a total of 516 comments of which 316 favored the proposal, 166 opposed the proposal, 14 requested extension of the comment period, and 20 offered "other" comment.

Wine Institute

Wine Institute, representing a membership of 500 commercial winemakers, stated its position which is summarized as follows:

(1) The causative agent in sulfite sensitivity is the "free" (molecular) sulfite;

(2) Wine is unique because the sulfites in wine are actually harmless sulfonates which are "irreversibly bound";

(3) There has never been a health problem with the sulfiting of wine; and,

(4) The only health problem, the indiscriminate use of "free" sulfites in raw fruits and vegetables, the so-called "salad bar syndrome," has been effectively resolved by industry and regulatory actions.

Wine Institute forwarded with its comment the preliminary results of medical testing which it had funded to support this position. Following a review of the summary data by FDA, representatives of Wine Institute met on March 27, 1986, with FDA and ATF officials and reported some indications of reactions to bound sulfites. In a June

27, 1986, letter endorsing the labeling of sulfites in wines, Wine Institute acknowledged that "part of the population of hyperallergenic asthmatics may be sulfite sensitive to wine . . . (and) while warning labels are certainly not warranted, informational labeling could assist some hyperallergenic asthmatics."

Ad Hoc Advisory Committee on Hypersensitivity to Food Constituents

This committee, established and funded by FDA, evaluated the literature pertaining to sulfites in two public meetings held in September and December of 1985. The committee voted unanimously to support ATF's labeling proposal.

FDA

The comment of Sanford A. Miller, Ph.D., Director, Center for Food Safety and Applied Nutrition, included the following statement:

FDA is in agreement with Notice No. 566 and supports the proposed rulemaking. As we have stated on previous occasions, FDA believes that individuals who are hypersensitive or simply wish to avoid or favor certain food ingredients should receive adequate notice of the presence of these ingredients in food. We believe that your Notice No. 566 accomplishes that for sulfiting agents.

CSPI

While generally supportive of ATF's proposal, the Center for Science in the Public Interest (CSPI) expressed its concern that the proposal "falls far short of adequately protecting the public from allergic reactions to alcoholic beverage ingredients other than sulfites." CSPI recommends that labels state "Contains (name of specific sulfiting agent), a sulfiting agent, used as a preservative" and that ATF specify that the sulfite declaration appear on the front brand label pursuant to the print size specifications for wine labeling.

Generic Labeling

The Grocery Manufacturers of America (GMA) submitted to ATF a comment favoring the use of a generic statement in lieu of a declaration specifying the name and technical effect of the sulfiting agent added to an alcoholic beverage. GMA had submitted this same comment in response to FDA's labeling proposal of April 3, 1985. GMA advocates the use of a generic labeling statement since various forms of sulfites may be used depending upon availability and cost to the processor or manufacturer.

General Comments Opposed to Proposal

Included in the various comments presented in opposition to the proposal were the following statements challenging the necessity for the declaration of sulfites on the grounds of economic impact, history of use, and practicality:

(1) The claim that for centuries wines have been sulfited without adverse effects;
(2) The need to add sulfites to wine compared to the lack of such need and outright abuse of sulfites in salad bars;
(3) Wine cannot withstand the handling and shipping vital to its distribution and export without the help of preservatives;
(4) Use of sulfur dioxide allows long storage in wood, bottle aging, and the maintaining of fruity flavors and freshness;
(5) The presence in wines and beers of "bound" sulfites produced naturally during fermentation;
(6) The AOAC method of analysis does not differentiate molecular bisulfite and the chemically "bound" forms which comprise most of the total sulfur dioxide measured in wine;
(7) The premise that only the free sulfite which constitutes an extremely small fraction of the materials measured as total sulfur dioxide in wine is the cause of reported sulfite sensitivities;
(8) The number of sulfite-sensitive individuals is estimated to constitute a very small segment (less 0.2 percent) of the U.S. population; and,
(9) To require all wines to be labeled with the phrase "contains sulfiting agents" would not be giving sulfite-sensitive consumers any distinguishing information regarding various producers and products.

Additonal Comments

An importer of wines requested that ATF require a sulfite declaration only on the labels of wines to which sulfites have been added. This would exempt wines containing nonadditive sulfites, i.e., the sulfites produced during fermentation by action of yeast on sulfates naturally present in juice. The commenter maintains that naturally produced sulfites are "irreversibly bound" and only the added "free" sulfites cause the reactions experienced by sulfite-sensitive individuals.

A domestic winemaker expressed concern about implementation of an effective date for a sulfite labeling requirement. The commenter pointed out that many vintage dated wines are bottled prior to aging in the bottle for a number of years. This commenter also expressed the concern that a final rule requiring a labeling declaration of sulfites should apply equally to foreign and domestic products. The commenter stated that an implementation date based on the time of bottling would be unenforceable in foreign countries since ATF has no authority to inspect records in order to verify bottling dates.

A medical researcher pointed out that the proposal does not expressly distinguish between naturally-occurring and additive sulfites. This commenter states that "the sensitive asthmatic cannot distinguish between the natural and additive forms either" and that "there is scant opportunity to eliminate naturally-occurring sulfites from fermented beverages."

A major importer of wines states that "when a product contains a substance that may cause an adverse physical reaction among a specific class of consumers, that fact should be declared on the label, along with the identity of the category of consumers at risk. The commenter cites as an example FDA's handling of the labeling of products containing the sweetener "aspartame" by requiring the labeling statement "Phenylketonurics: Contains Phenylalanine", a precedent upon which the commenter believes ATF should base its labeling of sulfites.

"Free Versus "Bond" Sulfites

Many of the commenters who had expressed opposition to the labeling proposal theorized (1) that the "free" form of sulfite was the cause for reactions experienced by sulfite-sensitive individuals and (2) that most sulfites in wine are "irreversibly bound" sulfonates. FASEB's review as well as studies by leading researchers indicate a connection between the free form of sulfites and the reactions experienced by sulfite-sensitive individuals. However, the medical testing funded by the Wine Institute shows that sulfite-sensitive individuals can react to the purportedly "bound sulfites."

FDA's Final Rule

In the **Federal Register** of July 9, 1986, the Secretary of Health and Human Services and the Commissioner of Food and Drugs published a final rule implementing regulations as proposed in FDA's notice of April 3, 1985, and requiring the declaration of sulfiting agents present at a minimum level of 10 parts per million measured as total sulfur dioxide. The effective date is January 9, 1987.

ATF's Final Rule

In view of ATF's knowledge of alcoholic beverage production, the data amassed by FDA in its second review of the GRAS status of sulfites, the recommendations of FASEB, and the public comments addressing ATF's proposal, ATF is issuing this final rule which requires the declaration on the

label of alcoholic beverages of the presence of sulfites when present at 10 or more parts per million, measured as total sulfur dioxide.

Since FDA has determined that the presence of undeclared sulfites in foods and beverages poses a recognized health problem to a certain class of individuals, ATF believes that the declaration of sulfites in the labeling of alcoholic beverages is necessary in order to inform sulfite-sensitive individuals of the presence of sulfites in alcoholic beverages. A label declaration of sulfites in foods and beverages will enable persons who are aware of an intolerance to sulfites to minimize their exposure to these ingredients.

This final rule requires the labeling of sulfites *present* in alcoholic beverages at a level of 10 or more parts per million (ppm), measured as total sulfur dioxide, by *any* method sanctioned by the Association of Official Analytical Chemists (AOAC). The mandatory sulfite declaration applies to alcoholic beverages which, at the time of bottling, contain 10 or more parts per million of sulfites measured as total sulfur dioxide. This final rule does not distinguish between the "free" and "bound" forms of sulfites.

ATF, in consideration of the deficiencies of the Monier-Williams test, will recognize any method which is sanctioned by the Association of Official Analytical Chemists for use in the determination of sulfites in alcoholic beverages. To date, only the Monier-Williams test has AOAC sanction; however, several methods, e.g., flow injection analysis and a combination Ripper/aeration-oxidation method, show promise and are to be collaboratively studied by AOAC in the coming months.

Form of Declaration

In consideration of FDA's determination that sulfites pose a health risk to certain individuals versus the economic impact of mandating new labeling information for producers, bottlers and importers of alcoholic beverages, ATF believes that the generic statements "Contains sulfites," "Contains a sulfiting agent," or "Contains sulfiting agents" provide adequate and effective notice to consumers of alcoholic beverages and have a minimal impact on producers, bottlers and importers responsible for the labeling of products affected by this final rule. ATF believes that a simple generic statement best serves the purpose of allerting an individual who is aware of a sensitivity to sulfites.

Producers, bottlers and importers have the option of identifying the specific sulfiting agent by its common or usual name. The common or usual names for the six sulfiting agents are 'sulfur dioxide", "sodium sulfite", "sodium bisulfite", "potassium bisulfite", "sodium metabisulfite", and "potassium metabisulfite." ATF does not recognize the use of other terms, e.g., "sulfurous (acid) anhydride", "pyrosulfite", or similar wording, as acceptable labeling for the declaration of sulfites because the vagueness of such terminology has the potential to mislead consumers.

A producer, bottler or importer may, *in addition to* the mandatory statement, state the parts per million of total sulfur dioxide determined to be present in the finished product immediately prior to bottling. The producer, bottler or importer may, *in addition to* the mandatory sulfite declaration, state the parts per million of free sulfite present at bottling provided this information is preceded by a statement of the parts per million of sulfite(s) measured as total sulfur dioxide immediately prior to bottling. For example, the label of a bottle of wine containing sulfites could declare the sulfite content as follows:

"CONTAINS SULFITES. At the time of bottling this product contained 100 parts per million total sulfur dioxide and 25 parts per million free sulfite."

ATF considers statements disclosing *only* the level of free sulfite or the level of free sulfite *not preceded immediately* by the total sulfur dioxide content as likely to mislead the consumer of the alcoholic beverage.

The mandatory declaration of the presence of sulfites shall conform to the size of type requirements for mandatory labeling information as prescribed in Title 27, Code of Federal Regulations, Parts 4, 5 and 7. If the mandatory declaration is contained among other descriptive or explanatory information, e.g., levels of total and free sulfites, the script, type, or printing of the mandatory declaration shall be of a size substantially more conspicuous than that of the descriptive or explanatory information. The declaration of sulfites shall appear on a contrasting background.

In order to allow producers, bottlers and importers flexibility in implementing the provisions of this final rule, the declaration of sulfites may appear on a neck or strip label in lieu of the brand (front) label or back label.

Method of Analysis

Under ATF's Notice No. 566, the detectable amount of a sulfiting agent is 10 or more parts per million, expressed as total sulfur dioxide, in the finished alcoholic beverage when a sample of the product is analyzed using the Monier-Willams method prescribed in section 20.123–20.125, "Total Sulfurous Acid," in "Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC)," 14th Ed. (1984). A copy of this method is available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044.

Since publication of the proposal, however, ATF has found that FDA's laboratories and ATF's laboratories actually use modifications of the published method, not expressly sanctioned by AOAC, e.g., a combination of the Ripper method and the aeration-oxidation method, to obtain more quantitative results of analysis. In addition, ATF is aware of ongoing efforts under the auspices of AOAC to conduct collaborative studies of at least a dozen newly-developed methods for quantitative analysis of sulfites in the various food matrices. In light of these developments, ATF will not specify use of the Monier-Willians test. Any method evaluated by collaborative study under AOAC auspices and published by AOAC for use in the determination of total sulfur dioxide in alcoholic beverages may be used.

Effective Date, Transition Period, Mandatory Dates

Implementation of a final rule requiring the declaration of sulfites in the labeling of alcoholic beverages which contain 10 or more parts per million of sulfites requires a reasonable period of time for industry members to bring labels of products affected by this final rule into compliance.

FDA has established a transition period of 180 days because information about the presence of sulfiting agents is not merely informative but is necessary to protect the health of sulfite-sensitive individuals. However, FDA's final rule constitutes a clarification of existing statutory and regulatory requirements applicable to the labeling of food and nonalcoholic beverages. Only a small percentage of the food and beverage industries within FDA's jurisdiction had not labeled products for sulfites because of a misunderstanding about what constituted a significant level of residual sulfites requiring a labeling declaration.

The mandatory declaration of sulfites in the labeling of alcoholic beverages is entirely new to the alcoholic beverage industry. It will require revision of the labels of all but a very few wines offered for sale in the United States and to a lesser extent will require revision to the labels of some malt beverages, and

few, if any, distilled spirits products, offered for sale in the United States. In view of this new requirement placed upon the industry, ATF has established an effective date of January 9, 1987, for the final rule, followed by a one-year transition period for the full implementation of the rule.

As of the effective date of January 9, 1987, all labels submitted for approval for alcoholic beverages affected by this final rule shall bear the mandatory sulfite declaration. As of July 9, 1987, all alcoholic beverages affected by this final rule, shall, at the time of bottling, be labeled with the mandatory sulfite declaration. As of January 9, 1988, the labels of all alcoholic beverages affected by this final rule shall include the mandatory sulfite declaration upon removal from domestic bottling premises or from customs custody.

During the 180-day period beginning on July 9, 1987, producers, bottlers and importers may remove alcoholic beverages affected by this final rule from bottling premises or from customs custody without a sulfite declaration provided such products are bottled prior to July 9, 1987. On and after January 9, 1988, the labels of all alcoholic beverages affected by this requirement shall bear a sulfite declaration upon the removal of such products from bottling premises in the case of domestically-bottled products or withdrawal from customs custody in the case of foreign-bottled products. As of this date, alcoholic beverages affected by this final rule may no longer be removed from bottling premises or from customs custody without the mandatory sulfite declaration, regardless of the dates of bottling.

Certificates of Label Approval

Labels for alcholic beverages affected by this final rule will require revision to include the mandatory sulfite declaration. The volume of applications for certificates of label approval for revised labels, especially for wines, however, would impose a large burden on industry and on ATF. Accordingly, ATF deems product labeling covered by existing certificates of label approval and which is revised solely to include the mandatory sulfite declaration, approved without the necessity for submission of a new certificate of label approval.

With the exception of the labeling statements specifically listed on the reverse of ATF Form 5100.31, for which the submission of a new application is not required, e.g., net contents and vintage year, any change in graphics, design, style, or in the wording or placement of mandatory and nonmandatory information printed on the original label(s) will necessitate the filing of a new application for a certificate of label approval.

ATF is permitting the addition of a separate strip or neck label which shows the mandatory sulfite declaration. The use with a previously approved label of a strip or neck label which bears *only* the sulfite declaration will not require the submission of a new certificate of label approval. If the sulfite declaration is added with no other changes to a previously approved strip or neck label bearing other information, the revision of the strip or neck label will not require the submission of a new application for certificate of label approval.

As of January 9, 1987, the effective date of this final rule, all sets of labels submitted on applications for certificates of label approval for alcoholic beverages containing 10 or more parts per million of total sulfur dioxide shall include the mandatory sulfite declaration. This statement may appear on a front or back label or on a strip or neck label. Any producer, bottler or importer who, as of this date, files an application for a certificate of label approval for a wine which is believed to contain less than 10 parts per million of sulfites, measured as total sulfur dioxide, shall also forward a sampling representative of the finished wine and consisting of 10 bottles having minimal net contents of 100 milliliters. ATF will analyze the wine for sulfur dioxide content prior to the issuance of a certificate of label approval for wine which does not bear the mandatory sulfite declaration.

Beginning on September 30, 1986, the date of publication of this final rule in the **Federal Register**, and until the effective date of January 9, 1987, ATF's Product Compliance Branch will qualify all newly issued certificates of label approval for wines not bearing the mandatory sulfite declaration with the statement:

"In order for this product to be bottled on and after July 9, 1987, this label must be revised to include the mandatory sulfite declaration prescribed in 27 CFR 4.32(e)."

ATF encourages the filing of applications for new labels as far in advance as possible of the July 9, 1987, manatory date for botting and labeling compliance.

Although the submission of new certificates of label approval is not necessary, producers, bottlers and importers who choose to submit applications for labels revised to include the mandatory sulfite declaration, are encouraged to include a photocopy of the previously issued certificate of label approval with each new application. This will facilitate approval by allowing a comparison of the previously approved label with the revised label.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable because this final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

ATF has determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal State, or local government agencies, or geographic regions; and, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB).

Drafting Information

The principal author of this document is Coordinator Michael J. Breen of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms. Coordinator Charles N. Bacon of the Product Compliance Branch assisted in the drafting of this document.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packing and containers, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

Authority and Issuance

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.32 is amended by adding a new paragraph (e) and OMB control number to the end of this section as follows:

§ 4.32 Mandatory label information.

* * * * *

(e) *Declaration of sulfites.* There shall be stated on a front label, back label, strip label or neck label, the statement "Contains sulfites" or "Contains (a) sulfiting agent(s)" or a statement identifying the specific sulfiting agent where sulfur dioxide or a sulfiting agent is detected at a level of 10 or more parts per million, measured as total sulfur dioxide. The provisions of this paragraph shall apply to: (1) Any certificate of label approval issued on or after January 9, 1987; (2) any wine bottled on or after July 9, 1987, regardless of the date of issuance of the certificate of label approval; and, (3) any wine removed on or after January 9, 1988.

* * * * *

(Paragraph (e) approved by the Office of Management and Budget under Control No. 1512-0469)

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 3. The authority citation for 27 CFR Part 5 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 4. Section 5.32 is amended to redesignate paragraphs (b) (7), (8), and (9) as paragraphs (b) (8), (9), and (10), respectively, to add a new paragraph (b)(7) and to add the OMB control number to the end of the section as follows:

§ 5.32 Mandatory label information.

* * * * *

(b) * * *

(7) *Declaration of sulfites.* There shall be stated, the statement "Contains sulfites" or "Contains (a) sulfiting agent(s)" or a statement identifying the specific sulfiting agent where sulfur dioxide or a sulfiting agent is detected at a level of 10 or more parts per million, measured as total sulfur dioxide. The sulfite declaration may appear on a strip label or neck label in lieu of appearing on the front or back label. The provisions of this paragraph shall apply to: (i) Any certificate of label approval issued on or after January 9, 1987; (ii) any distilled spirits bottled on or after July 9, 1987, regardless of the date of issuance of the certificate of label approval; and, (iii) any distilled spirits removed on or after January 9, 1988.

* * * * *

(Paragraph (b)(7) approved by the Office of Management and Budget under Control No. 1512-0469)

Par. 5. Section 5.33 is amended by revising paragraph (b)(2), by redesignating paragraphs (b)(3), (4), and (5) as paragraphs (b)(4), (5) and (6), respectively, and by adding a new paragraph (b)(3) as follows:

§ 5.33 Additional requirements.

* * * * *

(b) * * *

(2) Statements required by this subpart, except brand names and the declaration of sulfites in § 5.32(b)(7), shall be separate and apart from any other descriptive or explanatory matters.

(3) If not separate and apart from other descriptive or explanatory matter printed on the label, the statement declaring the presence of sulfites shall be of a size substantially more conspicuous than surrounding nonmandatory labeling information.

* * * * *

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 6. The authority citation for 27 CFR Part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 7. Section 7.22 is amended by adding a new paragraph (b)(6) and OMB control number to the end of the section as follows:

§ 7.22 Mandatory label information.

* * * * *

(b) * * *

(6) *Declaration of sulfites.* The statement "Contains sulfites" or "Contains (a) sulfiting agent(s)" or a statement identifying the specific sulfiting agent where sulfur dioxide or a sulfiting agent is detected at a level of 10 or more parts per million, measured as total sulfur dioxide. The sulfite declaration may appear on a strip label or neck label in lieu of appearing on the front or back label. The provisions of this paragraph shall apply to: (i) Any certificate of label approval issued on or after January 9, 1987; (ii) any malt beverage bottled on or after July 9, 1987, regardless of the date of issuance of the certificate of label approval; and, (iii) any malt beverage removed on or after January 9, 1988.

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(Paragraph (b)(6) approved by the Office of Management and Budget under Control No. 1512-0469).

Signed: August 11, 1986.

Stephen E. Higgins,

Director.

Approved: September 8, 1986.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

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Part III

Department of Health and Human Services

Office of Human Development Services

FY 1987 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. HDS-87-1]

FY 1987 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications

AGENCY: Office of Human Development Services, HHS.

ACTION: Announcement of availability of funds and request for applications under the Office of Human Development Services' Coordinated Discretionary Funds Program.

SUMMARY: The Office of Human Development Services (HDS) announces the beginning of its Coordinated Discretionary Funds Program for Fiscal Year 1987.

Funding for HDS grants and cooperative agreements is authorized by legislation governing the discretionary programs of its constituent program administrations—the Administration for Children, Youth and Families (ACYF); the Administration on Developmental Disabilities (ADD); the Administration on Aging (AoA); and the Administration for Native Americans (ANA).

This program announcement consists of four parts. Part I provides background information, discusses the purpose of the HDS Coordinated Discretionary Fund Program, lists funding authorities, and briefly describes the application process. Part II describes the programmatic priorities under which HDS solicits applications for funding for projects. Part III describes in detail the application process. Part IV provides guidance on how to prepare and submit an application. All of the forms and instructions necessary to submit an application are published as part of this announcement following Part IV. Therefore, no separate application kit is available for submitting an application.

DATES: The closing date for receipt of applications under this announcement is December 15, 1986.

ADDRESSES: Application receipt point: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue, SW., Room 724–F, Washington, DC 20201 Attn: HDS–87–1.

This program announcement is available as an electronic document through the HDS Computer Bulletin Board. Organizations equipped with computers and modems may link to the bulletin board by calling (202) 755–1642.

FOR FURTHER INFORMATION CONTACT: Department of Health and Human Services, HDS/Office of Policy, Planning and Legislation, Division of Research and Demonstration, 200 Independence Avenue, SW., Room 724–F, Washington, DC 20201. Telephone (202) 755–4633.

SUPPLEMENTARY INFORMATION:

Part I—Preamble

A. Goals of the Office of Human Development Services

The four program administrations in the Office of Human Development Services, though varied, share a common mission: to reduce dependency and increase self-sufficiency among our most vulnerable citizens. Progress toward accomplishing this mission not only reduces demand for services but makes it possible for more Americans to live independent lives.

In order to be considered for funding under the Coordinated Discretionary Funds Program (CDP), each applicant must describe activities that contribute to meeting the goals of HDS. These goals are:

- To increase family and individual self-sufficiency and independence through social and economic development strategies;
- To target Federal assistance to those most in need; and,
- To improve the effectiveness and efficiency of State, local and tribally-administered human services.

The HDS Coordinated Discretionary Funds program is based on the principle that the well-being of the public is the responsibility of individuals, families and the communities in which they live. Human service needs are best defined and addressed through institutions and organizations at the level closest to the individual—State, Tribal and local governments, public agencies, businesses, private voluntary organizations, religious institutions, communities and families.

B. Mission of the Coordinated Discretionary Funds Program

The Coordinated Discretionary Funds Program is the major research and demonstration effort of the Office of Human Development Services. Through this program, HDS, together with not-for-profit, non-profit, voluntary and philanthropic organizations and local communities, attempts to analyze trends and anticipate social issues that will become paramount in the future; to improve the effectiveness and efficiency of human services by developing new techniques and approaches to deal with social issues; and to develop alternatives to traditional social service approaches.

HDS is primarily interested in providing funds for projects of immediate impact or which can become self-sustaining in a short period of time. The HDS Coordinated Discretionary Funds program is not intended to provide funds for ongoing social services or to serve as a supplemental source of funds for local activities which need operating subsidies.

C. Competitive Review of Applications

Applications which meet the screening requirements under Part III of this announcement will be reviewed competitively against the evaluation criteria (also published in Part III of this announcement) by qualified persons from the field of human services. HDS uses these field reviewer scores as the primary element in the selection process. The results of this review assist the Assistant Secretary and the Program Commissioners and other members of the HDS Senior Staff in deciding which applications should receive funding. However, only the Commissioner on Aging has the authority to approve applications for funding under Title IV of the Older Americans Act.

D. Findings from a Symposium on Youth in the Year 2000

On June 10, 1986, Health and Human Services Secretary Otis Bowen and Secretary of Labor William Brock, together with the National Alliance of Business, sponsored a meeting of national public and private leaders to discuss youth issues of critical importance to the Nation during the next fourteen years. Following that meeting, several interagency agreements have been signed between HHS and the Labor Department to formalize our working relationship on youth issues. In Fiscal Year 1987, the two Departments will consider joint funding of a number of qualified projects under priority areas dealing with disadvantaged, at-risk and troubled youth (e.g., 1.2.B, 2.1.A, 2.1.B, and 2.4.A).

Youth issues have become an increasingly important area of concern and a special focus for HDS and other components of HHS. Some of the more significant factors which are anticipated to shape issues of concern to youth into the year 2000 are:

1. For many American youth the future appears bright. Approximately 71 percent of young people graduate from high school. Over 7.5 million young people attend college each year, up 22 percent in the last decade. Demographic projections point toward a labor force

that will grow more slowly, providing opportunities for today's youth to reach for economic self-sufficiency as they complete the transition into adulthood.

2. The changing structure of the American family, however, remains a cause of concern. In 1982 22 percent of all children lived in single-headed families compared with 11.8 percent in 1970. It is projected that the number of single heads of households with children under 18 will increase 23 percent by the Year 2000. The number of children with mothers in the labor force rose by 5.8 million over the last decade to 33.5 million, or to nearly 60 percent compared with less than 50 percent 10 years ago.

3. The annual number of out-of-wedlock births to teenagers has increased 270 percent since 1960. One million adolescents become pregnant each year. Today, four out of ten 14-year-old girls will have at least one pregnancy before their 20th birthday. Six of ten women who receive public assistance had their first child as teenagers. We estimate that teenage pregnancies cost the welfare system $16 billion annually.

The prevention of adolescent sexual activity and adolescent pregnancy depends primarily on developing strong family values and close family ties. Since the family is the basic unit in which the values and attitudes of adolescents concerning sexuality and pregnancy are formed, programs which address the issues of sexuality and pregnancy need to operate within the context of the family. A main goal of prevention programs, as articulated by Secretary Bowen, is to encourage the postponement of sexual activity by promoting family involvement through increasing the amount and ease of communication about sexual topics between teens and their parents and encouraging positive changes in attitudes about the postponement of sexual activity among teens.

Male responsibility in preparing for future parenting contributions, both emotional and financial, is seen as an important component of this prevention focus. All too often, prevention efforts have focused only on the females and ignored the male.

4. Other problems confront youth as well. Approximately 3 million young people, 21 percent of all 14-to-17 year olds, have problems with alcohol. While marijuana use has declined since 1979, cocaine and PCP use are increasing. Accidents, homicide and suicide are the three leading causes of death for young people, and people under the age of 21 account for more than half of all arrests for serious crimes.

5. While most of these problems cross all social, economic and geographic boundaries, they are particularly acute among our nation's urban and rural poor. High school drop out rates in our large cities are approximately 50 percent. This is disturbing because occupational projections suggest that although the labor market in the year 2000 appears favorable to today's youth, the jobs of the future will require higher skill levels than those of today. There will be few well-paying jobs for the unskilled.

HDS has provided and will continue to provide short-term project support through the CDP for projects that:

- Build on the strengths of our nation's strong values of individual, family and community responsibility and interdependence;
- Promote positive values and practices among all young people;
- Target specific prevention efforts to at-risk youth, families and communities; and,
- Develop and implement creative community and family-based approaches to working with youth who have encountered major challenges to their development into independent and responsible citizens.

Specific priority areas related to youth issues in this announcement include 1.1.B, 1.1.C, 1.1.D, 1.1.E, 1.1.J, 2.1.B, 2.1.H, 2.3.A, 2.3.B, 2.3.C, 2.4.A, and 2.4.B.

E. HDS Partnerships with National and Community Foundations

To help us to develop priority areas for the CDP each year, HDS has extensive consultations with practitioners, State and local officials, national organizations, academics, and philanthropic groups.

Many foundations have supported important innovations in the human services and are developing an increasingly sophisticated body of knowledge. Last year, HDS officials met with representatives of a number of foundations to share ideas regarding priorities and to solicit recommended approaches for Federal consideration. These meetings led to a closer relationship between HDS and a number of foundations in the conduct of the Coordinated Discretionary Funds Program for Fiscal Year 1986.

In some priority areas, foundation staff participated in the review, selection and funding of projects. Some foundations are currently sharing with HDS officials the responsibilities for managing funded projects. HDS staff have also been involved in the process by which some foundations make financial awards to organizations.

This year we are continuing our relationship with community and national foundations through several priority areas.

G. Statutory Authorities

The individual statutory authorities under which grants and cooperative agreements will be awarded through the HDS Coordinated Discretionary Funds Program are as follows:

- *Head Start:* Head Start Act, Subchapter B of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, as amended (42 U.S.C. 9831 et seq.);
- *Child Welfare Services:* Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96–272 (42 U.S.C. 626); section 426 of the Social Security Act, as amended, including the Child Welfare Training Grants Program (42 U.S.C. 5620);
- *Runaway Youth Program:* Runaway and Homeless Youth Act, as amended, Pub. L. 96–509 (42 U.S.C. 5701 et seq.);
- *Child Abuse:* Child Abuse Prevention and Treatment Act, Pub. L. 93–247 (42 U.S.C. 5101 et seq.);
- *Adoption Opportunities:* Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended, Pub. L. 95–266 (42 U.S.C. 5101 et seq.);
- *Native Americans:* Native American Programs Act of 1974, as amended, Pub. L. 93–644 (42 U.S.C. 2991 et seq.);
- *Developmental Disabilities Special Projects:* Developmental Disabilities Act of 1984, Part E—Special Project Grants, section 162, Pub. L. 98–527 (42 U.S.C. 6000 et seq.);
- *Older Americans: Training, Research and Discretionary Projects and Programs:* Title IV of the Older Americans Act, as amended, Pub. L. 89–73 (42 U.S.C. 3031–3035e);
- *Social Services Research and Demonstrations:* Section 1110 of the Social Security Act, as amended (42 U.S.C. 1310).

Part II—Priority Areas

The programmatic priority areas of the Office of Human Development Services' Coordinated Discretionary Funds Program are listed as follows:

Section 1: Community and Family-Based Care

Topic 1: Support for Families:

- *1.1.A:* Support for Families Including Members with Developmental Disabilities
- *1.1.B:* Resolving Chemical Dependency Problems Within Native American Environments
- *1.1.C:* Models to Assist Teenage Parents in Preventing Child Abuse and Neglect

1.1.D: Parental Involvement in Head Start Programs
1.1.E: A Parent-Adolescent Mediation Program
1.1.F: Utilization of Adoptive Parent Groups to Support the Adoption of Special Needs Children
1.1.G: Services to Adoptive Families Who Experience Disruption or Dissolution
1.1.H: Improving Community Capability to Work with Adoptive Families of Children with Developmental Disabilities
1.1.I: Foster Care Placement Prevention
1.1.J: Corporate Partnership Models for Strengthening Families—Prevention/Outreach
1.1.K: Parenting Programs for Incarcerated Parents
1.1.L: Chronic Neglect of Children
1.1.M: Employer-Based Support for Family Caregivers

Topic 2: Community-Based Care and Improvements in Local Human Services
1.2.A: Community-Based Living Arrangements for Persons with Developmental Disabilities
1.2.B: Private Industry Council Partnerships—Linking Social Services and Youth Employment Services
1.2.C: Mental Health Services and the Child Welfare System
1.2.D: Improving the Quality of Educational Services for Children in Foster Care
1.2.E: Meeting the Health Care Needs of Children in Foster Care
1.2.F: Training of Foster Parents to Deal with Sexually Abused Children
1.2.G: Improving Protective Services Administration and Performance
1.2.H: Partnerships of Unions, Sororities, Fraternities, Service Organizations and Indian Organizations with Social Service Agencies in Support of Special Needs Adoption
1.2.I: Effective Strategies for Adoption Opportunities for Children in Residential/Group Care
1.2.J: Coordination of Court Actions in Child Abuse and Neglect Cases
1.2.K: Improving Child Protective Services on Indian Reservations
1.2.L: Improvement of State Child Welfare Licensing Programs
1.2.M: Adoption Opportunities for Older Children
1.2.N: Strategies for Recruitment and Retention of Foster Families
1.2.O: Prevention of Abuse and Neglect in Infants of Chemically Dependent Mothers

Topic 3: Improvement in Community Systems for Responding to the Needs of the Elderly:
1.3.A: Assessments of Community Service Systems and the Roles of Area Agencies on Aging (AAA's)
1.3.B: Aging Network Linkages—Improving Linkages Between the Community Health Care System, Especially Hospitals and Community Health Centers, and the Community Supportive Service System
1.3.C: Aging Network Linkages—Increasing State Agency on Aging Leadership Capacity to Assist Alzheimer's Disease Victims and their Families
1.3.D: Aging Network Linkages—Improvement in Emergency Services
1.3.E: Aging Network Linkages—Improving Linkages with Long Term Care Facilities
1.3.F: Improving Targeting of Services to the Vulnerable Elderly
1.3.G: Hospital Emergency Services—Tapping their Full Potential for Older Persons
1.3.H: Field-Initiated Proposals for Improving Community Service Systems for the Elderly

Section 2: Economic and Social Self-Sufficiency

Topic 1: Individual Self-Sufficiency
2.1.A: Expanding Employment Activities for Persons with Developmental Disabilities
2.1.B: Innovative Community Approaches to Entrepreneurial Activity with Native American High School Youth
2.1.C: Legal Assistance for Older Persons
2.1.D: Aging Health Promotion—Mental Health
2.1.E: Aging Health Promotion—Dental Health
2.1.F: Aging Health Promotion—Pedestrian and Motor Vehicle Safety
2.1.G: Transition of Head Start Students to Public Schools

Topic 2: Community Self-Sufficiency
2.2.A: Development of Models Applying the Enterprise Zone Concept to American Indian Reservations

Topic 3: Intergenerational Projects
2.3.A: Intergenerational Projects

Topic 4: Challenge Grants to Community Foundations
2.4.A: Job Clubs for Teenagers
2.4.B: Mainstreaming Troubled Youth

Section 3: Dissemination and Utilization

3.1.A: Expand or Improve Social Service Delivery to Native American Communities by Packaging and Disseminating Successful Approaches and/or Implementing Models in Other Native American Communities
3.1.B: Development of New or Replication of Successful Placement Efforts in Special Needs Adoption
3.1.C: Temporary Child Care for Handicapped Children and Children in Need of Protection
3.1.D: Assessment of Local Agency Adoption Efficiency

Section 4: Research and Evaluation

4.1.A: Development of Measures for Assessing the Performance of State Agencies on Aging
4.1.B: Assessment of the Relationship between Social Services for the Elderly Provided through Title III of the Older Americans Act and the Social Services Block Grant Program
4.1.C: Risk Assessment Systems Utilized by Child Protective Services in the Decision Making Process
4.1.D: Abused and Neglected Children Involved in Court Actions
4.1.E: Methods Used in Interviewing Child Victims
4.1.F: Removal of the Perpetrator versus Removal of the Victim from the Home: Effects on the Victim and the Family
4.1.G: The Relationship of Child Maltreatment to Childrens' Social and Emotional Development and School Performance
4.1.H: Assessing the Impact of Child Abuse and Neglect on Victims
4.1.I: Effectiveness of Child Abuse and Neglect Prevention Programs

Section 5: Education and Training

Topic 1: Education and Training in Aging
5.1.A: Statewide Short-Term Training and Continuing Education for Professionals and Paraprofessionals
5.1.B: Aging Content in Professional Academic Training
5.1.C: Minority Training and Development
5.1.D: State Agency on Aging Collaboration with Other Agencies
5.1.E: Orientation and Education for Elected Officials

Topic 2: Education and Training Related to Services for Children, Youth and Families
5.2.A: Stimulate Community College Involvement in Competency-Based Child Development Associate (CDA) Training for Child Care Givers
5.2.B: Child Abuse and Neglect Interdisciplinary Training

Topic 3: Child Welfare Services Training
5.3.A: Traineeships
5.3.B: In-Service Training
5.3.C: Collaboration between Schools and Agencies
5.3.D: Special Indian Grants

Section 6: Transfer of International Innovations

Section 1: Community and Family-Based Care

Topic 1: Support for Families:

1.1.A: Support for Families Including Members with Developmental Disabilities

Families which have elected to maintain members with developmental disabilities at home have traditionally been faced with two possibilities—they could provide care at home with little or no external support or they could opt for an institutional placement. Slowly, the merit of both supporting and enhancing the caregiving capacity of families is being recognized.

Some of the clearest guidance on this topic comes from Human Services Research Institute (HSRI) under work funded by ADD and the HHS Office of the Assistant Secretary for Planning and Evaluation (ASPE). These findings, presented in an article in *Exceptional Parent* (November, 1985, pages 10–22), document that all States but one make available some type of family support program. However, the programs vary significantly according to types of service provided, eligibility criteria, the number of clients targeted for service, and the amount of money to be expended annually on individual families. For a variety of reasons, families are often discouraged, rather

than encouraged from providing continued care in the family.

HDS is interested in projects designed to improve the effectiveness and efficiency of efforts to support families and family care. In particular, we will support demonstrations or systematic evaluation of demonstrations which address the following topics:

• *Involvement of families in health care.*

Many persons with severe handicapping conditions have chronic health conditions requiring atypical care and support throughout their lives. Children who are medically fragile demand extensive health care and ongoing medical service. While such care has greatly improved in the last decade, models have been slow to emerge for supporting families of children with these needs and involving families in health care and medical services through training. The training agenda in this area includes not only training for family members, but training for related medical personnel to increase their skill in dealing with the families and patients with handicapping conditions. Strategies are needed for promoting positive health practices and wellness among persons with severely handicapping conditions and their families. Community-based health services models are also needed.

• *Transitions to community living arrangements.*

The transition from natural homes to community living arrangements is potentially stressful for both the handicapped person and his or her family members. Data describing the decision-making process, the transition process and the individual family members' adaptation to the process are notably lacking. In addition to models for promoting healthy, family-supportive transitions, personnel must be trained to help families build new interaction patterns following the transition to community living.

• *Community support for families including persons with severely handicapping conditions.*

This area encompasses a variety of "generic" services for families including: transportation, recreation and leisure, access to buildings and activities, and education. The degree of access to community activities is subtly tied to a community's acceptance of persons and families with special needs in the full range of community life. Least restrictive community environments should be promoted through training and demonstration efforts.

• *Underserved family groups including minorities, teenage parents, and rural residents.*

Many intervention strategies and service delivery models have been designed for the middle income, two-parent family for which services are readily available. The particular needs of minority families, of teenage parents of children with severe handicaps and of families in rural areas are not well-documented. The affect of cultural differences on adaptation to a severely handicapped child has not been studied extensively. The development and evaluation of effective models to support these families is encouraged.

• *Continuum of family support services.*

Most demonstration models of family support have focused on families with young children. Strategies for supporting families with older school-aged and adult children with severe handicaps are needed. In particular, attention should be directed to the changing role and needs of siblings of persons who are severely handicapped and to the development of family support during the handicapped individual's adolescent and adult years. Again, particular attention should be directed toward families of persons who are medically fragile, those who have particularly challenging behavior, and those who are the most profoundly disabled.

In addition to incorporating the private sector, applications under this priority area should also feature the following components: multi-faceted approaches (rather than single service, such as respite alone), interagency collaboration (including, but not limited to State and local agencies, Developmental Disabilities Councils, Protection and Advocacy agencies, University Affiliated Facilities, and parent groups), and a discussion of how the proposed work will both interface with and depart from current family support programs within the State.

Proposals submitted should both build on and depart from currently funded work. To that end, a list of projects recently funded by HDS on the topic of support for families with members who are developmentally disabled can be obtained by writing: HDS/Division of Research and Demonstration, Room 724F, 200 Independence Avenue, SW., Washington, DC 20201 attn: Dianne McSwain, telephone (202) 755–4633.

Under this priority area, HDS plans to engage in cooperative activities with agencies including, but not limited to, the Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Department of Education. Federal funding for projects in this priority area is limited to $100,000 per year with project periods not to exceed two years. Applicants are restricted to public or non-profit private entities.

1.1.B: Resolving Chemical Dependency Problems Within Native American Environments

Native American communities show widespread problems arising from chemical dependence. Disruption and dislocation of Native American family life are often associated with alcohol or other drug abuse. In a 10-year study of 12,000 Native American youth begun in 1975 by Colorado State University, it was found that the heaviest drug and alcohol users came from broken or unstable homes. Further, these youth felt that their family's life style was less successful in the "Indian way."

Another study by E.R. Oetting, et al. (1980) found that Native American youth who did not use drugs or alcohol consistently came from homes that had strong family sanctions against substance abuse. These families were perceived as being more successful in the "Indian way." A 1985 study of 2,000 Native American Youth aged 11 to 18, conducted by Velma Mason, showed that youth who did not use drugs or alcohol exhibited a high degree of family-oriented identity and perceived their families as maintaining traditional values. The reverse was found for Indian youth who reported drug or alcohol involvement.

During Fiscal Year 1985, the Administration for Native Americans funded a demonstration project called "Project Renewal." This project involved entire families in resolving problems caused by substance abuse. The Karuk Tribe of California has set up a model for family involvement with these significant elements:

1. Tribal elders and community leaders play a significant role in promoting traditional Karuk values among the families participating.

2. Family Service Workers work in the homes of needy citizens. These workers cultivate relationships with local and regional public and private agencies delivering human services. This includes educating agency professionals about Karuk cultural forms and implications for services design and delivery.

3. Cultural and family support groups meet weekly and a newsletter circulates among participants.

4. A summer camp brings the families together with the service workers and community elders. Held on Pow-wow grounds, families learn traditional survival skills.

The demonstration also prepared a film to disseminate information about the project. In addition, a demonstration camp has been planned for other tribal

leaders during the third year of the grant.

This is but one of a number of demonstration models which could be developed for use by Native American communities. Common to these models is the recognition that:

1. Substantial improvement in family life emerges from services sensitive to the Native American experience; and,

2. Effective service delivery involves the entire family.

Applications are solicited from American Indian tribes, Alaskan Native villages, Hawaiian groups and other Native American organizations for demonstration designed to show positive measurable outcomes in preventing or reducing chemical dependency. Proposals may present a comprehensive program for all families at risk in the project area or may address specific problem groups such as families where child abuse or neglect has occurred, families affected by suicides or suicide attempts, or single-parent families. Cooperative efforts including the general public and private agencies and/or organizations are encouraged.

Proposals should describe an extraordinary social or community involvement. Means for replicating the project must be included in the proposal. Federal funding for projects in this priority area is limited to $150,000 per project each year for up to three years.

1.1.C: Models to Assist Teenage Parents in Preventing Child Abuse and Neglect

As in FY 1986 HDS will seek applications in this area for FY 1987. Premature parenthood poses serious risks to the teen mother, her family, the teen father, and most significantly, the child. Teenagers are becoming parents at an increasingly earlier age. Teenagers now account for 16% of all live births and 22% of the low birth-weight babies.

Babies born to teenage mothers have a higher rate of infant mortality and greater incidence of developmental delays and abuse and neglect. These young mothers lack parenting skills and adequate knowledge of child growth and development. Early intervention with this high risk population is needed in order to reduce the potential for child abuse and neglect. Also of major importance is the encouragement of the teen father to meet his social and financial responsibilities to the child and to the mother of his child. The young parents are in need of a range of services that promote self-sufficiency, self-esteem, improve their skills in daily living, strengthen their capacity for parenthood and in general, improve their functioning as a family if possible.

Social service agencies, youth-serving agencies, public health agencies, and other private and public agencies provide a range of services to these young mothers and fathers, their babies and other family members. However, their efforts are often not coordinated, leading to fragmentation, gaps in service or duplication of services.

Particular consideration should be given by the applicant to:

(a) Identifying the procedures that will be used to determine those at highest risk.

(b) Developing state/regional/countywide coordination among agencies involved with providing direct services to this population.

(c) Developing collaborative efforts between two or more agencies to improve services and to follow-up with clients in the provision of services which promote self-sufficiency and better parenting skills such as health care, education (e.g., literacy or General Education Diploma—GED), housing, job training, day care, training in child development and parenting, and support group therapy.

(d) Expanding current program activities to enlist volunteers to support and provide assistance to the teen parent and child.

Applicants may wish to develop:

- Projects based in geographic locations with high concentrations of teenage mothers;
- Projects which are both innovative and cost effective in their approach to the problem;
- Projects which evidence collaborative service agreements with other related providers; and
- Projects which give sufficient promise of continuation after Federal funds terminate.

Cooperating and collaborating agencies should specifically address the level and type of involvement the agency is prepared to commit. Applicants should list organizations which will work on the project along with a short description of their contribution. Written assurances should be included with the application if available.

HDS anticipates funding 24 month projects having a Federal share not to exceed $75,000 per project, per year.

1.1.D: Parental Involvement in Head Start Programs

There are at least four major kinds of parent participation in local Head Start programs. They are:

1. Participation in the process of making decisions about the nature and operation of the program.

2. Participation in the classroom as paid employees, volunteers or observers.

3. Activities for parents which they have helped to develop.

4. Working with their children in cooperation with the staff of the center.

Most programs do involve parents in the local program. However, many programs have difficulty maintaining parent involvement and Regional Office review teams have difficulty assessing the level and quality of parent participation in local programs. There are a number of reasons for this low level of parent involvement: few descriptions of successful parent involvement programs; changing Head Start population being served (younger parents, more employed parents, diverse cultural groups); and, limited transportation for parents.

HDS will consider demonstration projects designed to increase parent involvement in Head Start programs and improve parenting skills as prime educators of their preschool age children. Proposals should address one or more of the following areas:

A. Programs that would involve parents one year prior to their children's entrance into the Head Start program and that would serve parents for one year after the children enter elementary school. These proposals should describe how parents would be recruited and selected for the program, what activities/programs would be provided for the parents, including training opportunities for various roles parents could play in the Head Start program.

B. Design programs that emphasize the role of parents as prime educators of their children. These programs should help the parents to access resources needed by children to succeed in elementary school.

C. Design programs that target a special parent group that may have unique attributes such as single parents, teen parents, fathers, migrants, isolated communities, multi-cultural populations, parents of handicapped children, etc.

Eligible applicants are local Head Start grantees.

HDS anticipates funding 24-month projects having a Federal share not to exceed $25,000 per project, per year.

1.1.E: A Parent-Adolescent Mediation Program Model

As more evidence points to adolescent abuse and neglect as a significant factor in runaway behavior, HDS is interested in developing innovative prevention strategies as part of the prevention-outreach goal of the Runaway and Homeless Youth Act.

The use of mediation to prevent and treat adolescent neglect was the focus of a pilot project which has resulted in a unique model program for use in conjunction with schools. The model was developed and tested by the Center for Community Justice (CCJ), a non-profit organization located in Washington, DC. It utilizes volunteers and focuses on truancy as a signal of possible family problems. This is especially significant for the runaway program since shelter experience has shown that truancy is almost always a precursor of runaway behavior.

Mediation is a method of dispute resolution that involves the use of a neutral third party to help people settle their own problems. The CCJ mediation model uses two mediators meeting with family members in two to four sessions of two to three hours each.

The factors that make mediation unique are:

1. The mediators are *neutral;* they do not make decisions for people or tell them what to do;
2. Mediation focuses on the *future* and ways to prevent problems from recurring;
3. Mediation helps people communicate in a positive way; and
4. Mediation teaches people ways of resolving their own problems and helps them take responsibility for their problems.

The majority of referrals to mediation come from school attendance officers and youth divisions of local police departments who recommend the Mediation Service for truants and their families when family problems are believed to contribute to or cause the truancy.

The initial results of the model program indicate that mediation can be used to work out issues of daily living and help to reduce family conflict. Most importantly, it helps family members to begin to communicate.

Every year for several years now over 50 percent of the youth served in runaway shelters have cited lack of or poor communication with parents as one of the major reasons for running away.

HDS will consider applications from runaway shelters and/or coordinated state or local networks of such shelters to further test this pilot model.

Interested shelters and/or coordinated networks should contact the Center for Community Justice to discuss the model and how it might best be adapted to their local communities. Proposals should describe extraordinary community involvement, especially from a junior or senior high school or schools. Written assurances should be included with the application if available.

A training of trainers approach will be used. Training will be provided for two people from each approved site. Proposals should describe how the model will be put into place once the training of trainers is complete. Project design should include concrete plans for evaluative, periodic feedback over the two-year period. HDS is especially interested in the possible impact on truancy rates.

Grantees are encouraged to utilize community resource persons with skills in mediation and conflict resolution such as the "Community Boards" program of San Francisco, California. One intensive training session will be conducted by CCJ in Washington, DC for all projects involved to train skilled trainers in the use and adaptation of this model. The training costs per person as well as per diem and travel costs should be contained in each proposed project budget. Information about the training costs can be obtained from Edna Povich at the Center for Community Justice, 918 16th Street, NW., Suite 503, Washington, DC 20026.

Project duration will be two years. Eligible applicants are runaway and homeless youth shelters or coordinated State or local networks of such shelters in partnership with one or more junior or senior high schools or both.

HDS anticipates funding 24 month projects having a Federal share not to exceed $65,000 per project, per year.

1.1.F: Utilization of Adoptive Parent Groups to Support the Adoption of Special Needs Children

Over the past two decades, adoptive parents have been effective advocates for children. They have challenged the term "unadoptable" by demonstrating that children with special needs can be placed with a family of their own. Adoptive parent groups and social service agencies have worked together to assist new adoptive families to integrate these special needs children into their families and have provided ongoing support to them.

HDS seeks applications from public or private non-profit agencies or organizations having statewide, regional (i.e. inter-State) or national membership to assist local or State adoptive parent groups to work with child welfare agencies. These adoptive parent groups will be responsible for activities which may include but are not limited to: adoption information and referral services, recruitment and orientation for prospective adoptive parents, and support to families following placement and legalization.

Applicants should be prepared to award small grants, not to exceed $5,000, to incorporated non-profit local or State adoptive parent groups to assist them in this effort. Applications should include criteria for choosing adoptive parents groups and the methods that will be used to request proposals from the groups; or applicants may list and describe the adoptive parent groups they propose to fund and include supporting documentation or other testimonies from such concerned groups. Written assurances should be included with the application if available.

Eligibility is limited to voluntary or public social service agencies, adoption exchanges, or other national regional or statewide adoption related organizations.

HDS anticipates funding 17 month projects having a Federal share not to exceed $75,000 per project.

1.1.G: Services to Adoptive Families Who Experience Disruption or Dissolution.

In studying disruptions (the removal of a child from an adoptive placement before legalization) and dissolutions (the removal of a child from an adoptive placement after legalization) in the adoption of children with special needs, we have learned that a large percentage of these children are later successfully placed in a different adoptive home.

However, we have little information about what happens to the adoptive family that experiences disruption or dissolution. For example, we do not know the extent to which the circumstances that resulted in disruption or dissolution are explored with the family by a social service agency; whether or not services are offered to the family to assist them in dealing with their feelings about the loss of the child or whether or not the family is given the opportunity to explore the appropriateness of the adoption of another child.

HDS is interested in applications from State, county, metropolitan or voluntary agencies that will develop, demonstrate and evaluate models of services to families that have experienced disruptions or dissolutions. Special attention should be given to families adopting minority children and/or children who have behavioral or emotional problems. Applicants should indicate the number of families to be served and describe products which will be worthy of national dissemination.

HDS anticipates funding 17 month projects having a Federal share ranging from $30,000 to $75,000 per project, depending on the number of disruption cases involved.

1.1.H: Improving Community Capability to Work with Adoptive Families of Children with

Developmental Disabilities

Families who are considering or who have adopted children with developmental disabilities frequently require services to assist them in understanding and meeting the needs of these children. The children may also need individual services to assist them in their adjustment in an adoptive home. In many communities there are multi-disciplinary diagnostic and treatment facilities that have the knowledge and expertise to provide these services. In addition, there are advocacy groups which are able to provide support and assist families in obtaining needed services. However, these organizations are often not known or readily accessible to adoptive families.

University Affiliated Facilities and Developmental Disabilities Councils could be of great assistance in special needs adoption by providing or assisting agencies and families to obtain pre-adoption diagnosis and evaluation of waiting children, preparation of families and by providing continued services through the placement, post-placement and post-adoptive periods. In addition, these entities can be helpful in linking adoptive parents with support and advocacy groups such as Associations for Retarded Citizens, Protection and Advocacy Agencies, United Cerebral Palsy and others.

HDS will consider projects to develop and demonstrate models of inter-disciplinary services for families who adopt children with developmental disabilities. These services should address pre-placement evaluation, diagnosis and preparation, as well as short and long term follow-up services. Models developed should be replicable and appropriate for dissemination.

Eligible applicants are University Affiliated Facilities, Developmental State Disabilities Councils and public or voluntary child welfare agencies. Applicants must document their ability to provide or obtain the services necessary for adoptive families. Applicants should demonstrate collaboration and joint commitment of a child welfare agency and UAF and/or DD Council. Applicants should list organizations that will work on the project along with a brief description of their contribution. Written assurances should be included with the application if available.

HDS anticipates funding 24 month projects at a Federal share not to exceed $75,000 per project per year.

1.1.I: Foster Care Placement Prevention

Under the Adoption Assistance and Child Welfare Act of 1980, States are required to develop a placement prevention program with an array of appropriate services, and since 1983, agencies are required to show that reasonable efforts have been made to avoid the necessity for placement. Early implementation studies show that States have developed law, policy, procedures and programs to meet these requirements but that in many instances actual resources for preventive services are still very limited.

Experience indicates that the change to a preventive approach is complex, requiring strong support from agency administrators and two to three years to complete reorientation of agency workers and community resources. Organizational and administrative structures and State and local financing practices are often barriers in shifting service provision from a child placement focus to family centered services. In addition, within States different approaches are needed to address preventive services in urban and rural areas.

In order to assist States, HDS has funded preventive service demonstrations in 5 States. The National Resource Center for Family Based Services is also funded to provide consultation and training to States on placement prevention programs. However, while most States have pilot projects or placement prevention programs in some metropolitan areas, few States have yet succeeded in providing these services to all appropriate children and families. This is significant because many States are experiencing an increase in the number of children in foster placement.

HDS seeks county, urban or Statewide demonstrations which draw on successful practices used by other States to identify children who are at imminent risk of removal from their homes and serve them through enabling their families to provide acceptable protection and care. (See *Annotated Directory of Family Based Services*, 1986, available from the National Resource Center for Family Based Services, University of Iowa, School of Social Work, N–240A Oakdale Hall, Iowa City, Iowa 52242.)

Proposals should address one or more of the following issues:

- Coordination of services to promote effective management of resources and delivery of services to families. In addressing issues of organization, applicants should describe how they will assure a family-based approach to service delivery. Attention should be directed to critical points of decision regarding allocation of resources, e.g., emergency response, assessment of family needs, crisis intervention, case planning, and provision and coordination of appropriate services. HDS is interested in creative approaches to both family assessment and decision making that will support staff in changing historic practices which encourage out-of-home placement.
- Promotion of adequate financing of family-based programs through increased flexibility in the use of funds, and the demonstration of cost effectiveness and program efficiency benefits when funding shifts are made from placement to in-home services.
- Demonstrations from rural consortia of counties or other rural regional structures, working in cooperation with the State agency, for the purpose of developing prevention and family-based programs across county lines.

Applications from such consortia should specify needs and resources including the development of natural helping networks, use of existing professionals such as school counselors, community mental health centers, State public health, agricultural extension and other such groups in planning and implementing a coordinated service system.

Funds may not be used to provide direct services.

HDS is interested in applications from State, metropolitan areas or rural or urban counties. Emphasis should be on developing a family based prevention service appropriate to the applicant's population, which can be used in similar situations by other counties or States. Applicants should list organizations that will work on the project along with a brief description of their contribution. Written assurances should be included with the application if available. HDS recognizes the need for States to use these various models to develop the capacity to offer appropriate family based services in all areas of the State. HDS anticipates funding 24 month projects having a Federal share not to exceed $100,000 per project, per year depending upon the scope of the proposed project (i.e. whether Statewide or less than Statewide).

1.1.J: Corporate Partnership Models for Strengthening Families—Prevention/Outreach

Prevention of runaway behavior; family conflict, abusive parenting, and other situations that cause family breakups and dysfunction at home and in the workplace are areas of concern not only to HDS but to communities nationwide. Family educational efforts and the provision of direct services have proved effective in reaching out to and

assisting families experiencing dysfunction.

Many corporations and health care providers have played an important role in this area by providing support to employees and their families through a variety of activities such as educational workshops, referral services and third party payments for the delivery of direct services. Much of this activity occurs under the general umbrella of the company's Employee Assistance Programs (EAP).

HDS seeks to continue the effort begun last year to develop models of partnerships between runaway and homeless youth centers or coordinated networks and corporations and health care providers that have existing or new Employee Assistance Programs. The purpose of the partnerships is to expand the capabilities of both centers and EAPs to provide educational and direct services to strengthen families in the workplace, and to prevent family dysfunction that results in runaway behavior. Each proposed project may include one or more corporations and/or one or more health care providers.

In 1986, five such partnership demonstrations were funded. Companies ranged in size from 20 employees to 60,000. They included manufacturing, chemical, high technology, research and planning, and computer service corporations. The projects included a wide range of approaches to partnerships with corporations ranging from lunch seminars, to educational workshops and family therapy. HDS will fund additional projects in this area so that there will be a sufficient project array to make the knowledge development as widely useful as possible.

Applications should address the development of education efforts or direct services based on a needs assessment of the families who are employees of the corporation and/or health care providers. Educational efforts could include issues such as preventing runaway behavior, adolescent abuse and neglect, teen suicide prevention, and improved parenting skills of parents with teenagers. Services could include counseling, group therapy, in-home family services, information and referral and other types of assistance.

An important part of each application should be the evaluation component. First, the evaluation component should include a statistical record of the utilization rate of all educational efforts and direct services and a description of the source of referral, hours, types of service provided, service outcomes for clinical services, and service status. This data should be used to provide a comparision of service usage and outcomes before and after the demonstration. Secondly, the evaluation component should include methods for determining client and employer satisfaction of the services provided. The third component of the evaluation should focus on determining the extent to which the project is viewed by the EAP director as a benefical, continuing priority in their current corporate Employee Assistance Program.

The corporations involved in the demonstration may be large or small; the health care providers may be a non-profit or for-profit hospital, HMO, or a free standing medical clinic.

HDS anticipates funding 17 month projects having a total Federal share not to exceed $70,000 per project. Eligibility to apply under this priority area is restricted to centers for runaway and homeless youth and coordinated networks. Each proposed project must demonstrate that the corporation and/or the health care provider partner was involved in the development of the project and is committed to its completion. Written assurances should be included with the application if available.

1.1.K: Parenting Programs for Incarcerated Parents

There is little information about the stigmas that are attached to parents who are incarcerated and their children. Past experience indicates that programs for these parents are critical factors in promoting emotional stability for both parents and children. Also, little is known about the impact on recidivism rates in correctional institutions where supportive parent/child programs may be in effect.

There is evidence to suggest that parenting programs can and do have a positive impact on incarcerated parents' sense of self worth and confidence in dealing with their children. This initial impact can lead to greater interest in self development and participation in GED, counseling, job skills development and career counseling program activities.

A successful project was conducted by Iowa State University in which positive family visitations and parenting skills were provided to incarcerated mothers. In-service training was provided to institution staff and volunteers, and resource material was upgraded to assist in preparing mothers for post-institutional life. Other successful program designs include the Mother Offspring Life Development (M.O.L.D.) program and Prison MATCH.

HDS and the National Institute of Corrections will fund demonstration programs which address the issue of parenting education, visitation type programs, and other programs for incarcerated parents with children and address the impact of these programs on incarcerated parents and their children. The project applicant should be aware of existing, successful programs such as the Iowa State University project. Data which indicate that a number of incarcerated persons were themselves victims of physical, emotional, and sexual abuse and what this finding may imply in developing a pertinent and successful program should also be taken into consideration. Applicants are also strongly encouraged to consider a volunteer component.

These projects are part of the overall HDS and National Institute of Corrections interest in strengthening families. Funds may be used for new or existing programs. Existing programs should be expanded to include an evaluation component that addresses the impact issues referred to above, i.e., increased parenting skills, improved self-image, greater interest in self development, job skills and participation in career counseling. Project applicants should be prepared to address not only the design and development of successful programs and their implementation and evaluation, but also the design and development of documentation and measures which will provide both qualitative and quantitative measures of the impact on project participants.

Variables should include but not be limited to: level of participation, i.e., one program component, several, etc.; development of parenting skills and child-parent relationships; and the impact of return or non-return to prison of parents within given time frames. Measures of recidivism and other data will be used as base line information for possible future projects and will not necessarily be interpreted as success or failure of a particular program.

Eligibility is limited to partnerships between correctional institutions, professional associations in the field with research capability, and research and educational institutions such as universities and colleges, graduate schools of social work, institutes or centers of child and family development. Applicants should list organizations that will work on the project along with a brief description of their contribution. Written assurances should be included with the application if available.

HDS anticipates funding 36 month projects having a Federal share not to exceed $60,000 per project, per year. Applicants shall focus separately on

incarcerated mothers or on incarcerated fathers.

1.1.L: Chronic Neglect of Children

Child neglect, as defined by the various states, is negligent treatment or maltreatment including the failure to provide adequate shelter, nourishment, medical care, education and supervision. Sixty-four percent of all substantiated child maltreatment reports (1976–1982) were instances of neglect. Many of these situations are chronic, requiring assistance over lengthy periods, or intermittently as families experience additional crises.

Few program models for working effectively with neglecting families have been developed and existing models usually have not differentiated among possible types and patterns of neglecting parents. National data (1976–1982) show that casework counseling was provided to 80% of all families served by child protective service agencies and that counseling is the service typically provided to neglecting families, although there is no evidence to indicate that this service is effective with chronically neglecting parents.

Other research has found that many neglecting parents, particularly mothers, suffer from depression and a variety of chronic health problems.

Finally, programs report difficulties in involving neglecting families, and in maintaining their participation in service programs.

The purpose of this priority area is to address those families which chronically neglect their children, and for which long-term dependency is an issue. HDS is interested in proposals to develop a cost-effective compensating support system for these families, using resources such as volunteers, parent aides and home visitors, to help the family identify and sustain the kinds of services and resources needed to keep the family going while dependent children are in the home. Each applicant should estimate the number or proportion of such families in its caseload, and provide the definition by which this number is determined.

The demonstrations should develop family assessment and treatment plans which, when tested against specific outcome criteria, can be evaluated for their effectiveness in compensating for client-family dependency. Project design should include an evaluation component. Applicants must list organizations that will work on the project along with a brief description of their contribution. Written assurances should be included if available.

HDS anticipates funding 2 to 5 36-month projects having a Federal share not to exceed $150,000 per project, per year.

1.1.M: Employer-Based Support for Family Caregivers

Many families have elected to maintain loved ones at home who are frail, handicapped, developmentally disabled, chronically or mentally ill. However, a recognition has emerged that some caregivers need support and training if they are to do an effective job and maintain their own well-being.

On June 23 and 24, 1986, HDS, together with other components of HHS sponsored a conference on support for family caregivers with 30 grantees, eight national associations, and three private foundations as well as other individuals and organizations interested in supporting caregivers. One of the recommendations that emerged from this conference was that the Federal government should stimulate the development of new approaches for assisting caregivers.

In this priority area, projects should focus on public and private employer caregiving policies, e.g. changes in leave policies, the development of new benefit policies, or the expansion of worksite service policies. Applicants must propose policy changes that address health, social and medical needs of both the dependent relative and the caregiver; policies that assist families in planning for future care needs and associated financial planning decision and decisions about alternative living arrangements; transitions from an acute care setting to a setting where ongoing services must be available.

The Department of Labor, which is interested in working with HDS in this area, will share information resources and may provide either technical assistance or funding support for selected projects. Applicants are encouraged to address the needs of multiple populations, including: families caring for frail or disabled elderly relatives and families in transitional stages of life who have a developmentally disabled member.

Topic 2: Community-Based Care and Improvements in Local Human Services

1.2.A: Community-Based Living Arrangements for Persons with Developmental Disabilities

The last decade has produced changes in residential arrangements. Public institutions have depopulated at a constant rate; the average size of residential facilities has decreased with corresponding increases in the number of small group residences; the number of children and youth in State MR/DD institutions has decreased; and State-based financing of community services has increased dramatically. In spite of the growing evidence regarding the benefits of community-based care, the development of community based residential programs continues to proceed without a comprehensive and unified national policy.

Although Federal efforts to support residential care in natural/adoptive families, foster homes and community based facilities have been supported by every administration since 1960, recent history presents a confused and irregular record. The largest Federal program for persons with mental retardation and developmental disabilities (MR/DD) is the ICF/MR (Intermediate Care Facilities for Mentally Retarded/Developmentally Disabled) which accounts for $2.657 billion (34.2%) of Fiscal Year 1985 Federal spending for these populations. Of far greater significance is that 82% of ICF/MR funds are being spent to maintain institutions with disproportionate numbers of severely and profoundly retarded persons. Meanwhile, most States have redirected their resources away from these operations to community based services.

In its Technical Report on Residential Services, the University Affiliated Facility (UAF) Networking Initiative reported many significant barriers to the community based provision of residential services for persons with developmental disabilities. (Copies are available from the Developmental Center for Handicapped Persons, Utah State University, UMC–68, Logan, Utah 84322.) These issues had to do broadly with needed policy reforms at Federal and State levels, more concerted efforts between UAFs and State Developmental Disabilities Councils in collaboration with other agencies and organizations, research and demonstration activities, broader dissemination of knowledge available and more organized transfer of the methods and models in existence, leadership training in areas critical to the planning of community based living arrangements, management of residential services and direct care worker training.

HDS is interested in research and demonstration projects which address each of several key issues. Topics on which proposals are sought include:

- Demonstration projects to eliminate systemic barriers to movement to the least restrictive environment. The trend of deinstitutionalization of persons with mild and moderate disabilities into community-based alternatives continues to prevail, while persons with more severe disabilities are remaining in the institutions. Design should focus on

shifting the burden of movement from the individual (by requiring demonstration of certain behaviors) to the residential/institutional system itself;

• Studies on the relationship between community setting and the acquisition of adaptive behavior skills. The full range of benefits resulting from community participation should be considered, particularly benefits related to improved quality of life (i.e. physical and social integration, variety, choice, relationships, health, and independence);

• Applications which propose to review relevant research or demonstrate models on the feasibility of heterogeneous groupings of persons with severe disabilities in small residences with persons who are less disabled. Increasingly, the field is revealing that serving only persons with severe handicaps in work, educational or residential settings results in multiple problems such as staff burn-out, inappropriate models of behavior for residents, and restrictions on community activity due to limited staff available for management purposes;

• Demonstrations designed to explore and document the relationship between facility accreditation/standards and actual client outcomes. Currently, information is not available to determine whether the application of standards to facilities has direct correlation to resident independence, productivity, development or satisfaction.

• The majority of states are designing community residential alternatives for six to eight residents. Pennsylvania is the only State placing four people or fewer in homes. Although smaller groups of people more closely resemble normal adult living situations, these smaller groupings also raise new questions about financial feasibility. Efforts examining the issues related to the number of persons residing in a single home are still needed.

Applicants addressing this priority area should clearly provide for the following in their proposals: interagency collaboration (including, but not limited to, State and local agencies, Developmental Disabilities Councils, Protection and Advocacy agencies, University Affiliated Facilities, and parent groups); discussion of how the proposed project will build on and depart from current work in the targeted state(s) or locality; and development of well-conceived strategies for evaluation, dissemination and utilization of the project findings. To that end, a list of projects recently funded by HDS on the topic of community based living arrangements for persons with developmental disabilities can be obtained by writing: HDS/Division of Research and Demonstration, Room 724F, 200 Independence Avenue, SW., Washington, DC 20201 attn: Dianne McSwain, telephone (202) 755–4633.

Under this priority area HDS plans to engage in cooperative activities with agencies including, but not limited to, the Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Department of Education. Federal funding for projects in this priority area is limited to $100,000 per year with project periods not to exceed two years. Applicants are restricted to public or non-profit private entities.

1.2.B: Private Industry Council Partnerships—Linking Social Services and Youth Employment Services

There has been significant Federal interest in the problems of low-income youth for many years. These interests have been reflected in a number of ways, among which are some targeted specifically to older youth in foster care, to runaway and homeless youth and to unemployed low-income youth.

Youth in foster care are the focus of services designed to enhance their skills for independent living on emancipation from foster care, including preparation for the world of work. Congress recently enacted legislation mandating independent living services to adolescents in foster care.

Runaway and Homeless Youth shelter programs focus also on independent living where reconciliation with families is not possible. Under the Department of Labor's Job Training Partnership Act (JTPA), funds have been earmarked for services aimed at promoting youth self-sufficiency at the local level through a partnership of Private Industry Councils (PICs) and elected officials.

What is often lacking at the local level is effective coordination and reinforcement among these various youth-serving programs for the development of program models aimed at promoting the self-sufficiency of these disadvantaged youth.

This priority area seeks the development of innovative, holistic program models to address the needs of two discrete youth populations: older adolescents in foster care or recently emancipated from foster care; and/or homeless youth being served in independent living programs in runaway youth centers or other youth serving agencies.

Many child welfare programs at the State and local levels are responding to the growing population of youth in their foster care caseloads; teenagers account for approximately 44 percent of those caseloads. Additionally, a growing proportion of these teenagers are staying in care for longer periods, up to emancipation at age 18 or 19. These agencies are developing programs geared to preparing youth for independent living, including preparation for the world of work.

Runaway and homeless youth shelters see a different group of adolescents. The shelters are able to reunite more than half of the runaways and find suitable living arrangements for most of the others. The homeless youth, however, are often entirely alienated from their families and must become prepared for independent living through a variety of public and private youth serving agencies.

HDS is seeking the establishment of community-based partnerships between those responsible for planning and allocating youth training and employment resources, i.e. local JTPA administering agencies (PICs), and those responsible for providing social support services to youth, i.e. foster care service agencies and local runaway and homeless youth shelters and/or local networks of shelters and other youth service providers.

Through joint planning and a case management approach these demonstrations will link social services and employment services into an integrated plan to assist these youth to achieve self-sufficiency.

Any of the three entities is eligible to apply as the designated local lead agency as long as agreements among the other agency(s) are reached. Written assurances should be included with the application if available. HDS encourages local JTPA administering agencies (PICs) to take on the leadership role in the design and development of the proposed projects.

What we seek foremost is the gaining of knowledge and perspective among the organizations that will lead to more effective coordination and services for these youth at the local level.

While the major focus is on local community-based efforts, HDS will consider one or two projects in which State Child Welfare Agencies, State JTPA administering agencies and coordinated State networks of runaway and homeless youth shelters and youth service providers propose efforts within the State. Applicants should state clearly how on-site coordination and collaboration among sites will be accomplished.

The following organizations endorse this priority area: the National Alliance

of Business; the National Association of Private Industry Councils; and the National Youth Employment Coalition.

HDS anticipates funding a series of 36 month demonstration projects. The level of funding would be approximately $50,000 per project. PICs are encouraged to use JTPA resources in support of these projects; however, JTPA funds must be used for JTPA purposes.

1.2.C: Mental Health Services and the Child Welfare System

Children in the child welfare system and the families who relate to them (whether birth, foster or adoptive) often have multiple problems which require the skills and expertise of mental health services in addition to child welfare services.

The purpose of this priority area is to support collaborative efforts between community mental health services and child welfare services to develop and/or expand specialized treatment skills and resources for the children and families served by the child welfare system, and to insure that there are mechanisms in place which permit and encourage child welfare agencies and families access to these resources and services.

The types of mental health problems of child welfare clients are not unique, but these clients exist in familial contexts which can be different from other mental health clients. Extensive support is frequently required for addressing the needs of and providing treatment for children and their parents in these families.

Protective services interventions that support the child in his own home rather than in foster care are effective, therapeutic, and in most cases cost-effective. The coordination and collaboration between mental health services and child protection services can be especially helpful during the investigative period when the child and family are dealing with the immediate crisis and the child is at greater risk of being removed as well as after the child has been removed and efforts are being made to reunite the family. In addition, physically and sexually abused children often need long-term psycho-therapeutic support to help them deal with the trauma, build self esteem and learn to relate positively to peers and adults.

Many children placed in foster care have a variety of developmental problems, behavioral symptoms, depression and mental health problems as a result of inadequate parenting, instability, family disruption, physical and sexual abuse and neglect. Efforts should address early identification of children who appear to be having emotional and adjustment difficulties and the provision of appropriate mental health services to the child and assistance to the foster parents in understanding and managing the child's behavior.

Families who adopt children with special needs often need mental health services. These children come into adoption with their own history and life experiences that are quite different than those of their new family. Services may be needed to help the child deal with previous separations and assist family members to integrate the child into the family. In addition to family sessions, individual treatment for the adopted child may be indicated. Adoption is a life-long process and mental health services may be needed years after an adoption occurs.

HDS will fund projects that demonstrate inter-agency coordination and improved mental health services to child welfare clients. Projects should specify methods and models for coordinated planning, resource development and systems integration that will provide a continuum of home and community-based services to assist in strengthening families, preventing placement, providing early intervention, reducing waiting periods for service while demonstrating cost-effectiveness. Public agencies as well as private non-profit child welfare or mental health agencies are encouraged to apply. Consortia of private and public agencies that demonstrate collaborative planning and joint commitment of resources, including personnel, are encouraged. For applicants other than public child welfare agencies, evidence of support from the public child welfare agency (local/regional/State) is highly desirable. Written assurances should be included with the application if available.

HDS anticipates funding 24 month projects having a Federal share between $100,000 to $200,000 per project, per year with a possibility of renewal for an additional 12 months. It is expected that projects proposed by both public and private non-profit applicants will be funded. Applicants may address one or more topics: protective services, adoption, or foster care.

1.2.D: Improving the Quality of Educational Services for Children in Foster Care

Many children in foster care have educational deficits as a result of frequent moves, lack of parental direction, learning disabilities and family disruption. (These deficits have been documented in two studies: Fanshel and Shinn's Longitudinal Study of Children in Foster Care, 1978 and Fanshel, Grundy and Finch's Serving Children at Risk in Foster Family Care, 1985—and in Child Welfare Research Notes #15 by Charles Gershenson). Many times these children are not adequately diagnosed or properly placed in the school system and their needs may be overlooked when they move to a new placement, or return home. Foster care agencies may not have the internal resources, parental supports, relationships with advocacy organizations or effective linkages with the school system to ensure that children with special educational needs are properly served.

HDS is interested in proposals that demonstrate effective methods to meet the special educational needs of children in foster family care, and that emphasize ways to institutionalize the improvements. Proposals should address the utilization of the developmental disability network and resources, the Education of All Handicapped Children Act (Pub. L. 94–142), the creation of mechanisms to ensure a timely transfer of educational records including psychological and educational assessments and the Individual Education Plan (IEP) when a foster child moves from one school to another.

The applicants should propose models, resources and approaches which could be widely disseminated. Eligibility is limited to Public or voluntary child welfare agencies. Applications should list organizations, especially educational agencies and schools, that will work on the project along with a brief description of their contribution. Written assurances should be included with the application if available.

HDS anticipates funding 17 month projects having a Federal share between $75,000 to $100,000 per project.

1.2.E: Meeting the Health Care Needs of Children In Foster Care

Twenty five percent of children entering foster care are found to be below the fifth percentile in height and weight and to be suffering from a variety of medical and health problems and chronic conditions. Eighteen percent of the children are judged to have serious health problems. The 1986 study by Roger White, John Hopkins School of Hygiene and Public Health, entitled *Health Status and Utilization Patterns of Foster Care Children* describes this and other aspects of health needs of foster children in Maryland. Foster care agencies generally have some plan for providing medical and dental care, as the need arises. Too often however, insufficient attention is paid to the early comprehensive diagnosis and treatment of health problems.

HDS is interested in projects which demonstrate cost effective methods for early assessment and prompt health treatment for children in foster care. Consideration should be given to the use of Early Periodic Screening, Diagnosis and Treatment (EPSDT) services under title XIX; alternative medical care arrangements such as health maintenance organizations, involvement of parents in compiling medical history, identifying existing conditions, and assisting in providing continuity of medical care; and support and advocacy groups which address developmental needs and other health problems of children. Methods that will lead to the continued improvement of the relationship between the health care system and the child welfare system are sought.

The applicants should propose models, resources and approaches which can be widely disseminated. State and/or county child welfare agencies are eligible to apply. Applicants should list organization that will work on the project, including health care facilities, along with a brief description of their contribution. Written assurances should be included with the application if available.

HDS anticipates funding 17 month projects having a Federal share between $75,000 to $100,000 per project.

1.2.F: Training of Foster Parents to Deal with Sexually Abused Children

Increasing numbers of sexually abused children are coming to the attention of child protective service agencies. Most of the cases coming to public attention are intrafamilial or involve someone close to the family. Often, it is necessary to separate the child from the alleged or known perpetrator. Agencies may encourage the perpetrator to voluntarily leave the home while undergoing treatment; or, the court may order the removal of the perpetrator from the home rather than the child. Nevertheless, there are many instances in which the child is removed from the home and placed in foster care while the case is more fully investigated, parents undergo treatment or rehabilitation programs or legal processes ensue.

Added to the physical trauma which may have been experienced by the sexually abused child, the psychological, emotional, and personal consequences may be even more difficult for the child to bear. The child may experience feelings of victimization, confusion and guilt, and may have developed pathological and/or self defeating patterns of relating to adults and other children.

Many of these children need professional mental health services; and, foster parents and group care staff may need specialized training to develop supportive remedial relationships with these children. In addition, to helping the child deal with the traumas of victimization and separation, foster parents and group care staff must help the child rebuild his or her relationship with the natural family, and deal constructively with separation from the natural family when that is the only recourse.

The purpose of this effort is to support specialized training of foster parents and group care staff who care for sexually abused children. Project development should involve both the child protective service agency and community mental health agency to train and confer with selected group care staff and foster parents. Proposals should list the organizations that will work on the project along with a brief description of their contribution. Written assurances should be included with the application if available. Either or both agencies in combination may apply.

HDS anticipates funding 24 month projects having a Federal share not to exceed $60,000 each for the first year, and $40,000 each for the second year.

1.2.G: Improving Protective Services Administration and Performance

During 1984 approximately 1.7 million reports of child abuse and neglect were received and documented by the States and other jurisdictions. Protective services have experienced an annual increase of 11% in the number of reports during the past five years. This increase of more than 50% in the workload has affected the efficiency and effectiveness of protective services. This is due, in part, to the historical lag of several years between the increase in child maltreatment reports and the administrative and resource allocation adjustments made by State and local protective service agencies. This is evidenced by the increasing use of a triage decision process to assure protection for those children at greatest risk.

HDS will consider projects which enable agencies to develop and implement ongoing monitoring systems and identify, analyze and correct weaknesses in State, county or metropolitan area protective services systems.

Issues addressed should represent several aspects of administrative procedures including qualifications of staff, including supervisory staff; staff-supervisory ratios; effective deployment of staff from intake through service completion; and uniformity of definitions and substantiation criteria through out the agency, including counties for applicant States.

All applicants should have a plan for regular review and analysis of critical decisions, e.g., substantiation, development of case plans, provision of family based services or foster care placement, selection of treatment alternatives and return of the child to his home.

The first year should be devoted to the development and pilot testing of the quantitative performance measures and analysis of current administrative procedures. During the second year the monitoring system shall be fully implemented as an ongoing administrative process, and a formative assessment shall be conducted after two quarters' experience to examine the impact on the administrative decision process. Implementation of revised procedures and programs should be projected by the end of the second year.

HDS anticipates funding 24 month projects having a Federal share ranging from $75,000 to $100,000 per project, per year. Eligibility is limited to States, counties or large urban or metropolitan agencies that annually receive 30,000 or more maltreatment reports.

1.2.H: Partnerships of Unions, Sororities, Fraternities, Service Organizations and Indian Organizations with Social Service Agencies in Support of Special Needs Adoption

During the past three years, several organizations received Federal grants to develop public/private cooperative efforts to increase public awareness and facilitate the adoption of special needs children. Children were featured in company newsletters, on posters and flyers in office buildings and other worksites. Their plight was presented at business meetings, churches, conferences and other special events. In addition, adoption benefits packages were developed to be used by corporations and manuals were developed to be used by various adoption groups and organizations interested in working with the corporate sector.

Over 40 companies provide employees with benefits to help them adopt children. An increasing number of companies and groups are using this approach as an opportunity to support their employees' interest in adoption.

HDS seeks to develop similar efforts through a collaboration between public and voluntary social service agencies and unions, fraternal groups, service organizations or Indian organizations.

Proposals should include strategies which involve the union, fraternity, sorority, service organization or Indian organization in the adoption of special needs children. Such strategies may include:

- Providing special needs adoption information and education through presentation at forums, national conventions and conferences of these groups;
- Utilizing media in featuring children such as in "Wednesday's Child" television programs and newspaper columns;
- Developing or replicating programs for recruiting members of these groups as adoptive parents and for utilizing members as recruiters;
- Developing an adoption benefit plan for members/staff of these groups who adopt special needs children.

Eligible applicants are public or voluntary social service agencies, unions, sororities, fraternal groups, service organizations and national Indian organizations. Demonstration projects should represent new efforts to promote special needs adoption. Applicants should list organizations that will work on the project along with a brief description of their contribution. Written assurances should be included with the application if available.

HDS anticipates funding 17 month projects having a Federal share not to exceed $35,000 per project.

1.2.I: Effective Strategies for Adoption Opportunities for Children in Residential/Group Care

Children with developmental disabilities, emotional and behavioral problems who reside in group care facilities may not have an opportunity for adoption. Adoption is not systematically considered as an option for these children when they cannot be reunited with their families. As a result, some of these children age out of the system without being considered for adoption. Often the staff in residential or group care facilities are not knowledgeble about adoption services and adoption opportunities for the children in their care. They may also be skeptical because some of these children have already experienced adoption disruption or dissolution.

The purpose of this priority area is to demonstrate that adoption is a viable alternative for certain children in residential/group care. Applicants should be prepared to develop effective methods for preparing children in residential/group care for adoptive placement and coordinate or provide post placement/post finalization services to prevent adoption disruptions.

HDS will consider model approaches for child placing agencies working with residential/group facilities, and residential/group facilities providing their own child placing services.

Each project should develop materials suitable for national dissemination. The applicant should target a specific number of children to be placed in adoptive families (a minimum of twenty-five children per project is suggested) as a result of the project and describe any extraordinary social or community involvement.

Eligible applicants include public or private non-profit child care institutions and other child welfare service agencies.

HDS anticipates funding 24 month projects having a Federal share not to exceed $75,000 per project, per year.

1.2.J: Coordination of Court Actions in Child Abuse and Neglect Cases

Abused and neglected children and their families are often involved in court proceedings which have a significant impact upon their lives. The court proceedings may be held in Juvenile Court, Domestic Relations Court, or Criminal Court.

Frequently, families may be involved with several of these courts at the same time with each court acting independently of the other. In such instances there is always the potential for confusion, overlap, duplication of effort and court dispositions which do not take into account the impact of other court actions. Stress is increased for families involved in multiple court actions and this creates a need for: (1) Coordinated court proceedings; (2) expedited court processes and; (3) where possible, consolidation of cases.

Child Protective Services (CPS) agencies frequently conduct investigations of reported child abuse or neglect prior to court hearings; or, at the request of the court, make an investigation if there was no prior involvement of CPS. Coordination of effort is needed between the courts, their investigative staff, the prosecutor's office, and the Child Protective Services Agency.

Consideration will be given to proposals which develop and implement appropriate procedures, including court rules, for the coordination of efforts and expedited processes. Through such measures, overlapping and duplication of effort will be reduced or eliminated at a savings to the State and community, and the trauma experienced by the child and family will be reduced.

Applicants should list organizations that will work on the project, including the courts of jurisdiction and the prosecutor's office, along with a brief description of their contribution, particularly as it relates to coordination with the Child Protective Services Agency. Written assurances should be included with the application if available. Courts are encouraged to apply.

HDS anticipates funding 24 month projects having a Federal share not to exceed $50,000 per project, per year.

1.2.K: Improving Child Protective Services on Indian Reservations

In an effort to protect children from abuse and neglect on reservations, some Indian Tribes have taken steps to develop a protective services system within their child welfare services. Other Tribes have developed Tribal/State agreements that describe which services will be provided by the State agencies and which will be provided by the Tribe. Nevertheless, protective services for Indian children living on reservations are often fragmented for a variety of reasons, including lack of clarity about program responsibility among the various service providers, absence of an identified central location for receiving reports and developing a coordinated service response, conflicting legal and jurisdictional issues, geographic isolation, unavailability of multidisciplinary child protection teams and other skilled professionals.

The purpose of this priority area is to assist Tribes to improve their protective services for Indian children on reservations. HDS is interested in supporting several projects which will develop and implement a comprehensive service system. Project activities may include the development of Tribal/State agreements; interagency agreements for service coordination among Tribal agencies (e.g., Indian Health Service, Tribal law enforcement, courts and social service agencies); establishment of a central point for receiving and responding to reports of child abuse and neglect; establishment and maintenance of a central registry for record keeping on reports and substantiated cases; development of policies and procedures for investigation, risk assessment and family intervention; implementation of multidisciplinary child protection teams and development of child abuse prevention activities.

Proposals should describe the current protective service system and specific goals and objectives to be carried out over a 36 month period. Outcomes should be measurable and stated clearly and progress should be documented at the end of each year's activity.

HDS anticipates funding 36 month projects having a Federal share ranging

from $50,000 to $85,000 per project, per year.

1.2.L: Improvement of State Child Welfare Licensing Programs

Services for most of the children in the child welfare system are impacted by State licensing. Licensing is one of the States' major mechanisms for protecting children who are not with their families, and to mandate a basic level of quality service consistent with current practices. Licensed services include placement of children into adoptive and foster homes, and care received in family foster homes, child care institutions, family day care and day care centers. State licensing is beginning to include services such as day treatment and independent living.

A large number of children are affected by licensing including virtually all the 276,000 children in foster homes and institutions. It also includes millions of children in licensed family day care and day care centers.

In 1983 HDS supported development of model State licensing materials. Nearly all States have utilized some aspects of this material. However, efforts to adapt licensing to the growing need to prevent abuse, and to new kinds of service such as day treatment, drug treatment, specialized family foster care and independent living have not kept pace with practice and need. Many States have acted to apply licensing requirements to services provided by public agencies, however, the majority of such services, particularly public child placing agencies, are still unlicensed.

HDS will consider applications to enable States to improve existing licensing programs and to extend the protections to services not yet covered.

Project activities could include amending licensing laws, licensure of public agencies and new kinds of services, organizational change, development of standing advisory committees or boards, revision of licensing rules and development of accompanying policy and training to implement such changes.

Fifteen states have already received grants to improve licensing programs. Eligibility is limited to those States which did not receive licensing improvement grants in Fiscal Years 1984 and 1985.

HDS anticipates funding 17 month projects having a Federal share not to exceed $30,000 per project.

1.2.M: Adoption Opportunities for Older Children

Many children who are legally free for adoption are over the age of 12, and remain in foster care because they are perceived as being "unadoptable". These children may be handicapped, or have school and learning problems, or exhibit behavioral difficulties in addition to being older. Because of feelings for their natural family or in order to protect against hurt and disappointment, some of these children also declare that they do not want to be adopted. The home finding for these children and the preparation of both the older child and the family for adoption requires skill, determination and a belief that all children deserve a permanent home. With adequate assessment and extensive preparation, many older children can be successfully placed for adoption.

As adoption of older children is a relatively new phenomenon, agencies need to examine their attitudes with regard to adoption of the older child. Workers need encouragement, time, skill development and on-going agency support to effectively plan and implement placement decisions. Effective recruitment, skillful preparation of adoptive parents and post-placement counseling for the older child and his adoptive family are also needed.

HDS will consider projects which develop and demonstrate specific methods for increasing older child adoption and delivery of post placement services to prevent disruption. In addition, suitable materials must be prepared for dissemination.

HDS anticipates funding 24 month projects having a Federal share not to exceed $75,000 per project, per year.

1.2.N: Strategies for Recruitment and Retention of Foster Families

Currently the public child welfare system serves about 276,000 foster children in 100,000 foster family homes. About 23% of the children are classified as having special needs. Almost half are over age 13 and over 50% of these youth have been in more than one placement. Workers and administrators report that many of these children have multiple problems and are increasingly difficult to care for. As a result, there is frequent turnover among foster parents and replacement of children into different foster or residential settings.

HDS is interested in proposals which demonstrate a set of cost effective recruitment, training and support strategies which address the community's foster care population. Consideration should be given to including foster care workers and supervisors, in addition to foster parents, in the training; to providing a variety of support strategies such as training, respite care, cluster homes or other innovative forms of mutual support; and to coordinating with appropriate parental support and advocacy organizations which serve specialized or developmentally disabled populations, (e.g., Association for Retarded Citizens, Association for Children with Learning Disabilities, etc.). Funds should not be used to develop new training materials, unless there is a clearly documented need in the proposal itself.

HDS anticipates funding 17 month projects having a Federal share not to exceed $100,000 per project.

1.2.O: Prevention of Abuse and Neglect in Infants of Chemically Dependent Mothers

Increasing numbers of infants are at risk of prenatal and postnatal neglect or abuse resulting from parental abuses of substances, including drugs and alcohol. These children may be born drug addicted; evidencing exposure to the AIDS virus; suffering from fetal alcohol syndrome; and lacking in age appropriate neurological development, resulting in symptoms such as hyper-irritability, gastrointestinal dysfunction, respiratory distress, fever, high-pitched cry, uncoordinated or undeveloped sucking and swallowing reflexes, dehydration, and other related symptoms. Many are of low birth weight, one of the most relevant predictors of infant mortality. Studies comparing the use of drugs and alcohol of mothers and their babies to non-users have demonstrated the deleterious effects of substance abuse on newborn infants.

According to Congressional hearings held in May 1986, hospitals are reporting startling increases in the number of babies born physically and mentally damaged from the mother's use of PCP, cocaine and other substances, including alcohol. For example, in New York City, the number of addicted births rose from 227 or 1.5 of each 1,000 live births in 1966 to 884 or nearly 8 of each 1,000 live births in 1983.

The Center for Disease Control reported that of 281 cases of AIDS in children under 13 years of age as of April 1986, 75% of the children contracted the disease from their mothers either during pregnancy, or immediately after birth. Of those, 61% of the mothers were drug users themselves and 12% had drug using male sex partners.

The social costs for neonatal care, and subsequent care for these children are great. The personal loss for these children is inestimable. Many are subjected to repeated abuse or neglect by parents who continue to be dependent on drugs or alcohol or who are unable to deal with the difficulties

presented by their special needs offspring. Still other children leave the hospital for out-of-home placements with foster parents who are unprepared for the specialized care which these infants require.

The purpose of this priority area is to develop demonstration projects which reduce the risk of abuse or neglect for infants born to chemically dependent mothers.

Applications must include a well developed, systematic plan that identifies and provides comprehensive services to chemically dependent mothers during pregnancy and until the end of the child's second year, that assesses the progress of the child's development and of the parent/child relationship, and that includes an evaluation component that is integrated into the program design. Application should list organization that will work on the project, especially health, mental health and social service providers, along with a brief description of their contribution. Applicants should also describe any extraordinary social or community involvement in the project. Written assurances should be included with the application if available.

Programs may be based in hospitals, mental health facilities, state county or urban public or private social service agencies and may include, but are not necessarily limited to, drug and alcohol abuse rehabilitation programs, nurse or lay home visitor programs, or specialized foster care programs.

HDS anticipates funding 36 month projects having a Federal share not to exceed $100,000 per project, per year.

Topic 3: Improvement in Community Systems for Responding to the Needs of the Elderly

Introduction

Because of the rapidly growing number of older persons in our society and the complex and often fragmented nature of current service delivery systems, communities are being challenged to "rationalize" their service systems and to make them more responsive to the needs of the elderly, particularly those who are most vulnerable. State and Area Agencies on Aging, Indian tribal organizations—as well as many other public, private and voluntary organizations—are faced with the need to assess the adequacy of existing service arrangements and to implement more effective systems for the provision of family and community-based care.

States and communities are being called upon to develop service systems that are significantly more accessible, that provide a continuum of services in a timely fashion, and that demonstrate effective linkages and collaboration among the many community-level organizations affecting the lives of the elderly. Also of concern is the need for improved response capability for crisis intervention in times of emergency, for the establishment of highly visible information, outreach and follow-up services, and for special efforts to serve those older persons and families who are most vulnerable to loss of independence.

The priority areas under this topic are intended to encourage State and Area Agencies on Aging, Indian tribal organizations funded under Title VI of the Older Americans Act, as well as other organizations with an interest in the elderly, to develop innovative project proposals which will significantly improve community-level service systems as suggested above. *A community is a place where older persons live and secure, as needed, appropriate services and care. In most cases, this is a geographic unit smaller than a Planning and Service Area.* The specific priority areas under this topic follow:

1.3.A: Assessments of Community Service Systems and the Roles of Area Agencies on Aging (AAA's)

The 1978 Amendments to the Older Americans Act charge AAA's with responsibility for helping to ensure development of "comprehensive and coordinated" service systems for older persons. In response to this mandate, AoA provided financial support to an organization called The Assistance Group for Human Services Development for the purpose of developing technical assistance material to help AAA's fulfill this important mission. This project resulted in the preparation of a two volume publication entitled, *Developing Comprehensive and Coordinated Service Systems for Older People: An Area Agency Guide.* The purpose of the *Guide,* which originally became available in November, 1981, is to help AAA's, local policy-makers, and others in the community to:

- Understand the meaning and characteristics of comprehensive, coordinated service systems;
- Assess local systems and define what can and should be done to improve them; and
- Select and implement strategies for system development.

Volume I of the *Guide* gives a brief overview of comprehensive and coordinated service systems, discusses the interacting parts of service systems for the elderly and gives examples of roles that AAA's might play in improving local systems. It also poses a series of preliminary questions for an AAA to use in assessing its own understanding of local systems and evaluating a community's readiness to strengthen the service system.

Volume II consists of more detailed "indicator" questions for AAA's to use in gauging the current status of their communities' system of services and in assessing the AAA's role in developing those systems. This part of the *Guide* is designed to help an AAA determine if all the elements of a comprehensive family and community-based care system are in place, and if the elements are adequate and properly linked together. The purpose is to help AAA's identify specific opportunities for improvement and to give the AAA an overall framework for setting priorities for action.

AoA solicits applications from State Agencies on Aging for the conduct of demonstrations within the State designed to assess existing systems of family and community-based care for the elderly and to assess the roles of AAAs in helping to develop these systems.

Proposed demonstrations should:

(1) Be organized and supervised by a State Agency on Aging;

(2) Involve 4 to 6 different communities within a State as part of a controlled multi-site demonstration;

(3) Utilize the Assistance Group's instrument referenced above or another already-developed instrument suitable for assessing community-level service systems and the roles of AAA's;

(4) Involve the application of the assessment instrument by the participating AAA's within the communities selected for the demonstration; and

(5) Result in across-site analyses of findings by the State Agencies on Aging participating in the demonstration, including analyses pertinent to improving the assessment instruments employed.

AoA's purposes in soliciting these demonstration projects are several:

(1) To gain information on the practical experience of AAA's in their application of community assessment instruments in sites across a number of States. This includes information on the extent to which the *Guide* or other instrument enables AAA's to identify community service system weaknesses and to set specific priorities for action;

(2) To analyze the utility of the *Guide* or other instrument for establishing baseline information both with respect to the current services system in each participating community, and with

respect to the activities of the AAA's involved;

(3) To encourage State Agencies on Aging to consider future use of the *Guide* or other appropriate assessment instrument by AAA's on a Statewide basis; and

(4) To identify any modifications to the *Guide* or other existing instrument that might be useful to make in order to improve their utility and practicability for wider-scale use in the future.

Applications in this priority area must identify all proposed demonstration site communities. Applications should list all AAAs and other organizations that will collaborate on the project and describe the nature and extent of their collaboration. Written assurances should be included with the application if available. The applicant's proposal must address how the demonstration will be organized and executed across all sites; how results will be documented, analyzed and reported; and what training and technical support will be provided to the participating AAA's.

Applicants wishing to use an assessment instrument other than the *Guide* developed by the Assistance Group must submit a copy of the proposed instrument as part of their applications. Copies of the Assistance Group's instrument, *Developing Comprehensive and Coordinated Service Systems: An Area Agency Guide,* may be obtained by writing to the Administration on Aging, Division of Research and Demonstrations, Room 4265, 330 Independence Avenue, SW., Washington, DC 20201, Attention: Dr. Harry Posman.

Federal funding for projects in this priority area is limited to $250,000 for a maximum duration of 17 months. Eligibility is restricted to State Agencies on Aging.

1.3.B: Aging Network Linkages—Improving Linkages Between the Community Health Care System, Especially Hospitals and Community Health Centers, and the Community Supportive Service System

In our society, many agencies—public, private and voluntary—share responsibility for serving the elderly population. Each constitutes a potentially important element in the creation and maintenance of what the Older American's Act terms a "comprehensive and coordinated service system." State and Area Agencies on Aging have a special, legislatively mandated responsibility to identify gaps and to serve as brokers and catalysts in helping to develop integrated service approaches.

The purpose of this priority area and the three that follow is to stimulate demonstrations involving creative linkages between State and Area Agencies on Aging on the one hand and other organizations that can play useful roles in improving service systems and access to services at the community level.

The intent of this priority area is to demonstrate how State and Area Agencies on Aging can work with hospitals and community health centers to more effectively plan and integrate health and supportive services for the elderly. Major changes are occurring in the health care system. In many communities the hospital is evolving as the core of the community health system providing, in addition to traditional institutional and out-patient services, health services in satellite clinics and hospital-based in-home services. Likewise, community health centers, traditionally focused on maternal and child-care, may become a primary health care resource to increasing numbers of elderly persons.

As brokers and catalysts for improved community service systems, Area Agencies on Aging (AAA's) can help insure that there are effective linkages between community-based agencies providing supportive services on the one hand, and community health centers and the hospital-based health care system on the other. AAA's should provide leadership in the planning and implementation of responsive community systems which provide for a continuum of care between hospital-based services and the services required in the less restrictive environment of home and community.

Applications are solicited from AAA's to work collaboratively with the administration of hospitals and community health clinics to plan and implement more effective linkages between the health care and supportive services systems for older persons in selected communities. Applications should provide written evidence of commitment on the part of the participating hospital(s) and health clinic(s) to collaborate closely with the AAA in both planning and implementation of an improved continuum of community care for older persons.

Applications are also solicited from State Agencies on Aging to develop collaborative State-level activities that will effectively link the health care and supportive services systems at the community level. Projects should not be focused primarily on planning; rather they should emphasize the implementation of concrete actions that will result in improved linkage between the two service systems on either a Statewide basis or in selected geographical areas. Applications should list all the organizations that will collaborate on the project, including the responsible State Health Agency, as well as the affected Area Agencies on Aging, hospitals, health clinics and other appropriate agencies, and describe the nature and extent of their collaboration. Written assurances should be included with the application if available.

All applications in this priority area must include an implementation plan and specify measurable outcomes. Applicant State or Area Agencies on Aging may not provide direct services themselves as part of any project proposed under this priority area.

Federal funding for projects in this priority area is limited to $150,000 for a maximum duration of 17 months. Eligibility is restricted to State and Area Agencies on Aging.

1.3.C: Aging Network Linkages—Increasing State Agency on Aging Leadership Capacity to Assist Alzheimer's Disease Victims and their Families

Many State Agencies on Aging have identified Alzheimer's Disease as a growing area of concern warranting additional effort and attention within their States. While considerable progress is being made, many State Agencies are hampered by difficulties in obtaining necessary technical support and expert training for organizations and agencies serving persons afflicted with this condition. In order to address this need, AoA invites applications involving collaborative capacity-building efforts between State Agencies on Aging and organizations with recognized expertise in Alzheimer's disease. Specifically, AoA is soliciting applications involving projects jointly planned and executed by State Agencies on Aging and either the Long Term Care Gerontology Centers, the National Institute on Aging's Alzheimer's Disease Research Centers, or other organizations qualified to assist State Agencies in their efforts to improve family and community-based care for victims of this disease. Project proposals might address any of several capacity-building activities including, for example, State Agency on Aging collaboration with such organizations to:

(1) Provide information and training to professional and paraprofessional staff of community service agencies dealing with Alzheimer's disease; or

(2) Design and carry out model projects that demonstrate innovative approaches in the provision of services

such as respite care, crisis intervention, day care, or other supportive service programs.

In addition to collaboration with the organizations identified above, State agency proposals should show the involvement of the Alzheimer's Disease and Related Disorders Association at either the national, regional or State chapter levels.

All applications should include a working agreement between the State Agency and the other participating organizations that clearly describes the role of each agency in carrying out the proposed project and the tasks that each will undertake.

State Agencies on Aging which are not familiar with the National Institute on Aging's Alzheimer's Disease Research Centers may obtain information about them by writing to: Administration on Aging, Division of Research and Demonstrations, Room 4265, 330 Independence Avenue, SW., Washington, DC 20201, Attention: Dr. Harry Posman.

Federal funding for projects in this priority area is limited to $150,000 each year for a maximum of 2 years. Eligibility is restricted to State Agencies on Aging.

1.3.D: Aging Network Linkages—Improvement in Emergency Services

There are many communities that do not have an adequate response capability to meet the needs of older persons and their families in times of crisis or emergency. This may be due to a lack of services; failure to coordinate existing services; or poor dissemination of information.

This priority area is intended to stimulate proposals which demonstrate collaborative efforts between Area Agencies on Aging (AAA's) or Indian tribal organizations funded under Title VI of the Older Americans Act and other organizations that result in the implementation of 24 hour-per-day, 7 day-per-week emergency response capability.

Proposals along these lines should involve the relevant community agencies (AAA's, Title VI Indian tribal organizations, information and referral services, police and fire departments, hospitals, shelters, utility companies, etc.) and may address such needs as improved emergency referral and communications networks, training of personnel, the establishment of "hot lines," etc. In addition to older persons themselves, the target population for proposed activities should include special and innovative efforts to provide information to family members, caregivers, friends, neighbors and the general public, who may need to help older persons access services. Evaluation of overall effectiveness and cost should be an integral part of all projects in this area.

Applications should describe how the proposed project will have a continuing significant impact on the problems being addressed.

Federal funding for projects in this priority area is limited to $150,000 for a maximum of 17 months.

1.3.E: Aging Network Linkages—Improving Linkages with Long Term Care Facilities

Nursing homes, board and care facilities, congregate housing complexes, group homes and other non-medical residential facilities are a critical part of the community-level continuum of care to help older people. While most older persons are able to live independently with help from family and friends, some require the kind of assistance provided in group or institutional settings on a temporary or permanent basis. As leaders in developing community responses to the needs of older people, Area Agencies on Aging must work closely with these community-level residential long term care resources.

Applications are solicited from Area Agencies on Aging, from organizations providing residential long term care and any other organizations concerned with older persons for collaborative efforts to plan and implement projects that will assist communities in developing a continuum of care for meeting the needs of the vulnerable elderly. Project proposals must focus on establishing more effective linkages and collaborative programming between supportive services and residential long term care available in local communities. Proposals may address any of several priority concerns, including:

(1) Development of community systems to assure appropriate placements for older persons needing some form of residential living arrangement;

(2) Activities designed to upgrade the quality of life for older persons living in residential long term care facilities;

(3) Efforts intended to assist elderly persons and their families in making transitions from one living arrangement to another, e.g., from hospital to congregate housing or from nursing home to the older person's own home; and

(4) Projects involving collaborative programing to establish systems for the provision of supportive services for older persons living in congregate housing complexes, board and care homes, and other residential long term care settings.

Applications should list all the organizations that will collaborate on the project and describe the nature and extent of their collaboration. Written assurances should be included with the application if available. In addition, applications from organizations other than Area Agencies on Aging must intimately involve the local Area Agency as a key actor in the design and conduct of the proposed project. All project proposals must set forth the measurable outcomes expected. Applications should describe how the proposed project will have a continuing significant impact on the problems being addressed.

Area Agencies on Aging may not provide direct services themselves as part of any project proposed under this priority area.

Federal funding for projects in this priority area is limited to $150,000 for a maximum duration of 17 months.

1.3.F: Improving Targeting of Services to the Vulnerable Elderly

This priority area addresses efforts that might be undertaken to further improve the aging services network's capability to ensure that services are provided to those who may need them most but who, for a variety of reasons, are less likely to be served than the general aging population. It is intended to stimulate demonstrations of ways to reach and serve more effectively those older individuals and families which, in the words of the Older Americans Act, have the "greatest social or economic needs." The specific target population for this priority area is functionally impaired older persons who have significant difficulties in accessing the services they require to remain in their own homes and who are in danger of institutionalization.

Applications are invited from State and Area Agencies on Aging, Indian tribal organizations funded under Title VI of the Older Americans Act, as well as from other appropriate organizations, for demonstration efforts intended to mobilize community resources in order to provide a continuum of care for vulnerable older persons. Barriers to service access which may be addressed by project proposals may encompass, but are not limited to, inability to leave the home because of handicap, developmental disability or other functional impairment, isolation or rural living environment, lack of familiarity with the formal social service system, and language or cultural barriers which may be associated with being a member of a minority group.

Projects in this priority area are expected to involve a high degree of

collaboration among State and/or local agencies and to focus existing community resources on activities intended to enable the vulnerable elderly to remain in their homes and to live as independently as possible.

Applications should show significant potential for making measurable progress in assisting this target population, and describe how the proposed project will have a continuing significant impact on the problems being addressed. Proposals from organizations other than State or Area Agencies on Aging, or Title VI Indian tribal organizations should provide for substantial involvement of these agencies.

Federal funding for projects in this area is limited to $200,000 for a maximum of 17 months.

1.3.G: Hospital Emergency Services—Tapping Their Full Potential for Older Persons

Each community should have a continuum of care for the elderly that brings together an effective and appropriate mix of family, community, and institutional resources. Among these resources is the hospital emergency room service. The emergency room is not only an immediate source of primary medical care for a large percentage of older people, it is also a major point of referral, access, and disposition into the extended network of health and related supportive services. As a gatekeeper to the health care system, the emergency room can serve an important role in coordinating and linking elements of the continuum of care to enable clients to stay out of institutions and in family/community settings whenever possible.

Demonstration project proposals are invited to test the feasibility and efficacy of this role wherein hospital emergency service facilities are linked formally and systematically with Area Agencies on Aging in the coordination of a continuum of care for elderly persons. These model demonstration projects should be based on an assessment of the relationships between agencies providing emergency services, health and supportive services, and should focus on improving system linkages and on how professional service providers in these organizations are utilized. The models may also address themselves to the resolution of linkage problems in such areas as transportation, insurance, information and referral, and case management.

Project proposals should involve multiple hospital emergency service facilities within the community or communities selected as demonstration sites. In addition, because of Area Agency on Aging responsibility for developing and maintaining family and community-based systems of care for older persons, applications should provide evidence of direct involvement of these agencies in the design and implementation of project proposals. However, Area Agencies on Aging may not provide direct services themselves as part of any project proposed under this priority area.

Federal funding for projects in this area is limited to $175,000 per year for a maximum duration of 17 months.

1.3.H: Field-Initiated Proposals for Improving Community Service Systems for the Elderly

This priority area allows for the submission of project proposals intended to effect significant improvements in community-wide service systems *which are not addressed elsewhere in this Announcement.* It provides State and Area Agencies on Aging, Indian tribal organizations funded under Title VI of the Older Americans Act and other organizations serving the elderly with an opportunity to present innovative ideas for improving community-level service systems not stated elsewhere in this Announcement.

Only a few extremely high quality projects are likely to be supported. HDS will consider applications which:

(1) Propose major redirections of effort on the part of State or Area Agencies on Aging or Title VI Indian tribal organizations, including but not limited to, redirection of Title III resources to effect systemic improvements in aging services at State or local levels;

(2) Propose major new mobilizations of private and voluntary sector organizations for the purpose of rationally coordinating existing service resources and capabilities, and improving the integration of fragmented service delivery systems;

(3) Support broadscale State-level or Indian reservation-level analyses and implementation of policies, procedures and organizational arrangements designed to improve programming for the elderly; or

(4) Involve the implementation of significant new State-wide, metropolitan area-wide, county-wide or reservation-wide priorities for services to the elderly and their families.

Proposals should show active support and involvement on the part of State and local elected officials and relevant State and local agencies impacting the elderly.

Awards under this priority area will not be made:

(1) For proposals which are essentially covered by other priority areas in this announcement;

(2) For projects limited primarily to planning;

(3) For Federal support for new services or the extension of existing services;

(4) For case management or services directly provided by staff of an Area Agency on Aging;

(5) For building construction or renovation; and

(6) For activities which can reasonably be expected to be implemented with existing Title III, Title VI or other available resources.

Proposed projects may not exceed a maximum duration of 24 months. Notwithstanding the ceiling on project costs stated elsewhere in this announcement, applicants under this priority area may apply for an annual level of funding commensurate with the scope of work of the proposed project.

Section 2: Economic and Social Self-Sufficiency

Topic 1: Individual Self-Sufficiency:

2.1.A: Expanding Employment Activities for Persons with Developmental Disabilities

In November 1983, President Reagan made a major step towards improving the employment options for persons with developmental disabilities by signing into effect an Employment Initiative for Persons with Developmental Disabilities. This new initiative involved developing employment opportunities in the competitive employment sector through pledges and other job commitments from private employers. In the period since the signing of this important proclamation, more than 87,000 persons with developmental disabilities have been placed in jobs in the integrated, competitive labor market.

The economic side effects have been impressive: the 87,000 newly employed workers will earn about $400 million in gross annual *taxable* wages, while the combined savings in public support costs and services will approximate another $400 million.

While we will continue to expand employment opportunities for adults with developmental disabilities leaving sheltered employment, the need in FY 1987 is for demonstration projects that target the youth population exiting the school system and facilitate the transition from school to work.

The U.S. Office of Special Education and Rehabilitative Services (OSERS) estimates that 250,000 to 300,000 students with handicaps leave special

education each year. Youth with disabilities, such as mental retardation, physical disabilities, and other disabilities have obstacles that make the transition from school to employment a difficult achievement. It is estimated that between 50 to 75% of young adults with disabilities are jobless. A majority of these are students who need additional help through educational training and rehabilitation services and programs in order to be able to make the transition from school to competitive employment. Unfortunately, many of these students will not make any major gains in the world of work unless there are early coordinated efforts to identify and develop strategies that will lead to a range of employment possibilities.

Much of the focus in the past few years has been on the development of supported employment options for persons with severe disabilities. This option has shown that given sufficient support, many adults with severe disability can work in real work settings. Achievements in accessing real work settings have further supported the commitment of HDS to a range of employment possibilities as appropriate options for persons with developmental disabilities. In one instance, the passage of a statewide transition law necessitated the creation of a tracking system for special needs high school graduates. Data from that system show that more than 80% of those expected to graduate in the next two years will face sheltered employment as the only job possibility. These data are a reflection of the data being reported by many other States.

Though technology is available to assist persons with severe disability in entering employment in real work settings, this technology requires human service personnel with an orientation to industry and an ability to relate not only to client needs but industry expectation.

HDS is interested in demonstration projects that support the goal of youth economic self-sufficiency and which address the following priority areas:

- Strategies to provide students with meaningful paid work opportunities while still in school. These work opportunities may begin as early as age 14 and are intended to give students with disabilities the same work experiences as other students and to instill positive attitudes toward work. Responsibility for developing these work experiences should be shared among the local vocational and special educational programs, industry, and accomplished in consultation with vocational rehabilitation. Development of a set of youth competencies for finding, obtaining and keeping a job, in partnership with local PICs, is encouraged.
- Projects at the State and local levels to develop alternative reimbursement strategies which serve as barriers to transitional services. Obstacles identified which impede or prohibit the provision of employment of community-based services are: (1) The inability of service agencies to "pool" funds and/or other resources, and (2) lack of appropriate residential and/or transportation alternatives.
- Projects which expand the corporate base of support for opening up jobs in new industries for students exiting school and transitioning into employment. To date, industries supporting employment of persons with developmental disabilities include food services, horticulture, hospitality, hospitals, housekeeping and grounds and building maintenance.

HDS is interested in projects designed to promote the employment of persons with developmental disabilities by addressing clearly identified needs. Cost-effective, innovative methods should be identified which will have a continuing significant impact on the problems being addressed.

In addition to incorporating an appropriate role for private sector involvement, proposals addressing this priority area should also feature the following components: interagency collaboration (including, but not limited to, State and local agencies, Developmental Disabilities Councils, Protection and Advocacy agencies, JTPA, Private Industry Councils, University Affiliated Facilities and parent groups); discussion of how the proposed work will both interface with and depart from current employment projects underway within the State; and development of well-conceived strategies for dissemination and utilization. To that end, a list of projects recently funded by HDS on the topic of employment for persons with developmental disabilities can be obtained by writing: HDS/Division of Research and Demonstration, Room 724F, 200 Independence Avenue, SW., Washington, DC 20201 telephone (202) 755–4633.

Under this priority area, HDS plans to engage in cooperative activities with agencies including, but not limited to, the Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Department of Education, and the Employment and Training Administration, Department of Labor. Federal funding for projects in this priority area is limited to $100,000 per year with project periods not to exceed two years. Applicants are restricted to public or non-profit private entities in this priority area.

2.1.B: Innovative Community Approaches to Entrepreneurial Activity with Native American High School Youth

It is widely recognized that persons who do not complete school experience self-image problems arising from unemployment and the absence of skills needed to do a job. The decline of self-esteem accompanying this type of experience further strengthens unproductive life-styles.

The challenge of ensuring a positive life-style among youth faces all Americans. Within Native American communities, this challenge is stronger because of many factors contributing to higher unemployment, lower income, and higher incidence of health and social problems such as substance abuse and suicide among Native Americans. Since more than one out of three Native Americans is under the age of twenty, the significance of such factors is intensified in Native American communities. Yet, numerous studies have shown that strong links to a tribal heritage and educational reinforcement with Indian values are significant in maintaining self-esteem among Indian youth.

Native American youth frequently deal with experiences of isolation and anomie arising from the systems through which education is provided. Two major systemic difficulties are:

1. A significant proportion of Indian students are educated at boarding schools. According to a 1980 study by the National Indian Training and Research Center, over 20,000 Indian children live in boarding schools and dormitories, spending nine months each year separated from family and own tribe.

2. Among Indian students participating in public school systems, feelings of isolation and low self-esteem are promoted by their minority status and the absence of culture-sensitive services which deal with Indians as members of a special group with an honored heritage. Evidence of insensitivity to Indianness in school curricula is frequent, and failure to "connect" with Indian children and youth is a common occurrence.

The challenge of building self-esteem and developing skills useful for successful adult living among youth is not being met within all Native American communities striving to fulfill goals of self-determination and self-sufficiency. The social and economic development strategies (SEDS) policy

followed by the Administration for Native Americans is one element in the striving for improved well-being within Native American communities. During the four years of SEDS implementation, the Administration for Native Americans has repeatedly encountered the need for increased entrepreneurial and management know-how among Indian communities committed to goals of self-sufficiency.

At the same time, experience within the general population has shown that entrepreneurial and management skills may be readily developed among high school youth through groups devoted to the achievement of specific business objectives. Under the guidance of sensitive and experienced counselors, youth have established and operated successful enterprises.

The increased sense of belonging, as well as the transmission of work-related skills, are seen as forces which may have a substantial impact on Native American high school students. The primary purpose of this priority area is the enrichment associated with the operation of a formal program through which both the specific Native American values of the students' heritage and work-related skills are transmitted in the classroom and through extra-curricular activities geared to business operations. Such programs could both prevent negative social behavior and provide for skills acquisition not only for the youth themselves but also for the community's need for persons with entreprenuerial orientations and management skills.

Applications are solicited from American Indian Tribes, Alaskan Native Villages, Hawaiian Native groups and other Native American organizations for demonstrations promoting entrepreneurship among Native American high school students. HDS will consider demonstrations which integrate specific Native American values and culture into activities associated with the school setting. These activities should include the expectation that income producing enterprises will develop through the activity. Expected outcomes may include the development of a service needed by the educational institution, co-ops providing for the needs of the participants, and/or individual or group-managed businesses for which markets may be identified.

Applicants are encouraged to include participation by the general public and private agencies, enterprises and organizations. These may consist of partnerships with private sector enterprises, social services agencies and training and employment programs available under the Job Training and Partnership Act (through Private Industry Councils or JTPA Advisory Boards) as well as other specific local area programs.

All applications in this priority area should include an implementation plan and specify measurable outcomes such as a decline in the rates of school drop-out and substance abuse, improved self-image, or increased competency in employment-related skills among the population served. Projects may deal with boarding schools, public schools or day schools on Indian reservations.

Applicants who wish to do so may discuss this priority area with the endorsing organizations, the National Alliance of Business and the National Association of Private Industry Councils. Requests for funding may be for a maximum of three years and should include a budget for each year for which Federal funding is requested. Proposals should show that the proposed effort will have a continuing significant impact on the problems being addressed. Applications should list the organizations that will work on the project along with a brief description of their contribution. Written assurances should be included with the application if available.

2.1.C: Legal Assistance for Older Persons

Many older persons who need legal assistance find it difficult to obtain the services they require because of financial constraints, lack of familiarity with available services or reluctance to ask for help. State and Area Agencies on Aging are responsible for coordinating programs developed by local legal assistance providers that give legal advice, consultation and related services to older persons. To assist the network of State and Area Agencies on Aging in carrying out this responsibility, the Administration on Aging solicits applications from national legal assistance organizations experienced in providing support, on a nationwide basis, to local legal assistance providers.

Applications must include plans for enhancing the availability of legal services to older persons in close coordination with the programs provided by State and Area Agencies on Aging. Legal assistance support activities include, but are not limited to: Case consultation; mediation; training; provision of substantive legal advice and assistance; and assistance in the design, implementation and administration of legal assistance delivery systems to local providers of legal assistance for older individuals.

In addition to proposals from national legal service organizations, applications are also solicited from other qualified agencies that demonstrate innovative and effective ways to work with State and Area Agencies to help vulnerable older individuals with problems requiring legal assistance.

Federal funding for projects in this priority area are limited to $200,000 for a maximum duration of 17 months.

2.1.D: Aging Health Promotion—Mental Health

Since 1984, the Administration on Aging has been working with the U. S. Public Health Service on a joint national initiative to develop and expand health promotion programs for older persons. Launched under an interagency agreement, a key objective of this initiative is to encourage collaboration among State and local health departments, State and Area Agencies on Aging, and voluntary organizations in the development of health promotion programs for older persons.

Thus far, the initiative has addressed the areas of nutrition, physical fitness, drug management, injury prevention and smoking cessation. Future efforts will focus on mental health, dental health, prevention of pedestrian and motor vehicle accidents and injuries, immunization, and prevention of fire and smoke-related accidents. This priority area and the two that follow solicit project applications relative to the first three of these future topics: mental health, dental health, and pedestrian and motor vehicle safety.

Available evidence indicates that the elderly have the greatest incidence of mental illness of any age group but that they make infrequent use of mental health resources. Estimates of the prevalence of moderate to severe mental illness in the older population range from 13 to 25 percent, compared to 7 percent in the age group 18 to 64 years. Furthermore, it is generally recognized that the incidence of depression, suicide and dementia increase with age.

The purpose of this priority area is to solicit project proposals for pilot *Statewide* or *Indian reservation-wide* public education campaigns aimed at promoting better mental health among the elderly. The campaigns should be designed to help vulnerable older people and their families identify symptoms of depression, stress and other mental health problems and provide information about where to turn for assistance. Applications should address how proposed projects will overcome the resistance of older persons to utilizing mental health services, and should identify the various channels to

be employed in organizing and implementing a statewide or reservation-wide campaign, taking advantage of experience gained in previous health promotion media campaigns.

Except as may be inappropriate for projects or Indian reservations, proposals should demonstrate collaboration with both the State Agency on Aging and the State Mental Health authority in the conduct of the State-wide effort. All applications should clearly define a strategy that will enlist the efforts of other relevant agencies and organizations including State and/or local mental health associations, Area Agencies on Aging and other appropriate public and private entities.

Applicants should work in conjunction with the existing State health promotion coalition established in connection with the AoA/PHS national initiative on health promotion.

Federal funding for projects in this priority area is limited to $150,000 for a maximum duration of 17 months.

2.1.E: Aging Health Promotion—Dental Health

Older adults are at greater risk of oral and dental disease than the younger population. Periodontal as well as other dental and oral diseases and conditions in the elderly contribute to poor nutrition and poor self-image, often resulting in poor overall physical and mental health. Although many dental and oral disorders are both preventable and reversible, seniors often do not seek periodic dental care or practice regular dental hygiene.

In order to address these concerns, AoA solicits proposals from State Agencies on Aging, State professional associations, schools of dentistry, public health and medicine, and other appropriate organizations to conduct training and public education activities aimed at promoting oral health among the elderly. With respect to training activities, consideration will be given to proposals which:

- Promote and encourage the integration of available geriatric dental knowledge into the curriculum of schools of dentistry and dental hygiene;
- Provide geriatric dental continuing education and training on a state- or region-wide basis for dentists and dental health care workers;
- Develop and provide dental awareness material for other health care providers who work with older persons with emphasis on geriatric dental problems.

Organizations wishing information regarding curriculum content already developed for a graduate level certificate program may contact: Joseph Holtzman, Ph.D., Department of Applied Dentistry, School of Dentistry, University of Colorado Health Sciences Center, Campus Box C 284, 4200 East 9th Avenue, Denver, Colorado 80262. Dr. Holtzman is the director of an AoA-Supported project entitled, "Oral Health Gerontology Fellows Program."

In addition to training for dental health professionals, AoA will consider providing support for projects to undertake *Statewide* or Title VI *Indian reservation-wide* dental health promotion campaigns to encourage preventive dental health practices. Except as may be inappropriate for Title VI Indian tribal organizations, these public education efforts must demonstrate collaboration with both the State Agency on Aging and the State Health Agency with responsibility for dental health programs.

All proposals should clearly define a strategy that will bring together other relevant participants including State and/or local Dental Health Associations, Area Agencies on Aging and other public and private organizations as collaborators in the effort. Proposed campaigns should be designed to educate and motivate older people, their families and caregivers to adopt good dental health practices, to identify symptoms and to locate treatment and information resources. Applications should specify how the statewide or reservation-wide campaign will be organized and implemented, taking advantage of experience gained in previous health promotion media campaigns. Applicants should work in conjunction with the existing State health promotion coalition established in connection with the AoA/PHS national initiative on health promotion.

Federal funding for projects in this priority area is limited to $150,000 for a maximum duration of 17 months.

2.1.F: Aging Health Promotion—Pedestrian and Motor Vehicle Safety

Motor vehicle and pedestrian fatalities are the leading cause of accidental death for older persons age 65–84. Within the age group 65–74, deaths from motor vehicles occur among men more than women by a ratio of 2 to 1. Differences in motor vehicle accident rates among older people are related to the frequency which older persons drive, and their interest and physical ability to walk unescorted outside their homes. Although they travel fewer miles and have fewer collisions than younger drivers, older drivers have a higher collision rate per miles driven. Likewise, although older persons are more cautious than other age groups, they are at greater risk both as drivers and pedestrians due to aging-related changes in their physical and mental reactions in driving and walking environments.

A number of actions can be taken to reduce the incidence of motor vehicle and pedestrian accidents among persons over age 65. Most are similar to actions that would reduce accidents among all age groups: prevention; detection and correction of physical impairments; law enforcement; public education and counseling; improvements in highway and pedestrian walkway engineering; and installation of auxiliary aides and safety devices in vehicles. However, to be effective, approaches along these lines may need to be tailored specifically to the needs of the elderly.

Several noteworthy efforts have already been undertaken. The U.S. Department of Transportation and the American Association for Retired Persons (AARP) have jointly sponsored a driver safety program entitled "Safe Rides for Long Lives," which is directed at encouraging older persons to use seat belts. AARP has also sponsored a driver education/re-education program called "55 Alive," which has resulted in adoption of legislation in 18 States lowering insurance rates for older persons completing this or other certified driver re-education courses. In addition, AARP is currently developing a number of other pedestrian safety educational materials.

In order to increase attention to the issues of driver and pedestrian safety for older persons, AoA solicits proposals for the conduct of *Statewide* public education and awareness programs. Projects should be designed to inform older drivers and the general public about the implications of driving that are associated with advancing age, physical limitations, medications and alcohol, loss of sensory acuity, and reduced reaction times. Projects may also aim to re-educate older drivers and assist them to compensate for loss of perceptual acuity, as well as to cope with hazards which derive from highway engineering or poorly marked roads. Applicants proposing projects covering urban areas are encouraged to consider pedestrian education programs to assist older persons to walk defensively and better anticipate the perils they may encounter due to slower gait or other physical limitations.

Applicants in this priority area are expected to involve the appropriate State and Area Agency on Aging, State and local Motor Vehicle Departments, and national or State organizations concerned with traffic safety in the design and conduct of their proposed

projects. Where feasible, linkages with high school driving and pedestrain safety programs should be explored. In addition, projects are expected to make maximum use of existing materials and programs, including those resources and programs developed by AARP.

Federal funding for projects in this priority area is limited to $150,000 for a maximum duration of 17 months.

2.1.G: Transition of Head Start Students to Public Schools

Previous studies under the Head Start developmental continuity initiative have found that making the transition from a preschool program to a public school program is frequently a period of high stress for both children and parents, due to the larger class size and different roles and approaches of the two kinds of programs. Insufficient attention has been paid to noting the similarities and differences of the two systems and to assisting parents to serve as links, giving continuity to the child during this critical time. Pilot efforts to facilitate transition of children with handicaps has shown that attention needs to be paid to assisting staff in planning ahead for transition and in understanding each other's system, including the differences in staffing patterns and emphasis on child development and academic work.

Demonstrations of locally-designed ways to reduce the stress of transition for children and new parents are needed. Applications should address innovative strategies for assisting parents in transition of Head Start children, including those with handicaps or at risk of abuse or neglect.

Proposals should address the development and demonstration of effective support to parents in the following areas:

- Involving parents actively in planning, carrying out and assessing the transition activities.
- Increasing parental contact between the two systems, including the year before the children make the transition.
- Improving parent information-sharing procedures and increasing parent input in describing the children's interests, motivations and learning styles, along with any special problems or needs.
- Reviewing record-keeping procedures to see if common record items or processes could be designed to facilitate transition. Developing better understanding of the expectations of the public school for children emerging from Head Start (survival skills), particularly for children with special needs.
- Developing support systems within the public school system that involve linkages with other parents.
- Developing ways to implement effective transition assistance activities in public schools and Head Start programs.

Special attention should be paid to developing information on costs involved and amount of volunteer time and in-kind contributions which are needed to operate the project, developing an assessment of the satisfaction with the activities by Head Start and public school staffs and parents and development of a final report which would contain narrative descriptions of strategies tried, both successful and unsuccessful, and cost and satisfaction information, at a minimum.

Under this priority area, eligible applicants include local Head Start programs, or public schools or PTAs in the same geographic area as a participating Head Start program. HDS welcomes applications from Head Start grantees and/or public school systems which reflect a close, collaborative and joint planning approach to increased new parent involvement in the transition process.

HDS anticipates funding 24-month projects having a Federal share not to exceed $12,000 per project per year.

Topic 2: Community Self-Sufficiency

2.2.A: Development of Models Applying the Enterprise Zone Concept to American Indian Reservations

The concept of enterprise zones as a means of attracting business and capital to Indian reservations is getting increased attention. American Indian Tribes have many of the attributes conducive to enterprise zone application, such as tax immunities, jurisdictional prerogatives, and natural and human resources. A bill pending in Congress, entitled the Indian Economic Development Act of 1985 (H.R. 3597) would, if enacted, significantly advance the concept of enterprise zones on Indian Reservations. Title I of the Bill gives the Secretary of the Interior the authority to designate Indian enterprise zones. The areas designated must be selected from nominations made by Tribal governments.

The purpose of an enterprise zone is to attract business and investment capital through packaging and marketing of local resources, attributes and locations. Concerted Tribal efforts will be necessary to enhance the natural advantages of Tribal operations and at the same time reduce the barriers that discourage businesses from beginning or expanding. According to a comprehensive study on enterprise zones completed in 1981, titled "The applicability of Enterprise Zones to American Indian Reservations," certain principal factors are important to industry in determining where to locate. These factors, identified below, should be addressed in the application:

1. Basic economic factors (location, labor availability and skills, land, resource availability, market demand and availability of private capital);
2. Civil order (personal safety, property security, enforcement of contracts and political stability);
3. Taxes and regulations (Federal, State, Tribal and local);
4. Infrastructure/service delivery (transportation access, utilities, site preparation, fire protection, schools and street maintenance); and,
5. Assistance programs (job training, management assistance services, and grants and low-interest loans);

Copies of the above-referenced study may be obtained by writing to the Administration for Native Americans, 330 Independence Avenue, SW., Room 5300, North Building, Washington, DC 20201 Attention: Anita Wright.

Eligibility is restricted to Federally-recognized Indian tribes. Applications should address the planning and setting up of the enterprise zone structure and the implementation of a zone. It is expected that applications addressing both the planning phase and implementation/marketing phase will require two years. Federal funding for projects in this priority area is limited to $250,000 for a maximum duration of 2 years.

Topic 3: Intergenerational Projects

2.3.A: Intergenerational Projects

The widespread establishment of intergenerational programs is one way in which social institutions can help meet the needs of our growing older population. It is also a way in which our Nation's younger members can benefit from the skills and experiences of the generations that have preceded them.

The purpose of this priority area is to encourage public and private non-profit organizations to plan and carry out creative intergenerational programs designed to meet identified community needs. A number of types of intergenerational programs, involving reciprocal benefits for both young and old, would be entertained, including:

1. Educational projects involving the use of older persons in helping youngsters in foster care or runaway youth shelters master basic educational skills. Such projects could have older persons volunteering through child welfare or runaway youth agencies to assist youth with tutoring, counseling and role-modeling. This focus should result in the mastery of specific skills as

well as improved self esteem for youngsters who may have had little positive contact with older persons.

2. Projects in which older people help teach parenting skills to adolescents.

3. Community service projects involving volunteer youth in assisting the homebound elderly or other older persons needing help with home maintenance chores, shopping, transportation, recreational activities, etc. Such projects would assist frail older people in activities of daily living.

All proposals must demonstrate how both young and old benefit from participation in the proposed activities. Projects must describe the specific activities that will be undertaken, including the roles and responsibilities of all participating agencies and organizations. Applicants should propose significant collaboration between child and youth serving organizations, such as runaway shelters and child welfare agencies, and organizations in the field of aging, especially State and Area Agencies on Aging. Applications should describe how the proposed project will have a continuing significant impact on the problems being addressed. Where the project warrants, funding will be jointly provided by the Administration on Aging (AoA) and the Administration for Children, Youth and Families (ACYF). Applications should list all organizations that will collaborate on the project and describe the nature and extent of that collaboration. Written assurances should be included with the application if available.

Potential applicants wishing information about worthwhile and successful intergenerational programs in operation across the country may wish to obtain a copy of a publication titled *A Guide to Intergenerational Programs.* Developed with grant support from the Administration on Aging, the *Guide* is a compilation of information on the content, impact and characteristics of model intergenerational programs. A number of these programs were developed with support from both AoA and ACYF. The *Guide* also provides information on a variety of resources that may be utilized in planning, designing and implementing such programs. Copies of the *Guide* may be available at the State Agency on Aging. Copies can also be obtained by writing to:

National Association of State Units on Aging, 600 Maryland Avenue, SW.—West Wing, #208, Washington, DC 20024—(Price: $15.00)

Federal funding for projects in this area is limited to $50,000 for a maximum duration of 17 months.

Topic 4: Challenge Grants to Community Foundations

Introduction

The purpose of challenge grants to community foundations is to stimulate the development of endowed restricted funds within community foundations for the support of small and medium sized human service organizations in their communities.

It is expected that the efforts will enhance the service capability and financial stability of small and medium sized human service organizations by increasing their support from the private sector and establish liaison among community foundations, public State and local agencies and the private sector.

Grants to community foundations are made for up to three years with submission of a yearly application and are subject to availability of funds. The community foundations must be able to establish an endowed fund of two dollars in new non-Federal funds for each Federal dollar, each year. The non-Federal funds must be assigned to an endowed restricted fund, the future income of which must be used to support small and medium sized human service organizations with emphasis on increased human service to youth at risk, such as runaways, homeless youth, older adolescents in foster care and unemployed low-income youth.

Eligibility

Applicants must:

(1) Meet legal requirements, donations to the organization must be allowable as a charitable contribution under section 170(c) of the Internal Revenue Code of 1954, as amended;

(2) Be a community foundation with public charity status;

(3) Have an endowment or be actively working towards building one; and

(4) Have a giving program which addresses a broad range of community needs.

Subgrants and Selection Criteria for Subgrantee

Community foundations shall propose selection criteria for subgrantees in the applications and upon approval from HDS, select subgrantees who will provide the services.

Grant Amounts

Federal funding for challenge grants to community foundations may range from $35,000 to $100,000 per year for three years and will contain a requirement for submission of annual applications for approval by HDS. Subgrants may range from $6,000 to $35,000 per year for three years with submission and approval of applications annually.

Non-Federal Funds

For every Federal dollar provided each year of the grant, the community foundation must provide two dollars in cash, cash equities, bonds or commercial papers (representing new private funds). Other similar instruments must be approved by HDS.

During the first three years, community foundations will use the Federal funds to award grants to subgrantees. The non-Federal funds must be deposited in a restricted fund (for small and medium sized local human service organizations). At the end of the third year the community foundation shall begin to use the income from the fund to fund subgrantees. The grants would continue to focus on the needs of the youth target population, but could use different project designs after the three-year period.

Review Criteria

Applications will be reviewed based on the following criteria:

(1) Demonstrated ability to provide the non-Federal funds and increase its earnings beyond the grant period (25 points);

(2) Demonstrated ability to understand complex human problems and the services to deal with the problems (25 points);

(3) Ability to coordinate with State and local public and private human service organizations (25 points); and

(4) Creativity in designing service programs for youth at risk (25 points).

2.4.A: Job Clubs for Teenagers

It has been well documented that disadvantaged teenagers often do not know how to look for a job, or how to conduct themselves in interviews or in on-the-job settings after receiving employment. Obtaining and retaining jobs have many positive influences on teenagers. Work produces income, develops self-confidence and discipline, provides valuable experience and provides direction to teenage development. Conversely, lack of work experience, world of work preparation and basic skills development makes it difficult for at-risk youth to move toward independence and self-sufficiency.

One of the problems in assisting teenagers has been the gap between community-based youth service providers and private sector-oriented skills training programs.

Job clubs take a variety of forms, many of which could be suitable for replication. At a minimum, job clubs bring youth together to learn about filling in forms, how to dress for and behave at interviews and how to do role playing. More elaborate forms of job clubs may include a bank of telephones where youth systematically call employers, seeking to promote themselves if an opportunity exists or could be created.

Available literature offers many other useful ideas, and two examples recently funded by HDS may be helpful as references:

Jobs for the Future (JFF) Project, Bank Street College of Education, 610 West 112th Street, New York, New York 10025

Jobs Independence for Youth (JIFFY) Project, New York State Department of Social Services, Bureau of Program Development, 40 North Pearl Street, Albany, New York 12243

HDS is soliciting proposals from community foundations which will establish a job club(s) through subgrants to local public or private community organizations. Job clubs for disadvantaged youth, using volunteers and involving the private sector, should establish comprehensive employment programs which include critical elements such as: Orientation to the world of work, recruitment, intake, provision of information on employer needs, eligibility for public sector jobs, how employers make selections, skills training, academic remediation, support services and job placement.

Periodic meetings with teenagers to discuss their experiences, issues and problems should also be considered. Private sector involvement in the design and volunteer aspects of the program is recommended.

HDS anticipates Federal funding levels of approximately $65,000 per year per project.

2.4.B: Mainstreaming Troubled Youth

This priority area addresses the idea of brokering new pathways for low-income youth in the social-human services system to enter or reenter the mainstream life of their community.

According to a report by the Advisory Commisssion of the Education Commission of the States, as many as 10 to 15 per cent (2.4 million) of our youth are disconnected from work, school, family and other societal anchors. As of 1983 there were 269,191 children and youth in foster care in the United States. Thirty-nine per cent of these were between the ages of 13–20 and 25 per cent were between the ages of 6–12. Only approximations have been made of the numbers of homeless youth, who are defined as "persons under 18 years of age and in need of services and without a place of shelter where he or she receives supervision and care." Of the number of youth seen in the runaway shelters, the Department estimates that approximately 35.5 percent are homeless.

Generically, HDS programs offer shelter care; intervention; protection and rehabilitation. There is, however, another dimension to be addressed, that of additional motivation, socialization and support at the point where social service programs leave off and self-sufficiency begins.

Traditional organizations in the community (Girl Scouts, Police Boys and Girls Clubs, fraternities, sororities, etc.), that do not usually deal with these subpopulations have much to offer in this area. Their programs already include constructive use of leisure time, reinforcement of positive decision-making, strengthening self-esteem and self-awareness, adult role models, peer support, skills building, community service etc. The target populations of this priority area are the hidden clientele of numbers of such organizations who presently perceive working with troubled youth as "risk venture programming."

Some successful models have emerged which address this idea. What appears to be a key factor is the involvement of a local advocate group as a broker who will work with one or more local organizations to develop programs, provide training, and assist these organization to focus on this population and begin to work with social service agencies. Some examples of such efforts include the following:

• A Girl's Emancipation Program of a YWCA, a residential, transitional project, assists adolescent girls to successfully establish independent life syles in the community. The program offers intensive, short term services to these girls for whom emancipation is an appropriate goal but who are unable to successfully move into independent living due to significant emotional and social concerns, as well as insufficient family and community support.

Services are provided on both a residential and out-client basis for approximately 90 days, and on an "as needed" basis for an additional 90 days after emancipation.

• A program based on the Camp Fire, Inc. Reflections Project assists young adolescent girls ages 13–16, who are primarily, but not exclusively, status offenders. The program helps these girls develop a positive self-image; provides an opportunity to discover personal talents and abilities; helps develop the skills necessary for independent decision-making; and to discover positive uses for leisure time.

To date, these successes have occurred: detentions at school have decreased, grades are beginning to improve; solving differences with words (rather than fists) is becoming more commonplace. These girls are not only learning how to have the system work for them, but also they are experiencing positive interaction with caring adults.

Runaway and homeless youth shelters and coordinated networks not only provide short term shelter care and counseling for troubled youth they also spend a major portion of their time and resources brokering the youth and their families into the appropriate service system for addressing their longer term needs. In this capacity and in their education/prevention efforts, shelters have become strong youth advocates in their communities. This priority area would like to involve community foundations and build on the advocacy role and talents of shelters to develop the concept described above.

Community foundations are invited to submit proposals in which appropriate organizations, e.g., runaway and homeless youth shelters, will be selected as brokers that provide technical assistance to one or more local organizations to develop appropriate programs to aid in the mainstreaming of youth in foster care and recently emancipated youth, and homeless youth in independent living programs.

The proposals should include: collaboration with local youth serving organizations such as Boy Scouts, Girl Scouts, Camp Fire, Big Brothers/Sisters, etc.; an outline of the program to be developed; and some indication of interest by the local social services agency involved. Applications should describe how the proposed project will have a continuing significant impact on the problems being addressed.

Projects will be three years in duration. The broker subcontracted for by the foundation should be prepared to work with at least one new traditional organization each year.

HDS anticipates funding 36 month projects having a total Federal share not to exceed $50,000 per project, per year.

Section 3: Dissemination and Utilization

3.1.A: Expand or Improve Social Service Delivery to Native American Communities by Packaging and Disseminating Successful Approaches and/or Implementing Models in Other Native American Communities

Successful approaches to programs relating to the development of social structures within Native American communities need to be disseminated so that other communities may benefit from these models in forming programs aimed at strengthening their own social development. Too often, Native American communities devote too much attention to reporting the success of economic development projects to the detriment of the development of social projects.

The philosophy of the Administration for Native Americans in the formulation and implementation of the Social and Economic Development (SEDS) program strategies is based on the principle that social and economic development are interrelated areas. Therefore, underreporting of successful social programs tends to impede the balanced delivery of programs which would result in an efficient and effectively-planned development of Native American communities. Synthesizing, packaging and disseminating or replicating successful approaches and outcomes for social projects is of critical importance.

Toward this end, the Administration for Native Americans is interested in entertaining proposals which incorporate successful approaches to social services and disseminate the outcomes of such projects. Applicants should demonstrate a strong marketing capacity in their proposal. In addition, they should identify those successful projects which they propose to market through this award. Other desirable significant factors include:

- The degree to which the project utilizes linkages with existing public and private social service providers.
- The degree to which the project increases Native American self-determination in the delivery of social services by promoting local control over planning, implementation, and administration.
- The degree to which the project supplements the absence of family support networks, especially for the institutionally vulnerable and/or otherwise at-risk or needy populations.
- The degree to which the project promotes self-reliance of individuals and families by providing needed services using culturally appropriate methods, and decreases dependency on local, State and Federal welfare programs.

Federal funding for this priority area will be limited to $150,000 for a maximum duration of 17 months. Eligibility is restricted to Tribal governments and Native American organizations. However, they are strongly encouraged to enter into partnerships with other public or private sector entities in these applications.

3.1.B: Development of New or Replication of Successful Placement Efforts in Special Needs Adoption

For the past nine years there has been extensive work in the field of adoption of special needs children. Model programs on recruitment, placement, post placement and post adoption services have been developed, demonstrated and disseminated; a curriculum has been developed, and widely distributed and States have received grants to improve and enhance their special needs adoption programs.

We are seeking to replicate effective programs for the adoption of children with special needs such as Wednesday's Child, One Church-One Child, and Friends of Black Children. Other successful efforts have included the use of videotapes to feature waiting children and partnerships between adoption agencies and the corporate sector.

In addition, HDS will consider demonstrations of innovative practices which may have the potential of replication. These efforts should be directed to overcoming barriers to the successful adoption of children with special needs. Such projects may address staff training, child-parent preparation, public awareness, or any aspect of special needs adoption in which successful practices have or need to be further developed.

HDS anticipates funding 17 month projects having a Federal share not to exceed $100,000 per project. Private, non-profit, voluntary agencies and public agencies are eligible to apply. Grants from public and private agencies will be considered separately and awards will be made to both types of agencies.

3.1.C: Temporary Child Care for Handicapped Children and Children in Need of Protection

Currently-accepted policy goals of strengthening family life and enhancing parental capacity to care for children require new forms of assistance and support for parents who are overstressed and temporarily incapacitated in providing appropriate care. Under this priority area, HDS in interested in two different types of support for such parents: respite care and crisis nurseries.

- Many families provide care for severely handicapped children, those with chronic or terminal illness and those with severe emotional and behavioral problems. In some instances, these parents are adoptive or foster parents.

Respite care is a promising approach to providing short-term relief to persons primarily responsible for the daily care of children who have these conditions. Respite care has not been utilized extensively by child welfare agencies despite its high potential for supplementing family care, thereby improving the quality and stability of the child's placement in the community.

Respite care can be used to prevent placement, reduce the incidence of multiple foster home placements and strengthen the long range parenting commitments of foster and adoptive families. A range of models have been used including in-home care, foster home care, residential care designed exclusively as respite care and cooperative parenting.

HDS is interested in replicable demonstration projects that apply known concepts and practices concerning the use of respite care and which assist biological, foster and adoptive families. Projects are required to develop handbooks or other resources which can be disseminated.

- Many young parents and single mothers find themselves temporarily overwhelmed in providing adequate care to infants and young children. Stresses due to low income, social isolation, and lack of family or neighborhood support networks are commonly reported by parents who have been investigated for abuse or neglect of their young children.

Crisis Nurseries have long been recognized as an important resource for parents under stress, in providing a respite to meet a current crisis, as a point for positive contact and involvement with isolated parents, and as a critical community service to prevent child abuse and neglect.

HDS is interested in proposals to establish crisis nurseries. Programs should specify links to child protection and to other programs in the community which constitute the child abuse prevention system, and should describe plans for community education to encourage appropriate use of the crisis facility, links to parent education, and referral for other needed services.

Projects should develop handbooks or other resources which can be disseminated.

Applicants should list organizations that will work on the project along with a brief description of their contribution. Written assurances should be included with the application if available. HDS anticipates funding 17 month projects in the area of respite care having a Federal share not to exceed $60,000 per project. We also anticipate funding 17 month projects in the area of crisis nurseries

having a Federal share not to exceed $100,000 per project.

3.1.D: Assessment of Local Agency Adoption Efficiency

States and local communities have taken the initiative to improve the performance of public adoption agencies. This is a consequence of their increased efforts to find permanent adoptive homes for children with special needs—school age, handicapped, minority and sibling groups. California and other States have developed quantitative and descriptive methods to assess local public agency adoption performance. These techniques annually inform State policy and administrative decisions affecting the allocation of staff, resources, and technical assistance to advance and improve adoption services. The development, improvement and implementation of assessment techniques that improve local agency adoption services are the foci of this priority area.

• *Development and Implementation of Feasible Assessment Models.*

California has legislation that mandates the establishment of annual goals and recommendations regarding the improvement of the performance of public adoption agencies. The "Public Agency Efficiency Report" is an intensive comparative analysis of the adoption efficiency among the counties based on quantitative measures and field visits. Three measures are used, the number of adoption placements less the number of adoption disruptions divided by the full time equivalent (FTE) adoption workers and supervisors. There are two other measures which are closely related.

Based on the ranking of all the counties, the lower half of the counties that are less efficient are field visited for intensive descriptive assessment of adoption process and contextual factors. The quantitative and descriptive information is used to establish efficiency goals for the next year.

HDS will consider projects that essentially implement the adoption efficiency system used in California. The system may be modified to meet the individual State needs.

HDS anticipates funding 24 month projects at a value not to exceed $50,000 to $100,000 per project, per year.

Applications are restricted to States with 500 or more children in need of adoptive homes.

Information concerning California's "Public Agency Adoption Efficiency Report" is available at cost from National Resource Center for Special Needs Adoption, P.O. Box 337, Chelsea, Michigan 48118, telephone (313) 475–8693, Contact: Nancy Burkhalter.

• *Developing and Implementing Alternative Measures of Adoption Efficiency.*

Applications should describe the development of alternative quantitative measures to assess local public agency adoption efficiency or effectiveness. The measures should be valid, reliable and feasible to implement and inform the State and local policy and administrative decision process. The measures may be supplemented with qualitative approaches to identify adoption system weaknesses which impair the State's goal to place special needs children in adoptive homes. These approaches may take into consideration work measurement, or other analytical techniques.

HDS anticipates funding 24 month projects having a Federal share not to exceed $50,000 to $100,000 per project, per year.

Applications are restricted to State agencies.

Section 4: Research and Evaluation

4.1.A: Development of Measures for Assessing the Performance of State Agencies on Aging

This priority area calls for the development and field testing of an instrument that can be used by State Agencies on Aging to evaluate how well they are carrying out their major responsibilities. What is envisioned is a protocol that can be self administered and that compels critical analysis of the strengths and weaknesses of State Agencies on Aging in the performance of their most important functions. The instrument might take any one of several forms (or be a mix of approaches)—a series of open-ended probes, checklists, statistical measures of performance, etc. The final instrument should be applicable to all State Agencies on Aging and should be sufficiently easy to use so as not to discourage voluntary application on the part of State Agencies interested in formal self-evaluation.

Applications should discuss the conceptual framework within which instrument development will be undertaken; the process by which the instrument will be developed—including how content areas and specific items will be identified and defined; the use of advisory panels; and the field-testing plan that will be employed.

It is anticipated that a major challenge in executing this type of effort will be the achievement of a workable consensus regarding the concrete specification of functions for which State Agencies on Aging should hold themselves accountable, and the development of yardsticks that can provide reasonable measures of success. Applications should discuss how these issues will be approached.

Federal funding for applications in this priority area is limited to $200,000 for a maximum period of 17 months. For-profit organizations are eligible to apply. Non-Federal funds must comprise at least 5 percent of the total cost of project under this priority area.

4.1.B: Assessment of the Relationship between Social Services for the Elderly Provided through Title III of the Older American Act and the Social Services Block Grant Program

Two major Federal programs currently provide funds for the provision of social services to the elderly: Title III of the Older Americans Act (OAA) and the Social Services Block Grant Program (SSBG). Under both authorities States and localities have broad discretion with respect to how the programs are organized and administered, how and by whom services are delivered, what services are provided, and who is actually served.

Research proposals are solicited which identify the principal effects, primarily at the local level, of having two separate Federal funding streams and of having, in many cases, two separate systems for the delivery of services to the elderly. The central issue to be addressed by studies in this priority area is: "What are the consequences of having two Federal social service programs providing service to the elderly?"

In exploring this issue, information and analyses should be generated on the following kinds of questions:

• Who is served? Is there a difference between the elderly clients served by the two programs?

• What services are being provided? Are the services made available to the elderly under the two programs the same or are they different?

• Do the two programs utilize the same service providers?

• Do the costs for the same services differ under the two programs? What accounts for the variation?

• What is the nature and extent of coordination between the two programs at the local level? Do the programs operate in light of one another or are they viewed as essentially separate? Is there joint planning, policy development and implementation?

• What innovative/effective management models have been developed to coordinate the two programs insofar as services to the elderly are concerned?

It is anticipated that findings from the proposed study will encourage State and local officials to review programmatic and management policies governing the manner in which the two programs are operated within their jurisdictions. If sufficiently compelling, the findings could precipitate improvements in targeting, cost control, and coordination at State and local levels where key management decisions are made. Reports resulting from the proposed study should be written in a manner that will be useful to policy-making officials at these levels.

Proposals in this priority area must clearly outline the issues to be addressed and the research design to be employed.

Federal funding for projects in this area is limited to $200,000 for a maximum of 17 months. For-profit organizations are eligible to apply. Non-Federal funds must comprise at least 5 percent of the total cost of projects under this priority area.

4.1.C: Risk Assessment Systems Utilized by Child Protective Services in the Decision-Making Process

Cases of child abuse and neglect reported to child protective services agencies vary in their urgency for immediate investigation and in the complexity of the decisions needed to protect the child while respecting the rights of parents and minimizing any unwarranted intervention into family life. Difficult decisions which convey risks for the child, the family and the agency must be made. They include: the speed with which an investigation should be undertaken, the involvement of other professionals or community agencies, the extensiveness of data to be gathered in the investigation, the provision of emergency protective services for the child (in or outside the home), the removal of the child or the perpatrator when it is essential to separate the two, the need to initiate juvenile or criminal court proceedings, and when to return the child to the home.

Agencies have begun to identify risk factors and to implement systems to assess risks for the child, for the family, and for the agency in arriving at decisions in the handling of a case.

Research is needed to examine current risk assessment systems more closely to identify the criteria used at various stages in the decision making process. Examination is also needed of methods used to establish acceptable levels of risk, as well as how information is feeded back into the system to improve services and reduce risks for children, families and the agency.

HDS is interested in considering proposals which address the foregoing issues and which measure the effectiveness of current practices in risk assessment, and which identify best practices. Appropriate agency collaboration is recommended, and written assurances should be included with the application where available. Proposals should also show the ability to gain access to necessary information.

Proposals for up to 24 months in duration with Federal funding not to exceed $200,000 will be considered.

Non-Federal funds must comprise at least 5 percent of the total cost of project under this priority area.

4.1.D: Abused and Neglected Children Involved in Court Actions

According to the American Human Association (AHA), the number of child abuse and neglect cases referred for court action has increased substantially since 1980. Cases referred to the court include some of the most serious forms of child abuse and neglect, and many are especially challenging for child protective service workers, law enforcement officers, prosecutors, and court personnel. Child protection, removal of the perpetrator or the child from the home, prosecution of the perpetrator, and child custody are among the issues requiring court action. In some instances, more than one court may be involved in different aspects of the case. The extent of coordination among the courts, child protective service agencies, and other entities in the community varies in jurisdictions across the country.

Little is known about (1) the experiences of abused or neglected children and their families in court cases, or (2) the effectiveness of the court's involvement in resolving the multiple issues facing the child victim or the family. For example, where the primary concern of the court may be the prosecution of the perpetrator, the consequences for the child victim and the family may not be clearly understood.

Research is needed on the impact of court involvement on abused or neglected children and their families, including comparisons of similar cases in which: prosecution is or is not pursued in a criminal court; cases are heard in juvenile or family courts; mediation is used as an ancillary service of the court or outside the court; cases involve the prosecutor but not the court; or there is no involvement of the court or its related entities.

Issues of concern include: the type of abuse or neglect, age and sex of the child, relationship of the perpetrator and the child, the nature of the court's involvement, how the court becomes involved, the extent to which the court depends on and interacts with the child protective service agency and other community agencies in considering cases, the various stages in the process and associated time lines experienced under varying conditions, services provided for the child or family while the case is in process, case disposition and follow-up services.

Applications should list all the organizations that will work on the project, along with a description of the nature and extent of their collaboration. Written assurances should be included with the application if available. Applications should show that applications will be able to gain access to necessary information.

HDS anticipates funding projects of up to 24 months in duration having a Federal share ranging from $75,000 to $125,000 depending on the proposed work.

Non-Federal funds must comprise at least 5 percent of the total cost of projects under this priority area.

4.1.E: Methods Used in Interviewing Child Victims

Anatomically correct dolls have increasingly come into use in interviewing children to elicit information about what actually happened when child sexual abuse is suspected and the child is asked to relate the events which occurred.

The use of dolls has proliferated absent systematic evaluation of the validity of the information obtained, the role of the interviewer, the suggestive aspects of the dolls or comments made by the interviewer, changes if any over time and different intervies, differences in information obtained in investigative vs. therapeutic environments. Although the National Center on Child Abuse and Neglect recently funded one study on the interaction of abused and non-abused children with anatomically correct dolls, additional investigations are needed to establish more empirically-based means for this and other techniques used in interviewing child victims.

Studies are needed to examine a range of child and interviewer variables to determine differential child responses, how different interviewing techniques affect the ability to elicit information for children of different ages, stages in development, cultural and ethnic backgrounds, and children who have suffered different types of abuse. Attention also needs to be given to the interpretation of data obtained

from children under varying circumstances.

Applicants should demonstrate knowledge of the literature in child psychology, child psychiatry, early childhood development, protective services procedures and posess the appropriate background and experience in research methodology.

HDS anticipates funding projects for up to 24 months in duration with Federal funding not to exceed $125,000 per year.

Non-Federal funds must comprise at least 5, percent of the total cost of projects under this priority area.

4.1.F: Removal of the Perpetrator versus Removal of the Victim from the Home: Effects on the Victim and the Family

Traditionally, efforts to protect children which could not be managed within the home have resulted in out-of-home placement for children. Little attention was given to the emotional or psychological effects on the child being removed from the home, or the further victimization of the child victim. More recently, concerns have been expressed that removal of the child from the home may suggest that the child doesn't fit or belong in the home, and feelings of guilt and responsibility for the events which the child may be experiencing may be intensified.

When the protection of the child requires separation of the child victim and the perpetrator, in some jurisdictions child protective service workers and judges have begun to seek voluntary and sometimes involuntary removal of the perpetrator from the home rather than the child. The results have been mixed, working well in some situations and poorly in others. When the perpetrator is highly motivated to receive treatment and leaves the home voluntarily, there may be a better likelihood for a positive result.

When the perpetrator leaves the home, the remaining members of the household may resent and blame the child victim. When the perpetrator is ordered out of the home and is unwilling to remain out of the home, enforcement of the order is difficult particularly if the remaining household members are sympathetic to the return of the perpetrator.

Studies are needed to determine the impact of removing the child vs. the perpetrator from the home, and to determine the circumstances under which one or the other would be more effective in protecting the child and rehabilitating the family. Criteria for removal of the child or the perpetrator need to be established with attention to the status of the child and the perpetrator in the family constellation and their various relationships. Differences that need to be examined include: the nature of the maltreatment experienced by the child; child status such as only child, one of several children, step-child, foster child, adopted child, biological child; the relationship of the perpetrator to the child, e.g. mother, father, step-father, mother's paramour, etc.; and, the relationships among siblings and other household members. The management and supportive services needed by the child and the family to help achieve a positive result also need to be identified.

While the most pressing need for this research is in the management and treatment of child sexual abuse, attention also needs to be given to other areas of abuse and neglect. Studies proposed need not address all areas of maltreatment but should be clear on what will be studied. Clear access to sufficient numbers of cases for study should be demonstrated in the application.

HDS will consider studies in the area for up to 36 months having a Federal share ranging between $75,000 and $125,000 per project per year.

Non-Federal funds must comprise at least 5 percent of the total cost of projects under this priority area.

4.1.G: The Relationship of Child Maltreatment to Childrens' Social and Emotional Development and School Performance

There is clear evidence that child maltreatment affects the growth and development of children in diverse ways. A recent analysis of the National Study of Social Services to Children and Their Families (1977) data indicate that while 84 percent of elementary school age children nationally are in their modal grades or higher, only 64 percent of children receiving home-based services for neglect are at grade or higher; and, for children between the ages of 14 and 17, 76 percent nationally are at modal or higher grades relative to only 48 percent of those under the care of social service agencies for child neglect.

HDS is interested in examining the impact of neglect and abuse on children's school performance and their social and emotional development. Research is needed to answer the question of the extent to which child maltreatment inhibits the child's development and performance in school, and to identify the extent to which remedial programs to serve these children may be needed. A secondary concern is to determine the extent to which poor school performance may be used as an indicator of potential child maltreatment.

HDS will consider proposals to address the relationship of child maltreatment, including lack of supervision, and other family factors which inhibit the child's social and emotional developmental progress and performance in school. The nature and extent of remedial programs and services that are available for the children should be addressed, as well as the extent to which local child protective service agencies, school social workers, and other school personnel interact on behalf of the child should also be examined. Proposals to study the extent to which poor school performance may be used as an indicator of potential child maltreatment may be submitted as a separate study.

Applications should list all organizations that will collaborate on the project, along with a description of their contribution. Written assurances should be included with the application if available, especially from appropriate school officials. Applications should also show that applicants will have the ability to gain access to necessary information.

HDS will fund studies ranging in duration from 17 to 24 months with Federal funds of up to $150,000 per year depending on the questions to be answered, the intensity of the effort proposed, and the generalizability of the results which may be anticipated.

Non-Federal funds must comprise at least 5 percent of the total cost of projects under this priority area.

4.1.H: Assessing the Impact of Child Abuse and Neglect on Victims

Literature indicates that child abuse and neglect have long-term impacts on the victims which may not be evident for years after the incident and subsequent intervention.

Research is needed to study the residual effects of various types of child maltreatment, the nature of the impact, and its manifestations at critical developmental periods throughout the child's maturation and adulthood. This should include aggregate information about childrens' developmental status, age, geographic location, sex and cultural and ethnic background of the child (so long as the confidentiality of information about individuals is protected), as well as the family context at the time of the incident and subsequent treatment services provided.

At the present time, HDS has underway four studies which were funded in Fiscal Year 1985 to assess the impact of child sexual abuse on victims. Therefore, such studies on child sexual abuse are not planned for solicitation for Fiscal Year 1987.

Research on the impact of physical abuse, neglect (including lack of supervision) and emotional maltreatment on victims is needed. Two studies funded by HDS in Fiscal Year 1984 on lack of supervision can provide background information for research in this area. Two research studies on emotional maltreatment, one pertaining to operational definition and the second to study the effects of emotional maltreatment, are getting underway in Fiscal Year 1986 and they will also be helpful when completed.

Needed are both retrospective and short-term follow-up studies on victims of child abuse and neglect to determine the residual effects after the conclusion of treatment in the areas of physical abuse, neglect, including lack of supervision, and emotional maltreatment.

HDS anticipates funding projects of 17 to 24 month duration having a Federal share not to exceed $150,000 per project, depending on the scope of work.

Non-Federal funds must comprise at least 5 percent of the total cost of projects under this priority area.

4.1.I: Effectiveness of Child Abuse and Neglect Prevention Programs

The disturbing increases in the numbers of children abused or neglected who are coming to public attention, particularly as concerns sexual abuse, have resulted in a diversity of efforts to combat the problem. While it is essential that more effective ways be found to identify, handle and treat cases to remedy the situation for children who have been abused, many believe that solutions must be found in programs to prevent child abuse and neglect. This concern has manifested itself in the establishment of Children's Trust Funds and other funding mechanisms designed specifically to support child abuse and neglect prevention activities, and was recently recognized by the Congress in the enactment of Pub. L. 98–473, legislation to provide Challenge Grants to States to further encourage State child abuse and neglect prevention activities.

Through these combined efforts many programs have emerged in the name of prevention. Some prevention programs have been designed to enable children to protect themselves; some have been designed to educate and prepare young parents for the difficulties of child rearing; some, such as self-help groups, have been directed to parents who have maltreated a child or who feel vulnerable to such behavior; some community-based programs have provided respite care, in-home services, and other assists to families at risk of abusing their children; and some have been designed for community education. Little is known about the effectiveness of these efforts. The rapid emergence and implementation of these programs has not been paralleled with systematic studies of effectiveness.

Research is needed on the effectiveness of the various child abuse and neglect prevention approaches such as those characterized above. Proposals may focus on one or more of the areas mentioned and should attend to both intended and unintended consequences (positive or negative) of various prevention approaches with particular emphasis on how they affect children and families. Applications should list the organizations that will work on the project along with a brief description of their contribution. Written assurances should be included with the application where available. Applications should also show that applicants will have access to necessary data.

HDS anticipates funding projects of 17 to 24 months in duration with Federal funding of up to $150,000 depending on the proposed scope of work.

Non-Federal funds must comprise at least 5 percent of the total cost of projects under this priority area.

Section 5: Education and Training

Topic 1: Education and Training in Aging

5.1.A: Statewide Short-Term Training and Continuing Education for Professionals and Paraprofessionals

AoA solicits applications for the provision of short-term and continuing education and training opportunities for professionals and paraprofessionals, who, in the execution of their duties, serve older persons. These professionals and paraprofessionals include, but are not limited to, nurses, home health and nursing home aides, pharmacists, mental health counselors, hospital discharge planners, homemaker aides, respite care and day care personnel, community health center personnel, nursing home administrators and others.

Eligible applicants include State Agencies on Aging, State professional associations, colleges and universities. Each application should include the following:

(1) A statement clearly specifying the *single* profession or occupation that is being targeted and the number of persons who are expected to be trained. The application should specify how the expected level of participation in the proposed training activities will be achieved.

(2) A plan to conduct *Statewide* continuing education and short-term training for the single targeted profession or occupation targeted. Applications which do not offer training that will impact on a targeted profession or occupation *throughout the State* will not be funded.

(3) In every case, the State Agency on Aging and a State or other appropriate association representing the targeted profession or occupation must be partners in the project. Applications should list all the organizations that will collaborate on the project along with a description of the nature and extent of that collaboration. Written assurances should be included with the application where available.

Applicants may apply for support for a number of different professional or paraprofessional occupations within the State. However, each proposal must target a *single* professional or paraprofessional occupation and show promise of significant impact on that occupation and subsequently on the elderly throughout the State.

(4) The applicant should present a training plan which shows how existing training materials will be used wherever possible. This requirement stems from the fact that the development of a great variety of curriculum materials has already been supported by AoA and other Federal, State and private efforts and not every project need develop new materials.

(5) Applications must describe how project products will be disseminated to other State Agencies on Aging and to the national associations representing members of the targeted profession.

Applications may not propose training for individuals for whom the State Agency on Aging has primary training responsibility as described under section 308(a)(1) of the Older Americans Act, i.e., "short-term training to personnel of public or non-profit private agencies and organizations engaged in the operation of programs authorized by this Act."

Federal funding for projects in this priority area is limited to $150,000 for a maximum duration of 17 months.

5.1.B: Aging Content in Professional Academic Training

The Administration on Aging encourages the inclusion of aging content in programs leading to certification or an academic degree for persons preparing for employment in occupations that significantly impact on the elderly population. Professionals and paraprofessionals who would benefit from specialized gerontological or geriatric content in their career preparation programs include nurses, home health aides, physicians, pharmacists, mental health counselors, nursing home administrators and others.

Applications are requested from institutions of higher education, State Agencies on Aging and State professional associations for the purpose of training persons in a specific professional or paraprofessional occupation. The training should focus on aging concepts and best practices for working with the elderly. Each application should include the following:

(1) A statement clearly specifying the *single* professional or paraprofessional occupation to be targeted.

(2) Evidence that the State Agency on Aging has been significantly involved in and supports the design of the training proposal, if the State Agency is not the applicant.

(3) Evidence that the proposed activity is in response to documented needs for aging content in the profession targeted for training.

Applicants should identify and adapt existing aging education and training curricula to the needs of the program. Information on curricula that have been developed with AOA support is archived in four major clearinghouses. Information may be obtained by calling Project Share (301) 231–9535; the National Technical Information Service (703) 487–4650; the American Association of Retired Persons' "Ageline" (202) 728–4575; and the Government Printing Office Library Programs Service, Micrographics Unit (202) 783–3238.

Applications must include a plan to collect and report information on students participating in the proposed program. The information, to be collected and reported at the beginning and end of the project, must include: (1) Number of students in the program; (2) Aggregate demographic characteristics including such factors as sex, race, age and geographic background of the students (i.e., urban or rural) so long as the confidentiality of individuals is assured; (3) Types of courses and practical experiences; and, (4) Upon each student's graduation, the employment secured.

Federal funding for projects in this priority area is limited to $150,000 for a maximum duration of 17 months.

5.1.C: Minority Training and Development

The Administration on Aging is interested in increasing the number of minorities in management positions in State and Area Agencies on Aging as well as in other organizations impacting the elderly. In order to accomplish this goal, applications are solicited from State and Area Agencies on Aging, Indian tribal organizations funded under Title VI of the Older Americans Act and other appropriate agencies and organizations to participate in a minority internship program. The program is intended to place college graduates, with either significant prior aging program experience or with graduate degrees, as management interns in organizations serving the elderly. Applications should contain information about the host agencies, information on procedures for selecting and recruiting interns, a description of the internship itself, and information about training and supervision associated with the internship.

Finally, applicants should describe fully what steps they plan to take to assure that, when the internship is completed, the intern will assume a management position in an organization serving older persons.

The level of Federal financial participation in projects under this priority area is limited to a maximum of $1,000 per internship per month. Thus, for example, a project proposing an internship program lasting for nine months and involving ten interns may apply for a maximum of $90,000 in Federal funding. Applicants are encouraged to obtain other contributions in support of their internship programs. Any such support will not be subjected to the $1,000 per internship-per-month federal cost constraint.

The per-project level of federal funding in this priority area is limited to $150,000 for a maximum duration of 17 months.

5.1.D: State Agency on Aging Collaboration with Other Agencies

State Agencies on Aging must establish strong linkages with other State agencies which directly affect the lives of the vulnerable elderly. The intent of this priority area is to facilitate the development by State Agencies on Aging of linkages with other key State agencies with which there must be cooperation and collaboration to achieve more comprehensive and coordinated services for vulnerable older persons in the community. Such State agencies may include those providing public health, mental health, housing, transportation and other services.

Applications are solicited from State Agencies on Aging which propose joint training, technical assistance and information transfer efforts with one other State agency and its service delivery network. Applications should:

- Describe joint development by the State Agency on Aging and the other participating State agency;
- Explain why the State Unit on Aging has chosen to collaborate with the other agency, including what is expected to be achieved as a result of the joint effort;
- Describe the existing working relationships between the collaborating agencies;
- Identify the collaborative activities to be undertaken and the plan for implementing them; and
- State the anticipated measurable outcomes.

Applications should list all organizations that will collaborate on the project and describe the nature and extent of that collaboration. Written assurances should be included with the application if available.

Proposed joint training projects should be structured to:

(1) Educate the appropriate non-aging State agency personnel, and the personnel associated with that agency's local service delivery system about:

- Gerontological concepts;
- The States' aging service delivery system;
- The Older Americans Act;
- Service delivery system integration strategies; and
- Other matters related to services for the elderly within the State.

(2) Increase the understanding of State Aging Agency and aging network personnel about the purposes, policies and procedures of programs of the other State agency and its service delivery system.

(3) Have a State-wide impact on the service systems and personnel of both participating agencies and contribute toward the development of improved coordination of service delivery systems affecting the elderly.

Federal funding for projects in this priority area is limited to $200,000 for a maximum duration of 17 months. Eligibility is restricted to State Agencies on Aging and only one application per State may be submitted.

5.1.E: Orientation and Education for Elected Officials

In each community in the Nation, any older person, individually or with the help of family or friends, should be able to find appropriate help to live independently in the community for as long as possible. This can be achieved only through the development of comprehensive and coordinated community-based systems of service that are highly visible and accessible to all older persons and their caregivers.

To be truly responsive, community systems must serve as reliable resources for help in meeting individual needs by making available a full continuum of services to all older persons, with special attention given to the needs of the vulnerable elderly. To be effective,

such systems must be tailored to the requirements and circumstances of individual communities. The resources to support such systems must come, ideally, from a variety of public, private and voluntary organizations, as well as from individuals, and must be utilized in a coordinated manner, reflecting a common understanding of the needs of the elderly in each community.

In most communities, a number of systems already exist which provide a variety of services; in many cases, unfortunately, they operate essentially autonomously and parallel to each other. They usually do not have planned, intermittent points at which they purposefully meet, nor do they share common goals and procedures.

Concerted action must be taken to develop more responsive community systems that are capable of addressing the service and support needs of our frail and impaired elderly and their families. What is needed are broad-based community efforts to effectively link existing service systems and subsystems so that they operate with common goals, have planned points of interaction, and utilize agreed-upon procedures.

Although State and Area Agencies on Aging have the primary leadership responsibility for serving as catalysts or brokers in helping to create responsive community service systems, many other organizations, groups and individuals also have key roles to play. This priority area is focused on one such group: Publicly elected State and local officials. As members of legislative bodies, as executive officials, or as members of quasi-independent regulatory bodies, elected officials are often in positions of unique influence and authority over matters bearing upon the general health and well-being of elderly citizens. However, many of these officials—whether at State, county or city levels—do not have ready access to information about issues related to the elderly within their States and local jurisdictions. Many may be unaware of the service systems which currently exist, of how such systems interact, and of the nature and extent of problems experienced by older persons and their families in securing needed assistance.

The purpose of this priority area is to solicit project proposals from State and Area Agencies on Aging as well as from other qualified organizations for the purpose of orienting and educating elected officials with respect to issues relating to the elderly and about what can be done to build responsive service systems.

Applications in this priority area should:

1. Identify the elected officials who will receive the proposed orientation/education;
2. Specify the content of the proposed orientation/education, including how it will focus on various aspects of community "systems-building" and the need for public, private and voluntary sector collaboration;
3. Identify who will deliver the orientation/education program, over what period of time and at what locations; and
4. Intimately involve the applicable State or Area Agency on Aging in the development and implementation of the orientation program—if the applicant is an organization other than a State or Area Agency on Aging.

Federal funding for projects in this priority area is limited to $200,000 for a maximum duration of 12 months.

Topic 2: Education and Training Related to Services for Children, Youth and Families

5.2.A: Stimulate Community College Involvement in Competency-Based Child Development Associate (CDA) Training for Child Care Givers

The number of infants, toddlers and 4 and 5-year old children in group programs has multiplied dramatically in recent years in public school kindergartens, pre-kindergartens, Head Start programs, day care, and many other privately and publicly-funded settings. Families place great trust in the staff of these programs, and it is the daily performance of the teacher or caregiver that determines the quality of the children's preschool experience. The Child Development Associate (CDA) competency standards and assessment system have been developed to support quality programs for preschool children by providing standards for training, evaluation, and recognition of teachers and caregivers based on their ability to meet the unique needs of this age group.

Initiated in 1971, the Child Development Associate National Credentialing Program is a major national effort to evaluate and improve the skills of caregivers in center-based, family day care, and home visitor programs. A Child Development Associate is a person who has demonstrated competence in caring for young children during an assessment conducted by the CDA National Credentialing Program. Competent caregivers are awarded the Child Development Associate credential. An optional bilingual specialization is available to candidates working in bilingual (Spanish/English) programs. More than 17,000 child care providers have earned the CDA credential since 1975, and more than half of the States have incorporated the credential in child care licensing requirements.

Although training is not a requirement for the CDA assessment, the majority of candidates enroll in child development courses to increase their knowledge and understanding and, in part, as preparation for CDA assessment.

Therefore, HDS wants to stimulate two-year community colleges to train child care providers based on the CDA competencies and to prepare these candidates for the successful completion of the assessment process and award of the credential by the CDA national body.

Applicants will be expected to initiate new or adapt their current curriculum for caregivers of infants and toddlers (0–3 years); and/or of preschool age children (3–5 years); Family Day Care providers; and Home Visitors to meet specific requirements for CDA training for this child care population. Information about these requirements is available from the Council for Early Childhood Professional Recognition, National Association for the Education of Young Children, 1341 G Street NW., Suite 802, Washington, DC 20005. The toll-free telephone number is 800–424–4310.

Applications should describe proposed efforts to disseminate findings at local and State levels and participate in two meetings in Washington, DC, of all successful applicants under this priority area.

Eligibility under this priority area is restricted to two-year community colleges with prior involvement in training in the area of early childhood education or child care. Four-year institutions with prior involvement in such training and located in areas where a community college system does not exist are eligible to apply.

HDS anticipates funding 17-month projects having a Federal share not to exceed $49,500 per project. The budgets should include the expenses for one individual to participate in two meetings in Washington, DC, and the cost of CDA application, assessment and credential award for a minimum of 15 successful candidates.

5.2.B: Child Abuse and Neglect Interdisciplinary Training

Reports of child abuse and neglect have increased steadily since 1974 when data on official reports were first available. In 1984 more than 1.7 million children were reported to child protective service agencies because of suspected abuse or neglect. Recent data indicate that reporting rates are increasing by about 11% annually, with

the greatest increase, 35%, seen in child sexual abuse.

While the public's expectations of those charged with providing protective services are very high, the increased demand for services and the complexity of the issues involved strain the capacity of child protective agencies. For example, the basic conflict inherent in the goal of protecting children while not unnecessarily disrupting families continues to persist. In addition, workers are continually confronted with the difficult task of determining whether abuse has taken place, assessing the potential for further abuse or progress in treatment, and deciding whether or not to remove the child from the home or to return the removed child to the family.

The field of child abuse has increasingly required a multidisciplinary response, involving social work, pediatrics, law, psychology, psychiatry, nursing, education, public health, as well as other disciplines.

Despite these high expectations and the increased complexity of service issues, few workers enter protective services with the professional training and preparation to carry out this complex and demanding job and many professionals in related fields, who are called upon in child abuse cases, have had only superficial exposure to the problem of child abuse. Training programs have not kept pace with the demand for expertise. While some preservice and in-service training programs have been and are being developed for professionals entering the field, few inter-disciplinary academic programs exist which provide the comprehensive professional training which is needed.

The purpose of this priority area is to provide grants to approximately 10 institutions of higher education to establish interdisciplinary training programs which will enable graduate students in a number of academic disciplines to specialize in treatment of child abuse and neglect. These trainees are expected to provide leadership in administration, clinical practice, policy formulation and research in the field of child abuse.

Interdisciplinary training programs are expected to provide graduate level students who have developed skill and competence in a single discipline with the opportunity to learn the vocabulary, concepts, tools and perspectives of other disciplines through interdisciplinary coursework and clinical experiences. Interdisciplinary training builds on expertise in one discipline and enables the professional to understand the contributions of other disciplines and how that information can influence the professional's own discipline. Training programs to be established through this announcement will enable schools to apply interdisciplinary training methods to students who will concentrate on child abuse and neglect prevention, identification, diagnosis and treatment.

Grants will be awarded in two phases. The first phase will consist of small grant awards ($10,000 for 4 months) to several institutions of higher education for the purpose of evaluating the feasibility of establishing a child abuse interdisciplinary training program. The second phase will consist of 3-year competitive grants which will be awarded to applicants which have completed the feasibility study and submit successful applications for funds to establish a training program.

In phase one, HDS is interested in applications from institutions of higher education which seek to determine the feasibility of establishing a graduate level child abuse training program for professionals in several disciplines. All training programs must at a minimum, include the departments of social work, psychology and medicine. Programs which include other relevant disciplines or departments (e.g. pediatrics, criminal justice, neurology, nursing, psychiatry, law, education, public health) are encouraged. Any single department may apply for a feasibility study grant in phase one, although only one will be awarded per institution.

Applicants for grants in Phase I should describe in detail existing resources that could potentially become part of the newly established interdisciplinary training program in child abuse. Resources may include: Current faculty expertise in research, teaching or clinical aspects of child abuse and neglect, including child sexual abuse; courses in various departments which focus on child abuse or include significant components focusing on child abuse; clinical facilities which are currently being used in diagnosis or treatment of child abuse; existing interdisciplinary training program involving a minimum of three academic departments or disciplines; existing agreements with community agencies for the purpose of providing child abuse and neglect services, training of staff, practicum or clinical placements or other relevant activity; and any other resources.

Applicants should also describe any components of the program that would require significant developmental effort. Applications should include the intended organizational structure and the relation of the program to the specific departments and within the university. Applicants are encouraged to involve community agencies, clinical or teaching facilities, or academic departments in Phase I proposals.

Activities to be conducted under the feasibility study grant should include at least the following:

- Design of administrative and organizational aspects of the interdisciplinary training program and its relation to specific departments and within the institution.
- Development of formal agreements among academic departments concerning the establishment of an interdisciplinary training program at the graduate level and commitments from the various departments regarding their level of support (e.g. faculty, and other resources).
- Development of agreements with relevant community agencies regarding practicum or other clinical experiences (e.g. child welfare agencies, hospitals, mental health clinics, prosecutors' offices and police departments).
- Development of the interdisciplinary core curriculum in child abuse that includes both didactic and clinical components. Existing courses which can be adapted or designated to be part of the curriculum and courses which need to be developed should be identified. (Courses should provide opportunities for training in interdisciplinary perspectives.) Interdisciplinary clinical experiences which represent state of the art practice should be identified.
- Identification and definition of specific discipline and interdisciplinary competencies which students who participate will acquire.
- Development of guidelines for selection of students from various departments to participate in the program.
- Identification of non-Federal sources of support for activities of the program.

Upon completion of the feasibility study (4 months after the grant award) all grantees must submit a report describing the outcome of the grant. Immediately following the Phase I grant, any institution which determines that it is feasible, may submit an application (Phase II) for a 3 year grant to establish an interdisciplinary training program. Federal funding for each program shall not exceed $150,000 per year; up to $30,000 of this amount may be used by the institution for stipends to support students from the various participating departments.

These funds (except for stipends) are intended to support core administrative activities for the development and operation of the interdisciplinary

didactic and clinical programs. Since the purpose of these grants is training, indirect cost rates shall not exceed 8%. Applicants are encouraged to exceed the non-Federal funds cost-sharing requirement of one dollar for every three dollars of Federal funds requested.

Topic 3: Child Welfare Services Training

Introduction

The need for adequately trained and skilled staff is crucial to the delivery of high quality, cost-effective public child welfare services. This is particularly true as the child welfare field increasingly is involved with an older, more handicapped and more difficult population of children and their families. Yet the most recently available data indicate that the vast majority of individuals who are employed in public child welfare lack the professional preparation which would equip them to perform this demanding work.

The social work profession has historically taken a lead role in the professional preparation of child welfare workers. However, as the field and the profession have evolved, fewer graduates of social work programs have taken positions in public agencies and some agencies have either been unable to find qualified persons to fill positions or have declassified positions and have hired individuals with no professional credentials. The combination of these and other factors has created a critical problem in child welfare service delivery.

The child welfare training priority areas described below are intended to address this critical problem, promote effective collaboration between schools of social work and public child welfare agencies and expand the number of professionally trained and qualified individuals who provide services in the public child welfare system.

Applications will be considered from institutions of higher education which are accredited by the appropriate accrediting authority and which train bachelors or master level students in social work.

Applications are sought in four priorities: (1) Traineeships for students pursuing degrees in social work; (2) in-service training for persons employed in the field of child welfare; (3) demonstration projects which involve collaborative efforts between schools of social work and public child welfare agencies; and, (4) special grants which focus on the needs of Indians.

Institutions may apply for traineeship grants and one other type of grant.

5.3.A: Traineeships

Traineeship grants will provide financial support for the education and professional training of students pursuing undergraduate or graduate social work degrees who have a stated interest in practice in public child welfare after graduation. Traineeships are intended to support the education of professionals who will assume leadership positions in the field of public child welfare. All traineeships must include a field placement component that provides the student with direct experience in a child welfare related setting, preferably in the public sector. HDS is especially interested in proposals for traineeships for minority students.

Applicants are encouraged to seek cooperative agreements with public child welfare agencies in order to provide traineeships to public agency employees who demonstrate potential for leadership in child welfare and who wish to return to school to obtain an undergraduate or graduate level degree in social work.

Applications should describe the curriculum utilized and how it relates to the needs of child welfare practitioners.

Traineeship grants may only be used for student financial support and not for any other direct or indirect costs for the applicant institution.

Traineeship grants will be awarded for up to 24 months, for a maximum of five stipends per school, not to exceed a Federal share of $25,000 per school, per year.

5.3.B: In-Service Training

In-Service Training grants will support training projects from institutions of higher education for personnel employed in public child welfare agencies. Topics for training should address specific high priority training needs identified by the public agency and may focus on any level of personnel, including front line workers, supervisors or administrators.

The training program should be described in detail with specific measurable outcomes and a plan for evaluation of effectiveness. Applicants must show that public child welfare agencies have actively participated in the selection of training topics and in the planning and implementation of the project. Participating agencies are encouraged to contribute resources toward the completion of the project goals.

HDS anticipates funding 17 month In-Service Training grants having a Federal share not to exceed $100,000 per grant.

5.3.C: Collaboration between Schools and Agencies

Grants will be awarded in this area to support special projects from institutions of higher education which will demonstrate significant collaboration between schools of social work and public child welfare agencies in order to accomplish specific training objectives. These collaborative efforts may also include professional associations with significant involvement in public child welfare. (Projects which are primarily in-service training or traineeships will not be funded under this priority area.)

Collaborative projects may include: (a) Development of a practice model and curriculum that prepare students for practice and for leadership in public child welfare; (b) Demonstration of a model to share or exchange staff and faculty in order to make curriculum more experience based and enable agencies to benefit from expertise of faculty; (c) Efforts to promote upgrading of State and/or local merit system procedures for classifying professional social work positions; (d) Efforts to define entry level competencies needed for persons to enter child welfare practice and develop a model curriculum which provides training in those competency skills; (e) Definition of competencies for supervisors in child welfare practice and development of a curriculum which prepares personnel for supervisory work; (f) Efforts involving professional social work organizations, schools and agencies in addressing recruitment and retention problems in public child welfare practice; (g) Efforts to improve the extent to which interdisciplinary services are provided to child welfare clients; (h) Definition of competencies needed for child protective services practice and the development of a curriculum which provides training in those competency skills.

HDS anticipates funding 17 month collaborative grants having a Federal share not to exceed $150,000 per grant.

5.3.D: Special Indian Grants

Special grants which focus on the education and training of Indians will be awarded in each of the three Child Welfare Services Training priority areas described above.

Section 6: Transfer of International Innovations

While this country is a natural field for research and demonstration in the area of social services, we can still gain insight from other countries. Knowledge of social services in other countries, the programs, authorizations and governance, delivery systems and innovations can be beneficial to U.S. domestic programs. HDS seeks proposals which address the transfer of innovations from other countries.

The following factors should be considered in proposing a transfer of an innovation from another country:

- Promise of contributing significantly to the achievement of one or more of the major HDS goals cited in the Preamble to this announcement and be of benefit to one or more of the HDS target groups which include Native Americans, the socially and economically needy elderly, the developmentally disabled or at-risk children, youth and families.
- Be relevant to domestic research with the possibility of complementing ongoing or new U.S. projects.
- Relate to the U.S. commitment to its participation in international organizations, both governmental and non-governmental, and to United Nations-sponsored events, such as the International Youth Year 1985; follow-up to the World Assembly on Aging; and the United Nations' Decade of Disabled Persons.

Examples of areas which HDS will consider are: access to services by the handicapped; children and youth at-risk; community and in-home services for functionally impaired populations; projects which strengthen community and family based systems of services for older persons; innovative housing arrangements for the aged; intergenerational linkages; programs designed to reduce dependency, including work-related day care; self-help; strategies for strengthening families; social indicators; and social service coordination and management systems.

Federal funds awarded under this priority area cannot be used to support international travel. However, a portion of the non-Federal contribution from cooperating organizations may be utilized for international travel.

There are no eligibility restrictions for applications in this priority area. However, HDS is interested in innovative models and is not interested in funding ongoing direct service projects which have been imported to the U.S. or exported to another country.

Part III—Application Process

A. Eligible Applicants

In general, any State, public or private nonprofit organization, institution or agency may submit an application under this announcement. Individuals are not eligible to apply.

Some priority areas or topics included in this announcement may have more restrictive eligibility requirements. Where limitations exist, the eligible entities are identified in the priority area description. Applications from organizations that do not meet the eligibility restrictions in the priority area description will not be reviewed.

We encourage applications that are developed jointly by State, local and community-based social services agencies, foundations or universities, since this helps to coordinate local resources. For these applications, a lead organization must be identified, and that organization must be an eligible applicant.

For-profit organizations may be eligible for certain projects funded under the authority of the Head Start Act, Native Americans Program Act, Runaway and Homeless Youth Act and, in limited cases, the Older Americans Act. The priority area descriptions in this announcement identify those priority areas under which for-profit organizations may submit applications. For-profit organizations may also participate as contractors under grants to eligible applicants on all projects.

Except in those instances where eligibility is not restricted to non-profit organizations, all applicants which have not previously received HDS program support must reference their listing in the IRS's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code or submit proof of non-profit status (e.g., a 501(c)(3) letter from IRS). HDS cannot fund a non-profit applicant without acceptable proof of its status.

B. Available Funds

The availability of funds for FY 1987 and FY 1988 is dependent on passage of appropriations by the Congress. Based on the level of funding for FY 1986, HDS expects to award new grants and cooperative agreements during the fourth quarter of FY 1987. Subject to Congressional action on the FY 1987 budget, HDS may also award a number of grants under this announcement in the first and second quarters of FY 1988. Appropriate HDS discretionary funding authorities will be used to fund projects, and more than one authority may be used to fund some projects.

HDS expects to make approximately 300 new awards pursuant to this announcement. These awards may range from $10,000 to a maximum of $200,000 per budget period (except where noted in the priority area descriptions), with an average award of $100,000. Actual awards may vary widely and eligible applicants requesting smaller awards (or awards for projects of less than 12 months duration) are encouraged to apply.

Applicants should be aware that HDS receives 2,000 to 3,000 applications annually to its Coordinated Discretionary Funds Program. Of these, about 200 to 400 applicants receive grant awards each year.

C. Grantee Share of the Project

Under the Coordinated Discretionary Funds Program, HDS does not make grant awards for the entire project cost (with the exceptions described below). Successful applicants are eligible to receive $3 in Federal funding for each $1 secured from non-Federal sources, up to the limits specified in the priority area descriptions in this announcement. There is, however, a programmatic exception under this year's CDP. For applications under priority areas described in section 4 of Part II of this announcement, "Research and Evaluation," non-Federal funds must comprise at least 5 percent of the total project cost.

At least 25% of the total cost for each budget period of proposed projects must come from a source other than the Federal government (one dollar match for every three dollars requested from HDS) with two exceptions. The first relates to tribal organizations or projects funded under the Native Americans Act, where the grantee match must be 20% of the total cost of the proposed project (one dollar match for every four dollars requested from HDS). Tribal organizations may also include in their applications a request to the Administration for Native Americans for a waiver of the non-Federal cost-sharing requirement for the project. Such requests will be dealt with on a case-by-case basis according to applicable laws and regulations.

The second exception relates to applications originating from American Samoa, Guam, the Virgin Islands or the Northern Mariana Islands. Applicants from these territories are covered by section 510(d) of Pub. L. 95–134, which requires the Department to waive "any requirement for local matching funds under $200,000" for these territories.

There is a change in this year's Coordinated Discretionary Funds Program regarding universities or other non-profit organizations which had institutional cost sharing agreements with HHS and which propose to carry out research projects. Previously, the provisions of the institutional cost-sharing agreement took precedence over the "$3 Federal/$1 non-Federal" matching or project cost-sharing requirement. This is no longer true since Department-wide institutional cost-sharing agreements are no longer negotiated or approved. Therefore, project-by-project cost-sharing will be required for grants under the Fiscal Year

1987 Coordinated Discretionary Funds Program.

The non-Federal share of total project costs for each budget period may be in the form of grantee-incurred costs or third party in-kind contributions. HDS strongly encourages applicants to propose a grantee share which is more than 25% of the project costs. HDS also encourages applications where the matching requirement will be met in cash (as opposed to in-kind contributions) from non-Federal funding sources.

If the required non-Federal share is not met by a funded project, HDS will disallow any unmatched Federal dollars.

D. Application Process

1. Availability of Forms

All instructions and forms required for submittal of applications are included in this announcement. Additional copies of this announcement may be obtained by writing or telephoning:

HDS/Division of Research and Demonstration
200 Independence Avenue SW., HHH Building,
Room 724–F
Washington, DC 20201
Attention HDS–87–1
Telephone: (202) 755–4633.

This program announcement is also available as an electronic document through the HDS Computer Bulletin Board. Organizations equipped with computers and modems may link to the bulletin board by calling (202) 755–1642. We suggest that organizations use communications software that supports the xmodem file transfer protocol, and IBM PC compatibility is recommended. Communications parameters are no parity, 8 data bits and 1 stop bit. The HDS bulletin board runs at 1200 bits per second (1200 baud).

2. Application Submission

One signed original and two copies of the application must be submitted to:

Department of Health and Human Services
HDS/Division of Grants and Contracts Management
200 Independence Avenue SW., HHH Building,
Room 724–F
Washington, DC 20201
Attention HDS–87–1

Priority Area: _____

3. Notification Under Executive Order 12372

This program is covered under Executive Order 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 Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alaska, Idaho, Nebraska, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these areas 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. Applications which propose exclusively to use funds administered by the Administration on Aging, and which are, therefore, not covered by under E.O. 12372, will not be subject to the "accommodate or explain" rule of the Order. Applicants should contact their SPOCs as soon as possible to alert them to the prospective application and to receive any necessary instructions.

Applicants must submit any required material as early as possible so 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 SF 424, item 22a.

SPOCs have sixty (60) days starting from the application deadline to comment on applications for financial assistance under this program. Comments are, therefore, due no later than February 15, 1987.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested clearly to differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to HDS, they should be addressed to:

Department of Health and Human Services,
HDS/Division of Research and Demonstration,
200 Independence Avenue SW., HHH Building,
Room 724–F,
Washington, DC 20201, attn: HDS–87–1

Priority Area: _____

A list of the State Single Points of Contact is included at the end of this announcement.

4. Notification of State Developmental Disabilities Councils

A copy of the application must be submitted to the State Developmental Disabilities Council for its review and comment when individuals with developmental disabilities who reside in that State are included as a target population of the proposed project. A listing of the Councils may be obtained by calling (202) 755–4633. This requirement is in addition to the SPOC notification required by E.O. 12372.

5. Application Consideration

Applications that conform to the requirements of this program announcement will be reviewed and scored competitively against the evaluation criteria specified in Part III, Section F.2 of this announcement and evaluated by Federal officials and qualified persons from outside of the Federal government. Although the results of this review are a primary factor considered in making the decision about an application, review scores are not the only factor.

HDS also solicits comments from other Federal Departments, from Federal Regional Office staff, from interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with such other factors as the geographic distribution of funding and the compatibility of applications with HDS priorities, will be considered by the Assistant Secretary for Human Development Services and HDS Senior Staff in making funding decisions.

The Older Americans Act places certain responsibilities upon, and authority in, the Commissioner on Aging which affects the role of the Administration on Aging in implementing this program announcement. All such requirements will be met through actions which conform to the mandates of the Act. Only the Commissioner on Aging has the authority to approve applications for funding under Title IV of the Older Americans Act.

HDS reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant.

6. Funding Limitations on Indirect Costs

Applicants should be aware that for training projects there is a limitation on

indirect costs to eight percent of the total allowable direct costs or, where a current agreement exists, the organization's negotiated indirect cost rate, whichever is lower. For all other applicants, indirect costs may be requested only if the applicant has (or will obtain) a negotiated indirect cost rate with the Department's Division of Cost Allocation or with another Federal agency. Local government agencies (other than local education agencies) are not required to submit their indirect cost proposals unless requested by HDS.

7. Budget Expressed in Total Project Costs (Federal Plus Non-Federal)

There will be a change this year in the manner in which the project budget is presented. In prior years, we had requested budgets for Federal funds only. This year we are requesting a consolidated budget, showing a total of both Federal and non-Federal share. This will be explained further in Part IV. Our award documents will also reflect this change.

E. Special Considerations for Funding

Within the limits of available Federal funds, HDS makes financial assistance awards consistent with the purposes of the statutory authorities governing the HDS Coordinated Discretionary Funds Program and this announcement. In making these decisions, preference will be given to applications which feature: a substantial innovation that has the potential to improve theory or practice in the field of human services; a model practice or set of procedures that hold the potential for dissemination to, and utilization by, organizations involved in the administration or delivery of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the possibility of a large degree of benefit for a small Federal investment; a programmatic focus on those most in need; and substantial involvement in the proposed project by national or community foundations.

To the extent possible, final decisions will reflect the equitable distribution of assistance among the States, geographical areas of the nation, rural and urban areas, and ethnic populations. HDS Senior Staff also take into account the need to avoid wasteful duplication of effort in making funding decisions.

F. Criteria for Screening and Review

All applications that meet the deadline will be screened to determine completeness and conformity to the requirements of this announcement. Complete, conforming applications will then be reviewed and scored competitively.

1. Screening Requirements

In order for an application to be in conformance, it must meet both of the following requirements:

(a) Number of copies: An original signed application, with the signature appearing on Standard Form 424 (published at the end of this announcement) and two copies must be submitted.

(b) Length: The narrative portion of the application *must not exceed twenty double-spaced pages* (or ten single-spaced pages) typewritten on one side of the paper only. The capability statement must not exceed two double-spaced pages or one single-spaced typewritten page.

UNDER NO CIRCUMSTANCES WILL APPLICATIONS THAT DO NOT MEET THESE SCREENING REQUIREMENTS BE REFERRED TO REVIEW PANELS.

2. Evaluation Criteria

Applications which pass the screening will be reviewed by at least three individuals. These reviewers will be primarily experts from outside the Federal government. Reviewers will score the applications, basing their scoring decisions on the following criteria:

(a) Need for the Project: 20 points.

The application clearly describes, in concrete terms, the social problem or situation that prompts the applicant to propose a project. The need for the project is discussed in terms of local, regional or national significance and the importance of the issues to be addressed. It also describes how the proposed project builds upon previous work, how it advances the state of knowledge from a national perspective and how it addresses a priority need identified in this announcement.

(b) Project Methodology: 20 points.

The application describes specific plans for conducting the project in terms of the tasks to be performed. It includes relevant information about: (1) hypotheses to be tested (if appropriate); (2) goals and measurable objectives; (3) what the project will do; (4) how the project will be conducted; (5) data to be collected (including specification of data sources); (6) plan for data analysis; and (7) chart with tasks laid out over time (Gantt chart). A detailed discussion is provided on how the approach proposed will accomplish the project objectives. Whenever possible, innovative use should be made of volunteers and the private sector should be involved.

(c) Expected Outcomes: 20 points.

The proposed project will result in a measurable, concrete reduction of a significant problem. The anticipated results and products are specified and the expected benefits for HDS target groups and human service providers are delineated. Outcomes as opposed to process measures are emphasized.

Where appropriate, evaluation plans and procedures should be described in detail and should be capable of measuring the degree to which project objectives have been accomplished.

(d) Dissemination and Utilization: 20 points.

The application describes the methods the project will use to share its experiences and findings in the field of human services in general and specifically with agencies and organizations capable of developing improved service delivery and management. The steps to be taken to disseminate and promote the utilization of project products and findings, and the Federal and non-Federal resources required, are described. The specific audiences to which the products will be addressed should be identified.

(e) Level of Effort: 20 points.

The resources that will be needed to conduct the project are specified, including personnel, time, funds and facilities. These resources should be adequate to meet the work plan described in the application. The staff (or other personnel resources) should be qualified and the team has the variety of skills required and ability to produce final results that are readily comprehensible and usable. The staffing pattern clearly links responsibilities to project tasks. The total cost of the project is reasonable in view of anticipated results. Any collaborative effort with other agencies or organizations is clearly identified and written assurances referenced. A description by category (personnel, travel, etc.) of the total funds required and of the sources of outside support that will be used to meet the matching requirement is included. The funds (total of Federal funds and non-Federal funds) are specified for each budget period.

These evaluation criteria correspond to the outline for the narrative section of the application and the descriptions of the five criteria above should be used in developing the program narrative.

G. Closing Date for Receipt of Applications

The closing date for submittal of applications under this program

announcement is December 15, 1986. Applications must be mailed or hand-delivered to:
HDS/Division of Grants and Contracts Management,
200 Independence Avenue SW., HHH Building, Room 724–F,
Washington, DC 20201,
Attention HDS–87–1

Priority Area: _____

Hand-delivered applications are accepted during the normal working hours of 9:00 a.m. to 5:30 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received on or before the deadline date at the above address; or

2. Sent on or before the deadline date and received in time to be considered during the competitive review and evaluation process. 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. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the above criteria are considered late applications. HDS will notify each late applicant that its application will not be considered in the current competition.

HDS may extend the deadline for all applicants because of acts of God, such as floods, hurricanes or earthquakes, when there is widespread disruption of the mails or when HDS determines an extension to be in the best interest of the government. However, if HDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant(s).

Part IV—Instructions for Completing Applications

A. Application Package

In order to expedite the processing of applications, we request that you *adhere to the following instructions explicitly.* Each application submission must include:

1. An original and two copies of the application (see Section B below). Each copy should be stapled securely (front and back if necessary) in the upper left corner. The original copy of the application must have an original signature in item 23 on page 1 of the SF 424. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials such as agency promotion brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

2. Do not include a self-addressed, stamped acknowledgment card. All applicants will be automatically notified of receipt and of the identification number assigned to their application. This number and the priority area must be referred to in *ALL* subsequent communication with HDS concerning the application. If acknowledgment is not received within ten weeks after the deadline date, please notify HDS by telephone (202) 755–4633.

After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number to aid in quick retrieval. It will not be possible for HDS staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given.

Applicants should be advised that HDS staff can not release pre-decisional information relative to an application other than that it has been received and that it is going through the review process. Unnecessary inquiries delay the award process. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.

B. Content of Application

Each copy of the application *must* contain an SF 424, completed and assembled in accordance with the following instructions:

1. Page 1, the cover page of the application;

2. Part II, Project Approval Information;

3. Part III, Budget Information, Section B (Budget Categories) and Section E (Budget Estimates for Federal Funds Needed for Balance of the Project);

4. Summary description with listing of key words;

5. Part IV, Program Narrative, which should be no more than twenty double-spaced or ten single-spaced pages and typewritten on one side of the paper only. In addition, an organizational capability statement, no more than two double-spaced typewritten pages or one single-spaced page, should be included;

6. Part V, Assurances; and,

7. Letters which show collaboration or substantive commitment to the project by organizations other than the applicant organization are not part of the narrative and, therefore, are not counted against the twenty page limit for the narrative.

C. Preparing the Application

The SF 424 has been reprinted for your convenience. We suggest that you reproduce it and type your application on the copy. Prepare your application in accordance with the following instructions:

1. *SF 424, page 1:* Complete item numbers 4, 5, 6b, 7, 8, 10, 12, 13, 15, 16, 22 and 23 only. Specific instructions are as follows:

Top of page. Enter the number of the priority area under which the application is being submitted.

Item 1. Preprinted on the form.

Items 2–3. Leave blank.

Item 4.a. Enter the name of applicant organization. Do not include the name of the principal investigator or project director on this line.

Item 4.b. Enter the unit within the organization that will actually carry out the project. If 4.a and 4.b are the same, leave 4.b blank.

Items 4.c.–4.g. Self explanatory.

Item 4.h. Enter the name and telephone number of a person who can respond to questions about the application.

Item 5. Enter the employer identification number of the applicant organization as assigned by the Internal Revenue Service.

Item 6.a. Leave blank.

Item 6.b. Enter the number of the priority area under which the application is being submitted. If more than one priority area is listed, HDS will disregard all but the first one listed.

Item 7. The title should be no more than 200 characters long, including spaces and punctuation. It should be typed in four lines of 50 characters each.

Summary Description. Item 7 also asks for a summary description of the project using Section IV. In place of Section IV, use a separate sheet of 8½ x 11 plain paper to provide this summary description of the project. Clearly mark this separate page with the applicant name as shown in item 4.a and the priority area as shown in item 6.b. The summary description should not exceed 1,200 characters, including words, spaces and punctuation. These 1,200 characters become part of the computer data base on each project.

The description should be specific and concise. It should describe the objectives of the project, the approaches to be used and the outcomes expected. At the end of the summary, list major products that will result from the proposed project (such as software packages, materials, management procedures, data collection instruments, training packages or videos). Remember, this summary description is limited to 1,200 characters. This information, in conjunction with the information on the SF 424, becomes the project's "abstract"

and will be the major source of information about the proposed project.

At the bottom of the page, but apart from the summary description of the project, type up to 10 key words describing the service(s) and target population(s) to be covered by the proposed project. The key words are to be selected from the list at the end of Part IV of this announcement. These key words will be used for computer searches for specific types of proposed and funded projects.

Item 8. Self-explanatory with the exception of 8.e, "City", which includes a town, township, or other municipality.

Item 9. Leave blank.

Item 10. Enter specific number of persons to be directly benefited or served during the life of the project. This number should be substantiated in the application's Program Narrative.

Item 11. Leave blank.

Items 12.a—12.f. Enter the budget for (1) the total period of 17 months or less or (2) the first year if the proposed project exceeds 17 months. 12.a– Enter the amount of Federal funds requested. 12.b–12.e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project for each budget period. These items (12.b–12.e) are considered cost-sharing or "matching funds". It is important that the dollar amounts entered in items 12.b to 12.e (the non-Federal share) total at least 25 percent of the total project cost for each budget period, except for: applications under Section 4, "Research and Evaluation," where the non-Federal share must be at least 5 percent of the total project cost; applications from American Native tribal organizations or projects funded under the Native Americans Act, where the non-Federal share must be 20 percent of the total project cost; and, applications originating from American Samoa, Guam or the Northern Mariana Islands, where non-Federal cost sharing is not required. In item 12.f, enter the sum of items 12.a–12.e.

Item 13.a. Enter the number of the Congressional district where the principal office is located.

Item 13.b. Enter the number of the Congressional districts(s) where the project will be located. If State-wide, a several state effort, or nationwide, enter "00".

Item 14. Leave blank.

Item 15. Enter the desirable start date for the project, beginning on or after July 1, 1987.

Item 16. Enter the estimated number of months to complete the project after Federal funds are available. Projects are generally for 12 months, 24 months or 36 months or for the duration specified in the priority area description.

Items 17.–21. Leave blank.

Item 22a. Enter the date the applicant contacted the Single Point of Contact (SPOC) regarding this application. Select the appropriate SPOC from the attached listing.

Item 22b. Check the appropriate box if not covered by E.O. 12372.

Items 23a. and b. Self-explanatory

Item 24–33. Leave blank.

2. *SF 424, Part II:* Negative answers will not require an explanation unless HDS requests more information at a later date. All "yes" answers must be explained on a separate page in accordance with these instructions.

Item 1. Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that it will be obtained.

Item 2. Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3. Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained.

Item 4. Show whether the approved comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not available, explain why.

Item 5. Show the population residing or working on the Federal installation who will benefit from this project. Federally recognized Indian reservations are not "Federal installations."

Item 6. Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal installation and its location.

Item 7. Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it.

Item 8. State the number of individuals, families, businesses or farms this project will displace.

Item 9. Show the Catalog of Federal Domestic Assistance number, the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another funding source.

3. *SF 424, Part III—Budget Information:* We have deleted Sections A, C, D and F under Part III. Sections B and E have been reprinted at the end of the announcement.

a. Section B—Budget Categories

This budget which includes the Federal as well as non-Federal funding for the proposed project covers (1) the total project period of 17 months or less or (2) the first year if the proposed project exceeds 17 months. It should relate to item 12.f, total funding, on the SF 424, page 1. The amount of Federal funds alone requested for the second or third year of a project is to be specified in Part III, Section E, Budget Estimate of Federal Funds Needed for Balance of Project.

Under the column title "Total," enter under column (5) the total requirements for funds (both Federal and non-Federal for the total project period if the project will be completed in 17 months or less, or for the first year if the proposed project exceeds 17 months) by object class category and the total funds required for the proposed project. A budget justification should be included when it is necessary to explain fully and justify major items, as indicated below. The budget justification should not exceed three typed pages and should follow the page with Sections B and E on it.

Personnel—Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff. Identify the principal investigator or project director, if known. Specify the percentage of time and titles of the organization's staff who will be working on the project as part of the budget justification. Do not include costs of consultants or personnel costs of delegate agencies.

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate. Provide a break-down of amounts and percentages that comprise fringe benefit costs.

Travel—6c: Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs. Include the total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d: Enter the total costs of all equipment to be acquired by the project. "Equipment" is non-expendable tangible personal property having a useful life of more than two

years and an acquisition cost of $500 or more per unit. An applicant may use its own definition, provided that it would at least include all non-expendable tangible personal property as defined in the preceding sentence.

Supplies—Line 6e: Enter the total costs of all tangible expendable personal property (supplies) other than those included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. Attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award. If the name of contractor, scope of work and estimated total is not available or has not been negotiated, include in Line h, "Other."

Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide back-up documentation identifying the name of contractor, purpose of contract and major cost elements.

Construction—Line 6g: Enter the costs of renovation or repair. Provide narrative justification and break-down of costs. New construction is not allowable unless specifically provided for in the HDS program legislation; Federal funds are rarely used for either renovation or repair.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, medical and dental costs, noncontractual fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the totals of Lines 6a through 6h.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. If no indirect costs are requested enter "none." This line should be used only when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency. Enclose a copy of this agreement. Local governments shall enter the amount of indirect costs determined in accordance with HHS requirements. In the case of training grants to other than State or local governments (as defined in 45 CFR Part 74), the reimbursement of indirect costs will be limited to the lesser of the negotiated or actual indirect cost rate or 8 percent of the amount allowed for direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations. It should be noted that when an indirect cost rate is requested, these costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total—Line 6k: Enter the total amounts of Lines 6i and 6j.

Program Income—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. Describe the nature and source of income in the Program Narrative.

b. Section E—Budget Estimate of Federal Funds Needed for Balance of the Project

This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20: Enter the estimated required *Federal* funds for the second budget period (months 13 through 24) under (b) first and for the third budget period (months 25 through 36) under (c) second opposite "Totals."

4. *SF 424, Part IV, Program Narrative:* Describe the project you propose in response to this announcement addressing the specific concerns mentioned under the priority area description in Part II. Your narrative (20 pages typed double-spaced, or ten pages typed single-spaced maximum, on 8½" K χ 11" plain white bond with 1" margins on both sides) should provide information on how the application meets the evaluation criteria in Part III. Reproductions of larger size paper, reduced to meet the size requirement, are not acceptable. We strongly recommend that you follow these format and page suggestions:

a. Need for the Project (5 pages double-spaced).

The application should clearly describe, in concrete terms, the social problem or situation that prompts the applicant to propose a project. The need for the project should be discussed in terms of local, regional or national significance and the importance of the issues to be addressed. It also should describe how the proposed project would build upon previous work, advance the state of knowledge from a national or regional perspective and address a priority need identified in this announcement.

b. Project Methodology (8 pages double-spaced)

The application should describe specific plans for conducting the project in terms of the tasks to be performed. It should include relevant information about: (1) Hypotheses to be tested (if appropriate); (2) concise and clear statement of goals and measurable objectives; (3) what the project will do; (4) how the project will be conducted; (5) data to be collected (including specification of data sources); (6) plan for data analysis; and (7) chart with tasks laid out over time (Gantt chart). A detailed discussion should be provided on how the approach proposed will accomplish the project objectives. Whenever possible, innovative use should be made of volunteers and the private sector should be involved.

c. Expected Outcomes (2 pages double spaced)

The program narrative should describe how the proposed project will result in a measurable, concrete reduction of a significant problem. The anticipated results and products should be specified and the expected benefits for HDS target groups and human service providers delineated. Outcomes as opposed to process measures should be emphasized.

Where appropriate, evaluation plans and procedures should be described in detail and should be capable of measuring the degree to which project objectives have been accomplished.

d. Dissemination and Utilization (2 pages double-spaced)

This section should describe the methods the project will use to share its experiences and findings in the field of human services in general and specifically with agencies and organizations capable of developing improved service delivery and management. The steps to be taken to disseminate and promote the utilization of project products and findings, and the Federal and non-Federal resources required, should be described. The specific audiences to which the products will be addressed should be identified.

e. Level of Effort: (3 pages doubled-spaced)

This portion of the program narrative should describe the resources that will be needed to conduct the project, including personnel, time, funds and facilities. The description should indicate that staff (of other personnel resources) are qualified and the team has the variety of skills required and ability to produce final results that are readily comprehensible and usable. The staffing pattern clearly should link responsibilities to project tasks. Costs should be justified as reasonable in view of anticipated results. Any collaborative effort with other agencies or organizations should be clearly identified and written assurances referenced. A description by category (personnel, travel, etc.) of the Federal funds required and of the sources of outside support that will be used to meet the matching requirement should be included.

5. *Organizational Capability Statement:* A brief (maximum 2 pages double-spaced or one page single-spaced) background description of how the applicant agency (or the particular division of a larger agency which will have responsibility for this project) is organized and the types and quantity of services it provides or research capabilities it possesses. This description should cover capabilities not included in the program narrative under level of effort. It may include descriptions of any current or previous relevant experience or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. It may include a description of the qualifications of key staff described in a few paragraphs rather than in formal vitae.

6. *Part V, Assurances:* Applicants are required to file Part V, Assurances, and the Assurance of Compliance with the DHHS Regulations under Title VI of the Civil Rights Act of 1964 and the Assurance of Compliance with section 504 of the Rehabilitation Act of 1973, as amended. Copies of these assurances are reprinted at the end of this announcement.

D. Check List of Application Requirements

The following check list is provided for your convenience:

- ☐ SF 424 has been completed according to the instructions, signed and dated by an authorized official (item 23), and the original has been included in the package to be mailed along with the two copies.
- ☐ The original and both copies of the application have been stapled securely (no folders or binders) with the first page of the SF 424 as the first page of each copy of the application.

Included in your application package are:

- ☐ One original application plus two copies. The original and both copies of the application should include the following:
- ☐ SF 424, page 1 and Parts II and III;
- ☐ Summary description;
- ☐ SF 424, Part IV, Program narrative (20 pages, double-spaced maximum);
- ☐ Organizational capability statement (2 pages, double-spaced maximum); and,
- ☐ Part V, Assurances

The original application, the two copies of the application and the summary description should be packaged together so that they can be processed together.

Remember, applications must be postmarked or hand delivered (by 5:30 p.m.) no later than December 15, 1986 to:
HDS/Division of Research and Demonstration,
200 Independence Avenue SW., HHH Building, Room 724–F
Washington, DC 20201
Attention HDS–87–1

Priority Area

F. Points To Remember

• In computing the required match for all projects except those funded under the Native Americans Act Authority, proposals from certain U.S. Territories or applications under priority areas described in Section 4 of Part II of this announcement, "Research and Evaluation," please note that 25% of the *total* (the amount requested and your cost share) project cost is equivalent to ⅓ of the amount requested from HDS. Thus, for every 3 Federal dollars you request, you must match with one dollar from your organization or another source. An application may be unduly penalized in the review process by careless errors relating to the computation of the non-Federal share or match.

In order to compute the required minimum match, divide the amount you are requesting from HDS by 3. For example, if your request for Federal funds is $100,000, then the required minimum match or cost sharing is $33,333. The total project cost, Federal request and proposed matching cost, is $133,333.

• You are required to send an original and two copies of an application.

• Designate, at the top of the first page of the SF 424, your application for one priority area only.

• *Applications containing narratives in excess of twenty typewritten double-spaced pages (or ten typewritten single-spaced pages) or capability statements of more than two double-spaced pages (or 1 single-spaced page) will not be given further consideration.*

• The summary description of 1,200 characters or less is an essential element of the application. It is important that this accurately reflect the nature and scope of the proposed project.

• Follow the recommended format as closely as possible in preparing the program narrative. The format reflects the evaluative criteria which will be used by reviewers to evaluate applications.

• General support letters endorsing the project are *not* to be included.

• The qualifications of key staff should be described in a few paragraphs rather than in formal vitae. Unless specifically requested under a priority area, vitae or resumes are not to be provided and will not be included in the applications provided to reviewers.

• Although multiple applications (of different concepts) from the same applicant are not prohibited, they are not encouraged.

• Indirect costs of training grants may not exceed 8%.

• Applicants are strongly encouraged to have someone other than the writer apply the screening requirements and evaluation criteria to the application prior to its submittal. In this way, applicants will gain a sense of their application's quality and potential competitiveness.

• Unless exempted, applicants must contact their SPOCs and, if requested, submit the required materials to their SPOCs to obtain their comments for consideration by HDS as part of the application review and award process.

• Applicants proposing projects targeted on individuals with developmental disabilities must submit a copy of the application to the State Developmental Disabilities Council for the State in which the project will be conducted. A listing of Councils may be requested by calling (202) 755–4633.

• *The activities below generally will not meet the purposes of this announcement when the activity is not in response to the outcomes described under Part II of the announcement:*

Projects whose main activity is a conference or meeting;

Projects whose major product is a manual;

Proposals which request expansion or continuation of existing services or programs; or,

Proposals which would establish clearinghouses.

BILLING CODE 4130-01-M

PRIORITY AREA: ———

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box)
- ☐ NOTICE OF INTENT (OPTIONAL)
- ☐ PREAPPLICATION
- ☐ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
- a. NUMBER: N/A
- b. DATE (Year month day): 19 N/A

3. STATE APPLICATION IDENTIFIER (NOTE TO BE ASSIGNED BY STATE)
- a. NUMBER: N/A
- b. DATE ASSIGNED (Year month day): N/A 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name .
- b. Organization Unit .
- c. Street/P.O. Box .
- d. City . e. County
- f. State . g. ZIP Code.
- h. Contact Person (Name & Telephone No.) .

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA)
- a. NUMBER: | | | • | | | |
- N/A MULTIPLE ☐
- b. TITLE: N/A

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)
N/A

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
N/A
Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13. CONGRESSIONAL DISTRICTS OF:
- a. APPLICANT
- b. PROJECT

15. PROJECT START DATE (Year month day): 19

16. PROJECT DURATION (Months)

18. DATE DUE TO FEDERAL AGENCY (Year month day): ► N/A 19

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
N/A
Enter appropriate letter ☐

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify):
N/A
Enter appropriate letter(s) ☐☐☐

19. FEDERAL AGENCY TO RECEIVE REQUEST
N/A
- a. ORGANIZATIONAL UNIT (IF APPROPRIATE): N/A
- b. ADMINISTRATIVE CONTACT (IF KNOWN): N/A
- c. ADDRESS: N/A

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER
N/A

21. REMARKS ADDED
N/A
☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT ►
To the best of my knowledge and belief, data in this preapplication/application 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 approved.

a. YES, THIS NOTICE OF INTENT/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 ☐

23. CERTIFYING REPRESENTATIVE
- a. TYPED NAME AND TITLE
- b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED (Year month day): 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- ☐ e. DEFERRED
- ☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE ► (Year month day): 19

30. STARTING DATE (Year month date): 19

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32. ENDING DATE (Year month date): 19

33. REMARKS ADDED
☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

OMB NO 0348-0006

PART II
PROJECT APPROVAL INFORMATION

Item 1
Does this assistance request require State, local regional, or other priority rating?
_____ Yes _____ No
Name of Governing Body _____
Priority Rating _____

Item 2
Does this assistance request require State, or local advisory, educational or health clearances?
_____ Yes _____ No
Name of Agency or Board _____
(Attach Documentation)

Item 3
Does this assistance request require State, local regional or other planning approval?
_____ Yes _____ No
Name of Approving Agency _____
Date _____

Item 4
Is the proposed project covered by an approved comprehensive plan?
_____ Yes _____ No
Check one State ☐
Local ☐
Regional ☐
Location of Plan _____

Item 5
Will the assistance requested serve a Federal installation?
_____ Yes _____ No
Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6
Will the assistance requested be on Federal land or installation?
_____ Yes _____ No
Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7
Will the assistance requested have an impact or effect on the environment
_____ Yes _____ No
See instructions for additional information to be provided

Item 8
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?
_____ Yes _____ No
Number of
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9
Is there other related assistance on this project previous, pending, or anticipated
_____ Yes _____ No
See instructions for additional information to be provided.

OMB NO 0348-0008

PART III - BUDGET INFORMATION

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				(Federal & Non-Federal) Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$ N/A	$ N/A	$ N/A	$ N/A	$
b. Fringe Benefits	N/A	N/A	N/A	N/A	
c. Travel	N/A	N/A	N/A	N/A	
d. Equipment	N/A	N/A	N/A	N/A	
e. Supplies	N/A	N/A	N/A	N/A	
f. Contractual	N/A	N/A	N/A	N/A	
g. Construction	N/A	N/A	N/A	N/A	
h. Other	N/A	N/A	N/A	N/A	
i. Total Direct Charges	N/A	N/A	N/A	N/A	
j. Indirect Charges	N/A	N/A	N/A	N/A	
k. TOTALS	$ N/A	$ N/A	$ N/A	$ N/A	$
7. Program Income	$ N/A	$ N/A	$ N/A	$ N/A	$

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. N/A	$ N/A	$ N/A	$ N/A	$ N/A
17. N/A	N/A	N/A	N/A	N/A
18. N/A	N/A	N/A	N/A	N/A
19. N/A	N/A	N/A	N/A	N/A
20. TOTALS (Federal request only)	$	$	$ N/A	$ N/A

PART V

ASSURANCES

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A-102, A-110 and applicable cost principles, (Circulars: A-21, "Educational Institutions"; A-87, "Cost Principles for State and Local Governments"; and A-122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

   Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services; or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant, including the records of contractors and subcontractors performing under the grant.

9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the grantee's activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94-135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).

17. It will comply with Pub. L. 93-348 as implemented by Part 46 of Title 45 (45 CFR 46, 42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.

18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding $10,000, in accordance with Department of Labor regulations at 41 CFR Part 60.

19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds $2,500.

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

_____ (hereinafter called the "Applicant") HEREBY
Name of Applicant (type or print)

AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Date _____ By _____
Signature and Title of Authorized Official

_____
Area Code — Telephone Number

_____
Applicant (type or print)

_____
Street Address

_____
City State Zip

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to § 84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for federal financial assistance that were approved before such date. The recipient recognizes and agrees that such federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in § 84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

a. ( ) employs fewer than fifteen persons;

b. ( ) employs fifteen or more persons and, pursuant to § 84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulation:

_____

Name of Designee(s) — Type or Print

_____ _____

Name of Recipient — Type or Print | Street Address

_____ _____

(IRS) Employer Identification Number | City

_____ _____

Area Code — Telephone Number | State | Zip

I certify that the above information is complete and correct to the best of my knowledge.

_____ _____

Date | Signature and Title of Authorized Official

If there has been a change in name or ownership within the last year, please PRINT the former name below:

HHS-641 (7/84) REV.)
GPO 908-714

BILLING CODE 4130-01-C

HDS GRANTS MANAGEMENT

Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939, Tel. (205) 284–8905

Alaska

None.

Arizona

Department of Commerce, State of Arizona.

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to:
Janice Dunn, Attn: Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 255–5004

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–1074

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323–7480

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to:
Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–3410

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804
For Information Contact: Hawaii State Clearinghouse, Tel. (808) 548–3016 or 548–3085

Idaho

None

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana

Mr. Alexander J. Ingram, Deputy Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604

Iowa

Office for Planning and Programming, Capitol Annex, 523 East 12th Street, Des Moines, Iowa 50319, Tel. (515) 281–3864

Kansas

Ms. Judy Krueger, Intergovernmental Liaison, 122 A South, State Office Building, Topeka, Kansas 66612, Tel. (913) 296–3919

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Louisiana

Mr. Ferguson Brew, Assistant Secretary and SPOC, Dept. of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 925–3725

Maine

State Planning Office, Attn: Intergovernmental Review Process/ Hal Kimbal, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3154

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 225–4490

Massachusetts

Executive Office of Communities and Development, Attn: Beverly Boyle, 100 Cambridge Street, Rm. 904, Boston, Massachusetts 02202, Tel. (617) 727–3253

Michigan

Michelyn Pasteur, Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Tel. (517) 373–3530

Minnesota

Maurice D. Chandler, Intergovernmental Review, Minnesota State Planning Agency, Room 101, Capitol Square Building, St. Paul, Minnesota 55101, Tel. (612) 296–2571

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202
For Information Contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (601) 359–3150

Missouri

Lois Pohl, Coordinator, Missouri Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 760 Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834

Montana

Sue Heath, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

None

Nevada

Ms. Jean Ford, Director, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420

Note.—Correspondence & questions concerning this State's E.0. 12372 process should be directed to:
John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420

New Hampshire

David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN

803, 363 West State Street, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to:

Nelson S. Silver, State Review Process, Division of Local Government Services—CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025

New Mexico

Peter C. Pence, Director, Department of Finance and Administration, Management and Contracts Review Div., Clearinghouse Bureau, Room 424, State Capitol, Santa Fe, New Mexico 87503, Tel. (505) 827–3885

New York

Director of the Budget, New York State

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to:

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215

For Information Contact: Mr. Leonard E. Roberts, Deputy Director, Tel. (614) 466–0699

Oklahoma

Don Strain, Office of Federal Assistance Management, 4545 North Lincoln Blvd., Oklahoma City, Oklahoma 73105, Tel. (405) 528–8200

Oregon

Intergovernmental Relations Division, State Clearinghouse, Attn: Delores Streeter, Executive Building, 155 Cottage Street, NE., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Barbara J. Gontz, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656

Note.—Questions & correspondence concerning this State's review process should be directed to:

Mr. Michael T. Marfeo, Review Coordinator

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, South Carolina 29201, Tel. (803) 758–2417

South Dakota

Connie Tveidt, State Clearinghouse Coordinator, State Government Operations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741–1676

Texas

Bob McPherson, State Planning Director, Office of the Governor, P.O. Box 13561, Capitol Station, Austin, Texas 78711

Note.—Questions concerning this State's review process should be directed to:

Intergovernmental Relations Division, Tel. (512) 463–1778

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245

Vermont

State Planning Office, Attn: Bernie Johnson, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia

Shawn McNamara, Department of Housing and Community Development, 205 North 4th Street, Richmond, Virginia 23219, Tel. (804) 786–4474

Washington

Washington Department of Community Development, ATTN: Washington Intergovernmental Review process, Dori Goodrich, Coordinator, Ninth and Columbia Building, Olympia, Washington 98504–4151, Tel. (206) 586–1240

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Rm. 553, Charleston, West Virginia 25305, Tel (304) 348–4010

Wisconsin

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Note.—Correspondence and questions concerning this State's E.O. 12372 process should be directed to:

Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–8349

Wyoming

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District of Columbia

Lovetta Davis, DC State Single Point of Contact for E.O. 12372, Executive Office of the Mayor, Office of Intergovernmental Relations, Rm. 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Tel. (202) 727–6265

Virgin Islands

Toya Andrew, Federal Program Coordinator, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774–6517

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Northern Mariana Islands

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American Samoa

None

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List of Key Words

Abused elderly
Accreditation
Adoption
Advocacy and guardianship
Adult day care (use home care with aging and elderly)
Adults
Aging and elderly
Aging-out

Agriculture
Allied professional education
Alternative financing
Asians
Barrier-free design
Blacks
Board and care
Budgeting and finance
Business development training
Cable television
Career and vocational education
Case Management
Child abuse and neglect
Child care
Child care centers
Children
Clearinghouse
Client outcome measures
Colleges and Universities
Community Care
Community-based organizations
Competitive employment
Comprehensive care
Computer networks
Computers
Conferences
Congregate housing
Consumer education
Continuing education
Contracting
Cooperatives
Coordination
Corrections
Counseling
Courts
Crisis intervention
Cross-cultural
Cross-cutting
Cultural activities
Curriculum development
Data collection
Day care
Day care centers
Deinstitutionalization
Design
Developmentally disabled
Dissemination
Dropouts
Economic development
Education and training
Effectiveness measures
Efficiency
Emergency services
Emergency shelters
Employer-supported human services
Employment
Entrepreneurship
Environment
Environmental design
Evaluation
Exploited youth
Families
Family counseling
Family day care
Family support
Films
Finance
Fire safety
Fiscal management
Food and nutrition
Food banks
Forecasting
Foster care
Foster grandparents
Foundations
Frail elderly
Friendly visitors
Gerontology training
Group homes
Guardianship
Handbooks
Historically Black Colleges and Universities (use HBCU)
Head Start
Health
Hispanics
Home care
Home equity conversions
Homeless
Hospitals
Hospices and nursing homes
Housing
Human services
Immigrants and refugees
Income generation
Independent living
Indians
Infants and toddlers
Informal caregivers
Information centers
Information and referral
In-home care
Institutionalization
Information transfer
Interagency cooperation
Interdisciplinary
Intergenerational
Interstate agreements
Investigations
Isolated elderly
Job bank
Job clubs
Job placement
Judicial system
Juvenile justice
Latchkey and school-age children
Law enforcement
Legal
Legal counseling
Legislation and model codes
Linkages
Living skills
Low-cost alternatives
Low-income
Mainstreaming
Management
Management Information Systems
Management training
Manuals
Marketing
Materials
Meals
Media
Medical
Mental health
Mentally disabled
Mentors
Microcomputers
Minorities
Native Alaskans
Native Americans
Needs assessment
Newsletters
Newspapers
Nursing homes
Nutrition counseling
On-the-job training
Outreach
Parent education
Peer counseling
Performance-based contracting
Permanancy planning
Physically disabled
Planning
Preschools
Prevention
Preventive care
Primary schools
Private sector
Prostitution
Public education
Public-private cooperation
Radio
Rate-setting
Readiness skills
Recreation
Recruitment
Recycling
Referral
Refugees
Research
Residential care
Resource allocation
Respite care
Retirement
Runaways
Rural
Samoans
School-age children
Secondary schools
Self-care
Self-help
Seminars
Sheltered workshops
Single parents
Small business
Social services
Software
Special education
Special needs adoption
Speech impairment
Standards
Support groups
Target populations
Television
Taxes
Technical assistance
Technology transfer
Teenage parents
Telecommunications
Therapeutic day care
Toddlers
Training
Training of trainers
Transitioning
Transportation
Unemployed
Urban
User fees
Video
Visual Impairment
Vocational training
Volunteers
Vouchers
Women
Workplace
Youth

Dated: September 24, 1986.

Jean K. Elder,

Acting Assistant Secretary for Human Development Services.

Dodie Livingston,

Commissioner, Administration for Children, Youth and Families.

Casimer R. Wichlacz,

Acting Commissioner, Administration on Developmental Disabilities.

Carol Fraser Fisk,

Commissioner, Administration on Aging.

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Deputy Commissioner, Administration for Native Americans.

G. Barry Neilsen,

Acting Director, Office of Policy, Planning and Legislation.

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Federal Register

Tuesday
September 30, 1986

Part IV

Department of Health and Human Services

Health Care Financing Administration

Office of the Secretary

Office of Inspector General

42 CFR Chapter V, et al.

45 CFR Part 101

Medicare and Medicaid Programs, Office of Inspector General Regulations; Establishment of CFR Chapter; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

42 CFR Ch. V

45 CFR Part 101

Medicare and Medicaid Programs; Establishment of Chapter V for OIG Regulations

AGENCY: Office of the Secretary, Office of Inspector General, HHS.

ACTION: Final rule.

SUMMARY: This rule establishes all Office of Inspector General (OIG) authorities, currently contained in 45 CFR Part 101 and various portions of 42 CFR Parts 412, 420, 455, 474 and 489, in a new 42 CFR Chapter V, and reflects the 1983 transfer of the fraud and abuse responsibilities under Medicare and Medicaid from the Health Care Financing Administration (HCFA) to the OIG. While a number of conforming changes to the regulations setting forth the OIG responsibilities have previously been made (50 FR 37370, September 13, 1985) the purpose of this rule is to specifically place these authorities delegated to the OIG into a separate chapter of the Medicare/Medicaid volume within the Code of Federal Regulations. Several conforming and technical changes are also being made at this time to reflect the establishment of Chapter V.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: James Patton, (301) 594–1816.

SUPPLEMENTARY INFORMATION:

I. Transfer of Fraud and Abuse Authorities

On April 18, 1983, the Secretary of Health and Human Services transferred the authorities for controlling fraud and abuse in the Department's health care financing programs from the Health Care Financing Administration (HCFA) to the Office of Inspector General (OIG) (48 FR 21662, May 13, 1983). (Also see 48 FR 45306, October 4, 1983, and 49 FR 29849, July 24, 1984.) Specifically, this delegation of authority provides that the OIG will make the necessary determinations and effectuate appropriate sanctions under sections 1128, 1156(b), 1160(b) (as set forth prior to Pub. L. 97–248), 1862(d) (1) and (2), and 1866(b)(2) (D), (E) and (F) of the Social Security Act, and take action under section 1866(c)(1) with respect to determinations taken under section 1866(b)(2) (D), (E) or (F) of the Act. To reflect this transfer of fraud and abuse authority to the OIG, final regulations—the Medicare and Medicaid Fraud and Abuse Technical Amendments—were published on September 13, 1985 (50 FR 37370) making various conforming changes in the HHS regulations at 42 CFR Parts 420, 455 and 489. To further reflect this distinction of responsibility and authority, we are now placing the appropriate portions of those regulations contained in 42 CFR Chapter IV, and 45 CFR Part 101 (Civil Money Penalties and Assessments), into a newly established Chapter V—"Office of Inspector General—Health Care, Department of Health and Human Services." A derivation table, following this preamble, specifically identifies those sections of 42 CFR Chapter IV and 45 CFR Subtitle A from which the new Chapter V derives its content.

II. Fraud and Abuse Authorities Not Delegated to the OIG

In addition to the authorities cited above that have been explicitly delegated to the OIG, there are a number of other statutory authorities relating to program fraud and abuse under Medicaid that have been retained by HCFA. For example, HCFA continues to retain specific responsibility for enforcing State plan requirements, even though some of these requirements pertain to State obligations in enforcing OIG sanction authorities. The HCFA-delegated authorities include sections 1126, 1902(a)(4)(A), 1902(a)(30), 1902(a)(39), 1903(i)(2) and 1903(n). While HCFA continues to retain the delegated authorities for enforcing these provisions, we are including specific regulations based on these authorities in Part 1002, Subparts A and B of Chapter V for the convenience of developing a complete and comprehensive regulatory package that sets forth the Department's fraud and abuse related provisions in one location.

III. Functions Delegated to the OIG

The following is a brief summary of those functions presently assumed by the OIG and a brief description of the regulations that are being redesignated and modified under this recodification.

1. Program Integrity Regulations

The Office of Inspector General has been delegated the authority under section 1128 of the Social Security Act to suspend from participation in the Medicare program, and to require the States to suspend from the Medicaid program, physicians and other individuals who have been convicted of fraudulent activities against the Medicare or Medicaid programs. The OIG has also been delegated the authority provided by section 1862(d)(1)(A), (B) and (C) of the Act to exclude from coverage items and services furnished by practitioners, providers or other suppliers of health care services who have made false statements in applying for Medicare payment or have engaged in certain forms of program abuse, and to terminate provider agreements for the same reasons under section 1866(b)(2) (D), (E) and (F) of the Act. Where Medicare reimbursement is precluded as a result of suspension, exclusion or termination, Federal financial participation is not available for Medicaid.

Additionally, the OIG has also been delegated specific authority under section 1866(c)(1) of the Act. Under this authority, where an agreement filed by a provider has been terminated by the OIG, such provider may not file another agreement unless the OIG finds that the reason for the termination has been removed and that there is reasonable assurance that it will not recur.

While the OIG has a broad mandate and full responsibility for case development and the imposition of sanctions against individual health care providers as a result of criminal and civil litigation or program abuse, the OIG technical amendment regulations, published September 13, 1985, reflected a "shared" administrative responsibility between the OIG and HCFA in notifying all responsible parties of any sanctions action, and will be contained in both the HCFA chapter and in the new OIG chapter. Parties to be notified include, among others, the affected party, the general public, licensing boards and professional societies, and the State Medicaid Fraud Control Unit, where appropriate. Notification to program beneficiaries as a group, however, will remain a HCFA responsibility.

Specific changes. Major portions of current regulations contained in Subpart B of Part 420, Exclusion or Suspension of Practitioners, Providers, Suppliers of Services, and Other Individuals are being redesignated and revised to read as a new 42 CFR Chapter V, Part 1001. Portions of 42 CFR Part 489, Subpart E (Withholding of Payment, Termination of Agreement and Reinstatement after Termination) specific to OIG's delegated authority are also being duplicated and included in the same Chapter V, Part 1001 to reflect the responsibility of both HCFA and OIG to terminate provider agreements under the authorities respectively delegated to each. Those portions of the termination provisions that are HCFA-specific will continue to

be contained in 42 CFR 489.53. Further, those subparts of the prospective payment regulations at 42 CFR 412.48, that relate to OIG responsibility for making determinations with respect to sanctions under sections 1862(d) and 1866(b) of the Act, are also being redesignated and revised for inclusion into Part 1001 of the New Chapter V.

In addition, the current regulations contained in Subparts C (Exclusion of Providers and Suspension of Practitioners and Other Individuals) and D (State Medicaid Fraud Control Units) of Part 455, dealing with certification and recertification, are also being redesignated into the new 42 CFR Chapter V, Part 1002.

2. Civil Monetary Penalty and Peer Review Organization Sanction Regulations

The current regulations contained in 45 CFR Part 101 specify procedures for implementing the authority provided to the Department by sections 1128A and 1128(c) of the Social Security Act, as amended by section 2105 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) and section 137(b)(26) of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248), to administratively impose civil money penalties and assessments for the filing of false or certain other improper claims in the Medicare, Medicaid, or Maternal and Child Health Services Block Grant programs. The regulations also permit the Department to suspend from participation in the Medicare and Medicaid programs an individual upon whom the Department has imposed a civil money penalty or assessment. Under these regulations, violators may be fined up to $2,000 as a penalty for each false or improper item or service, and an additional assessment of up to twice the amounts falsely claimed for each item or service. The rule also provides to those persons against whom civil money penalties and assessments have been proposed an opportunity for a hearing on the record in accordance with the Administrative Procedure Act, for an appeal to the Secretary, and for judicial review of the Secretary's final determination.

In addition, current regulations at 42 CFR Part 474, implementing the Peer Review Improvement Act of 1982, specifically establish sanctions that the OIG may impose on health care practitioners and other persons for violations of certain program obligations under section 1156 of the Act. Under these regulations, the OIG, based on a PRO recommendation, is authorized to exclude practitioners and other persons from the Medicare program or, in lieu of exclusion, require payment of a monetary penalty as a condition of continued eligibility to receive reimbursement under the program.

Specific changes. The current regulations contained in 45 CFR Part 101, Civil Money Penalties and Assessments, as well as appropriate portions of 42 CFR Part 474, Imposition of Sanctions on Health Care Practitioners and Providers of Health Care Services, are being redesignated and revised for inclusion into the new 42 CFR Chapter V, Parts 1003 and 1004, respectively.

IV. Regulatory Impact Statement

Since this rule makes no substantive changes in current regulations, there is no need for the analysis required by Executive Order 12291 for rules that have a significant impact on the economy.

In addition, because this rule does not require a general notice of proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553(b)), it is not subject to the requirements for regulatory flexibility analysis imposed under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612).

Paperwork Reduction Act Statement

Under the Paperwork Reduction Act of 1980, the Department is required to obtain Office of Management and Budget (OMB) approval for all information collection requirements. As indicated above, these regulations are merely a recodification of existing regulations and therefore establish no new information collection requirements. The information collection requirements contained in §§ 1004.40, 1004.50, 1004.60 and 1004.70 are approved under OMB control number 0938–0444. Sections 1002.3, 1002.204, 1002.206, 1002.212 and 1002.234 contain information collection requirements which are not currently approved by OMB. The Department is seeking OMB approval of these requirements and will publish a notice in the **Federal Register** when OMB approval is obtained.

V. Waiver of Notice of Proposed Rulemaking

Because this rule makes no substantive changes in the regulations that it redesignates, we find that notice of proposed rulemaking is unnecessary.

VI. List of Subjects

42 CFR Part 1001

Cancer hospitals, Christian Science sanitoria, Discharges and transfers, Inpatient hospital services, Outlier cases, Prospective payment referral centers, Renal transplantation centers, Sole community hospitals, Abuse, Administrative practice and procedures, Contracts (Agreements), Conviction, Convicted, Courts, Exclusion, Fraud, Health care, Health facilities, Health Maintenance Organizations (HMO), Health professions, Health suppliers, Information (disclosure), Lawyers, Medicaid, Medicare, Penalties, Reporting and recordkeeping requirements, Supervision, Utilization and Quality Control Peer Review Organizations (PRO).

42 CFR Part 1002

Abuse, Administrative practice and procedure, Claim, Conviction, Convicted, Exclusion, Grant-in-Aid program—health, Health care, Health facilities, Health professions, Information (disclosure), Investigations, Medicaid, Medicaid Fraud Control Units, Medicaid personnel, Penalties, Reporting requirements, Suspension.

45 CFR Part 1003

Administrative practice and procedures, Archives and records, Grant programs—social programs, Maternal and child health, Medicaid, Medicare, Penalties.

42 CFR Part 1004

Health care, Health professions, Penalties, Utilization and Quality Control Peer Review Organizations (PRO), Reporting and recordkeeping requirements.

VII. Derivation Table

This table identifies the sections of 42 CFR Chapter IV and 45 CFR Subtitle A from which the new 42 CFR Chapter V derives its content. In the case of Title 45, all of the source sections were redesignated. In the case of 42 CFR Chapter IV, some of the source sections were redesignated, but others were retained in Chapter IV and duplicated in Chapter V.

New Section	Source Section
	42 CFR Chapter IV
1001.1	420.1
1001.2	420.2
1001.3	420.3
1001.100	420.100
1001.101	420.101
1001.102	420.102
1001.103	420.103
1001.105	420.105
1001.107	420.107
1001.109	420.109
1001.114	420.114
1001.115	420.115
1001.122	420.122
1001.123	420.123
1001.124	420.124
1001.125	420.125
1001.126	420.126
1001.128	420.128
1001.130	420.130
1001.132	420.132

New Section	Source Section
	42 CFR Chapter IV
1001.134	420.134
1001.136	420.136
1001.201	489.54
1001.211	489.55
1001.221	489.57
1001.301	412.48(c), (d), and (e)
1002.1	455.1
1002.2	455.2
1002.3	455.106
1002.200	455.200
1002.203	455.203
1002.204	455.204
1002.205	455.205
1002.206	455.206
1002.207	455.207
1002.208	455.208
1002.210	455.210
1002.211	455.211
1002.212	455.212
1002.213	455.213
1002.214	455.214
1002.230	455.230
1002.232	455.234
1002.234	455.234
1002.301-1002.321	455.300
	45 CFR Subtitle A
1003.100	101.100
1003.101	101.101
1003.102	101.102
1003.103	101.103
1003.104	101.104
1003.105	101.105
1003.106	101.106
1003.107	101.107
1003.108	101.108
1003.109	101.109
1003.110	101.110
1003.111	101.111
1003.112	101.112
1003.113	101.113
1003.114	101.114
1003.115	101.115
1003.116	101.116
1003.117	101.117
1003.118	101.118
1003.119	101.119
1003.120	101.120
1003.122	101.122
1003.123	101.123
1003.124	101.124
1003.125	101.125
1003.126	101.126
1003.127	101.127
1003.128	101.128
1003.129	101.129
1003.130	101.130
1003.131	101.131
1003.132	101.132
1003.133	101.133
	42 CFR Chapter IV
1004.1	474.0
1004.10	474.30
1004.20	474.32
1004.30	474.34
1004.40	474.36
1004.50	474.38
1004.60	474.39
1004.70	474.40
1004.80	474.41
1004.90	474.42
1004.100	474.52
1004.110	474.54
1004.120	474.56
1004.130	474.58

Titles 42 and 45 of the Code of Federal Regulations are amended as follows:

TITLE 42—[AMENDED]

I. In Title 42 of the Code of Federal Regulations, a new Chapter V—Office of Inspector General—Health Care—is established to read as follows:

CHAPTER V—OFFICE OF INSPECTOR GENERAL—HEALTH CARE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subchapter A—General Provisions

Part
1000 Introduction; General definitions

Subchapter B—OIG Authorities

1001 Program Integrity—Medicare
1002 Program Integrity—Medicaid
1003 Civil Money Penalties and Assessments
1004 Imposition of Sanctions on Health Care Practitioners and Providers of Health Care Services by a Peer Review Organization
1005–1010 [Reserved]

Subchapter A—General Provisions

PART 1000—INTRODUCTION; GENERAL DEFINITIONS

Subpart A—[Reserved]

Subpart B—Definitions

Sec.
1000.10 General definitions.
1000.20 Definitions specific to Medicare.
1000.30 Definitions specific to Medicaid.

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

Subpart A—[Reserved]

Subpart B—Definitions

§ 1000.10 General definitions.

In this chapter, unless the context indicates otherwise—

"Act" means the Social Security Act, and titles referred to are titles of that Act.

"Administrator" means the Administrator, Health Care Financing Administration.

"CFR" stands for Code of Federal Regulations.

"Department" means the Department of Health and Human Services (HHS), formerly the Department of Health, Education, and Welfare.

"ESRD" stands for end-stage renal disease.

"FR" stands for *Federal Register*.

"HCFA" stands for Health Care Financing Administration.

"HHS" stands for the Department of Health and Human Services.

"HHA" stands for home health agency.

"HMO" stands for health maintenance organization.

"ICF" stands for intermediate care facility.

"Inspector General" means the Inspector General for Health and Human Services.

"Medicaid" means medical assistance provided under a State plan approved under Title XIX of the Act.

"Medicare" means the health insurance program for the aged and disabled under Title XVIII of the Act.

"OIG" means the Office of Inspector General within HHS.

"PRO" stands for Utilization and Quality Control Peer Review Organization.

"Secretary" means the Secretary of Health and Human Services.

"SNF" stands for skilled nursing facility.

"Social security benefits" means monthly cash benefits payable under section 202 or 223 of the Act.

"SSA" stands for Social Security Administration.

"United States" means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

"U.S.C." stands for United States Code.

§ 1000.20 Definitions specific to Medicare.

As used in connection with the Medicare program, unless the context indicates otherwise—

"Beneficiary" means a person who is entitled to Medicare benefits.

"Carrier" means an entity that has a contract with HCFA to determine and make Medicare payments for Part B benefits payable on a charge basis and to perform other related functions.

"Entitled" means that an individual meets all the requirements for Medicare benefits.

"Hospital insurance benefits" means payments on behalf of, and in rare circumstances directly to, an entitled individual for services that are covered under Part A of Title XVIII of the Act.

"Intermediary" means an entity that has a contract with HCFA to determine and make Medicare payments for Part A or Part B benefits payable on a cost basis and to perform other related functions.

"Medicare Part A" means the hospital insurance program authorized under Part A of Title XVIII of the Act.

"Medicare Part B" means the supplementary medical insurance program authorized under Part B of Title XVIII of the Act.

"Provider" means a hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or effective November 1, 1983 through September 30, 1986, a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has a similar agreement but only to furnish outpatient physical therapy or speech pathology services.

"Railroad retirement benefits" means monthly benefits payable to individuals under the Railroad Retirement Act of 1974 (45 U.S.C. beginning at section 231).

"Services" means medical care or services and items, such as medical diagnosis and treatment, drugs and biologicals, supplies, appliances, and equipment, medical social services, and use of hospital or SNF facilities.

"Supplementary medical insurance benefits" means payment to or on behalf of an entitled individual for services covered under Part B of Title XVIII of the Act.

"Supplier" means a physician or other practitioner, or an entity other than a provider, that furnishes health care services under Medicare.

§ 1000.30 Definitions specific to Medicaid.

As used in connection with the Medicaid program, unless the context indicates otherwise—

"Applicant" means an individual whose written application for Medicaid has been submitted to the agency determining Medicaid eligibility, but has not received final action. This includes an individual (who need not be alive at the time of application) whose application is submitted through a representative or a person acting responsibly for the individual.

"Federal financial participation" (FFP) means the Federal Government's share of a State's expenditures under the Medicaid program.

"FMAP" stands for the Federal medical assistance percentage, which is used to calculate the amount of Federal share of State expenditures for services.

"Medicaid agency" or "agency" means the single State agency administering or supervising the administration of a State Medicaid plan.

"Provider" means any individual or entity furnishing Medicaid services under a provider agreement with the Medicaid agency.

"Recipient" means an individual who has been determined eligible for Medicaid.

"Services" means the types of medical assistance specified in sections 1905(a)(1) through (18) of the Act.

"State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.

"State plan" or *"the plan"* means a comprehensive written commitment by a Medicaid agency, submitted under section 1902(a) of the Act, to administer or supervise the administration of a Medicaid program in accordance with Federal requirements.

Subchapter B—OIG Authorities

PART 1001—PROGRAM INTEGRITY: MEDICARE

Subpart A—General Provisions

Sec.

1001.1 Scope and purpose.
1001.2 Definitions.
1001.3 Applicability of other regulations.

Subpart B—Suspension, Exclusion, or Termination of Practitioners, Providers, Suppliers of Services, and Other Individuals

1001.100 Basis and scope.

Suspensions, Exclusions or Termination on Basis of Fraud or Abuse

1001.101 Bases for exclusion for fraud and abuse; exceptions.
1001.102 Sanction for violation of the freeze on physician charges.
1001.103 Exclusion for violation of the freeze on physician charges.
1001.105 Notice of proposed exclusion or termination for fraud and abuse.
1001.107 Notice of exclusion or termination to affected party.
1001.109 Notice to others regarding exclusion or termination.
1001.114 Duration of exclusion.
1001.115 Effect of exclusion.

Suspensions on Basis of Conviction of Program-Related Crime

1001.122 Bases for suspension for conviction of program-related crime and individuals affected.
1001.123 Notice of affected party of suspension for conviction of program-related crime.
1001.124 Notice to others regarding suspension for conviction of program-related crime.
1001.125 Duration of suspension.
1001.126 Effect of suspension.
1001.128 Appeal procedures.

Reinstatement Procedures

1001.130 Timing and method of request for reinstatement.
1001.132 Criteria for action on request for reinstatement.
1001.134 Notice of action on request for reinstatement.
1001.136 Reversed or vacated convictions of program-related crimes.

Subpart C—Termination of Agreement and Reinstatement After Termination

1001.201 Termination by OIG.
1001.211 Exceptions to effective date of termination.
1001.221 Reinstatement after termination.

Subpart D—Payment Denial Under the Prospective Payment System

1001.301 Denial of payment as a result of admissions and quality review.

Authority: Secs. 1102, 1128, 1842(j), 1862(d), 1862(e), 1866(b)(2) (D), (E) and (F), and 1871 of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1395u(j), 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E) and (F), and 1395hh), unless otherwise noted.

Subpart A—General Provisions

§ 1001.1 Scope and purpose.

This part sets forth provisions for the detection and prevention of fraud and abuse in the Medicare program. It implements statutory sections, specifically identified in each subpart, aimed at protecting the integrity of the Medicare program.

§ 1001.2 Definitions.

"Convicted" means that a judgment of conviction has been entered by a Federal, State, or local court, regardless of whether an appeal from that judgment is pending.

"Exclusion" means that items or services furnished by a specified practitioner, provider, or other supplier of services will not be reimbursed under Medicare.

"Furnished" refers to items and services provided directly by, or under the direct supervision of, or ordered by, a practitioner or other individual (either as an employee or in his or her own capacity), a provider, or other supplier of services. (For purposes of denial of reimbursement within this part, it does not refer to services ordered by one party but billed for and provided by or under the supervision of another.)

"HHS" means Department of Health and Human Services.

"OIG" means Office of Inspector General of the Department of Health and Human Services.

"Practitioner" means a physician or other individual licensed under State law to practice his or her profession.

"PRO" means Utilization and Quality Control Peer Review Organization as created by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248.

"Provider" means (a) hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice that has in effect an agreement to participate in Medicare, Medicaid, or the social services programs, or (b) a clinic, a rehabilitation agency, or a public health agency that has a similar agreement, but only to furnish outpatient physical therapy or speech pathology services.

"Supplier" or *"supplier of services"* means an individual or entity, other than a provider or practitioner, that furnishes health care services under Medicare, Medicaid, or the social services programs.

"Suspension" means that items or services furnished by a specified party who has been convicted of a program related offense in a Federal, State, or

local court will not be reimbursed under Medicare or Medicaid.

§ 1001.3 Applicability of other regulations.

Subpart O of Part 405 of this title contains detailed procedures for hearings and reviews that are made available under this part for exclusions and terminations on the basis of fraud and abuse. Appeal procedures applicable to suspension based on a conviction for a program-related crime are specified in § 1001.128 of this Part.

Subpart B—Suspension, Exclusion, or Termination of Practitioners, Providers, Suppliers of Services, and Other Individuals

§ 1001.100 Basis and scope.

This subpart implements Sections 1128, 1842(j), and 1862 (d) and (e) of the Act. It sets forth criteria and procedures for (a) excluding practitioners, providers, and suppliers of services who have defrauded or abused the Medicare program or, for those physician practitioners who are not participating physicians, who have violated the billing restrictions of section 1842(j) of the Act, and (b) for suspending practitioners and other individuals convicted of crimes related to their participation in the delivery of medical care or services under the Medicare, Medicaid or the social services programs. It also specifies the appeal rights of a suspended or excluded individual and the procedures for reinstatement of excluded and suspended individuals. The procedures set forth in §§ 1001.101 through 1001.115 also apply to terminations of provider agreements under § 1001.201(a) (1), (2) or (3) of this chapter.

Suspensions, Exclusions or Termination on Basis of Fraud or Abuse

§ 1001.101 Bases for exclusions for fraud or abuse; exceptions.

(a) Payment will not be made under Medicare for items or services furnished by a practitioner, provider, or other supplier of services that the OIG determines has;

(1) Knowingly and willfully made or caused to be made any false statement or misrepresentation of a material fact in a request for payment under Medicare or for use in determining the right to payment under Medicare.

(2) Furnished items or services that are substantially in excess of the beneficiary's needs or of a quality that does not meet professionally recognized standards of health care; or

(3) Submitted or caused to be submitted bills or requests for payment containing charges (or costs) that are substantially in excess of its customary charges (or costs).

(b) The OIG's determination under paragraph (a)(2) of this section, that the items or services furnished were excessive or of unacceptable quality, will be made on the basis of reports, including sanction reports, from the following sources:

(1) The PSRO or PRO for the area served by the practitioner, provider, or other supplier of services;

(2) State or local licensing or certification authorities;

(3) Peer review committees of fiscal agents or contractors;

(4) State or local professional societies; or

(5) Other sources deemed appropriate by the OIG.

(c) *Exceptions.* (1) Notwithstanding the circumstances specified in paragraph (a)(2) of this section, HCFA will not deny Medicare payments if it has waived a disallowance on the grounds that the beneficiary and the practitioner, provider, or other supplier of services could not reasonably be expected to know that payment would not be made for a particular item or service (See § 405.330 of this title.)

(2) HCFA will not deny Medicare payment for bills or requests that are substantially in excess of customary charges or costs, if it finds the excess changes are justified by unusual circumstances or medical complications requiring additional time, effort, or expense in localities in which it is accepted medical practice to make an extra charge in such case.

§ 1001.102 Sanctions for violations of the freeze on physician charges.

(a) Whenever the OIG determines that a physician, who is not a participating physician under section 1842(h) of the Act, has during the statutory period of the freeze (1) provided services to a beneficiary and (2) knowingly and willfully billed that beneficiary for actual charges that are in excess of the physician's actual charges for the calendar quarter beginning on April 1, 1984, the OIG may exclude the physician from program participation for a period of up to five years, impose a monetary penalty or assessment against the physician, or both.

(b) If the OIG makes a determination under paragraph (a) of this section that involves a monetary penalty or assessment, the OIG will use the penalty determination, notification, effectuation, and appeal procedures contained in §§ 1003.100 through 1003.130 of this chapter.

(c) If the OIG makes a determination under paragraph (a) of this section and proposes to exclude a physician from Medicare program participation without imposing a monetary penalty or assessment, the OIG will use the determination, notification, effectuation, appeal, and reinstatement procedures contained in §§ 1001.100 through 1001.115 and 1001.130 through 1001.134.

§ 1001.103 Exclusion for violations of the freeze on physician charges.

(a) In excluding a physician under § 1001.102, the exclusion period determined under § 1001.114 may not exceed five years.

(b) The OIG will not impose an exclusion under § 1001.102 if it determines that the physician is the sole source of essential specialized service or a sole community physician.

§ 1001.105 Notice of proposed exclusion or termination for fraud or abuse.

(a) If the OIG proposes to deny reimbursement in accordance with § 1001.101, or to terminate a provider agreement in accordance with § 1001.201(a) (1), (2), or (3) of this chapter, it will send written notice of its intent and the reasons for the proposed exclusion or termination to the practitioner, provider or other supplier of services.

(b) Within 30 days of the date on the notice, the party may submit: (1) Documentary evidence and written argument against the proposed action; or (2) A written request to present evidence or argument orally to an OIG official.

(c) For good cause shown by the party, the OIG may extend the 30-day period.

§ 1001.107 Notice of exclusion or termination to affected party.

(a) If, after a party has exhausted the procedures specified in § 1001.105, the OIG decides to exclude the party under § 1001.101 or to terminate a provider agreement under § 1001.201(a) (1), (2), or (3) it will send written notice of its decision to the affected party at least 15 days before the decision becomes effective.

(b) The notice will state (1) the reasons for the decision; (2) the effective date; (3) the extent of its applicability to participation in the Medicare program; (4) the earliest date on which the OIG will accept a request for reinstatement; (5) the requirements and procedures for reinstatement; and (6) the appeal rights available to the excluded party.

(c) This decision and notice constitute an "initial determination" and a "notice of initial determination" for purposes of the administrative appeals procedures

specified in Subpart O of Part 405 of this title.

§ 1001.109 Notice to others regarding exclusion or termination.

Notice of exclusion or termination and the effective date will also be given to the public and, as appropriate, to:

(a) State Medicaid and title V agencies, State Medicaid Fraud Control Units, and PROs.

(b) Hospitals, skilled nursing facilities, home health agencies and health maintenance organizations (HMOs);

(c) Medical societies and other professional organizations;

(d) Contractors, health care prepayment plans and other affected agencies and organizations; and

(e) The State or local authority responsible for licensing or certifying the excluded party.

§ 1001.114 Duration of exclusion.

(a) The exclusion of a petitioner, provider, or other supplier of services will continue until the party is reinstated in accordance with §§ 1001.130 through 1001.136.

(b) The exclusion notice will specify the earliest date on which the excluded party may seek reinstatement. In setting that date, the OIG will consider:

(1) The number and nature of the program violations and other related offenses:

(2) The nature and extent of any adverse impact the violations have had on beneficiaries:

(3) The amount of any damages incurred by the Medicare program:

(4) Whether there are any mitigating circumstances:

(5) Any other facts bearing on the nature and seriousness of the violations or related offenses; and

(6) The previous sanction record of the excluded party under the Medicare or Medicaid program.

(c) For the effective date of termination of a provider agreement under § 1001.201(a) (1), (2), or (3), see § 1001.201(b) of this chapter.

§ 1001.115 Effect of exclusion.

(a) *Denial of payments during exclusion.* (1) Except as provided in paragraph (c) of this section, payment will not be made to an excluded practitioner, provider, or other supplier of services (that has accepted assignment of beneficiary claims), for items or services furnished on or after the effective date of exclusion specified in the exclusion notice.

(2) An assignment of a beneficiary's claim that is made on or after the effective date of exclusion will not be valid.

(b) *Denial of payment to beneficiaries.* If a beneficiary submits claims for items or services furnished by an excluded practitioner, provider, or other supplier of services after the effective date of the exclusion:

(1) HCFA will pay the first claim submitted by the beneficiary and immediately give notice of the exclusion.

(2) HCFA will not pay the beneficiary for items or services furnished by an excluded party more than 15 days after the date on the notice to the beneficiary or after the effective date of the exclusion, whichever is later.

(c) *Exceptions.* Payment is available for up to 30 days after the effective date of exclusion for—

(1) Inpatient hospital services (including inpatient psychiatric hospital services) or posthospital extended care services furnished to a beneficiary who was admitted before the effective date of exclusion; and

(2) Home health services and hospice care furnished under a plan established before the effective date of exclusion.

Suspensions on Basis of Conviction of Program-Related Crime

§ 1001.122 Bases for suspension for conviction of program-related crime and individuals affected.

(a) The OIG will suspend from participation in Medicare any party specified in paragraph (b) of this section who is convicted on or after October 25, 1977, of a criminal offense related to—

(1) Participation in the delivery of medical care or services under the Medicare, Medicaid, or the social services program; or

(2) Participation in the performance of management or administrative services relating to delivery of medical care or services under the Medicare, Medicaid, or the social services program.

(b) The suspension from participation in Medicare for conviction of a program-related crime, specified in paragraph (a) of this section, will apply to—

(1) Practitioners;

(2) Suppliers that are wholly owned by a convicted individual;

(3) Individuals who are employees, administrators, or operators of providers; and

(4) Any other individuals who, in any capacity, are receiving payment for providing services under Medicare, Medicaid, or the social services programs.

(c) The OIG will also require the State Medicaid agency to suspend any convicted party specified in paragraphs (a) and (b) of this section whether or not that party is eligible to participate in the Medicare program.

§ 1001.123 Notice to affected party of suspension for conviction of program-related crime.

(a) Whenever the OIG has conclusive information that a practitioner or other individual has been convicted of a crime related to his or her participation in the delivery of medical care or services under the Medicare, Medicaid, or the social services program, it will give the party written notice that he or she is suspended from participation in Medicare beginning 15 days from the date on the notice. In the case of a party who is not eligible to participate in Medicare, the OIG will provide written notice to the affected party that the State Medicaid agency will be required to suspend the party from Medicaid participation.

(b) The written notice will set forth:

(1) The basis for the suspension;

(2) The duration of the suspension and the factors considered in setting the duration;

(3) The requirements and procedure for reinstatement;

(4) The appeal rights;

(5) The fact that the State Medicaid agency is required to suspend the person from participation in the Medicaid program for the same period as he or she is suspended from Medicare participation.

§ 1001.124 Notice to others regarding suspension for conviction of program-related crime.

(a) The following groups will also be notified of the suspension concurrently with its notification to the suspended party:

(1) Any provider or supplier in which the suspended party is known to be serving as an employee, administrator, operator, or in which the party is serving in any other capacity and is receiving payment for providing services. The purpose of the notice is to inform the provider or supplier that Medicare payment will be denied for any services performed by the suspended party on or after the effective date of the suspension. However, the lack of this notice will not affect HCFA's ability to deny payment for these services;

(2) The State Medicaid agencies, in order that they can promptly suspend the party from participation in the Medicaid program (see § 1002.210 of the chapter);

(3) The State or local authority responsible for the licensing or certification of the suspended party;

(4) The public; and

(5) As appropriate—

(i) Title V agencies, States Medicaid Fraud Control Units, and PROs;

(ii) Hospitals, skilled nursing facilities, home health agencies, and health maintenance organizations (HMOs);

(iii) Medical societies and other professional organizations; and

(iv) Contractors, health care prepayment plans, and other affected agencies and organizations.

(b) The notice to the licensing or certifying authority will be accompanied by a request that the authority:

(1) Make appropriate investigations;

(2) Invoke any sanctions available under State law and the authority's policies; and

(3) Keep HCFA and the OIG fully and currently informed of any action it takes.

§ 1001.125 Duration of suspension.

(a) Suspension on the basis of a conviction of a program-related crime will continue until the suspended party is reinstated in accordance with §§ 1001.130 through 1001.136.

(b) The suspension notice will specify the earliest date on which the suspended individual may seek reinstatement. In setting that date, the OIG will consider:

(1) The number and nature of the program violations and other related offenses;

(2) The nature and extent of any adverse impact the violations have had on beneficiaries;

(3) The amount of the damages incurred by the Medicare, Medicaid, and the social services programs;

(4) Whether there are any mitigating circumstances;

(5) The length of the sentence imposed by the court;

(6) Any other facts bearing on the nature and seriousness of the program violations; and

(7) The previous sanction record of the suspended party under the Medicare or Medicaid program.

§ 1001.126 Effect of suspension.

(a) *Denial of payments to a suspended party.* (1) Payment will not be made to a suspended party (who has accepted assignment for the beneficiary's claims) for items and services furnished on or after the effective date of the suspension, except as provided in paragraph (e) of this section.

(2) An assignment of a beneficiary's claim that is made to an individual or supplier on or after the effective date of the suspension is not valid.

(b) *Denial of payments to a supplier that is wholly owned by a suspended party.* (1) Payment will not be made to a supplier (e.g., durable medical equipment supplier or laboratory) that is wholly owned by a suspended party for items or services furnished on or after the effective date of the suspension if the supplier has accepted assignment for the beneficiary's claim.

(2) An assignment of a beneficiary's claim that is made on or after the effective date of the suspension to a supplier that is wholly owned by a suspended party is not valid.

(c) *Denial of payments to a provider for services performed by a suspended party.* Payment will not be made to a provider for services performed, including services performed under contract, by a suspended party or by a supplier which is wholly owned by a suspended party, on or after the effective date of the suspension.

(d) *Denial of payment to beneficiaries.* If a beneficiary submits claims for items or services furnished by a suspended party or by a supplier which is wholly owned by a suspended party, on or after the effective date of the suspension—

(1) HCFA will pay the first claim submitted by the beneficiary and immediately give the beneficiary notice of the suspension.

(2) HCFA will not pay the beneficiary for items or services furnished more than 15 days after the date on the notice to the beneficiary.

(e) *Exceptions.* Payment is available for up to 30 days after the effective date of the suspension for—

(1) Inpatient hospital services (including inpatient psychiatric hospital services) or posthospital extended care furnished to a beneficiary who was admitted before the effective date of the suspension; and

(2) Home health services and hospice care furnished under a plan established before the effective date of the suspension.

§ 1001.128 Appeal procedures.

(a) A person suspended for conviction of a program-related crime, as specified in § 1001.122, may request a hearing before an Administrative Law Judge on the following issues:

(1) Whether he or she was, in fact, convicted;

(2) Whether the conviction was related to his or her participation in the delivery of medical care of services under the Medicare, Medicaid, or social services program; and

(3) Whether the length of the suspension is reasonable.

(b) A hearing under this section will be conducted in accordance with the procedures set forth in §§ 405.1531, 405.1533, 405.1534, 405.1540, 405.1541, 405.1543, and 405.1544 through 405.1558 of Subpart O of Part 405.15 of this title.

(c) If any party to the hearing is dissatisfied with the hearing decision, that party is entitled to request Appeals Council review of the decision as specified in §§ 405.1595 through 405.1559 of Subpart O of Part 405 of this title. A suspended party may also seek judicial review of the final administrative decision.

Reinstatement Procedures

§ 1001.130 Timing and method of request for reinstatement.

(a) A practitioner, provider, or supplier of services excluded from participation for fraud and abuse under § 1001.101 and a party suspended from participation for program-related crimes under § 1001.122 may request reinstatement at any time after the date specified in the notice of exclusion or suspension by submitting to the OIG or authorizing the OIG to obtain:

(1) Statements from private health insurers, indicating whether there have been any questionable claims submitted during the period of exclusion or suspension;

(2) Statements from peer review bodies, probation officers, where appropriate, or professional associates, as required by the OIG, attesting to their belief, supported by facts, that the violations that led to exclusion or conviction will not be repeated; and

(3) A statement from the affected party setting forth the reasons why he or she should be reinstated.

§ 1001.132 Criteria for action on request for reinstatement.

(a) *OIG criteria for action.* The OIG will not approve a request for reinstatement unless it is reasonably certain that the violations that led to exclusion or conviction will not be repeated. In making this determination, the OIG will consider, among other factors:

(1) Whether the applicant has been convicted in Federal, State or local court for activities related to his or her program participation; and

(2) Whether the State or local licensing authority has taken any adverse action against the party since the date of exclusion or suspension.

(b) *Additional criteria for providers requesting reinstatement.* When the OIG approves a request from a provider requesting reinstatement, such provider may not be reinstated until the OIG determines, based on the findings of HCFA, that the provider has fulfilled or has made satisfactory arrangements to fulfill all of the statutory and regulatory responsibilities specified in its agreement.

§ 1001.134 Notice of action on request for reinstatement.

(a) *Notice of approval of request.* If the OIG approves the request for reinstatement, it will:

(1) Give written notice to the excluded or suspended party specifying the date when program participation may resume; and

(2) Given notice to the public and, as appropriate, to Title V State agencies, State Medicaid agencies and Medicaid Fraud Control Units, hospitals, skilled nursing facilities, home health agencies, medical societies, other professional societies or associations, contractors, health care prepayment plans, health maintenance organizations (HMOs), PROs, the State or local licensing or certifying authority, and other affected organizations.

(b) *Notice of denial of request.* (1) If the OIG does not approve the request for reinstatement, it will give written notice to the party.

(2) Within 30 days of the date on the notice, the excluded or suspended party may submit:

(i) Documentary evidence and written argument against the continued exclusion or suspension; or

(ii) A written request to present evidence or argument orally to an OIG official. (The decision to continue the exclusion or suspension is not an initial determination under the provisions of Subpart O of Part 405 of this title.)

(c) *Action following consideration of additional evidence.* After evaluating any additional evidence submitted by the excluded or suspended party (or at the end of the 30 day period, if none is submitted), the OIG will send written notice:

(1) Confirming the denial, and indicating that a subsequent request for reinstatement will not be accepted until 6 months after the date of confirmation; or

(2) Approving reinstatement and specifying the date when program participation may be resumed. If the OIG approves reinstatement, the OIG will notify the public and, as appropriate, the agencies and institutions as specified in paragraph (a)(2) of this section.

(d) The OIG must automatically reinstate a physician excluded only on the basis of § 1001.102 if that exclusion has been in effect for five (5) years.

§ 1001.136 Reversed or vacated convictions of program related crime.

(a) The OIG will reinstate a suspended party whose conviction has been reversed or vacated.

(b) If a reinstatement is made under paragraph (a) of this section, HCFA will make payment, either to the party or the beneficiary, if the claim was not assigned, for services covered under Medicare that are furnished or performed during the period of suspension.

Subpart C—Termination of Agreement and Reinstatement After Termination

§ 1001.201 Termination by the OIG.

(a) *Basis for termination.* The OIG may terminate the agreement of any provider if the OIG finds that any of the following failings can be attributed to that provider:

(i) It has knowingly and willfully made, or caused to be made, any false statement or representation of a material fact for use in an application or request for payment under Medicare.

(ii) It has submitted, or caused to be submitted, requests for Medicare payment of amounts that substantially exceed the costs it incurred in furnishing the services for which payment is requested.

(iii) It has furnished services that the OIG has determined to be substantially in excess of the needs of individuals or of a quality that fails to meet professionally recognized standards of health care. The OIG will not terminate a provider agreement under paragraph (a) if HCFA has waived a disallowance with respect to the services in question on the grounds that the provider and the beneficiary could not reasonably be expected to know the payment would not be made. (The rules for determining such lack of knowledge are set forth in §§ 405.334 and 405.336 of this title.)

(b) *Notice of termination.* (1)The OIG will give the provider notice of termination at least 15 days before the effective date of termination of the agreement, and will concurrently give notice of termination to the public. The notice will state the reasons for, and the effective date of, the termination, and explain to what extent services may continue after that date, in accordance with the exceptions set forth in § 1001.211.

(c) *Appeal by the provider.* A provider may appeal a termination of its agreement by the OIG, in accordance with Subpart O of Part 405 of this title. The termination of a provider agreement by the OIG is subject to the additional procedures specified in §§ 1001.105 through 1001.109 of this chapter for notice and appeals.

§ 1001.211 Exceptions to effective date of termination.

Payment is available for up to 30 days after the effective date of termination for—

(a) Inpatient hospital services (including inpatient psychiatric hospital services) and posthospital extended care services furnished to a beneficiary who was admitted before the effective date of termination; and

(b) Home health services and hospice care furnished under a plan established before the effective date of termination. [1]

§ 1001.221 Reinstatement after termination.

When a provider agreement has been terminated by the OIG under § 1001.201, or by HCFA under § 489.53 of this title, a new agreement with that provider will not be accepted unless the OIG or HCFA, as appropriate, finds—

(a) That the reason for termination of the previous agreement has been removed and there is reasonable assurance that it will not recur; and

(b) That the provider has fulfilled, or has made satisfactory arrangements to fulfill, as of the statutory and regulatory responsibilites of its previous agreement.

Subpart D—Payment Denial Under the Prospective Payment System

§ 1001.301 Denial of payment as a result of admissions and quality review.

(a) A determination under § 412.48(a) of this title, related to a pattern of inappropriate admissions and billing practices that have the effect of circumventing the prospective payment system, will be referred by HCFA to the OIG for a determination in accordance with section 1866(b)(2) of the Act. The determination will be effective in the manner provided in section 1866(b)(3) and (4) of the Act, and regulations in subpart C of this Part, with respect to terminations of agreements, and will remain in effect until the OIG finds and gives reasonable notice to the public and that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

(b) Any party to a determination made by the OIG under paragraph (a) of this section, who is dissatisfied with that determination, is entitled to reasonable notice and opportunity for a hearing to the same extent as provided in section 205(b) of the Act and to judicial review of the final decision after hearing as provided in section 205(g) of the Act.

(c) The OIG will promptly notify each Medicaid agency of any determination

[1] For termination before July 18, 1984 payment was available through the calendar year in which the termination was effective.

made under paragraph (a) of this section.

PART 1002—PROGRAM INTEGRITY—MEDICAID

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Authority: Secs. 1102, 1124, 1126, 1128, 1902(a)(4)(A), 1902(a)(30), 1902(a)(39), 1903(a)(6), 1903(b)(3), 1903(i)(2), 1903(n), and 1903(q) of the Social Security Act; 42 U.S.C. 1302, 1320a–3, 1320a–5, 1320a–7, 1396a(a)(4)(A), 1396a(30), 1396a(39), 1396b(a)(6), 1396b(b)(3), 1396b(i)(2), 1396b(n), and 1396b(q).

Subpart A—General Provisioins

§ 1002.1 Basis and purpose.

(a) This part sets forth requirements for the prevention of fraud and abuse in the Medicaid program and implements specific statutory provisions aimed at protecting the integrity of the program.

(b) Subpart B is based on sections 1126, 1128, 1902(a)(4)(A), 1902(a)(30), 1902(a)(39) and 1903(i)(2) of the Social Security Act. It requires Medicaid agencies to—

(1) Have the ability to exclude from program reimbursement any provider that defrauds or abuses the Medicaid or Medicare program; and

(2) Suspend any individual receiving reimbursement under the Medicaid program who has been convicted of a crime related to delivery of medical care or services under the Medicare, Medicaid, or social services programs.

(c) Subpart C implements sections 1903(a)(6), 1903(b)(3), and 1903(q) of the Social Security Act, and prescribes requirements for the establishment and operation of State Medicaid fraud control units. It also details conditions that must be met in order for costs of the fraud control units to quality for 90 percent Federal financial participation (FFP).

§ 1002.2 Definitions.

As used in Suparts B and C of this part, unless the context indicates otherwise—

"Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecesary cost to the Medicaid program.

"Conviction" or "Convicted" means that a judgment of conviction has been entered by a Federal, State, or local court, regardless of whether an appeal from that judgment is pending.

"Exclusion" means that items or services furnished by a specific provider who has defrauded or abused the Medicaid program will not be reimbursed under Medicaid.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law.

"Furnished" refers to items and services provided directly by, or under the direct supervision of, or ordered by, a practitioner or other individual (either as an employee or in his or her own capacity), a provider, or other supplier of services. (For purposes of denial of reimbursement within this Part, it does not refer to services ordered by one party but billed for and provided by or under the supervision of another.)

"Practitioner" means a physician or other individual licensed under State law to practice his or her profession.

"PRO" means Utilization and Quality Control Peer Review Organization as created by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248.

"PSRO" stands for Professional Standards Review Organization.

"Suspension" means that items or services furnished by a specified provider who has been convicted of a program related offense in a Federal State, or local court will not be reimbursed under Medicaid.

§ 1002.3 Disclosure by providers: Information on persons convicted of crimes.

(a) *Information that must be disclosed.* Before the Medicaid agency enters into or renews a provider agreement, or at any time upon written request by the Medicaid agency, the provider must disclose to the Medicaid agency the identity of any person who:

(1) Has ownership or control interest in the provider, or is an agent or managing employee of the provider; and

(2) Has been convicted of a cirminal offense related to that person's in volvement in any program under Medicare, Medicaid, or the Title XX services program since the inception of those programs.

(b) *Notification to Inspector General.* (1) The Medicaid agency must notify the Inspector General of the Department of any disclosures made under paragraph (a) of this section within 20 working days from the date it receives the information.

(2) The agency must also promptly notify the Inspector General of the Department of any action it takes on the provider's application for participation in the program.

(c) *Denial or termination of provider participation.* (1) The Medicaid agency may refuse to enter into or renew an agreement with a provider if any person who has an ownership or control interest in the provider, or who is an agent or managing employee of the provider, has been convicted of a criminal offense related to that person's involvement in any program established

under Medicare, Medicaid or the Title XX Services Program.

(2) The Medicaid agency may refuse to enter into or may terminate a provider agreement if it determines that the provider did not fully and accurately make any disclosure required under paragraph (a) of this section.

Subpart B—Exclusion of Providers, and Suspension of Practitioners and Other Individuals

§ 1002.200 State plan requirement.

The plan must provide that the requirements of this subpart are met. However, the provisions of these regulations are minimum requirements. The agency may impose broader sanctions if it has the authority to do so under State law.

§ 1002.203 Exclusion of Medicaid providers for fraud and abuse.

(a) *Basis for exclusion.* The agency must have administrative procedures which enable the agency to exclude from Medicaid reimbursement a provider who it determines has:

(1) Knowingly and willfully made or caused to be made any false statement or misrepresentation of material fact in claiming, or use in determining the right to, payment under Medicaid.

(2) Furnished or ordered services under Medicaid that are substantially in excess of the recipient's needs or that fail to meet professionally recognized standards for health care; or

(3) Submitted or caused to be submitted to the Medicaid program bills or requests for payment containing charges or costs that are substantially in excess of customary charges or costs. However, the agency must not impose an exclusion under this section if it finds the excess charges are justified by unusual circumstances or medical complications requiring additional time, effort, or expense in localities in which it is accepted medical practice to make an extra charge in such case.

(b) *Reports to be considered.* The agency may base its determination that services were excessive or of unacceptable quality on reports, including sanction reports, from any of the following sources:

(1) The PRO for the area served by the provider;

(2) State or local licensing or certification authorities;

(3) Peer review committees of fiscal agents or contractors;

(4) State or local professional societies; or

(5) Other sources deemed appropriate by the Medicaid agency or the OIG.

§ 1002.204 Notice of proposed exclusion for fraud and abuse.

If the agency proposes to exclude a provider under § 1002.203 it must send the provider written notice stating the reasons for the proposed exclusion and the right to review.

§ 1002.205 Right to review.

Before imposing an exclusion, the agency must give the provider the opportunity to submit documents and written argument against the exclusion. However, the provider must be given any additional appeals rights under procedures established by the State.

§ 1002.206 Notice of exclusion for fraud and abuse.

After the review, if the agency makes a final decision to exclude—

(a) The agency must send the provider written notice 15 days before the exclusion becomes effective;

(b) The notice must state—

(1) The reasons for the decision;

(2) The effective date;

(3) The effect of the exclusion on the party's participation in the Medicaid program;

(4) The earliest date in which the agency will accept a request for reinstatement (see §§ 1002.232 and 1002.234 for reinstatement procedures); and

(5) The requirements and procedures for reinstatement.

(c) The agency must also give notice of the exclusion and the effective date to the OIG, HCFA, the public, and, as appropriate, to—

(1) Recipients;

(2) PROs;

(3) Providers and organizations;

(4) Medical societies and other professional organizations;

(5) State licensing boards and affected State and local agencies and organizations; and

(6) Medicare carriers and intermediaries.

§ 1002.207 Denial of payment and FFP: Parties excluded under Medicaid.

(a) *Denial of payment.* The agency must not make payment under Medicaid for items or services furnished by a provider who has been excluded from the Medicaid program in accordance with § 1002.203.

(b) *Denial of FFP.* FFP is not available in payments under any State plan for services furnished by a provider who has been excluded from the Medicaid program.

(c) *Duration of exclusion.* The exclusion will continue until the provider is reinstated in accordance with §§ 1002.230 through 1002.236.

(d) *When FFP will be reinstated.* FFP will be available for services furnished by a Medicaid provider after reinstatement in the Medicaid program.

§ 1002.208 Denial of FFP: Parties excluded or terminated under Medicare for fraud and abuse.

(a) *Denial of FFP.* FFP is not available in payments for services furnished by a Medicaid provider while that provider is excluded or terminated from participation, or otherwise sanctioned, because of fraud and abuse under the Medicare program under § 1001.101 of this chapter.

(b) *Effective date of denial.* Except as specified in paragraph (c) of this section, the denial of FFP will apply to services furnished on or after the effective date of the exclusion from Medicare.

(c) *Exception: FFP available in payment made during exclusion or after termination.* Payment is available for up to 30 days after the effective date of the exclusion or termination for—

(1) Inpatient hospital services (including inpatient psychiatric hospital services) and skilled nursing facility and intermediate care facility services furnished to a beneficiary who was admitted before the effective date of the exclusion or termination; and

(2) Home health services and hospital care furnished under a plan established before the effective date of the exclusion or termination.

(d) *When FFP will be reinstated.* FFP will be available for services furnished by a Medicaid provider after reinstatement in the Medicare program.

Suspensions on Basis of Conviction of Program-Related Crimes

§ 1002.210 Bases for suspension for conviction of program-related crimes.

The agency must suspend from the Medicaid program any party who has been suspended from participation in Medicare under § 1001.122 of this chapter for conviction of a program-related crime. The agency must also suspend any convicted party who is not eligible to participate in Medicare whenever the OIG directs such action.

§ 1002.211 Duration of suspension.

(a) The suspension under Medicaid must be effective on the date established by the OIG for suspension under Medicare, and must be for the same period as the Medicare suspension. In the case of a convicted party who is not eligible to participate in Medicare, the suspension will be effective on the date and for the period established by the OIG.

(b) The agency may impose a sanction under its own sanction authorities which is effective before, or extends beyond, the mandatory suspension period under paragraph (a) of this section.

§ 1002.212 Notification of State or local convictions of crimes againt Medicaid.

(a) The agency must notify the OIG whenever a State or local court has entered a judgment of conviction against an individual who is receiving reimbursement under Medicaid, for a criminal offense related to participation in the delivery of medical care or services under the Medicaid program.

(b) If the agency was involved in the investigation or prosecution of the case, it must send notice within 15 days after the conviction.

(c) If the agency was not so involved, it must give notice within 15 days after it learns of the conviction.

(Approved by the Office of Management and Budget under control number 0938–0076)

§ 1002.213 Effect of suspension.

(a) *Denial of payment.* Except as specified in paragraph (b) of this section, the agency must not make any payment under the plan for services furnished directly by, or under the supervision of, a suspended party during the period of the suspension.

(b) *Circumstances under which payment may be made after a suspension.* Payment is available for up to 30 days after the effective date of the suspension for—

(1) Inpatient hospital services (including inpatient psychiatric hospital services) and skilled nursing facility and intermediate care facility services furnished to a beneficiary who was admitted before the effective date of the suspension; and

(2) Home health services and hospital care funished under a plan established before the effective date of the suspension.

§ 1002.214 Waiver of suspension of parties.

(a) *Request.* The agency may request the OIG to waive suspension of a party under § 1002.210 if it concludes that, because of the shortage of providers or other health care personnel in the area, individuals eligible to receive Medicaid benefits would be denied adequate access to medical care.

(b) *Notice of waiver of suspension.* The OIG will notify the agency if and when it waives suspension in response to the agency's request.

Reinstatement Procedures

§ 1002.230 Reinstatement of parties suspended under Medicare.

(a) The agency may not reinstate in the Medicaid program a party that has been suspended from Medicare or suspended at the direction of the OIG until the OIG notifies the agency that the party may be reinstated.

(b) If the OIG makes a determination to reinstate a party under Medicare, the agency, upon notification from the OIG, must automatically reinstate the party under Medicaid effective on the date of reinstatement under Medicare, unless a longer period of suspension was established in accordance with the State's own authorities and procedures.

§ 1002.232 Basis for reinstatement after exclusion.

(a) The provisions of this section and § 1002.234 apply to the reinstatement in the Medicaid program of all parties excluded in accordance with § 1002.203, if a State affords reinstatement opportunity to those parties.

(b) A party who has been excluded from Medicaid may be reinstated only by the Medicaid agency that imposed the exclusion.

(c) A party may submit to the agency a request for reinstatement at any time after the date specified in the notice of exclusion.

(d) In setting the earliest date on which it will consider a request for reinstatement, the agency must consider—

(1) The number and nature of the program violations and other related offenses;

(2) The nature and extent of any adverse impact the violations have had on recipients;

(3) The amount of any damages;

(4) Whether there are any mitigating circumstances; and

(5) Any other facts bearing on the nature and seriousness of the program violations or related offenses.

§ 1002.234 Action on request for reinstatement.

(a) *Criteria for approving reinstatement request.* The agency may grant reinstatement only if it is reasonably certain that the violation(s) that led to exclusion will not be repeated. In making this determination, the agency will consider, among other factors—

(1) Whether the party has been convicted in a Federal, State, or local court of other offenses related to participation in the Medicare or Medicaid program which were not considered during the development of the exclusion; and

(2) Whether the State or local licensing authorities have taken any adverse action against the party for offenses related to participation in the Medicare or Medicaid program which were not considered during the development of the exclusion.

(b) *Notice of action on request.* (1) If the agency approves the request for reinstatement, it must give written notice to the excluded party, and to all others who were informed of the exclusion in accordance with § 1002.206, specifying the date on which Medicaid program participation may resume.

(2) If the agency does not approve the request for reinstatement, it will notify the excluded party of its decision.

Subpart C—State Medicaid Fraud Control Units

§ 1002.301 Definitions.

As used in this subpart, unless otherwise indicated by the context:

"Employ" or "employee", as the context requires, means full-time duty intended to last at least a year. It includes an arrangement whereby an individual is on full-time detail or assignment to the unit from another government agency, if the detail or assignment is for a period of at least 1 year and involves supervision by the unit.

"Provider" means an individual or entity which furnishes items or services for which payment is claimed under Medicaid.

"Unit" means the State Medicaid fraud control unit.

§ 1002.303 Scope and purpose.

This subpart implements sections 1903(a)(6), 1903(b)(3), and 1903(q) of the Social Security Act, as amended by the Medicare-Medicaid Anti-fraud and Abuse Amendments (Pub. L. 95–142 of October 25, 1977). The statute authorizes the Secretary to pay a State 90 percent of the costs of establishing and operating a State Medicaid fraud control unit, as defined by the statute, for the purpose of eliminating fraud in the State Medicaid program.

§ 1002.305 Basic requirement.

A State Medicaid fraud control unit must be a single identifiable entity of the State government certified by the Secretary as meeting the requirements of §§ 1002.307 through 1002.313 of this chapter.

§ 1002.307 Organization and location requirements.

Any of the following three alternatives is acceptable:

(a) The unit is located in the office of the State attorney general or another department of State government which has statewide authority to prosecute individuals for violations of criminal laws with respect to fraud in the provision or administration of medical assistance under a State plan implementing Title XIX of the Act; or

(b) If there is no State agency with statewide authority and capability for criminal fraud prosecutions, the unit has established formal procedures which assure that the unit refers suspected cases of criminal fraud in the State Medicaid program to the appropriate State prosecuting authority or authorities, and provides assistance and coordination to such authority or authorities in the prosecution of such cases; or

(c) The unit has a formal working relationship with the office of the State attorney general and has formal procedures for referring to the attorney general suspected criminal violations occurring in the State Medicaid program and for effective coordination of the activities of both entities relating to the detection, investigation and prosecution of those violations. Under this requirement, the office of the State attorney general must agree to assume responsibility for prosecuting alleged criminal violations referred to it by the unit. However, if the attorney general finds that another prosecuting authority has the demonstrated capacity, experience and willingness to prosecute an alleged violation, he or she may refer a case to that prosecuting authority, as long as the Attorney General's Office maintains oversight responsibility for the prosecution and for coordination between the unit and the prosecuting authority.

§ 1002.309 Relationship to, and agreement with, the Medicaid agency.

(a) The unit must be separate and distinct from the Medicaid agency.

(b) No official of the Medicaid agency shall have authority to review the activities of the unit or to review or overrule the referral of a suspected criminal violation to an appropriate prosecuting authority.

(c) The unit shall not receive funds paid under this subpart either from or through the Medicaid agency.

(d) The unit shall enter into an agreement with the Medicaid agency under which the Medicaid agency will agree to comply with all requirements of § 455.21(a)(2) of this title.

§ 1002.311 Duties and responsibilities of the unit.

(a) The unit shall conduct a statewide program for investigating and prosecuting (or referring for prosecution) violations of all applicable State laws pertaining to fraud in the administration of the Medicaid program, the provision of medical assistance, or the activities of providers of medical assistance under the State Medicaid plan.

(b) The unit shall also review complaints alleging abuse or neglect of patients in health care facilities receiving payments under the State Medicaid plan and may review complaints of the misappropriation of patient's private funds in such facilities.

(1) If the initial review indicates substantial potential for criminal prosecution, the unit shall investigate the complaint or refer it to an appropriate criminal investigative or prosecutive authority.

(2) If the initial review does not indicate a substantial potential for criminal prosecution, the unit shall refer the complaint to an appropriate State agency.

(c) If the unit, in carrying out its duties and responsibilities under paragraphs (a) and (b) of this section, discovers that overpayments have been made to a health care facility or other provider of medical assistance under the State Medicaid plan, the unit shall either attempt to collect such overpayment or refer the matter to an appropriate State agency for collection.

(d) Where a prosecuting authority other than the unit is to assume responsibility for the prosecution of a case investigated by the unit, the unit shall insure that those responsible for the prosecutive decision and the preparation of the case for trial have the fullest possible opportunity to participate in the investigation from its inception and will provide all necessary assistance to the prosecuting authority throughout all resulting prosecutions.

(e) The unit shall make available to Federal investigators or prosecutors all information in its possession concerning fraud in the provision or administration of medical assistance under the State plan and shall cooperate with such officials in coordinating any Federal and State investigations or prosecutions involving the same suspects or allegations.

(f) The unit shall safeguard the privacy rights of all individuals and shall provide safeguards to prevent the misuse of information under the unit's control.

§ 1002.313 Staffing requirements.

(a) The unit shall employ sufficient professional, administrative, and support staff to carry out its duties and responsibilities in an effective and efficient manner. The staff must include:

(1) One or more attorneys experienced in the investigation or prosecution of civil fraud or criminal cases, who are capable of giving informed advice on applicable law and procedures and providing effective prosecution or liaison with other prosecutors;

(2) One or more experienced auditors capable of supervising the review of financial records and advising or assisting in the investigation of alleged fraud;

(3) A senior investigator with substantial experience in commercial or financial investigations who is capable of supervising and directing the investigative activities of the unit.

(b) The unit shall employ, or have available to it, professional staff who are knowledgeable about the provision of medical assistance under title XIX and about the operation of health care providers.

§ 1002.315 Applications, certification, and recertification.

(a) *Initial application.* In order to receive FFP under this subpart, the unit must submit to the Secretary, an application approved by the Governor, containing the following information and documentation.

(1) A description of the applicant's organization, structure, and location within State government, and an indication of whether it seeks certification under § 1002.307 (a), (b) or (c);

(2) A statement from the State attorney general that the applicant has authority to carry out the functions and responsibilities set forth in this subpart. If the applicant seeks certification under § 1002.307(b), the statement must also specify either that there is no State agency with the authority to exercise statewide prosecuting authority for the violations with which the unit is concerned, or that, although the State attorney general may have common law authority for statewide criminal prosecutions, he or she has not exercised that authority;

(3) A copy of whatever memorandum of agreement, regulation, or other document sets forth the formal procedures required under § 1002.307(b), or the formal working relationship and procedures required under § 1002.307(c);

(4) A copy of the agreement with the Medicaid agency required under § 1002.309;

(5) A statement of the procedures to be followed in carrying out the functions and responsibilities of this subpart;

(6) A projection of the caseload and a proposed budget for the 12-month period for which certification is sought; and

(7) Current and projected staffing, including the names, education, and experience of all senior professional staff already employed and job descriptions, with minimum qualifications, for all professional positions.

(b) *Conditions for, and notification of certification.* (1) The Secretary will approve an application only if he or she has specifically approved the applicant's formal procedures under § 1002.307 (b) or (c), if either of those provisions is applicable, and has specifically certified that the applicant meets the requirements of § 1002.307;

(2) The Secretary will promptly notify the applicant whether the application meets the requirements of this subpart and is approved. If the application is not approved, the applicant may submit an amended application at any time. Approval and certification will be for a period of 1 year.

(c) *Conditions for recertification.* In order to continue receiving payments under this subpart, a unit must submit a reapplication to the Secretary at least 60 days prior to the expiration of the 12-month certification period. A reapplication must:

(1) Advise the Secretary of any changes in the information or documentation required under paragraphs (a) (1) through (5) of this section;

(2) Provide projected caseload and proposed budget for the recertification period; and

(3) Include or incorporate by reference the annual report required under § 1002.317.

(d) *Basis for recertification.* (1) The Secretary will consider the unit's reapplication, the reports required under § 1002.317, and any other reviews or information he or she deems necessary or warranted, and will promptly notify the unit whether he or she has approved the reapplication and recertified the unit.

(2) In reviewing the reapplication, the Secretary will give special attention to whether the unit has used its resources effectively in investigating cases of possible fraud, in preparing cases for prosecution, and in prosecuting cases or cooperating with the prosecuting authorities.

(Approved by the Office of Management and Budget under control number 0990–0162)

§ 1002.317 Annual report.

At least 60 days prior to the expiration of the certification period, the unit shall submit to the Secretary a report covering the last 12 months (the first 9 months of the certification period for the first annual report), and containing the following information:

(a) The number of investigations initiated and the number completed or closed, categorized by type of provider;

(b) The number of cases prosecuted or referred for prosecution; the number of cases finally resolved and their outcomes; and the number of cases investigated but not prosecuted or referred for prosecution because of insufficient evidence;

(c) The number of complaints received regarding abuse and neglect of patients in health care facilities; the number of such complaints investigated by the unit; and the number referred to other identified State agencies.

(d) The number of recovery actions initiated by the unit; the number of recovery actions referred to another agency; the total amount of overpayments identified by the unit; and the total amount of overpayments actually collected by the unit;

(e) The number of recovery actions initiated by the Medicaid agency under its agreement with the unit; and the total amount of overpayments actually collected by the Medicaid agency under this agreement;

(f) Projections for the succeeding 12 months for items listed in paragraphs (a) through (e) of this section;

(g) The costs incurred by the unit;

(h) A narrative that evaluates the unit's performance; describes any specific problems it has had in connection with the procedures and agreements required under this subpart; and discusses any other matters that have impaired its effectiveness.

(Approved by the Office of Management and Budget under control number 0990–0162)

§ 1002.319 Federal financial participation (FFP).

(a) *Rate of FFP.* Subject to the limitation of this section, the Secretary will reimburse each State by an amount equal to 90 percent of the costs incurred by a certified unit which are attributable to carrying out its functions and responsibilities under this subpart.

(b) *Retroactive certification.* The Secretary may grant certification retroactive to the date on which the unit first met all the requirements of the statute and of this subpart. For any quarter with respect to which the unit is certified, the Secretary will provide reimbursement for the entire quarter.

(c) *Amount of FFP.* FFP for any quarter shall not exceed the higher of $125,000 or one-quarter of 1 percent of the sums expended by the Federal, State, and local governments during the previous quarter in carrying out the State Medicaid program.

(d) *Costs subject to FFP.* FFP is available under this subpart for the expenditures attributable to the establishment and operation of the unit, including the cost of training personnel employed by the unit. Reimbursement shall be limited to costs attributable to the specific responsibilities and functions set forth in this subpart in connection with the investigation and prosecution of suspected fraudulent activities and the review of complaints of alleged abuse or neglect of patients in health care facilities. Establishment costs are limited to clearly identifiable costs of personnel that:

(1) Devote full time to the establishment of the unit which does achieve certification; and

(2) Continue as full-time employees after the unit is certified. All establishment costs will be deemed made in the first quarter of certification.

(e) *Costs not subject to FFP.* FFP is not available under this subpart for expenditures attributable to:

(1) The investigation of cases involving program abuse or other failures to comply with applicable laws and regulations, if these cases do not involve substantial allegations or other indications of fraud;

(2) Efforts to identify situations in which a question of fraud may exist, including the screening of claims, analysis of patterns of practice, or routine verification with recipients of whether services billed by providers were actually received;

(3) The routine notification of providers that fraudulent claims may be punished under Federal or State law;

(4) The performance by a person other than a full-time employee of the unit of any management function for the unit, any audit or investigation, any professional legal function, or any criminal, civil or administrative prosecution of suspected providers;

(5) The investigation or prosecution of cases of suspected recipient fraud not involving suspected conspiracy with a provider; or

(6) Any payment, direct or indirect, from the unit to the Medicaid agency, other than payments for the salaries of employees on detail to the unit.

§ 1002.321 Other applicable HHS regulations.

Except as otherwise provided in this subpart, the following regulations from 45 CFR Subtitle A apply to grants under this subpart:

Subpart C of Part 16—Department Grant Appeals Process—Special Provisions Applicable To Reconsideration of Disallowances (note that this applies only to disallowance determinations and not to any other determinations, e.g., over certification or recertification)
Part 74—Administration of Grants
Part 75—Informal Grant Appeals Procedures
Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services; Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedure for Hearings Under 45 CFR Part 80
Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance

PART 1003—CIVIL MONEY PENALTIES AND ASSESSMENTS

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1003.132 Limitations.
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Authority: Secs. 1102, 1128, 1128A and 1842(j) of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1320a–7a, and 1995u(j)).

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, and 1842(j) of the Social Security Act (42 U.S.C. 1320a–7c, 1320a–7a, and 1395u(j)).

(b) *Purpose.* This part (1) establishes procedures for imposing civil money penalties and assessments against persons who have submitted certain prohibited claims under the Medicare, Medicaid, or the Maternal and Child Health Services Block Grant programs; (2) establishes procedures for suspending from the Medicare and Medicaid programs, persons against whom a civil money penalty or assessment has been imposed; and (3) specifies the appeal rights of persons subject to a penalty or assessment.

§ 1003.101 Definitions.

For purposes of this part:

Act means the Social Security Act.

Agent includes a Medicare fiscal intermediary or carrier, a Medicaid fiscal agent, or any other claims processing agent under the Medicare, Medicaid, or Maternal and Child Health Services Block Grant program.

ALJ means an Administrative Law Judge.

Assessment means the amount described in § 1003.104, and includes the plural of that term.

Claim means an application submitted by a person to an agency of the United States or of a State, or an agent thereof, for payment for:

(a) An item or service for which payment may be made under Medicare, or

(b) An item or service for which medical assistance is provided under a State plan for medical assistance, or

(c) An item or service for which payment may be made under the Maternal and Child Health Services Block Grant program.

Department means the Department of Health and Human Services.

General Counsel means the General Counsel of the Department or his or her designees.

HCFA means the Health Care Financing Administration.

Inspector General means the Inspector General of the Department or his or her designees.

Item or service includes (a) any item, device, medical supply or service claimed to have been provided to a patient and listed in an itemized claim for program payment or a request for payment, and (b) in the case of a claim based on costs, any entry or omission in a cost report, books of account or other documents supporting the claim.

Maternal and Child Health Services Block Grant program means the program authorized under Title V of the Act.

Medicaid means the program of grants to the States for medical assistance authorized under title XIX of the Act.

Medicare means the program of health insurance for the aged and disabled authorized under Title XVIII of the Act.

Penalty means the amount described in § 1003.103 and includes the plural of that term.

Person means an individual, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.

Program means the Medicare, Medicaid or Maternal and Child Health Services Block Grant program.

Request for payment means an application submitted by a person to any person for payment for an item or service covered under the Medicare, Medicaid or Maternal and Child Health Services Block Grant program.

Respondent means the person upon whom the Secretary has imposed, or proposes to impose, a penalty or assessment.

Secretary means the Secretary of the Department or his or her designees.

State includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Suspension means the temporary barring or permanent exclusion of a person from participation in the Medicare or Medicaid programs under section 1128(b) of the Social Security Act.

§ 1003.102 Basis for civil money penalties and assessments.

(a) The OIG may impose a penalty and assessment against any person whom it determines in accordance with this part has presented or caused to be presented a claim which is for an item or service:

(1) That the person knew or had reason to know was not provided as claimed; or

(2) For which no payment could be made under the program under which it was submitted because:

(i) The person had been excluded under section 1128 of the Act (42 U.S.C. 1320a–7);

(ii) The person had been excluded from eligibility to provide services on a reimbursement basis under section

1160(b) of the Act as that section read prior to enactment of Pub. L. 97-248 (42 U.S.C. 1320c-9(b));

(iii) Payment had been prohibited under Title XVIII of the Act because of a determination under section 1862(d) of the Act (42 U.S.C. 1395y(d)); or

(iv) The Secretary had initiated termination proceedings against the person pursuant to a determination by the Secretary under section 1866(b)(2) of the Act (42 U.S.C. 1395cc(b)(2)).

(b) The OIG may impose a penalty against any person whom it determines in accordance with this part:

(1) Has presented or caused to be presented a request for payment in violation of the terms of:

(i) An agreement to accept payments on the basis of an assignment under section 1842(b)(3)(B)(ii) of the Act;

(ii) An agreement with a State agency not to charge a person for an item or service in excess of the amount permitted to be charged; or

(iii) An agreement to be a participating physician or supplier under section 1842(h)(1); or

(2) Is a non-participating physician under section 1842(j) of the Act and has knowingly and willfully billed individuals enrolled under Part B of Title XVIII of the Act, during the statutory period of the freeze, for actual charges in excess of such physicians, actual charges for the calendar quarter beginning on April 1, 1984.

(c)(1) In any case in which it is determined that more than one person was responsible for presenting or causing to be presented a claim as described in paragraph (a) of this section, each such person may be held liable for the penalty prescribed by this part, and an assessment may be imposed against any one such person or jointly and severally against two or more such persons, but the aggregate amount of the assessments collected may not exceed the amount that could be assessed if only one person was responsible.

(2) In any case in which it is determined that more than one person was responsible for presenting or causing to be presented a request for payment described in paragraph (b) of this section, each such person may be held liable for the penalty prescribed by this part.

§ 1003.103 Amount of penalty.

The OIG may impose a penalty of not more than $2,000 for each item of service that is subject to a determination under § 1003.102.

§ 1003.104 Amount of assessment.

A person subject to a penalty determined under § 1003.102(a) may be subject, in addition, to an assessment of not more than twice the amount claimed for each item or service which was a basis for the penalty. The assessment is in lieu of damages sustained by the Department or a State agency because of that claim.

§ 1003.105 Suspension from participation in Medicare or Medicaid.

(a) A person subject to a penalty or assessment determined under § 1003.102 may, in addition, be suspended from participation in Medicare for a period of time determined under § 1003.107. The OIG may require the appropriate State agency to suspend the person from the Medicare program for a period he shall specify. The State agency may request the Secretary to waive suspension of a person from the Medicaid program under this section if it concludes that, because of the shortage of providers or other health care personnel in the area, individuals eligible to receive Medicaid benefits would be denied access to medical care or that such individuals would suffer hardship. The Secretary will notify the State agency if and when the Secretary waives suspension in response to such a request.

(b) Any suspension under this section shall become effective only after there is a final decision of the Secretary pursuant to § 1003.125(f), or at any earlier date that the respondent fails, within the time permitted, to exercise his or her right to a hearing under § 1003.109 or administrative review under § 1003.125. The effect of such suspension shall be governed by 42 CFR § 1001.126.

(c) When the Inspector General proposes to suspend a long-term care facility from the Medicare and Medicaid programs, he or she shall, at the same time he or she notifies the respondent, notify the appropriate State Office of Aging, the long-term care ombudsman, and the State Medicaid agency of the Inspector General's intention to suspend the facility.

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) In determining the amount of any penalty or assessment, the Department shall take into account, in accordance with this section: (1) The nature of the claim or request for payment and the circumstances under which it was presented, (2) the degree of culpability of the person submitting the claim or request for payment, (3) the history of prior offenses of the person submitting the claim or request for payment, (4) the financial condition of the person presenting the claim or request for payment, and (5) such other matters as justice may require.

(b) *Guidelines for determining the amount of the penalty or assessment.* As guidelines for taking into account the factors listed in paragraph (a), of this section, the following circumstances are to be considered:

(1) *Nature and circumstances of the claim.* It should be considered a mitigating circumstance if all the items or services subject to a determination under § 1003.102 included in the action brought under this part were of the same type and occurred within a short period of time, there were few such items or services, and the total amount claimed for such items or services was less than $1,000. It should be considered an aggravating circumstance if such items or services were of several types, occurred over a lengthy period of time, there were many such items or services (or the nature and circumstances indicate a pattern of claims for such items or services), or the amount claimed for such items or services was substantial.

(2) *Degree of culpability.* It should be considered a mitigating circumstance if the claim for the item or service was the result of an unintentional and unrecognized error in the process respondent followed in presenting claims, and corrective steps were taken promptly after the error was discovered. It should be considered an aggravating circumstance if the respondent knew the item or service was not provided as claimed, or if the respondent knew that no payment could be made because he had been excluded from program reimbursement as specified in § 1003.102(a)(2) or because payment would violate the terms of an assignment agreement or an agreement with a State agency under § 1003.102(b).

(3) *Prior offenses.* It should be considered an aggravating circumstance if at any time prior to the presentation of any claim which included an item or service subject to a determination under § 1003.102, the respondent was held liable for criminal, civil, or administrative sanctions in connection with a program covered by this part or any other public or private program of reimbursement for medical services.

(4) *Financial condition.* It should be considered a mitigating circumstance if imposition of the penalty or assessment without reduction will jeopardize the ability of the respondent to continue as a health care provider. In all cases, the resources available to the respondent

will be considered when determining the amount of the penalty and assessment.

(5) *Other matters as justice may require.* Other circumstances of an aggravating or mitigating nature should be taken into account if, in the interests of justice, they require either a reduction of the penalty or assessment or an increase in order to assure the achievement of the purposes of this part.

(c) As guidelines for determining the amount of the penalty and assessment to be imposed, for every item or service subject to a determination under § 1003.102:

(1) If there are substantial or several mitigating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently below the maximum permitted by § 1003.103, to reflect that fact.

(2) If there are substantial or several aggravating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently close to or at the maximum permitted by § 1003.103, to reflect that fact.

(3) Unless there are extraordinary mitigating circumstances, the aggregate amount of the penalty and assessment should never be less than double the approximate amount of damages sustained by the United States, or any State, as a result of claims subject to a determination under § 1003.102.

(d) The guidelines set forth in this section are not binding. Moreover, nothing in this section shall limit the authority of the Department to settle any issue or case as provided by § 1003.126, or to compromise any penalty and assessment as provided by § 1003.128.

§ 1003.107 Determinations regarding suspension.

In determining whether to suspend a person and the duration of a suspension, the Department will take into account the circumstances set forth in § 1003.106(a) and described in § 1003.106(b). Where there are aggravating circumstances as described in § 1003.106(b), the person should be suspended. The guidelines set forth in this section are not binding. Moreover, nothing in this section shall limit the authority of the Department to settle any issue or case as provided by § 1003.126 or to compromise any suspension as provided by § 1003.128.

§ 1003.108 Penalty not exclusive.

A penalty imposed under this part is in addition to any other penalties prescribed by law.

§ 1003.109 Notice of proposed determination.

(a) If the Inspector General proposes to impose a penalty and assessment, or to suspend a respondent from participation in Medicare or Medicaid, in accordance with this part, he or she must deliver or send by certified mail, return receipt requested, to the respondent, written notice of his or her intent to impose a penalty, assessment and suspension, as applicable. The notice will include reference to the statutory basis for the penalty, assessment, and suspension; description of the claims and requests for payment with respect to which the penalty, assessment, and suspension are proposed (except in cases where the Inspector General is relying upon statistical sampling pursuant to § 1003.113, in which case the notice shall describe those claims and requests for payment comprising the sample upon which the Inspector General is relying and shall also briefly describe the statistical sampling technique utilized by the Inspector General); the reason why such claims and requests for payment subject the respondent to a penalty, assessment, and suspension; the amount of the proposed penalty, assessment, and the period of proposed suspension (where applicable); any circumstances described in § 1003.106 which were considered when determining the amount of the proposed penalty and assessment and the period of suspension; instructions for responding to the notice, including a specific statement of respondent's right to a hearing, of the fact that failure to request a hearing within 30 days permits the imposition of the proposed penalty, assessment, and suspension without right to appeal, and of respondent's right to request an extension of time in which to respond to the notice and a copy of the rules contained in this part.

(b) Within 30 days of the date of receipt of the notice, the respondent may submit:

(1) A written statement accepting imposition of the penalty, assessment, and suspension as proposed; or

(2) A written request for a hearing which shall be accompanied by an answer to the notice that (i) with respect to the claims and requests for payment identified in the notice, admits or denies that the respondent presented or caused to be presented such claims and requests for payment, (ii) states any defense on which the respondent intends to rely, and (iii) may state any reasons which respondent contends should result in a reduction or modification of a penalty, assessment, and suspension.

(c) The Inspector General may extend the 30 day period for good cause shown by the respondent upon request made prior to the expiration of the 30 day period.

§ 1003.110 Failure to request a hearing.

If the respondent does not request a hearing within the time prescribed by § 1003.109 (b) and (c), the Inspector General may impose the proposed penalty, assessment, and suspension, or any less severe penalty, assessment, and suspension. The Inspector General shall notify the respondent by certified mail, return receipt requested, of any penalty, assessment, and suspension that has been imposed and of the means by which the respondent may satisfy the judgment. The respondent has no right to appeal a penalty, assessment, and suspension, with respect to which he or she has not requested a hearing.

§ 1003.111 Initiation of hearing.

If the respondent requests a hearing in accordance with § 1003.109(b)(2), determination of the penalty, assessment, and suspension will be assigned to an ALJ for hearing.

§ 1003.112 Parties.

The Inspector General and the respondent are parties to the hearing.

§ 1003.113 Notice of hearing.

The ALJ will send written notice to the respondent and to the Inspector General stating the time and place for the hearing and the issues that will be considered. In fixing the time and place of the hearing, the ALJ will attempt to minimize the costs to the parties.

§ 1003.114 Issues and burden of proof.

(a) To the extent that a proposed penalty and assessment is based on claims or requests for payment presented on or after August 13, 1981, the Inspector General must prove by a preponderance of the evidence that the respondent presented or caused to be presented such claims or requests for payment as described in § 1003.102.

(b) To the extent that a proposed penalty and assessment is based on claims presented before August 13, 1981, the Inspector General must prove by clear and convincing evidence that:

(1) The respondent presented or caused to be presented such claims as described in § 1003.102; and

(2) Presenting or causing to be presented such claims could have rendered respondent liable under the provisions of the False Claims Act, 31 U.S.C. 3729 *et seq.*, for payment of an amount not less than that proposed.

(c) Where a final determination that the respondent presented or caused to be presented a claim or request for payment falling within the scope of § 1003.102 has been rendered in any proceeding in which the respondent was a party and had an opportunity to be heard, the respondent shall be bound by such determination in any proceeding under this part.

(d) The respondent shall bear the burden of producing and proving by a preponderance of the evidence any circumstances described in § 1003.106 that would justify reducing the amount of the penalty or assessment, or the period of suspension.

§ 1003.115 Authority of ALJ.

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

(b) The ALJ shall have the authority to:

(1) Change the date, time, and place of the hearing, upon 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 in hearings involving Medicare claims;

(6) Rule on motions and other procedural matters;

(7) Regulate the course of the hearing and the conduct of counsel;

(8) Examine witnesses;

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

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

(11) Issue a written opinion containing findings of fact, conclusions of law, and an initial decision on whether a penalty or assessment or suspension should be imposed, and if so, the amount.

(c) The ALJ does not have the authority to decide upon the validity of Federal statutes or regulations.

(d) (1) The ALJ shall schedule a prehearing conference at a reasonable time in advance of the hearing, at which the parties or their counsel shall meet with the ALJ to consider:

(i) Simplification of the issues;

(ii) The necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;

(iii) Stipulations, admissions of fact or the contents and authenticity of documents;

(iv) Limitation of the number of witnesses;

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

(vi) Such other matters as may tend to expedite the disposition of the proceedings.

(2) The ALJ shall issue an order containing all matters described in paragraph (d)(1) of this section agreed upon by the parties or ordered by the ALJ.

§ 1003.116 Rights of parties.

(a) All parties may:

(1) Appear by counsel (or, in the case of a government agency, other authorized representative) in all a hearing proceedings.

(2) Participate in any prehearing or posthearing conference held by the ALJ.

(3) Agree to stipulations as to facts which will be made part of the record.

(4) Make opening statements at the hearing.

(5) Present material evidence which is relevant to the issues at the hearing.

(6) Present witnesses who then must be available for cross-examination by all other parties.

(7) Present oral arguments at the hearing.

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

(b)(1) A party wishing to procure the appearance and testimony at the hearing of any person having personal knowledge of the matters in issue may serve on the person a notice to appear as witness. The notice shall set forth the time, date, and place at which the person is to appear for the purpose of giving testimony and the categories of documents the witness is to bring to the hearing, if any. A copy of the notice shall be filed with the ALJ and additional copies shall be served upon all parties.

(i) In all hearings, it shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at the time and place, and on the date set forth in a notice to appear as witness, if that party has control over such person.

(ii) In hearings involving Medicare claims, a notice to appear as witness may be accompanied by an administrative subpoena. A party who desires the issuance of a subpoena shall, not less than 15 days prior to the time fixed for a hearing, file with the ALJ a written request therefor, designating the witness(es) or document(s) to be produced and describing the address and location thereof with sufficient particularity to permit such witness(es) or document(s) to be found. A subpoena issued under this section shall be in the name of the Secretary. The party requesting the subpoena shall pay the cost of service and the fees and the mileage of any witnesses so subpoenaed, as provided in 28 U.S.C. 1821. Subpoenas shall be served by the party requesting issuance in the manner provided in section 205(d) of the Act. A check for witness fees and mileage shall accompany the subpoena when served.

(3) A party or prospective witness may file an objection to notice to appear as witness or, in the case of a subpoena a motion to quash within five days after the notice or subpoena is served, stating with particularity the reasons why the party should not be required to produce a requested witness or why the prospective witness should not be required to appear. Where the party serving the notice has reason to believe that the party being served is likely to refuse to produce the requested witness, that party may move for an order enforcing the notice to appear as witness. Upon the failure of any person to comply with a subpoena issued under this section, the Secretary shall institute enforcement proceedings before the appropriate district court pursuant to section 205(e) of the Act, unless in the judgment of the Secretary the enforcement of such subpoena would be inconsistent with law or the purposes of the Act.

§ 1003.117 Discovery.

(a) Upon request of a party, the ALJ shall allow that party to inspect and copy all documents, unless privileged, relevant to the issues in the proceeding that are in the possession or control of the other party. Depositions, interrogatories, and other forms of discovery are not authorized except as provided for in paragraph (b) of this section. Nothing in this section shall be construed as requiring the disclosure of internal government documents prepared in conjunction with the investigation or litigation of the case.

(b) In those cases in which the Inspector General intends to introduce the results of a statistical sampling study as evidence at the hearing pursuant to § 1003.133, the Inspector General, upon request of the respondent, shall make available for deposition, the individual(s) responsible for conducting the statistical sampling study. Should respondent intend to introduce expert testimony to rebut the statistical sampling study at the hearing, the respondent shall, upon request of the Inspector General, make available for deposition the expert witness or

witnesses who will be called to so testify at the hearing. Such depositions shall be conducted in accordance with Rules 28 and 30 of the Federal Rules of Civil Procedure. Such depositions may be used by an adverse party for any purpose at the hearing. The failure of a party to make witnesses available for deposition pursuant to this section shall serve to bar the introduction of testimony or other evidence from those witnesses at the hearing.

(c)(1) Witness lists, prior statements of witnesses, and hearing exhibits shall be exchanged at least 15 days in advance of the hearing, or such other later time as is set by the ALJ. Each party shall provide to the other party copies of all exhibits that it then plans to use at the hearing.

(2) All discovery shall be concluded at least 30 days prior to the hearing or by such other later time as ordered by the ALJ. The ALJ shall, however, allow adequate time for discovery.

§ 1003.118 Evidence and witnesses.

(a) Testimony at the hearing is given orally and under oath or affirmation. Written direct testimony may be used in the discretion of the ALJ. Witnesses must be available at the hearing for cross-examination by all parties.

(b) The parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by a party, must be exchanged at a prehearing conference or otherwise prior to the hearing, if the ALJ so decides.

(c) Technical rules of evidence are not applicable to the hearing, except that when reasonably necessary, the ALJ must apply rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination.

(d) A witness may be cross-examined on any matter relevant to the proceeding without regard to the scope of his or her direct examination.

(e) The ALJ shall exclude irrelevant, immaterial, or unduly repetitious evidence.

(f) All documents and other evidence offered or taken for the record shall be open to examination by the parties.

§ 1003.119 Exclusion from the hearing for misconduct.

Disrespectful or disorderly language or conduct, refusal to comply with directions, or continued use of dilatory tactics by any individual at the hearing constitutes grounds for immediate exclusion of that individual from the hearing by the ALJ.

§ 1003.120 Ex parte contacts.

(a) Except for matters related to the issuance of ex parte subpoenas, the ALJ may not consult or be consulted by a party or any other individual (except employees of his or her own office) on any matter in issue, unless on notice and opportunity for all parties to participate.

(b) The ALJ shall not consider letters or other contacts from non-parties expressing views or urging action.

§ 1003.121 Separation of functions.

An employee or an agent of the Department, who is engaged in the performance of investigative or prosecutive functions for or on behalf of the Department in a case may not, in that or a factually related case, participate or advise in the decision, except as witness or counsel in public proceedings.

§ 1003.122 Official transcript.

The hearing will be recorded and transcribed. Transcripts may be obtained from the reporter by a party or the public at not to exceed the maximum rates fixed by contract between the Department and the reporter.

§ 1003.123 Post-hearing briefs.

The ALJ shall fix the time for filing post-hearing briefs, which shall not exceed 30 days from the date of receipt of the hearing transcript by the parties. Upon motion by a party, the ALJ may extend the time in which to file post-hearing briefs for a period of up to 60 days where the hearing was of unusual length or complexity or for other good cause shown. Such briefs may contain proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 1003.124 Record for decision.

The transcript of testimony, exhibits, and all papers, requests and rulings filed or made in the proceedings, constitute the exclusive record for the ALJ's initial decision.

§ 1003.125 Initial decision; administrative review; finality.

(a) The ALJ shall serve the initial decision on all parties within 60 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired.

(b) The initial decision shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments (which may be the amount proposed by the Inspector General, or a greater or lesser amount), and the length of any suspension (which may be for the period proposed by the Inspector General, or a greater or lesser peirod of time), imposed upon the respondent thereby.

(c) The findings of fact shall include a finding on each of the following issues for every item or service with respect to which a penalty or assessment was proposed.

(1) Whether the item or service is subject to a determination under § 1003.102;

(2) If the item or service is subject to a determination under § 1003.102 whether there are mitigating or aggravating circumstances as described in § 1003.106(b).

(d) The initial decision of the ALJ becomes final and binding on the parties 30 days after notice thereof is received by the respondent, unless on or before that 30th day a party files with the ALJ written exception to the initial decision and supporting reasons for the exceptions.

(e) A party opposing exceptions may file a brief in opposition to exceptions within 30 days after receipt of the exceptions or may file a brief which is limited to the issue of whether or not the Secretary should review the initial decision of the ALJ.

(f)(1) If a party timely files exceptions under paragraph (d) of this section, the ALJ will forward to the Secretary the record of the proceeding, the exceptions and reasons therefor, and any briefs filed in opposition.

(2) After the Secretary receives the initial decision, the record on which it is based, and submissions of the parties made subsequent to the decision, the Secretary will determine whether he or she will review the initial decision of the ALJ.

(3) In any case in which the Secretary decides to review the initial decision of the ALJ, he or she will inform each party of this decision by written notice. A party opposing exceptions may file a brief addressing any relevant issues not addressed in any brief filed under paragraph (e) of this section within 30 days after receipt of the Secretary's written notice under this paragraph. After the Secretary has reviewed the initial decision, the record on which it is based, and submissions of the parties made subsequent to the decision, the Secretary will affirm, modify, or reverse the initial decision, or remand the case to an ALJ. The Secretary may modify the penalty, assessment, or suspension, to be more or less severe than that imposed by the ALJ. There is no right to appear personally before the Secretary. A copy of the decision of the Secretary will be sent to the respondent by certified mail, mailed return receipt requested, and served upon the

Inspector General. Except in the case of a remand, the decision of the Secretary becomes final and binding on the parties 60 days after notice thereof is received by the respondent.

(4) In any case in which the Secretary declines to review the initial decision of the ALJ, he or she will notify the respondent by certified mail, return receipt requested, and inform the Inspector General of this decision. The initial decision of the ALJ becomes final and binding on the parties 60 days after the Secretary's notice is received by the respondent.

(5)(i) The respondent may file with the ALJ a request for stay of the effective date of the final decision pending appeal. Such request shall state the grounds upon which respondent relies in requesting the stay, together with a copy of the notice(s) of appeal filed by respondent seeking review of the decision of the Secretary. The filing of such a request shall automatically act to stay the effective date of the decision of the Secretary until such time as the ALJ rules upon the request.

(ii) The Inspector General may file an opposition to respondent's request for a stay within 10 days of receipt of the request. If the Inspector General fails to file such an opposition within the allotted time, or indicates that he or she has no objection to the request, the ALJ shall grant the stay without requiring respondent to give a bond or other security.

(iii) In those cases in which the Inspector General opposes respondent's request for a stay, the ALJ may grant respondent's request where justice so requires and to the extent necessary to prevent irreparable harm. An ALJ may grant an opposed request to stay a final decision requiring the payment of money only upon the respondent's giving of a bond or other adequate security. The ALJ shall rule upon an opposed request for stay within 10 days of the receipt of the opposition of the Inspector General. A decision of the ALJ denying respondent's request for a stay shall constitute final agency action.

§ 1003.126 Settlement.

The Inspector General has exclusive authority to settle any issues or case, without the consent of the ALJ or the Secretary, at any time prior to a final decision by the Secretary. Thereafter, the General Counsel has such exclusive authority.

§ 1003.127 Judicial review.

(a) Section 1128A(d) of the Act authorizes judicial review of a penalty or assessment imposed under § 1003.110 or § 1003.125 that has become final. Judicial review may be sought by a respondent only with respect to a penalty or assessment with respect to which the respondent filed an exception under § 1003.125(d) unless the failure or neglect to urge such exception shall be excused by the court pursuant to section 1128A(d) because of extraordinary circumstances.

(b) Section 1128(d) of the Act authorizes judicial review of a determination to bar a person from participation in Medicare or Medicaid pursuant to section 1128(b) of the Act. Judicial review may be sought by a respondent only with respect to a suspension with respect to which the respondent filed an exception under § 1003.125(d) unless the failure or neglect to urge such exception shall be excused because of extraordinary circumstances.

§ 1003.128 Collection of penalty and assessment.

(a) Once a determination by the Secretary has become final under § 1003.125(f), collection of any penalty and assessment shall be the responsibility of HCFA, except in the case of the Maternal and Child Health Services Block Grant, where the collection shall be the responsibility of the Public Health Service.

(b) A penalty and assessment imposed under this part may be compromised by the General Counsel, after consultation with the Inspector General, and may be recovered in a civil action brought in the United States district court for the district where the claim was presented, or where the respondent resides.

(c) The amount of a penalty and assessment when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States, or by a State agency, to the respondent.

(d) Matters that were raised or that could have been raised in a hearing before an ALJ or in an appeal under section 1128A(d) of the Act may not be raised as a defense in a civil action by the United States to collect a penalty under this part.

§ 1003.129 Notice to other agencies.

Whenever a penalty and assessment or suspension imposed under this part becomes final, the following organizations and entities will be notified—the appropriate State or local medical or professional association, the appropriate Peer Review Organization, the State Medicaid agency, the appropriate Medicare carrier or intermediary, the appropriate State or local licensing agency or organization (including the Medicare and Medicaid State survey agencies), the long-term care ombudsman, and where appropriate, the State agency administering a Maternal and Child Health Services Block Grant Program, that the penalty and assessment or suspension have become final and the reasons for them. In cases involving suspensions, notice will also be given to the public of the suspension and its effective date. HCFA will also provide to the State Medicaid agency will also receive the notice required under section 1128(b) of the Social Security Act.

§ 1003.130 Form, filing and service of papers; computation of time; motions, disposition of motions.

(a) *Form, filing and service of papers*—(1) *Form.* The original and one copy of all papers in a proceeding conducted under this part shall be filed with the ALJ assigned to the case or with the Chief ALJ if the case has not been assigned. Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case file number assigned by the ALJ, and a designation of the paper (e.g., motion for summary judgment). The paper shall be signed and shall contain the address and telephone number of the person representing the party or the person on whose behalf the paper was filed. Unless the ALJ otherwise orders with respect to specific papers in a specific case, all such papers are public documents. Papers are considered filed when they are received by the ALJ.

(2) *Service.* Service upon any party shall be made by the party filing the document by delivering or mailing a copy to the party's last known address. When a party is represented by an attorney, service shall be made upon the attorney.

(3) *Proof of service.* A certificate of the person serving the document by personal delivery or by mailing, setting forth the manner of service, shall be proof of service.

(b) *Computation of time.* In computing any period of time under these rules or in an order issued hereunder, 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. When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) *Motions, disposition of motions*—(1) *Motions.* Motions shall state the relief sought, the authority relied upon and the facts alleged, and shall be filed with the ALJ. If made before or after the hearing itself, the motions shall be in writing. If made at the hearing, motions may be stated orally; but the ALJ may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Unless otherwise ordered by the ALJ, written motions shall be accompanied by a supporting memorandum. Within 10 days after a written motion is served, or such other time period as may be fixed by ALJ, any party may file a response to a motion.

(2) *Disposition of motions.* The ALJ may not grant a written motion prior to expiration of the time for filing responses thereto, except upon consent of the parties or following a hearing, but may overrule or deny such motion without awaiting response. The ALJ shall make every reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 1003.131 Records to be public.

All documents contained in the records of formal proceedings for imposing a penalty and assessment or suspension under this part may be inspected and copied, unless ordered sealed by the ALJ.

§ 1003.132 Limitations.

No action under this part shall be entertained unless commenced, pursuant to § 1003.109(a) of this part, within five years from the date on which the right of action accrued.

§ 1003.133 Statistical sampling.

(a) In meeting the burden of proof set forth in § 1003.114, the Inspector General may introduce the results of a statistical sampling study as evidence of the number and amount of claims and/or requests for payment as described in § 1003.102 that were presented or caused to be presented by respondent. Such a statistical sampling study, if based upon an appropriate sampling and computed by valid statistical methods, shall constitute prima facie evidence of the number and amount of claims or requests for payment as described in § 1003.102.

(b) Once the Inspector General has made a prima facie case as described in paragraph (a) of this section, the burden of production shall shift to respondent to produce evidence reasonably calculated to rebut the findings of the statistical sampling study. The Inspector General will then be given the opportunity to rebut this evidence.

Part 1004—IMPOSITION OF SANCTIONS ON HEALTH CARE PRACTITIONERS AND PROVIDERS OF HEALTH CARE SERVICES BY A PEER REVIEW ORGANIZATION

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1004.130 Appeal rights.

Authority: Secs. 1102 and 1156 of the Social Security Act (42 U.S.C. 1302 and 1320c–5).

Subpart A—General Provisions

§ 1004.1 Scope and definitions.

(a) *Scope.*

This part implements section 1156 of the Act (PROs) by—

(1) Setting forth certain obligations imposed on practitioners and providers of services under Medicare;

(2) Establishing criteria and procedures for the reports required from PSROs and PROs when there is failure to meet those obligations;

(3) Specifying the policies and procedures for making determinations on violations and imposing sanctions; and

(4) Defining the procedures for appeals by the affected party and the procedures for reinstatements.

(b) *Definitions.* As used in this part, unless the context indicates otherwise:

"Economically" means that services are provided at the least expensive, medically appropriate type of setting or level of care available.

"Exclusion" means that items or services furnished or ordered by a specified health care practitioner, provider, or other person during a specified period are not reimbursed under Medicare.

"Gross and flagrant violation" means a violation of an obligation has occurred in one or more instances which presents an imminent danger to the health, safety or well-being of a Medicare beneficiary or places the beneficiary unnecessarily in high-risk situations.

"Health care services" or "Services" means services or items for which payment may be made (in whole or in part) under the Medicare program.

"Obligation" means any of the obligations specified at section 1156(a) of the Act.

"OIG" stands for the Office of the Inspector General, Department of Health and Human Services.

"Other person" means a hospital or other health care facility, an organization, or an agency that furnishes health care services for which payment may be made under the Medicare program.

"Physician" means a doctor of medicine or osteopathy or another individual who is authorized under State or Federal law to practice medicine and surgery or osteopathy.

"Practitioner" means a physician or other health care professional licensed under State law to practice his or her profession.

"PRO area" means the geographic area subject to review by a particular PRO.

"Provider" means a hospital or other health care facility, agency, or organization.

"Sanction" means an exclusion or monetary penalty that the Secretary may impose on a practitioner or other person as a result of a recommendation from a PRO.

"Substantial violation in a substantial number of cases" means a pattern of care has been provided that is inappropriate, unnecessary, or does not meet recognized professional standards of care, or is not supported by the necessary documentation of care as required by the PRO.

Subpart B—Sections Under the PRO Program; General Provisions

§ 1004.10 Statutory obligations of practitioners and other persons.

It is the obligation of any health care practitioner or other person who furnishes or orders health care services that may be reimbursed under Medicare, to ensure, to the extent of his or her authority, that those services are—

(a) Furnished economically and only when and to the extent medically necessary;

(b) Of a quality that meets professionally recognized standards of health care; and

(c) Supported by evidence of the medical necessity and quality of the services in the form and fashion that the reviewing PRO may reasonably require (including copies of the necessary documentation and evidence of compliance with pre-admission or pre-procedure review requirements to ensure that the practitioner or other person is meeting the obligations imposed by section 1156(a) of the Act.

§ 1004.20 Sanctions.

In addition to any other sanction provided under law, a practitioner or other person may be—

(a) Excluded from Medicare; or

(b) In lieu of exclusion and as a condition for continued participation in Medicare, if the violation involved the provision or ordering of health care services that were medically improper or unnecessary, required to pay an amount not in excess of the cost of the improper or unnecessary services that were furnished or ordered. The practitioner or other person will be required either to pay the monetary assessment within 6 months of the date of notice or have it deducted from any sums the Federal Government owes the practitioner or other person.

Subpart C—PRO Responsibilities

§ 1004.30 Basic responsibilities.

(a) The PRO must use its authority or influence to enlist the support of other professional or government agencies to ensure that each practitioner or other person complies with the obligations specified in § 1004.10.

(b) The PRO must identify situations where the obligations specified in § 1004.10 are violated and afford the practitioner or other person reasonable notice and opportunity for discussion in accordance with §§ 1004.40 and 1004.50.

(c) The PRO must submit a report to the OIG after the notice and opportunity provided under paragraph (b) of this section, if the PRO determines that the practitioner or other person has—

(1) Failed substantially to comply with any obligation in a substantial number of cases; or

(2) Grossly and flagrantly violated any obligation in one or more instances.

(d) The PRO report to the OIG must comply with the provisions of § 1004.70.

(e) The PRO must deny services or items ordered by an excluded practitioner or other person when the PRO identifies the services or items and reports the findings to HCFA.

§ 1004.40 Action on identification of a violation.

When a PRO identifies a violation, it must determine the nature of the violation.

(a) If the PRO determines the violation as one that is gross and flagrant, it must proceed in accordance with § 1004.50.

(b) If the PRO determines the violation as a substantial violation in a substantial number of cases it must send the practitioner or other person a written initial notice of the identification of a violation containing the following information:

(1) The obligation involved.

(2) The situation, circumstances, or activity that resulted in a violation.

(3) The authority and responsibility of the PRO to report violations of obligations.

(4) At the discretion of the PRO, a suggested method for correcting the situation and a time period for corrective action.

(5) The sanction that the PRO could recommend to the OIG if the violation continues.

(6) An invitation to submit additional information to or discuss the problem with representatives of the PRO within 20 days of receipt of the notice. The date of receipt is presumed to be five days after the date on the notice, unless there is a reasonable showing to the contrary.

(7) A summary of the information used by the PRO in arriving at its determination of a violation of an obligation.

(Approved by the Office of Management and Budget under control number 0938–0444)

§ 1004.50 Action on determination of a violation.

(a) *Written notice.* The PRO must give written notice to the practitioner or other person if it determines that—

(1) A substantial violation has occurred in a substantial number of cases; or

(2) A violation is gross and flagrant in one or more cases.

(b) *Contents.* The notice must contain the following information:

(1) The determination of a violation.

(2) The obligation violated.

(3) The basis for the determination.

(4) The sanction the PRO will recommend to the OIG.

(5) The right of the practitioner or other person to submit to the PRO within 30 days of receipt of the notice, additional information or a written request for a meeting with the PRO to review and discuss the determination, or both. The date of receipt is presumed to be five days after the date on the notice, unless there is a reasonable showing to the contrary.

(6) A copy of the material used by the PRO in arriving at its determination.

(c) *Review of PRO determination.*

(1) The PRO may, on the basis of additional information received, affirm, modify, or reverse its determination.

(2) The PRO must give written notice to the practitioner or other person, of any action it takes as a result of the additional information received, as specified in § 1004.60

(Approved by the Office of Management and Budget under control number 0938–0444)

§ 1004.60 Final PRO determination of a violation.

If the issue is not resolved to the PRO's satisfaction as specified in § 1004.50(c), the PRO must—

(a) Submit its report and recommendation to the OIG; and

(b) Send the affected practitioner or other person a concurrent final notice, with a copy of the PRO report that is being forwarded to the OIG, advising that—

(1) The PRO recommendation has been submitted to the OIG;

(2) The practitioner or other person has 30 days from receipt of this final notice to submit any additional written material or documentary evidence to the OIG at its central office location. The date of receipt is presumed to be five days after the date on the notice, unless there is a reasonable showing to the contrary; and

(3) Due to the 120-day statutory requirement specified at § 1004.90(e), the period for submitting additional information will not be extended and any material received by the OIG after the 30-day period will not be considered.

(Approved by the Office of Management and Budget under control number 0938–0444)

§ 1004.70 PRO report to OIG.

(a) *Manner of reporting.* If the PRO determines that a substantial violation has occurred in a substantial number of cases or that a gross and flagrant violation has occurred, it must submit a report and recommendation to the OIG at the regional office with jurisdiction.

(b) *Content of report,* The PRO report must include the following information—

(1) Identification of the practitioner or other persons and when applicable, the name of the director, administrator, or owner of the entity involved;

(2) The type of health care services involved;

(3) A description of each failure to comply with an obligation, including

specific dates, places, circumstances, and any other relevant facts;

(4) Pertinent documentary evidence;

(5) Copies of written correspondence and written summaries of oral exchanges with the practitioner or other person regarding the violation;

(6) Th PRO's determination that an obligation under section 1156(a) of the Act has been violated and that the violation is substantial and has occurred in a substantial number of cases or is gross and flagrant;

(7) The professional qualifications of the PRO's reviewers' and

(8) The PRO's sanction recommendation.

(c) *PRO Recommendation.* The PRO must specify in its report—

(1) The sanction recommended;

(2) The amount of the monetary penalty recommended, if applicable;

(3) The period of exclusion recommended, if applicable; and

(4) A recommendation as to whether the practitioner or other person is unable or unwilling substantially to comply with the obligation that was violated.

(Approved by the Office of Management and Budget under control number 0938-0444)

§ 1004.80 Basis for recommended sanction.

The PRO's specific recommendation must be based on a consideration of—

(a) The type of offense involved:

(b) The severity of the offense;

(c) The deterrent value;

(d) The practitioner's or other person's previous sanction record;

(e) The availability of alternative sources of services in the community; and

(f) Any other factors that the PRO considers relevant (for example, the duration of the problem).

Subpart D—OIG Responsibilities

§ 1004.90 Acknowledgement and review of report.

(a) *Acknowledgement.* The OIG will inform the PRO of the date it received the PRO's report and recommendation.

(b) *Review.* The OIG will review the PRO report and recommendation to determine whether—

(1) The PRO is following its procedures;

(2) A violation has occurred; and

(3) The practitioner or other person has demonstrated an unwillingness or lack of ability substantially to comply with an obligation.

(c) *Rejection of the PRO recommendation.* If the OIG decides that a sanction is not warranted, it will notify the PRO that recommended the sanction and the affected practitioner or other person that the recommendation is rejected.

(d) *Decision of sanction.* If the OIG decides that a violation of obligations has occurred, it will determine the appropriate sanction by considering—

(1) The recommendation of the PRO;

(2) The type of offense;

(3) The severity of the offense;

(4) The previous sanction record of the practitioner or other person;

(5) The availability of alternative sources of services in the community;

(6) Any prior problems the Medicare carrier or intermediary has had with the practitioner or other person;

(7) Whether the practitioner or other person is unable or unwilling to comply substantially with the obligations; and

(8) Any other matters relevant to the particular case.

(e) *exclusion sanction.* If the PRO submits a recommendation for exclusion to the OIG, and a determination is not made by the 120th day after actual receipt by the OIG, the exclusion sanction recommended will become effective and the OIG will provide notice in accordance with § 1004.100(f).

(f) *Monetary penalty.* If the PRO recommendation is to assess a monetary penalty, the 120-day provision does not apply and the OIG will provide notice in accordance with § 1004.100 (a) through (e).

§ 1004.100 Notice of sanction.

(a) The OIG notifies the practitioner or other person of the adverse determination and of the sanction to be imposed.

(b) The sanction is effective 15 days from the date of receipt of the notice. The date of receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary.

(c) The notice specifies—

(1) The legal and factual basis for the determination;

(2) The sanction to be imposed;

(3) The effective date and, if appropriate, the duration of the exclusion;

(4) The appeal rights of the practitioner or other person; and

(5) In the case of exclusion, the earliest date on which the OIG will accept a request for reinstatement.

(d) The OIG notifies the public by publishing in a newspaper of general circulation in the PRO area a notice that identifies the sanctioned practitioner or other person, the obligation that has been violated, the sanction imposed and, if the sanction is exclusion, the effective date and duration.

(e) Notice of the sanction is also provided to the following entities as appropriate:

(1) The PRO that originated the sanction report.

(2) PROs in adjacent areas.

(3) State Medicaid fraud control units and State licensing bodies.

(4) Appropriate Medicare contractors and State agencies.

(5) Hospitals, including the hospital where the sanctioned individual's case originated and where the individual currently has privileges, if known; skilled nursing facilities, home health agencies, and health maintenance organizations (HMOs).

(6) Medical societies and other professional organizations.

(7) Medical carriers and intermediaries, health care prepayment plans, and other affected agencies and organizations.

(f) If an exclusion sanction is effected because a decision was not made within 120 days after receipt of the PRO recommendation, notification is as follows:

(1) The OIG notifies the practitioner or other person that the exclusion from the Medicare program is effective 15 days from the date the notice is received by the practitioner or other person. The date of receipt is presumed to be five days after the date on the notice, unless there is a reasonable showing to the contrary.

(2) Notice of the sanction is also provided as specified in paragraph (e) of this section.

(3) As soon as possible after the 120th day, the OIG will issue a notice to the practitioner or other person affirming the PRO recommendation or modifying the recommendation based on the OIG's review of the case.

(g) The determination and notice of sanction provided for in this section constitute an "initial determination" and a "notice of initial determination" for purposes of the administrative appeals procedures specified in Subpart O of Part 405 of this title concerning determinations and appeals procedures for providers and suppliers.

Subpart E—Effect and Duration of Exclusion

§ 1004.110 Effect of an exclusion on Medicare payments and services.

(a) *General provisions.* Except as provided under paragraphs (b) and (c) of this section—

(1) Payment will not be made under Medicare to an excluded practitioner or other person for services or items

furnished or ordered during the period of exclusion;

(2) Payment will not be made under Medicare to any provider for services or items ordered by an excluded practitioner or other person when the order was a necessary precondition for payment under Medicare; and

(3) Assignment of a beneficiary's claim for services or items furnished or ordered by an excluded practitioner or other person on or after the effective date of exclusion will not be valid.

(b) *Exceptions.* Payment is available for services or items provided up to 30 days after the effective date of an exclusion for—

(1) Inpatient hospital or skilled nursing services or items furnished to a beneficiary who was admitted before the effective date of the exclusion; and

(2) Home health services or items furnished under a plan established before the effective date of the exclusion.

(c) *Denial of payments to beneficiaries.* If a beneficiary submits claims for services or items furnished or ordered by an excluded practitioner or other person on or after the effective date of exclusion—

(1) HCFA pays the first claim submitted and immediately gives the beneficiary notice of the exclusion; and

(2) The beneficiary's right to payment extends to services or items furnished or ordered up to 15 days after the date on the notice.

(d) *Effective date of termination of provider agreement.* The effective date of termination of a Medicare provider agreement is determined in accordance with §§ 1001.201 and 1001.211 of this chapter.

§ 1004.120 Reinstatement after exclusion.

Exclusion will remain in effect until—

(a) The OIG determines, in accordance with §§ 1001.130 through 1001.136 of this chapter, that the basis for the exclusion no longer exists and there is reasonable assurance that the problems will not recur, or

(b) The OIG's determination to exclude is reversed by a hearing decision.

§ 1004.130 Appeal rights.

(a) *Right to administrative review.*

(1) A practitioner or other person dissatisfied with an OIG determination or an exclusion that results from a determination not being made within 120 days is entitled to a hearing before an Administrative Law Judge and may also request a review of that decision by the Appeals Council in accordance with §§ 405.1530 through 405.1595 of this title.

(2) Due to the 120-day statutory requirement specified at § 1004.90(e) of this part, the following limitations apply:

(i) The period for submitting additional information will not be extended.

(ii) Any material received by the OIG after the 30-day period allowed, will not be considered and will not be subject to review by the Administrative Law Judge and the Appeals Council.

(3) The OIG's determination continues in effect unless reversed by a hearing decision.

(b) *Right to judicial review.* Any practitioner or other person dissatisfied with a decision of the Appeals Council or an administrative law judge (if a request for Appeals Council review is denied) may file a civil action in accordance with the provisions of section 205(g) of the Act.

TITLE 45—[AMENDED]

PART 101—[REMOVED]

II. In Title 45 of the Code of Federal Regulations, Part 101 is removed.

(Catalog of Federal Domestic Assistance Programs, No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; and No. 13.744, Medicare—Supplementary Medical Insurance Program)

Dated: August 28, 1986.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: September 15, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-21751 Filed 9-29-86; 8:45 am]

BILLING CODE 4150-04-M

Health Care Financing Administration

42 CFR Parts 412, 420, 455, 466, 474 and 489

[BPO-061-F]

Medicare and Medicaid Programs; Program Integrity

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

ACTION: Final rule.

SUMMARY: This document removes rules pertaining to responsibilities delegated to the Department's Office of the Inspector General (OIG) and conforms other rules accordingly. Most of the content removed from HCFA rules is being included in a new Chapter V of this title—Office of the Inspector General—Health Care—Department of Health and Human Services. The new Chapter V is published elsewhere in this issue of the **Federal Register.**

EFFECTIVE DATE: These amendments are effective September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (201) 245-0383.

SUPPLEMENTARY INFORMATION: On April 18, 1983, the Secretary transferred the authority for controlling fraud and abuse in the Medicare and Medicaid programs from HCFA to the Office of the Inspector General (OIG).

This change in delegation was reflected in final regulations published on September 13, 1985 (50 FR 37370), which amended HCFA regulations in Parts 420, 455, and 489. The OIG regulations published today transfer the rules pertaining to OIG authorities to a new 42 CFR Chapter V, and include material from Parts 412 and 474 as well as 420, 455, and 489.

This document further amends HCFA regulations as required by the removal of the content redesignated under the new 42 CFR Chapter V Specifically—

1. In § 412.48 (which deals with denial of Medicare payment) we removed paragraphs (d) and (e) and revised paragraph (c) to refer to § 1001.301 of the new OIG rules.

2. In Part 420 (Program Integrity: Medicare), we removed § 420.2 and revised §§ 420.1 and 420.3 to limit scope and applicability and cite the new OIG rules. We have vacated and reserved Subpart B. The content of Subpart B, pertaining to exclusion or suspension of practitioners, providers, or suppliers of services now appears in 42 CFR Chapter V, Part 1001, Subpart B.

3. In Part 455 (which deals with program integrity in Medicaid), we removed Subparts C and D; revised § 455.1 (Basis and scope) to limit the description of the scope to those aspects that remain in Part 455 because they continue to be HCFA's responsibility; and added a new § 455.3 to indicate that the rules on exclusion and suspension of providers and on Medicaid fruad control units are now in the OIG regulations.

4. In Part 466, which deals will utilization and quality control review, we added a new paragraph (f) to § 466.70 to indicate that the rules on PRO sanctions are now set forth in Part 1004 of the OIG regulations.

5. In Part 474, we removed Subparts C through G because they deal with matters for which the OIG now has responsibility. We removed Subpart B because it dealt with the Professional Standards Review Organization (PSRO) program and had become obsolete. The Peer Review Improvement Act of 1982 (Title I, Substitle C of Pub. L. 97-248)

amended Title XI of the Act to repeal the PSRO program and establish the Utilization and Quality Control Peer Review (PRO) program. HCFA began awarding contracts to PROs in June 1984. There are no longer any PSROs performing review functions in the Medicare program. All that remained of Part 474 was Subpart A, a single § 474.0 Scope and definitions. Since there is nothing left in Part 474 to which this section could apply, we vacated and reserved Part 474.

6. In § 489. 54, which deals with termination of provider agreements by the OIG, and is also reflected in the new Chapter V, we changed a cross-reference from § 420.105 through 420.109" to §§ 1001.105 through 1001.109 of this title".

Waiver of Notice and Delayed Effective Date

These rules merely conform Parts 412, 420, 455, 466, 474 and 489 of the HCFA rules to changes in the delegations of authority in order to avoid confusion and duplication. Accordingly, we find that notice and opportunity for public comment and delayed effective date are unnecessary, and find good cause to waive them.

Regulatory Impact Statement

Since we are merely conforming the HCFA rules to the changes made by other rules published today, these rules will have no appreciable impact. For that reasons, the requirements of Executive Order 12291, the Regulatory Flexibility Act, and Paperwork Reduction Act do not apply.

List of Subjects

42 CFR Part 412

Health facilities, Medicare.

42 CFR Part 420

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicare.

42 CFR Part 455

Fraud, Grant programs-health, Investigations, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 466

Grant programs-health, Health care, Health facilities, Health professions, Peer Review Organizations, Professional Standards Review Organizations (PSRO).

42 CFR Part 474

Administrative practice and procedures, Health care, Health professions Peer Review Organizations, Penalties, Professional Standards Review Organizations (PSRO), Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Chapter IV is amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. 1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1122, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a–1, 1395hh, and 1395ww)

2. Section 412.48 is amended by removing paragraphs (d) and (e), and revising paragraph (c) to read as follows:

§ 412.48 Denial of payment as a result of admissions and quality review.

* * * * *

(c) A determination under paragraph (a) of this section, if it is related to a pattern of inappropriate admissions and billing practices that has the effect of circumventing the prospective payment system, is referred to the Department's Office of Inspector General, for handling in accordance with § 1001.301 of this title.

B. 1. The heading of Part 420 is revised to read as follows:

PART 420—PROGRAM INTEGRITY: MEDICARE

2. The authority citation for Part 420 is revised to read as follows:

Authority: Secs. 1102, 1124, 1126, 1866, and 1871, of the Social Security Act (42 U.S.C. 1302, 1320a–3, 1320a–5, 1395cc, and 1395hh).

3. Subpart A is amended as follows:

Subpart A—General Provisions

a. Section 420.2 is removed and the table of contents is amended to reflect this change.

b. Sections 420.1 and 420.3 are revised to read as follows:

§ 420.1 Scope and purpose.

This part sets forth requirements for Medicare providers, intermediaries, and carriers to disclose ownership and control information. It also deals with access to records pertaining to certain contracts entered into by Medicare providers. These rules are aimed at protecting the integrity of the Medicare program. The statutory basis for these requirements is explained in each of the other subparts.

§ 420.3 Other related regulations.

(a) *Appeals procedures.* Subpart O of Part 405 of this chapter sets forth the appeals procedures available to providers whose provider agreements HCFA terminates for failure to comply with the disclosure of information requirements set forth in Subpart C of this part.

(b) *Exclusion, termination, or suspension.* Part 1001 of this title sets forth the rules applicable to exclusion, termination, or suspension from the Medicare program because of fraud or abuse or conviction of program-related crimes.

Subpart B—[Removed and Reserved]

4. Subpart B is removed and reserved and the table of contents is amended to reflect this change.

Subparts C and D—[Amended]

5. The authority citations in Subparts C and D are removed as inconsistent with the pattern of all Medicare and Medicaid rules except 42 CFR Part 405.

C. 1. The heading of Part 455 is revised to read as follows:

PART 455—PROGRAM INTEGRITY: MEDICAID

2. The authority citation for Part 455 is revised to read as follows:

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

3. Section 455.1 is amended by revising the undesignated introductory statement and paragraph (a) and removing paragraphs (c) and (d). As revised, § 455.1 reads as follows:

§ 455.1 Basis and scope.

This part sets forth requirements for a State fraud detection and investigation program, and for disclosure of information on ownership and control.

(a) Under the authority of sections 1902(a)(4), 1903(i)(2), and 1909 of the Social Security Act, Subpart A provides State plan requirements for the identification, investigation, and referral of suspected fraud and abuse cases. In addition, the subpart requires that the State (1) report fraud and abuse information to the Department and (2) have a method to verify whether services reimbursed by Medicaid were actually furnished to recipients.

(b) Subpart B implements sections 1124, 1126, 1902(a)(36), 1903(i)(2), and 1903(n) of the Act. It requires that providers and fiscal agents must agree to disclose ownership and control information to the Medicaid State agency.

§ 455.2 [Amended]

4. a. In the undesignated introductory statement, the phrase "Subparts A, B, C, and D of" is removed.

b. The definitions of "PRO" and "PSRO" are removed, the first because it duplicates § 400.200, the second as outdated.

5. A new § 455.3 is added to read as follows:

§ 455.3 Other applicable regulations.

Part 1002 of this title sets forth the following:

(a) State plan requirements for excluding providers for fraud and abuse, and suspending practitioners convicted of program-related crimes.

(b) The limitations on FFP for services furnished by excluded providers or suspended practitioners.

(c) The requirements and procedures for reinstatement after exclusion or suspension.

(d) Requirements for the establishment and operation of State Medicaid fraud control units and the rates of FFP for their fraud control activities.

§ 455.15 [Amended]

6. In paragraph (a)(1)—

a. "Subpart D of this part," is changed to "Subpart C of Part 1002 of this title,".

b. "§ 455.300(e); or" is changed to "§ 1002.309 of this title; or".

Subpart B—[Amended]

7. In Subpart B, the authority citation is removed as inconsistent with the pattern of other Medicaid rules.

§ 455.101 [Amended]

8. The definition of "Convicted" is removed as duplicative of the § 455.2 definition.

Subparts C and D—[Removed]

9. Subparts C and D are removed and the table of contents is amended to reflect this change.

PART 466—UTILIZATION AND QUALITY CONTROL REVIEW

1. The authority citation for Part 466 is revised to read as follows and the authority citations for § 466.1, and §§ 466.60 through 466.63 (preceding § 466.60), are removed:

Authority: Secs. 1102, 1154, and 1871 of the Social Security Act (42 U.S.C. 1302, 1302c–3, and 1395hh).

2. Section 466.70 is amended by adding a new paragraph (f), to read as follows:

§ 466.70 Statutory bases, applicability, and provisions.

* * * * *

(f) *Coordination of sanction activities.* The PRO must carry out the responsibilities specified in Subpart C of Part 1004 of this title regarding imposition of sanctions on providers and practitioners who violate their statutory obligations under section 1156 of the Act.

PART 474—IMPOSITION OF SANCTIONS ON HEALTH CARE, PRACTITIONERS AND PROVIDERS OF HEALTH CARE SERVICES—[Removed and Reserved]

E. Part 474 is removed and the table of contents of Chapter IV is amended to reflect this change.

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

F. 1. The authority citation for Part 489 is revised to read as follows:

Authority: Secs. 1102, 1861, 1864m 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh), and sec. 602(k) of Pub. L. 98–21 (42 U.S.C. 1395 ww note).

§ 489.54 [Amended]

2. In § 489.54(d), the cross reference is changed from "§§ 420.105 through 420.109" to "§§ 1001.105 through 1001.109".

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

Dated: June 13, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 15, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86–21752 Filed 9–29–86; 8:45 am]

BILLING CODE 4120–01–M

Federal Register

Tuesday
September 30, 1986

Part V

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 400, 405, 413, 416, 417, 420, 421, 447, and 489

Medicare Program; Redesignation of Reasonable Cost Regulations; Final Rule With Comment Period

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 400, 405, 413, 416, 417, 420, 421, 447, and 489

[BERC-369-FC]

Medicare Program; Redesignation of Reasonable Cost Regulations

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

ACTION: Final rule with comment period.

SUMMARY: This rule redesignates most of the sections in Subpart D of 42 CFR Part 405 into a new Part 413. This redesignation is part of our overall plan for reorganization of the regulations in 42 CFR Part 405 in order to make them easier to locate and use. More specifically, we intend this redesignation to provide more adequate space for the complex policies and procedures regarding reasonable cost reimbursement that currently are compressed into Part 405, Subpart D.

DATES:

Effective: These regulation are effective October 1, 1986. They are being issued in final for reasons explained in the supplementary information section below.

Comment: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on December 1, 1986.

ADDRESS: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-369-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BERC-369-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Mike Fiore, (301) 594-9779.

SUPPLEMENTARY INFORMATION: In the Code of Federal Regulations (CFR), the main body of HCFA's rules are located in Title 42 (Public Health), Chapter IV (Health Care Financing Administration, Department of Health and Human Services), Parts 400-499. In Subpart D of Part 405, the rules that govern reasonable cost reimbursement are set forth. In this final rule, as part of the overall plan for the continuing reorganization of 42 CFR Chapter IV, we are redesignating most of the reasonable cost regulations located in Part 405, Subpart D into a new Part 413. As part of this process, we previously redesignated §§ 405.470 through 405.477 to a new Part 412 (50 FR 12740). Those regulations govern the prospective payment system for inpatient hospital services under Medicare.

The regulations sections being redesignated in this final rule are those that deal with reasonable cost reimbursement for Medicare providers, and special reimbursement rules for outpatient maintenance dialysis. The sections dealing with payments to teaching hospitals (§§ 405.465-405.466) and payments for services of physicians to providers (§§ 405.480-405.482) will be the subject of future redesignations.

In addition to the coding changes made by this redesignation, other changes in the final rule are for minor technical corrections, such as integrating regulations into a logical sequence and updating of cross-references throughout 42 CFR, or minor editorial revisions, such as correcting spelling and punctuation errors. In no instance do we intend any of the amendments to affect the substance of the Medicare rules.

Changes that require more specific explanation are discussed below:

Subpart A—Introduction and General Rules

In § 413.1(a) (§ 405.401), we added organ procurement agencies and histocompatability laboratories to the list of providers subject to reasonable cost reimbursement rules in Part 413. These facilities were not included in this introductory list, although discussed in subsequent regulations in Part 413 (Part 405, Subpart D).

Subpart G—Capital-Related Costs

1. In § 413.134(a)(3)(ii)(B) (§ 405.415), we added the specific effective date regarding the acquisition of depreciable assets.

2. In § 413.144 (§ 405.417), because paragraph (b) was lengthy and complex, we split it into paragraphs (b), (c), and (d) to make it easier to read.

Subpart H—Payment for End-Stage Renal Disease (ESRD) Services

1. We are deleting §§ 405.438 and 405.440 because these sections are time limited and were not applicable after July 31, 1983. We are also revising paragraph (g) of § 413.5 (§ 405.402) to delete obsolete material.

2. In § 413.170(h)(2) (§ 405.439), we substituted "Administrator" for "Secretary", because the Administrator of HCFA has been delegated the authority to review Provider Reimbursement Review Board decisions.

3. In § 413.174(a) (§ 405.441), we deleted the references to the Office of Management and Budget approval numbers for HCFA forms 2552 and 265. We do not normally include in regulations text approval numbers for HCFA forms because these forms may be revised periodically or become obsolete, which would require us to further amend the regulations text.

4. In § 413.178(c)(2), (§ 405.436), we added the specific effective date regarding agreements filed by organ procurement agencies and histocompatability laboratories. The following table displays the current section coding and the redesignated coding.

REDESIGNATION TABLE FOR 42 CFR 405.401 THROUGH 405.463

Old section	New section
405.401	413.1
405.402	413.5
405.403	413.50
405.405	413.60
405.406	413.20
405.414	413.130
405.415	413.134
405.416	413.139
405.417	413.144
405.418	413.149
405.419	413.153
405.420	413.80
405.421	413.85
405.422	413.90
405.424	413.94
405.425	413.98
405.426	413.102
405.427	413.17
405.429	413.157
405.432	413.106
405.433	413.110
405.434	413.114
405.435	413.161
405.436	413.178
405.438	[1]
405.439	413.170
405.440	[1]
405.441	413.174
405.451	413.9
405.452	413.53
405.453	413.24
405.454	413.64
405.455	413.13
405.456	413.74
405.457	413.56
405.460	413.30
405.461	413.35
405.463	413.40

[1] Deleted.

Regulatory Impact Statement

We have determined that this is not a major rule under Exective Order 12291. In addition, the Secretary certifies that

this redesignation will not have a significant economic impact on a substantial number of small entities. Therefore, we have prepared neither a regulatory impact analysis under E.O. 12291 nor a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 through 612).

Waiver of Proposed Rulemaking

The changes made by this redesignation are minor, and of an editorial nature. Because these changes do not alter any Medicare policies or procedures, the usual notice and opportunity for prior public comment are unnecessary and we find good cause to waive notice of proposed rulemaking. However, we are furnishing a subsequent public comment period limited to the issue of whether we inadvertently made a substantive change in this redesignation. If, during the comment period, we receive information concerning substantive errors or omissions that have occurred in the redesignation, we will correct them in a later documemt.

Waiver of 30-day Delay in the Effective Date

As noted above, the regulations are effective October 1, 1986. If we were to provide the customary 30-day delay in the effective date, the next updated issue of Title 42 of the CFR, which is revised as of October 1, 1986, would show two sets of extensive, essentially duplicative regulations text regarding reasonable cost reimbursement. One set would continue to be located in Subpart D of 42 CFR Part 405, which would remain in effect through the 30-day period. The second set would be located in the new 42 CFR Part 413, which would be effective after the 30-day period had expired. Such a confusing and perverse effect would be unintended but would result from the interaction of a 30-day delay in the effective date of this final rule and the annual date of revision of 42 CFR. Therefore, the usual delay in effective date is impractical. In addition, because we are not revising the regulations, but merely redesignating them, the delay is unnecessary. Accordingly, we find good cause to waive the delay in the effective date of this final rule.

Information Collection Requirements

These provisions do not impose information collection requirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

List of Subjects

42 CFR Part 400

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

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 413

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 417

Administrative practice and procedures, Health Maintenance Organization (HMO), Medicare.

42 CFR Part 420

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicare.

42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Chapter IV is amended as set forth below:

I. The table of contents for Chapter IV is amended by adding the title of a new Part 413 to Subchapter B to read as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

* * * * *

Subchapter B—Medicare Programs

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

* * * * *

II. Part 400 is amended as follows:

PART 400—INTRODUCTION; DEFINITIONS

Subpart C—OMB Control Numbers for Approved Collections of Information

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

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

§ 400.310 [Amended]

B. In § 400.310, reference to "§ 405.460" is changed to read "§ 413.30."

III. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart A is amended as follows:

Subpart A—Hospital Insurance Benefits

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

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

§ 405.153 [Amended]

2. In § 405.153(c)(1), reference to "§ 405.456" is changed to read § 413.74 of this chapter."

B. Subpart B is amended as follows:

Subpart B—Supplementary Medical Insurance Benefits; Enrollment, Coverage, Exclusions, and Payment

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

Authority: Secs. 1102, 1831–1843, 1861, 1862, 1866, and 1871 of the Social Security Act as amended (42 U.S.C. 1302, 1395j–1395v, 1395x, 1395y, 1395cc, and 1395hh), unless otherwise noted.

§ 405.240 [Amended]

2. In § 405.240(i)(1), reference to "§ 405.439" is changed to read "§ 413.170 of this chapter."

§ 405.260 [Amended]

3. In § 405.260(a), reference to "Subpart D" is changed to read "Part 413 of this chapter."

C. Subpart C is amended as follows:

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

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

Authority: Secs. 1102, 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh, and 1395pp), and 31 U.S.C. 3711.

§ 405.343 [Amended]

2. In § 405.343, reference to "§ 405.461" is changed to read "§ 413.35 of this chapter."

§ 405.376 [Amended]

3. a. In § 405.376(c)(1)(ii), reference to "42 CFR 405.454(f)(2)" is changed to read "§ 413.64(f)(2) of this chapter."

b. In § 405.376(e)(3), reference to "§ 405.453(f)" is changed to read "§ 413.24(f) of this chapter."

c. In § 405.376(h)(1), reference to "§ 405.454(l)" is changed to read "§ 413.64(j) of this chapter."

d. In § 405.376(i), reference to "§ 405.419" is changed to read "§ 413.153 of this chapter," and the reference to "§ 405.419(a)(2)" is changed to read "§ 413.153(a)(2) of this chapter."

D. Subpart D is amended as follows:

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

Authority: Secs. 1102, 1871, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395hh, and 1395xx).

2. The title of Subpart D is revised to read as follows:

Subpart D—Principles of Reimbursement for Services by Hospital-Based Physicians

3. The table of contents for Subpart D is revised by removing the titles of §§ 405.401 through 405.463 and the undesignated center headings preceding those sections.

§§ 405.401 through 405.463 [Amended]

4. Sections 405.401 through 405.463 are revised and redesignated as new §§ 413.1 through 413.178, as set forth below in new Part 413. The undesignated center headings preceding those sections are removed.

§ 405.465 [Amended]

5. a. In § 405.465, all references to "§ 405.427" are changed to read "§ 413.17 of this chapter."

b. In § 405.465(e)(1), reference to "§ 405.453" is changed to read "§ 413.24 of this chapter."

§ 405.480 [Amended]

6. a. In § 405.480, the introductory text to paragraph (a), reference to "§ 405.426" is changed to read "§ 413.102 of this chapter."

b. In § 405.480(a)(4), reference to "§ 405.451" is changed to read "§ 413.9 of this chapter."

§ 405.481 [Amended]

7. In § 405.481, paragraphs (a) and (d)(2), references to "42 CFR 405.427" and § 405.427", respectively, are changed to read "§ 413.17 of this chapter."

E. Subpart E is amended as follows:

Subpart E—Criteria for Determination of Reasonable Charges, Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

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

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395u(b) and (h), 1395x(b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, and 1395xx).

§ 405.501 [Amended]

2. In § 405.501(b), reference to "Subpart D of this part" is changed to read "Part 413 of this chapter."

§ 405.502 [Amended]

3. In § 405.502, paragraphs (e)(2) and (e)(3), reference to "§§ 405.439 and 405.544" is changed to read "§ 405.544 and § 413–170 of this chapter." Also, in paragraph (e)(3) of § 405.502, reference to "Subpart D of this part" is changed to read "Part 413 of this chapter."

§ 405.521 [Amended]

4. In § 405.521(d)(1), reference to "§ 405.421 of Subpart D of this part" is changed to read "§ 413.85 of this chapter."

§ 405.522 [Amended]

5. In § 405.522(b), references to "Subpart D of this part" are changed to read "Part 413 of this chapter."

§ 405.525 [Amended]

6. In § 405.525, in footnote three to the table, reference to "Subpart D of this part" is changed to read "Part 413 of this chapter."

§ 405.541 [Amended]

7. a. In § 405.541(a)(1), reference to "§ 405.439 and 405.544" is changed to read "§ 405.544 and § 413.170 of this chapter."

b. In § 405.541(e), reference to "§ 405.439(f)" is changed to read "§ 413.170(f) of this chapter."

c. In § 405.541(f)(2), reference to "§ 405.406" is changed to read "§ 413.20 of this chapter."

d. In § 405.541(f)(3), reference to "§ 405.441" is changed to read "§ 413.174 of this chapter."

§ 405.544 [Amended]

8. a. In § 405.544, all references to "Subpart D of this part" are changed to read "Part 413 of this chapter."

b. In § 405.544, all references to "§ 405.439" are changed to read "§ 413.170 of this chapter."

§ 405.550 [Amended]

9. a. In § 405.550(e)(2), reference to "Subpart D of this part" is changed to read "Part 413 of this chapter."

b. In § 405.550(e)(3), reference to "§ 405.427" is changed to read "§ 413.17 of this chapter."

§ 405.556 [Amended]

10. In § 405.556(c), reference to "Subpart D" is changed to read "Part 413 of this chapter."

F. Subpart F is amended as follows:

Subpart F—Notice, Election and Agreements

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

Authority: Secs. 1102, 1816, 1842, 1861(u), 1864, 1866, 1871, and 1881, of the Social Security Act (42 U.S.C. 1302, 1395h, 1395u, 1395x(u), 1395aa, 1395cc, 1395hh, and 1395rr), unless otherwise noted.

§ 405.658 [Amended]

2. In § 405.658(b)(3), reference to "§ 405.456" is changed to read "§ 413.74 of this chapter."

§ 405.691 [Amended]

3. In § 405.691(a), reference to "§ 405.439" is changed to read "§ 413.170 of this chapter."

G. Subpart P is amended as follows:

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

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

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

§ 405.1682 [Amended]

2. In § 405.1682(c), reference to "§ 405.454(k)" is changed to read "§ 413.64(i) of this chapter."

H. Subpart R is amended as follows:

Subpart R—Provider Reimbursement Determinations and Appeals

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

Authority: Secs. 205, 1102, 1814(b), 1815(a), 1833, 1861(v), 1871, 1872, 1878, and 1886 of the Social Security Act (42 U.S.C. 405, 1302, 1395f(b), 1395g(a), 1395l, 1395x(v), 1395hh, 1395ii, 1395oo, and 1395ww).

§ 405.1801 [Amended]

2. a. In § 405.1801(a)(1), reference to "§ 405.406" is changed to read "§ 413.20 of this chapter."

b. In § 405.1801, references to "§ 405.453(f)" are changed to read "§ 413.24(f) of this chapter."

c. In § 405.1801(b)(1), reference to "Subpart D of this part" is changed to read "Parts 413 and 412, respectively, of this chapter."

§ 405.1803 [Amended]

3. In § 405.1803(c), reference to "§ 405.454(f)" is changed to read "§ 413.64(f) of this chapter."

§ 405.1805 [Amended]

4. In § 405.1805, reference to "§ 405.427" is changed to read "§ 413.17 of this chapter."

§ 405.1841 [Amended]

5. In § 405.1841(a)(2), reference to "§ 405.427" is changed to read "§ 413.17 of this chapter."

§ 405.1877 [Amended]

6. In § 405.1877, paragraphs (e) and (f), reference to "§ 405.427" is changed to read "§ 413.17 of this chapter."

IV. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation continues to read as follows:

Authority: Secs. 1102, 1122, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a–1, 1395hh, and 1395ww).

B. Subpart A is amended as follows:

Subpart A—General Provisions

§ 412.2 [Amended]

1. a. In § 412.2 (c)(1) and (c)(3), references to "§ 405.452(b)" are changed to read "§ 413.55(b)."

b. In § 412.2(d)(1), reference to "§§ 405.414 and 405.429" is changed to read "§§413.130 and 413.157, respectively."

c. In § 412.2(d)(2), reference to "§ 405.421" is changed to read "§ 413.85."

§ 412.6 [Amended]

2. a. In § 412.6(a)(3), reference to "Subpart D of Part 405" is changed to "Part 413."

b. In § 412.6(b), reference to "§ 405.453(f)(3)" is changed to read "§ 413.24(f)(3)."

C. Subpart B is amended as follows:

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment System

§ 412.22 [Amended]

1. In § 412.22(b) reference to "Subpart D of Part 405" is changed to read "Part 413" and reference to "§ 405.463" is changed to read "§ 413.40."

D. Subpart C is amended as follows:

Subpart C—Conditions for Payment Under the Prospective Payment System

§ 412.52 [Amended]

1. In § 412.52, reference to "§§405.406 and 405.453" is changed to read "§413.20 and 413.24."

E. Subpart D is amended as follows:

Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates

§ 412.62 [Amended]

1. In § 412.62(c)(2), reference to "§ 405.463(c)(3), is changed to read "§ 413.40(c)(3)."

§ 412.63 [Amended]

2. In § 412.63(c)(2)(i), reference to "§405.463(c)" is changed to read "413.40(c)."

F. Subpart E is amended as follows:

Subpart E—Determination of Transition Period Payment Rates

§ 412.71 [Amended]

1. a. In § 412.71, the introductory paragraph to paragraph (b), reference to "§ 405.452" is changed to read "§ 413.55."

b. In § 412.71(b)(2), reference to "§ 405.421" is changed to read "§ 413.85."

c. In § 412.71(b)(3), reference to "§ 405.414" is changed to read "§ 413.130."

§ 412.73 [Amended]

2. a. In § 412.73(b)(2), reference to "§ 405.460" is changed to read "§ 413.30."

b. In § 412.73, paragraphs (c)(1) and (c)(3), reference to "§ 405.463(c)(3)" is changed to read "§ 413.40(c)(3)."

G. Subpart G is amended as follows:

Subpart G—Special Treatment of Certain Facilities

§ 412.92 [Amended]

1. a. In § 412.92(b)(4), reference to "§ 405.460(e)(1)" is changed to read "§ 413.30(e)(1)."

b. In § 412.92(e)(3)(ii), reference to "Subpart D of Part 405" is changed to read "Part 413."

§ 412.94 [Amended]

2. In § 412.94(b)(1), reference to "Subpart D of Part 405" is changed to read "Part 413." Also in the same paragraph, reference to "§ 405.463" is changed to read "§ 413.40."

§ 412.98 [Amended]

3. In § 412.98(b), reference to "§ 405.463(c)(4)" is changed to read "§ 413.40(c)(4)" and reference to "§ 405.463" is changed to read "§ 413.40."

H. Subpart H is amended as follows:

Subpart H—Payments to Hospitals Under the Prospective Payment System

§ 412.113 [Amended]

1. a. § 412.113(a), reference to "§ 405.414" is changed to read "§ 413.130."

b. In § 412.113(b), reference to "§ 405.421" is changed to read "§ 413.85." Also in the same paragraph, references to "§ 405.421(a)" and "§ 405.421(d)" are changed to read "§ 413.85(a)" and "§ 413.85(d), respectively".

§ 412.115 [Amended]

2. In § 412.115(a), reference to "§ 405.420" is changed to read "§ 413.80."

§ 412.118 [Amended]

3. In § 412.118(e)(1), reference to "§ 405.421" is changed to read "§ 413.85."

V. A new Part 413 is added to read as folows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

Subpart A—Introduction and General Rules

Sec.

413.1 Introduction.
413.5 Cost reimbursement: General.
413.9 Cost related to patient care.
413.13 Amount of payments if customary charges for services furnished are less than reasonable costs.
413.17 Cost to related organizations.

Subpart B—Accounting Records and Reports

413.20 Financial data and reports.
413.24 Adequate cost data and cost finding.

Subpart C—Limitis on Cost Reimbursement

413.30 Limitations on reimbursable cost.
413.35 Limitations on coverage of costs: Charges to beneficiaries if cost limits are applied to services.
413.40 Ceiling on rate of hospital cost increases.

Subpart D—Apportionment

413.50 Apportionment of allowable costs.
413.53 Determination of costs of services to beneficiaries.
413.56 Malpractice insurance costs.

Subpart E—Payments to Providers

413.60 Payment to providers: General.
413.64 Payment to providers: Specific rules.
413.74 Payment to a foreign hospital.

Subpart F—Specific Categories of Costs

413.80 Bab debts, charity, and courtesy allowances.
413.85 Cost of educational activities.
413.90 Research costs.
413.94 Value of services of nonpaid workers.
413.98 Purchase discounts and allowances, and refunds of expenses.
413.102 Compensation of owners.
413.106 Reasonable cost of physical and other therapy services furnished under arrangements.
413.110 Determining allowable cost for drugs.
413.114 Reasonable cost of extended care services furnished by a swing-bed hospital.

Subpart G—Capital-Related Costs

413.130 Introduction to capital-related costs.
413.134 Depreciation: Allowance for depreciation based on asset costs.
413.139 Depreciation: Optional allowance for depreciation based on a percentage of operating costs.
413.144 Depreciation: Allowance for depreciation on fully depreciated or partially depreciated assets.
413.149 Depreciation: Allowance for depreciation on assets financed with Federal or public funds.
413.153 Interest expense.
413.157 Return on equity capital of proprietary providers.
413.161 Nonallowable costs related to certain capital expenditures.

Subpart H—Payment for End-Stage Renal Disease (ESRD) Services.

413.170 Payments for covered outpatient dialysis treatments.
413.174 Recordkeeping and cost reporting requirements for outpatient maintenance dialysis.
413.178 Reimbursement of independent organ procurement agencies and histocompatability laboratories.

Authority: Sections 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

Subpart A—Introduction and General Rules

§ 413.1 Introduction.

(a) *Scope*—(1) *General summary.* This part sets forth regulations governing Medicare payment for services furnished to beneficiaries by—

(i) Hospitals;

(ii) Skilled nursing facilities (SNFs);

(iii) Home health agencies (HHAs);

(iv) Comprehensive outpatient rehabilitation facilities (CORFs);

(v) End-stage renal disease (ESRD) facilities;

(vi) Providers of outpatient physical therapy and speech pathology services (OPTs); and

(vii) organ procurement agencies (OPAs) and histocompatibility laboratories.

(2) *Applicability.* The principles of payment and the related policies described in this subpart apply to HCFA, to the fiscal intermediaries acting as payors of claims on HCFA's behalf, to the Provider Reimbursement Review Board, and to the hospitals, SNFs, HHAs, CORFs, ESRD facilities, OPTs, OPAs, and histocompatibility laboratories receiving payment under this part.

(b) *Reasonable cost reimbursement.* Except as provided under paragraphs (c) through (e) of this section, Medicare is generally required, under section 1814(b) of the Act (for services covered under Part A) and under section 1833(a)(2) of the Act (for services covered under Part B) to pay for services furnished by providers on the basis of reasonable costs as defined in section 1861(v) of the Act, or the provider's customary charges for those services, if lower. Regulations implementing section 1861(v) are found generally in this part beginning at §413.5.

(c) *Outpatient maintenance dialysis and related services.* Section 1881 of the Act authorizes special rules for the coverage of and payment for services furnished to ESRD patients. Sections 413.170 and 413.174 implement various provisions of section 1881. In particular § 413.170 establishes a prospective payment method for outpatient maintenance dialysis services that applies both to hospital-based and independent ESRD facilities, and under which Medicare pays for both home and infacility dialysis services furnished on or after August 1, 1983.

(d) *Payment for impatient hospital services.* (1) For cost reporting periods beginning before October 1, 1983, the amount paid for inpatient hospital services is determined on a reasonable cost basis.

(2) For cost reporting periods beginning on or after October 1, 1983, payment to short-term general hospitals located in the 50 States and the District of Columbia for the operating costs of inpatient hospital services is determined prospectively on a per discharge basis under Part 412 of this chapter except as follows:

(i) Payment for capital-related, medical education, and kidney acquisition costs, and the costs of certain anesthesis services, is described in § 412.113 of this chapter.

(ii) Payment to children's, psychiatric, rehabilitation and long-term hospitals (as well as separate psychiatric and rehabilitation units (distinct parts) of short-term general hospitals), which are excluded from the prospective payment system under Subpart B of Part 412 of this chapter, and to hospitals outside the 50 States and the District of Columbia is on a reasonable cost basis, subject to the provisions of § 413.40.

(iii) Payment to hospitals subject to a State reimbursement control system is described in paragraph (e) of this section.

(e) *State reimbursement control systems.* Beginning October 1, 1983, Medicare reimbursement for inpatient hospital services may be made in accordance with a State reimbursement control system rather than under the Medicare reimbursement principles set forth in this part, if the State system is approved by HCFA. Regulations implementing this alternative reimbursement authority are set forth in Subpart C of Part 403 of this chapter.

§ 413.5 Cost reimbursement: General.

(a) In formulating methods for making fair and equitable reimbursement for services rendered beneficiaries of the program, payment is to be made on the basis of current costs of the individual provider, rather than costs of a past period or a fixed negotiated rate. All necessary and proper expenses of an institution in the production of services, including normal standby costs, are recognized. Furthermore, the share of the total institutional cost that is borne by the program is related to the care furnished beneficiaries so that no part of their cost would need to be borne by other patients. Conversely, costs attributable to other patients of the institution are not to be borne by the program. Thus, the application of this approach, with appropriate accounting support, will result in meeting actual costs of services to beneficiaries as such costs vary from institution to institution.

However, payments to providers of services for services furnished Medicare beneficiaries are subject to the provisions of §§ 413.13 and 413.30.

(b) Putting these several points together, certain tests have been evolved for the principles of reimbursement and certain goals have been established that they should be designed to accomplish. In general terms, these are the tests or objectives:

(1) That the methods of reimbursement should result in current payment so that institutions will not be disadvantaged, as they sometimes are under other arrangements, by having to put up money for the purchase of goods and services well before they receive reimbursement.

(2) That, in addition to current payment, there should be retroactive adjustment so that increases in costs are taken fully into account as they actually occurred, not just prospectively.

(3) That there be a division of the allowable costs between the beneficiaries of this program and the other patients of the provider that takes account of the actual use of services by the beneficiaries of this program and that is fair to each provider individually.

(4) That there be sufficient flexibility in the methods of reimbursement to be used, particularly at the beginning of the program, to take account of the great differences in the present state of development of recordkeeping.

(5) That the principles should result in the equitable treatment of both nonprofit organizations and profit-making organizations.

(6) That there should be a recognition of the need of hospitals and other providers to keep pace with growing needs and to make improvements.

(c) As formulated herein, the principles give recognition to such factors as depreciation, interest, bad debts, educational costs, compensation of owners, and an allowance for a reasonable return on equity capital of proprietary facilities. However, costs such as depreciation, interest on borrowed funds, a return on equity capital (in the case of proprietary providers), and other costs related to certain capital expenditures are subject to the provisions of § 413.161, "Nonallowable costs related to certain capital expenditures." With respect to allowable costs some items of inclusion and exclusion are:

(1) An appropriate part of the net cost of approved educational activities will be included.

(2) Costs incurred for research purposes, over and above usual patient care, will not be included.

(3) Grants, gifts and income from endowments will not be deducted from operating costs unless they are designated by the donor for the payment of specific operating costs.

(4) The value of services provided by nonpaid workers, as members of an organization (including services or members of religious orders) having an agreement with the provider to furnish such services, is includable in the amount that would be paid others for similar work.

(5) Discounts and allowances received on the purchase of goods or services are reductions of the cost to which they relate.

(6) Bad debts growing out of the failure of a beneficiary to pay the deductible, or the coinsurance, will be reimbursed (after bona fide efforts at collection).

(7) Charity and courtesy allowances are not includable, although "fringe benefit" allowances for employees under a formal plan will be includable as part of their compensation.

(8) A reasonable allowance of compensation for the services of owners in profitmaking organizations will be allowed providing their services are actually performed in a necessary function.

(9) Reasonable cost of physicians' direct medical and surgical services (including supervision of interns and residents in the care of individual patients) furnished in a teaching hospital may be reimbursed as a provider cost (as described in § 405.465 of this chapter) where elected as provided for in § 405.521 of this chapter.

(d) In developing these principles of reimbursement for the Medicare program, all of the considerations inherent in allowances for depreciation were studied. The principles, as presented, provide options to meet varied situations. Depreciation will essentially be on an historical cost basis but since many institutions do not have adequate records of old assets, the principles provide an optional allowance in lieu of such depreciation for assets acquired before 1966. For assets acquired after 1965, the historical cost basis must be used. All assets actually in use for production of services for Medicare beneficiaries will be recognized even though they may have been fully or partially depreciated for other purposes. Assets financed with public funds may be depreciated. Although funding of depreciation is not required, there is an incentive for it since income from funded depreciation is not considered as an offset which must be taken to reduce the interest expense that is allowable as a program cost.

(e) A return on the equity capital of proprietary facilities, as described in § 413.157, is an allowable cost in profit-making organizations. The rate of return may not exceed one and one-half times the average long-term rate of interest on obligations issued for purchase by the Medicare Part A Trust Fund.

(f) Renal dialysis items and services furnished under the ESRD provision are reimbursed and reported under § 413.170 and 413.174 respectively. For special rules concerning health maintenance organizations (HMOs), and providers of services and other health care facilities that are owned or operated by an HMO, or related to an HMO by common ownership or control, see § 417.242(b)(14) and 417.250(c).

§ 413.9 Cost related to patient care.

(a) *Principle.* All payments to providers of services must be based on the reasonable cost of services covered under Medicare and related to the care of beneficiaries. Reasonable cost includes all necessary and proper costs incurred in furnishing the services, subject to principles relating to specific items of revenue and cost. However, for cost reporting periods beginning after December 31, 1973, payments to providers of services are based on the lesser of the reasonable cost of services covered under Medicare and furnished to program beneficiaries or the customary charges to the general public for such services, as provided for in § 413.13.

(b) *Definitions*—(1) *Reasonable Cost.* Reasonable cost of any services must be determined in accordance with regulations establishing the method or methods to be used, and the items to be included. The regulations in this part take into account both direct and indirect costs of providers of services. The objective is that under the methods of determining costs, the costs with respect to individuals covered by the program will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by the program. These regulations also provide for the making of suitable retroactive adjustments after the provider has submitted fiscal and statistical reports. The retroactive adjustment will represent the difference between the amount received by the provider during the year for covered services, from both Medicare and the beneficiaries and the amount determined in accordance with an accepted method of cost apportionment to be the actual cost of

services furnished to beneficiaries during the year.

(2) *Necessary and proper costs.* Necessary and proper costs are costs that are appropriate and helpful in developing and maintaining the operation of patient care facilities and activities. They are usually costs that are common and accepted occurrences in the field of the provider's activity.

(c) *Application.* (1) It is the intent of Medicare that payments to providers of services should be fair to the providers, to the contributors to the Medicare trust funds, and to other patients.

(2) The costs of providers' services vary from one provider to another and the variations generally reflect differences in scope of services and intensity of care. The provision in Medicare for payment of reasonable cost of services is intended to meet the actual costs, however widely they may vary from one institution to another. This is subject to a limitation if a particular institution's costs are found to be substantially out of line with other institutions in the same area that are similar in size, scope of services, utilization, and other relevant factors.

(3) The determination of reasonable cost of services must be based on cost related to the care of Medicare beneficiaries. Reasonable cost includes all necessary and proper expenses incurred in furnishing services, such as administrative costs, maintenance costs, and premium payments for employee health and pension plans. It includes both direct and indirect costs and normal standby costs. However, if the provider's operating costs include amounts not related to patient care, specifically not reimbursable under the program, or flowing from the provision of luxury items or services (that is, those items or services substantially in excess of or more expensive than those generally considered necessary for the provision of needed health services), such amounts will not be allowable. The reasonable cost basis of reimbursement contemplates that the providers of services would be reimbursed the actual costs of providing quality care however widely the actual costs may vary from provider to provider and from time to time for the same provider.

§ 413.13 Amount of payments if customary charges for services furnished are less than reasonable cost.

(a) *Principle.* Providers of services, other than CORFs and hospices, are paid the lesser of the reasonable cost of services furnished to beneficiaries or the customary charges made by the provider for the same services. (Payment to CORFs is based on the reasonable cost of services.) Public providers of service furnishing services free of charge or at a nominal charge are paid fair compensation for services furnished to beneficiaries. This principle is applicable to services furnished by providers in cost reporting periods beginning after December 31, 1973. This principle does not apply to payments for the costs of Part A inpatient hospital services for cost reporting periods subject to the rate of increase ceiling under § 413.40 or the prospective payment system under Part 412 of this chapter. However, the carryover from previous periods is recognized, subject to the provisions of paragraph (d) of this section. For special rules concerning HMOs and providers of services and other health facilities that are owned or operated by an HMO, or related to an HMO by common ownership or control, see §§ 417.242(b)(14) and 417.250(c) of this chapter.

(b) *Definitions*—(1) *Customary charges.* Customary charges for services furnished to beneficiaries are the charges as defined in § 413.53(b). Such charges must be recorded on all bills submitted for program reimbursement. If the provider does not actually impose such charges in the case of most patients liable for payment for its services on a charge basis or fails to make reasonable efforts to collect such charges from patients liable for payment for its services on a charge basis, customary charges for services furnished to beneficiaries will be the charges as defined in § 413.53(b) and recorded on the bills submitted for program reimbursement reduced in proportion to the ratio of the aggregate amount actually collected from patients liable for payment for services on a charge basis to the amounts that would be realized had charges consistent with the charges as defined in § 413.53(b) and recorded on the bills submitted for program reimbursement been paid by or on behalf of all patients liable for payment on a charge basis.

(2) *Reasonable cost.* For purposes of comparison with customary charges, the reasonable cost of services furnished to beneficiaries will exclude—(i) Payments made to a provider as reimbursement for bad debts arising from noncollection of Medicare deductible and coinsurance amounts; (ii) Amounts that represent the recovery of excess depreciation resulting from termination, or a decrease in Medicare utilization (§ 413.134(d)(3)) applicable to prior cost periods; (iii) Amounts applicable to prior cost periods resulting from disposition of depreciable assets (§ 413.134(f)); and (iv) Payments to funds for the donated services of teaching physicians.

(3) *Public provider.* A public provider means any provider operated by a Federal, State, county, city, or other local Government agency or instrumentality.

(4) *Nominal charges.* A public provider's charges are considered nominal if the aggregate charges are less than one-half of the reasonable cost of services or items represented by such charges.

(5) *New provider.* A new provider is an institution that has operated as the type of facility for which it is certified in the program (or the equivalent thereof) under present and previous ownership for less than three full years.

(c) *Aggregation of charges.* It is appropriate that, on an aggregate basis, payments to a provider for covered services furnished beneficiaries under Medicare should not exceed the customary charges made by the provider to the general public for the same services. In comparing charges and costs, customary charges for items and services, and the reasonable cost of such items and services will be aggregated, without regard to whether the related services were reimbursable under Part A or Part B of Medicare. The principle established is be applied after the provider's charges and costs have been adjusted in accordance with the requirements set forth in paragraph (b)(2) of this section and in §§ 405.480 through 405.482 of this chapter, to exclude any amounts attributable to physicians' services not reimbursable to the provider on a reasonable cost basis and to exclude costs and charges with respect to noncovered provider services.

Example. The reasonable cost of covered services furnished to program beneficiaries by a provider for a cost reporting period is $125,000. The customary charges to these beneficiaries for these services totaled $110,000. The amount to be reimbursed this provider will be $110,000 less deductible and coinsurance amounts to be borne by program beneficiaries.

(d) *Accumulation of unreimbursed costs and carryover to subsequent periods*—(1) *General.* Any provider of services whose charges are lower than costs in any cost reporting period beginning after December 31, 1973, may carry forward costs attributable to program beneficiaries that are unreimbursed under the provisions of this section for the two succeeding reporting periods. If beneficiary charges exceed reasonable cost in such subsequent periods, such previously

unreimbursed amounts carried forward will be reimbursed to the provider to the extent that such previously unreimbursed amounts carried forward, together with costs applicable to program beneficiaries in such subsequent periods, do not exceed customary charges with respect to services to program beneficiaries in such subsequent periods. If such two succeeding cost reporting periods combined include fewer than 24 full calendar months, the provider may carry forward costs unreimbursed under this section for one additional reporting period. However, no recovery may be made in any period in which costs are unreimbursed under §§ 413.30 or 413.40.

Example. In the reporting period ending December 31, 1974, the provider's reimbursable costs attributable to covered services furnished program beneficaries were $100,000. The provider's customary charges for these services were $90,000. The provider will, therefore, be reimbursed $90,000 less any deductible and coinsurance amounts but will be permitted to carry the unreimbursed $10,000 forward for the next two succeeding reporting periods. If, in the reporting period ending December 31, 1975, the charges to beneficiaries for covered services exceeded the reimbursable reasonable costs of such services by $10,000 or more, the provider could recover the entire $10,000 previously not reimbursed. If, however beneficiary charges exceeded costs by $8,000, this amount would be added to the provider's reimbursable costs for this period. The balance of the unreimbursed amount or $2,000 would be carried over to the next reporting period.

(2) *New provider*—(i) *General.* A new provider of services may carry forward for five succeeding cost reporting periods costs attributable to program beneficiaries that are unreimbursed under the provisions of this section during a base period, which includes any cost reporting period that begins after December 31, 1973, and ends on or before the last day of its third year of operation. If beneficiary charges exceed reasonable cost in the five succeeding reporting periods, such previously unreimbursed amounts carried forward will be reimbursed to the provider to the extent that such previously unreimbursed amounts carried forward, together with costs applicable to program beneficiaries in such subsequent periods, do not exceed customary charges with respect to services to program beneficiaries in such subsequent periods. If such five succeeding cost reporting periods combined include fewer than 60 full calendar months, the provider may carry forward costs unreimbursed under this section for one additional reporting period.

Example. A provider begins its operations on March 5, 1972. However, it begins to participate in the Medicare program as of January 1, 1973, and reports on a calendar year basis. Since it would be subject to the application of the provision for its cost reporting period beginning with January 1, 1974, it would be permitted to accumulate any unreimbursed costs (excess of cost over its charges) incurred during this reporting period. Since this cost reporting period ends before the end of the third year of operation, its carryover period will be the succeeding five cost reporting periods ending with December 31, 1979. Had this provider begun its operation on July 1, 1973, and become a participating provider as of the same date (with a fiscal year ending June 30), it would have been able to accumulate any unreimbursed costs for the two cost reporting periods ending June 30, 1975, and June 30, 1976. Its carryover period would then be the five cost reporting periods ending no later than June 30, 1981, in the case of costs unreimbursed in either of the reporting periods ending June 30, 1975, and June 30, 1976.

(ii) *New provider base period: Unreimbursed costs under lower of cost or charges.* If costs of a new provider are unreimbursed under this section, such previously unreimbursed amounts that a provider may recover during any cost reporting period in the new provider base period or carry forward period is limited to the amount by which the aggregate customary charges applicable to Medicare beneficiaries during any such period exceed the aggregate costs applicable to such beneficiaries during that period, except that no recovery may be made in any period in which costs are unreimbursed under §§ 413.110 or 413.116.

(e) *Public providers.* Fair compensation to public providers furnishing services free of charge or at nominal charges, as defined in paragraph (b)(4) of this section, for the services they furnish will be the reasonable costs of covered services, as defined in this part.

§ 413.17 Cost to related organizations.

(a) *Principle.* Except as provided in paragraph (d) below, costs applicable to services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control are includable in the allowable cost of the provider at the cost to the related organization. However, such cost must not exceed the price of comparable services, facilities, or supplies that could be purchased elsewhere.

(b) *Definitions*—(1) *Related to the provider.* Related to the provider means that the provider to a significant extent is associated or affiliated with or has control of or is controlled by the organization furnishing the services, facilities, or supplies.

(2) *Common ownership.* Common ownership exists if an individual or individuals possess significant ownership or equity in the provider and the institution or organization serving the provider.

(3) *Control.* Control exists if an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution.

(c) *Application.* (1) Individuals and organizations associate with others for various reasons and by various means. Some deem it appropriate to do so to assure a steady flow of supplies or services, to reduce competition, to gain a tax advantage, to exstend influence, and for other reasons. These goals may be accomplished by means of ownership or control, by financial assistance, by management assistance, and other ways.

(2) If the provider obtains items of services, facilities, or supplies from an organization, even though it is a separate legal entity, and the organization is owned or controlled by the owner(s) of the provider, in effect the items are obtained from itself. An example would be a corporation building a hospital or a nursing home and then leasing it to another corporation controlled by the owner. Therefore, reimbursable cost should include the costs for these items at the cost to the supplying organization. However, if the price in the open market for comparable services, facilities, or supplies is lower than the cost to the supplier, the allowable cost to the provider may not exceed the market price.

(d) *Exception.* (1) An exception is provided to this general principle if the provider demonstrates by convincing evidence to the satisfaction of the fiscal intermediary (or, if the provider has not nominated a fiscal intermediary, HCFA), that (i) The supplying organization is a bona fide separate organization; (ii) A substantial part of its business activity of the type carried on with the provider is transacted with others than the provider and organizations related to the supplier by common ownership or control and there is an open, competitive market for the type of services, facilities, or supplies furnished by the organization; (iii) The services, facilities, or supplies are those that commonly are obtained by institutions such as the provider from other organizations and are not a basic element of patient care ordinarily

furnished directly to patients by such institutions; and (iv) The charge to the provider is in line with the charge for such services, facilities, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for such services, facilities, or supplies. (2) In such cases, the charge by the supplier to the provider for such services, facilities, or supplies is allowable as cost.

Subpart B—Accounting Records and Reports

§ 413.20 Financial data and reports.

(a) *General.* The principles of cost reimbursement require that providers maintain sufficient financial records and statistical data for proper determination of costs payable under the program. Standardized definitions, accounting, statistics, and reporting practices that are widely accepted in the hospital and related fields are followed. Changes in these practices and systems will not be required in order to determine costs payable under the principles of reimbursement. Essentially the methods of determining costs payable under Medicare involve making use of data available from the institution's basis accounts, as usually maintained, to arrive at equitable and proper payment for services to beneficiaries.

(b) *Frequency of cost reports.* Cost reports are required from providers on an annual basis with reporting periods based on the provider's accounting year. In the interpretation and application of the principles of reimbursement, the fiscal intermediaries will be an important source of consultative assistance to providers and will be available to deal with questions and problems on a day-to-day basis.

(c) *Recordkeeping requirements for new providers.* A newly participating provider of services (as defined in § 400.202 of this chapter) must make available to its selected intermediary for examination its fiscal and other records for the purpose of determining such provider's ongoing recordkeeping capability and inform the intermediary of the date its initial Medicare cost reporting period ends. This examination is intended to assure that—(1) The provider has an adequate ongoing system for furnishing the records needed to provide accurate cost data and other information capable of verification by qualified auditors and adequate for cost reporting purposes under section 1815 of the Act, and (2) That no financial arrangements exist that will thwart the commitment of the Medicare program to reimburse providers the reasonable cost of services furnished beneficiaries. The data and information to be examined include cost, revenue, statistical, and other information pertinent to reimbursement including, but not limited to, that described in paragraph (d) of this section and in § 413.24.

(d) *Continuing provider recordkeeping requirements.* (1) The provider must furnish such information to the intermediary as may be necessary to (i) Assure proper payment by the program, including the extent to which there is any common ownership or control (as described in § 413.17(b)(2) and (3)) between providers or other organizations, and as may be needed to identify the parties responsible for submitting program cost reports; (ii) Receive program payments; and (iii) Satisfy program overpayment determinations.

(2) The provider must permit the intermediary to examine such records and documents as are necessary to ascertain information pertinent to the determination of the proper amount of program payments due. These records include, but are not limited to, matters pertaining to—

(i) Provider ownership, organization, and operation;

(ii) Fiscal, medical, and other recordkeeping systems;

(iii) Federal income tax status;

(iv) Asset acquisition, lease, sale, or other action;

(v) Franchise or management arrangements;

(vi) Patient service charge schedules;

(vii) Costs of operation;

(viii) Amounts of income received by source and purpose; and

(ix) Flow of funds and working capital.

(3) The provider, upon request, must furnish the intermediary copies of patient service charge schedules and changes thereto as they are put into effect. The intermediary will evaluate such charge schedules to determine the extent to which they may be used for determining program payment.

(e) *Suspension of program payments to a provider.* If an intermediary determines that a provider does not maintain or no longer maintains adequate records for the determination of reasonable cost under the Medicare program, payments to such provider will be suspended until the intermediary is assured that adequate records are maintained. Before suspending payments to a provider, the intermediary will in accordance with the provisions in § 405.371(a) of this chapter, send written notice to such provider of its intent to suspend payments. The notice will explain the basis for the intermediary's determination with respect to the provider's records and will identify the provide'rs recordkeeping deficiencies. The provider must be given the opportunity, in accordance with § 405.371(a) of this chapter, to submit a statement (including any pertinent evidence) as to why the suspension must not be put into effect.

§ 413.24 Adequate cost data and cost finding.

(a) *Principle.* Providers receiving payment on the basis of reimbursable cost must provide adequate cost data. This must be based on their financial and statistical records which must be capable of verification by qualified auditors. The cost data must be based on an approved method of cost finding and on the accrual basis of accounting.

However, if governmental institutions operate on a cash basis of accounting, cost data based on such basis of accounting will be acceptable, subject to appropriate treatment of capital expenditures.

(b) *Definitions*—(1) *Cost finding.* Cost finding is the process of recasting the data derived from the accounts ordinarily kept by a provider to ascertain costs of the various types of services furnished. It is the determination of these costs by the allocation of direct costs and proration of indirect costs.

(2) *Accrual basis of accounting.* Under the accrual basis of accounting, revenue is reported in the period when it is earned, regardless of when it is collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(c) *Adequacy of cost information.* Adequate cost information must be obtained from the provider's records to support payments made for services furnished to beneficiaries. The requirement of adequacy of data implies that the data be accurate and in sufficient detail to accomplish the purposes for which it is intended. Adequate data capable of being audited is consistent with good business concepts and effective and efficient management of any organization, whether it is operated for profit or on a nonprofit basis. It is a reasonable expectation on the Part of any agency paying for services on a cost-reimbursement basis. In order to provide the required cost data and not impair comparability, financial and statistical records should be maintained in a manner consistent from one period to another. However, a proper regard for

consistency need not preclude a desirable change in accounting procedures if there is reason to effect such change.

(d) *Cost finding methods.* After the close of the accounting period, providers must use one of the following methods of cost finding to determine the actual costs of services furnished during that period. For cost reporting periods beginning after December 31, 1971, providers using departmental method of cost apportionment must use the step-down method described in paragraph (d)(1) of this section or an "other method" described in paragraph (d)(2) of this section. For cost reporting periods beginning after December 31, 1971, providers using the combination method of cost apportionment must use the modified cost finding method described in paragraph (d)(3) of this section. Effective for cost reporting periods beginning on or after October 1, 1980, HHAs not based in hospitals or SNFs must use the step-down method described in paragraph (d)(1) of this section. HHAs based in hospitals or SNFs must use the method applicable to the parent institution.) However, an HHA not based in a hospital or SNF that received less than $35,000 in Medicare reimbursement for the immediately preceding cost reporting period, and for whom this reimbursement represented less than 50 percent of the total operating cost of the agency, may use a simplified version of the step-down method, as specified in instructions for the cost report issued by HCFA.

(1) *Step-down Method.* This method recognizes that services furnished by certain nonrevenue-producing departments or centers are utilized by certain other nonrevenue-producing centers as well as by the revenue-producing centers. All costs of nonrevenue-producing centers are allocated to all centers that they serve, regardless of whether or not these centers produce revenue. The costs of the nonrevenue-producing center serving the greatest number of other centers, while receiving benefits from the least number of centers, is apportioned first. Following the apportionment of the cost of the nonrevenue-producing center, that center will be considered "closed" and no further costs are apportioned to that center. This applies even though it may have received some service from a center whose cost is apportioned later. Generally, if two centers furnish services to an equal number of centers while receiving benefits from an equal number, that center which has the greatest amount of expense should be allocated first.

(2) *Other methods*—(i) *The double-apportionment method.* The double-apportionment method may be used by a provider upon approval of the intermediary. This method also recognizes that the nonrevenue-producing departments or centers furnish services to other nonrevenue-producing centers as well as to revenue-producing centers. A preliminary allocation of the costs of non-revenue-producing centers is made. These centers or departments are not "closed" after this preliminary allocation. Instead, they remain "open," accumulating a portion of the costs of all other centers from which services are received. Thus, after the first or preliminary allocation, some costs will remain in each center representing services received from other centers. The first or preliminary allocation is followed by a second or final apportionment of expenses involving the allocation of all costs remaining in the nonrevenue-producing functions directly to revenue-producing centers.

(ii) *More sophisticated methods.* A more sophisticated method designed to allocate costs more accurately may be used by the provider upon approval of the intermediary. However, having elected to use the double-apportionment method, the provider may not thereafter use the step-down method without approval of the intermediary. Written request for the approval must be made on a prospective basis and must be submitted before the end of the fourth month of the prospective reporting period. Likewise, once having elected to use a more sophisticated method, the provider may not thereafter use either the double-apportionment or step-down methods without similar request and approval.

(3) *Modified cost finding for providers using the Combination Method for reporting periods beginning after December 31, 1971.* This method differs from the step-down method in that services furnished by nonrevenue-producing departments or centers are allocated directly to revenue-producing departments or centers even though these services may be utilized by other nonrevenue-producing departments or centers. In the application of this method the cost of nonrevenue-producing centers having a common basis of allocation are combined and the total distributed to revenue producing centers. All nonrevenue-producing centers having significant percentages of cost in relation to total costs will be allocated this way. The combined total costs of remaining nonrevenue-producing costs centers will be allocated to revenue-producing cost centers in the proportion that each bears to total costs, direct and indirect, already allocated. The bases which are to be used and the centers which are to be combined for allocation are not optional but are identified and incorporated in the cost report forms developed for this method. Providers using this method must use the program cost report forms devised for it. Alternative forms may not be used without prior approval by HCFA based upon a written request by the provider submitted through the intermediary.

(4) *Temporary method for initial period.* If the provider is unable to use either cost-finding method when it first participates in the program, it may apply to the intermediary for permission to use some other acceptable method that would accurately identify costs by department or center, and appropriately segregate inpatient and outpatient costs. Such other method may be used for cost reports covering periods ending before January 1, 1968.

(5) *Simplified optional reimbursement method for small, rural hospitals with distinct parts for cost reporting periods beginning on or after July 20, 1982.* (i) A rural hospital with a Medicare-certified distinct part SNF may elect to be reimbursed for services furnished in its hospital general routine service area and distinct part SNF using the reimbursement method specified in § 413.53 for swing-bed hospitals if it meets the following conditions: (A) The institution is located in a rural area as defined in § 482.66 of this chapter. (B) On the first day of the cost reporting period, the hospital and distinct part SNF have fewer than 50 beds in total (with the exception of beds for newborns and beds in intensive care type inpatient units).

(ii) In applying the optional reimbursement method, only those beds located in the hospital general routine service area and in the distinct part SNF certified by Medicare are combined into a single cost center for purposes of cost finding.

(iii) The reasonable cost of the routine extended care services is determined in accordance with § 413.114(c). The reasonable cost of the hospital general routine services is determined in accordance with § 413.53(a)(2).

(iv) The hospital must make its election to use the optional swing-bed reimbursement method in writing to the intermediary before the beginning of the hospital's cost reporting year. The hospital must make any request to revoke the election in writing before the

beginning of the affected cost reporting period.

(v) The intermediary must approve requests to terminate use of the optional swing-bed reimbursement method. If a hospital terminates use of this optional method, no further elections may be made by the facility to use the optional method.

(e) *Accounting basis.* The cost data submitted must be based on the accrual basis of accounting which is recognized as the most accurate basis for determining costs. However, governmental institutions that operate on a cash basis of accounting may submit cost data on the cash basis subject to appropriate treatment of capital expenditures.

(f) *Cost reports.* For cost reporting purposes, the Medicare program requires each provider of services to submit periodic reports of its operations that generally cover a consecutive 12-month period of the provider's operations. Amended cost reports to revise cost report information that has been previously submitted by a provider may be permitted or required as determined by HCFA.

(1) *Cost reports—Terminated providers and changes of ownership.* A provider that voluntarily or involuntarily ceases to participate in the Medicare program or experiences a change of ownership must file a cost report for that period under the program beginning with the first day not included in a previous cost reporting period and ending with the effective date of termination of its provider agreement or change of ownership.

(2) *Due dates for cost reports.* (i) Cost reports are due on or before the last day of the third month following the close of the period covered by the report.

(ii) A 30-day extension of the due date of a cost report may, for good cause, be granted by the intermediary, after first obtaining the approval of HCFA.

(iii) The cost report from a provider that voluntarily or involuntarily ceases to participate in the Medicare program or experiences a change of ownership is due no later than 45 days following the effective date of the termination of the provider agreement or change of ownership.

(3) *Changes in cost reporting periods.* A provider may change its cost reporting period if a change in ownership is experienced or if the—

(i) Provider requests the change in writing from its intermediary;

(ii) Intermediary receives the request at least 120 days before the close of the new reporting period requested by the provider; and

(iii) Intermediary determines that good cause for the change exists. Good cause would not be found to exist if the effect is to change the initial date that a hospital would be affected by the rate of increase ceiling (see § 413.40), or be paid under the prospective payment system (see Part 412 of this chapter).

(g) *Exception from full cost reporting for lack of program utilization.* If a provider does not furnish any covered services to Medicare beneficiaries during a cost reporting period, it is not required to submit a full cost report. It must, however, submit an abbreviated cost report, as prescribed by HCFA.

(h) *Waiver of full cost reporting for low program utilization.* (1) If the provider has had low utilization of covered services by Medicare beneficiaries (as determined by the intermediary) and has received correspondingly low interim reimbursement payments for the cost reporting period, the intermediary may waive a full cost report if it decides that it can determine, without a full report, the reasonable cost of covered services provided during that period.

(2) If a full cost report is waived, the provider must submit within the same time period required for full cost reports:

(i) The cost reporting forms prescribed by HCFA for this situation; and

(ii) Any other financial and statistical data the intermediary requires.

Subpart C—Limits on Cost Reimbursement

§ 413.30 Limitations on reimbursable costs.

(a) *Introduction*—(1) *Scope.* This section implements section 1861(v)(1)(A) of the Act, by setting forth the general rules under which HCFA may establish limits on provider costs recognized as reasonable in determining Medicare program payments, and sections 1861(v)(7)(B) and 1886(a) of the Act, by setting forth the general rules under which HCFA may establish limits on the operating costs of inpatient hospital services that are recognized as reasonable in determining Medicare program payments. (For cost reporting periods beginning on or after October 1, 1983, the operating costs incurred in furnishing inpatient hospital services are not subject to the provisions of this section.) This section also sets forth rules governing exemptions, exceptions, and adjustments to limits established under this section that HCFA may make as appropriate in consideration of special needs or situations of particular providers.

(2) *General principle.* Reimbursable provider costs may not exceed the costs estimated by HCFA to be necessary for the efficient delivery of needed health services. HCFA may establish estimated cost limits for direct or indirect overall costs or for costs of specific items or services or groups of items or services. These limits will be imposed prospectively and may be calculated on a per admission, per discharge, per diem, per visit, or other basis.

(b) *Procedure for establishing limits.* (1) In establishing limits under this section, HCFA may classify providers by type of provider (for example, hospitals, SNFs, and HHAs) and by other factors HCFA finds appropriate and practical, including—

(i) Type of services furnished;

(ii) Geographical area where services are furnished, allowing for grouping of noncontiguous areas having similar demographic an economic characteristics;

(iii) Size of institution;

(iv) Nature and mix of services furnished; or

(v) Type and mix of patients treated.

(2) Estimates of the costs necessary for efficient delivery of health services may be based on cost reports or other data providing indicators of current costs. Current and past period data will be adjusted to arrive at estimated costs for the prospective periods to which limits are being applied.

(3) Prior to the beginning of a cost period to which revised limits will be applied, HCFA will publish a notice in the **Federal Register**, establishing cost limits and explaining the basis on which they were calculated.

(4) In establishing limits under paragraph (b)(1) of this section, HCFA may find it inappropriate to apply particular limits to a class of providers due to the characteristics of the provider class, the data on which those limits are based, or the method by which the limits are determined. In such cases, HCFA may exclude that class of providers from the limits, explaining the bases of the exclusion in the notice setting forth the limits for the appropriate cost reporting periods.

(c) *Provider requests regarding applicability of cost limits.* A provider may request a reclassification, exception, or exemption from the cost limits imposed under this section. The provider's request must be made to its fiscal intermediary within 180 days of the date on the intermediary's notice of program reimbursement. The intermediary will make a recommendation on the provider's request to HCFA, which will make the decision. HCFA will respond to the exception request within 180 days from

the date HCFA receives the request from the intermediary. The intermediary will notify the provider of HCFA's decision. The time required for HCFA to review the exception request will be considered good cause for the granting of an extension of the time limit to apply for a Board review, as specified in § 405.1841 of this chapter. HCFA's decision is subject to review under Subpart R of Part 405 of this chapter.

(d) *Reclassification.* A provider may obtain a reclassification if it can show that its classification is at variance with the criteria specified in promulgating the limits.

(e) *Exemptions.* Exemptions from the limits imposed under this section may be granted in the following circumstances:

(1) *Sole community hospital.* A sole community hospital is a hospital which, by reason of factors such as isolated location or absence of other hospitals, is the sole source of such care reasonably available to beneficiaries.

(2) *New provider.* The provider of inpatient services has operated as the type of provider (or the equivalent) for which it is certified for Medicare, under present and previous ownership, for less than three full years. An exemption granted under this paragraph expires at the end of the provider's first cost reporting period beginning at least two years after the provider accepts its first patient.

(3) *Risk-basis HMO.* The items or services are furnished to beneficiaries enrolled in an HMO by a provider that is either owned or operated by a risk-basis HMO or related to a risk-basis HMO by common ownership or control (see § 417.250(c)).

(4) *Rural hospital with less than 50 beds.* The hospital—

(i) Was in operation with less than 50 beds as of September 3, 1982;

(ii) Has less than 50 beds throughout the applicable cost reporting period; and

(iii) Is outside the boundaries of all Standard Metropolitan Statistical Areas as designated by the Executive Office of Management and Budget.

(f) *Exceptions.* Limits established under this section may be adjusted upward for a provider under the circumstances specified in paragraphs (f)(1) through (f)(8) of this section, and may be adjusted upward or downward under the circumstances specified in paragraph (f)(9) of this section. An adjustment is made only to the extent the costs are reasonable, attributable to the circumstances specified, separately identified by the provider, and verified by the intermediary.

(1) *Atypical services.* The provider can show that the—

(i) Actual cost of items or services furnished by a provider exceeds the applicable limit because such items or services are atypical in nature and scope, compared to the items or services generally furnished by providers similarly classified; and

(ii) Atypical items or services are furnished because of the special needs of the patients treated and are necessary in the efficient delivery of needed health care.

(2) *Extraordinary circumstances.* The provider can show that it incurred higher costs due to extraordinary circumstances beyond its control. These circumstances include, but are not limited to, strikes, fire, earthquake, flood, or similar unusual occurrences with substantial cost effects.

(3) *Providers in areas with fluctuating populations.* (i) The provider is located in an area (for example, a resort area) that has a population that varies significantly during the year;

(ii) The appropriate health planning agency has determined that the area does not have a surplus of beds and similar services and has certified that the beds and services made available by the provider are necessary; and

(iii) The provider meets occupancy standards established by the Secretary.

(4) *Medical and Paramedical education.* The provider can demonstrate that, if compared to other providers in its group, it incurs increased costs for items or services covered by limits under this section because of its operation of an approved education program specified in § 413.85.

(5) *More intensive routine care for cost reporting periods beginning before October 1, 1982.* The hospital—

(i) Is subject to per diem limits on inpatient general routine operating costs issued under paragraph (b)(3) of this section;

(ii) Furnishes a greater intensity of inpatient general routine operating care than other hospitals having a reasonably similar mix of patients; and

(iii) Shows that the more intensive care results in a shorter average length of stay and higher per unit costs than in comparable hospitals.

(6) *Essential community hospital services exception.* The Secretary finds that—

(i) The hospital exceeds its applicable limit by more than 15 percent;

(ii) Full application of the limits would render the hospital insolvent;

(ii) Such insolvency would deprive the community of essential services; and

(iv) The hospital has taken, or provided adequate assurances that it plans to take, all available efficiency and economy measures to bring its costs into line with those of comparable facilities. In this case, the Secretary may grant an exception to the limit for the amount by which the hospital exceeds 115 percent of its applicable limit for such period as he deems necessary (but not to exceed the period during which the hospital meets the enumerated conditions).

(7) *Newly-established HHA.* The agency can demonstrate that—

(i) It has provided under present and previous ownship for a period of less than three full years home health care services equivalent to those that would have been covered if the agency had a Medicare provider agreement in effect. Eligibility for an exception under this paragraph ceases with the end of the cost reporting period that begins not more than 24 months after the HHA makes its first visit covered under the Medicare program or its first visit that would have been covered under the Medicare program if the agency had a Medicare provider agreement in effect.

Example No. 1: HHA A had been operating for several years and had been performing only "homemaker" visits. The Medicare provider agreement of HHA A became effective on July 1, 1980 and on that date the agency performed its first skilled nursing visit. HHA A's first cost reporting period under Medicare ends December 31, 1980. HHA A qualifies under this paragraph for an exception for the periods ending December 31, 1980, December 31, 1981, and December 31, 1982 because the first Medicare covered visit was performed on July 1, 1980. Prior in that date, the agency only provided "homemaker" visits (not covered by Medicare).

Example No. 2: HHA B began operating on January 1, 1974, providing only homemaker visits. In July 1974, it contracted with an HHA participating in the Medicare program to supply staff that HHA B used to furnish nursing and home health aide visits in addition to homemaker services. HHA B obtained a Medicare provider agreement effective on March 1, 1980, and its first cost reporting period under Medicare ended February 28, 1981. HHA B may not qualify under this paragraph as a newly-established HHA because it has been furnishing skilled nursing and home health aide visits (of the type reimbursable by Medicare) under contract since July 1974 (first visit).

(ii) Its variable operating cost were reasonable in relation to its utilization during the year; and

(iii) Its fixed operating costs are reasonable in relation to realistic projection of utilization to be achieved at the end of the provider's second full year (the reporting year containing the 24th month after the start of the provider's first cost reporting period) of operation in the program.

(8) *Unusual labor costs.* The provider has a percentage of labor costs that varies more than 10 percent from that included in the promulgation of the limits.

(9) *Changes in case mix for cost reporting periods beginning before October 1, 1983.* The hospital—

(i) Is subject to limits issued under paragraph (b)(3) of this section for cost reporting periods beginning before October 1, 1983, that are calculated by use of a case-mix index;

(ii) Has added or discontinued services in a year after the year represented in the discharge data used to establish the limits described in paragraph (f)(9)(i) of this section;

(iii) Has experienced a significant and abrupt change in case mix as a result of the addition or deletion of services; and

(iv) Submits discharge data, in the format required by HCFA, for Medicare discharges in the cost reporting period for which the exception is requested.

(g) *Operational review of providers receiving an exception.* Any provider that applies for an exception to the limits established under paragraph (f) of this section must agree to an operational review at the discretion of HCFA. The findings from any such review may be the basis for recommendations for improvements in the efficiency and economy of the provider's operations. If such recommendations are made, any future exceptions shall be contingent on the provider's implementation of these recommendations.

(h) *Adjustments.* For cost reporting periods beginning on or after October 1, 1982 and before October 1, 1983, HCFA may adjust the amount of a hospital's inpatient operating costs to take into account factors that could result in a significant distortion in the operating costs of inpatient hospital services. Such factors could include a decrease in the inpatient services that a hospital provides that are customarily provided directly by similar hospitals, or the manipulation of discharges to increase reimbursement. A decrease in inpatient services could result from changes that include, but are not limited to, such actions as closing a special care unit or changing the arrangements under which such services may be furnished, such as leasing a department.

§ 413.35 Limitations on coverage of costs: Charges to beneficiaries if cost limits are applied to services.

(a) *Principle.* A provider of services that customarily furnishes an individual items or services that are more expensive than the items or services determined to be necessary in the efficient delivery of needed health services described in § 413.30, may charge an individual entitled to benefits under Medicare for such more expensive items or services even though not requested by the individual. The charge, however, may not exceed the amount by which the cost of (or, if less, the customary charges for) such more expensive items or services furnished by such provider in the second cost reporting period immediately preceding the cost reporting period in which such charges are imposed exceeds the applicable limit imposed under the provisions of § 413.30. This charge may be made only if—

(1) The intermediary determines that the charges have been calculated properly in accordance with the provisions of this section;

(2) The services are not emergency services as defined in paragraph (d) of this section;

(3) The admitting physician has no direct or indirect financial interest in such provider;

(4) HCFA has provided notice to the public through notice in a newspaper of general circulation servicing the provider's locality and such other notice as the Secretary may require, of any charges the provider is authorized to impose on individuals entitled to benefits under Medicare on account of costs in excess of the costs determined to be necessary in the efficient delivery of needed health services under Medicare; and

(5) The provider has, in the manner described in paragraph (e) of this section, identified such charges to such individual or person acting on his behalf as charges to meet the costs in excess of the costs determined to be necessary in the efficient delivery of needed health services under Medicare.

(b) *Provider request to charge beneficiaries for costs in excess of limits.* (1) If a provider's actual costs (or, if less, the customary charges) in the second preceding cost period exceed the prospective limits established for such costs, the intermediary will, at the provider's request, validate in advance the charges that may be made to the beneficiaries for the excess.

(2) If a provider does not have a second preceding cost period and is a new provider as defined in § 413.30(e)(2) the provider, subject to validation by the intermediary, will estimate the currrent cost of the service to which a limit is being applied. Such amount will be adjusted to an amount equivalent to costs in the second preceding year by use of a factor to be developed based on estimates of cost increases during the preceding two years and published by SSA or HCFA. The amount thus derived will be used in lieu of the second preceding cost period amount in determining the charge to the beneficiary.

(3) To obtain consideration of such a request, the provider must submit to the intermediary a statement indicating the chagre for which it is seeking validation and providing the data and method used to determine the amount. Such statement should include the—

(i) Provider's name and number;

(ii) Identity of class and prospective cost limit for the class in which the provider has been included;

(iii) Amount of charge and cost period in which the charge is to be imposed;

(iv) Cost and customary charge for items and services furnished to beneficiaries; and

(v) Cost period ending date of the second reporting period immediately preceding the cost period in which the charge is to be imposed. The intermediary may request such additional information as it finds necessary with respect to the request.

(c) *Provider charges—(1) Establishing the charges.* If the actual cost incurred (or, if less, the customary charges) in the prior period determined under paragraph (a) of this section exceeds the limits applicable to the pertinent period, the provider may charge the beneficiary to the extent costs in the second preceding cost reporting period (or the equivalent when there is no second preceding period) exceed the current cost limits. (Data from the most recently submitted appropriate cost report will be used in determining the actual cost.) For example, if a limit of $58 per day is applied to the cost of general routine services for the provider's cost reporting period starting in calendar year 1975 and if the provider's actual general routine cost in the second preceding reporting period, that is, the reporting period starting in calendar year 1973, was $60 per day, the provider (after first having obtained intermediary validation and subject to the considerations and requirements specified in paragraph (a) of this section) may charge Medicare Part A beneficiaries up to $2 per day for general routine services.

(2) *Adjusting cost.* Program reimbursement for the costs to which limits imposed under § 413.30 are applied in any cost reporting period will not exceed the lesser of the provider's actual cost or the limits imposed under § 413.30. If program reimbursement for items or services to which such limits are applied plus the charges to beneficiaries for such items or services imposed under this section exceed the provider's actual cost for such items or

services, program payment to the provider will be reduced to the extent program payment plus charges to the beneficiaries exceed actual cost. If the provider's actual cost for general routine services in 1975 was $57,000, the cost limit was $58,000, and billed charges to Medicare Part A beneficiaries were $2,000, the provider would receive $55,000 from the program ($57,000 actual cost minus the $2,000 in charges to the beneficiaries).

(d) *Definition of emergency services.* For purposes of paragraph (a)(2) of this section, emergency services are those hospital services that are necessary to prevent the death or serious impairment of the health of the individual, and which, because of the threat to the life or health of the individual, necessitate the use of the most accessible hospital (see § 405.192 of this chapter) available and equipped to furnish such services. If an individual has been admitted to such hospital as an inpatient because of an emergency, the emergency will be deemed to continue until it is safe from a medical standpoint to move the individual to another hospital or other institution or to discharge him.

(e) *Identification of charges to individual.* For purposes of paragraph (a)(5) of this section, a provider must give or send to the individual or his representative, a schedule of all items and services that the individual might need and for which the provider imposes charges under this section, and the charge for each. Such schedule must specify that the charges are necessary to meet the costs in excess of the costs determined to be necessary in the efficient delivery of needed health services under Medicare and include such other information as the HCFA considers necessary to protect the individual's rights under this section. The provider, in arranging for the individual's admission, first service, or start of care, must give or send this schedule to the individual or his representative when arrangements are being made for such services or if this is not feasible, as soon thereafter as is practicable but no later than at the initiation of services.

§ 413.40 Ceiling on rate of hospital cost increases.

(a) *Introduction*—(1) *Scope.* This section implements section 1886(b) of the Act establishing a ceiling on the rate of increase of operating costs per case for inpatient hospital services that will be recognized as reasonable for purposes of determining Medicare reimbursement. This ceiling on allowable rate of cost increases applies to hospital cost reporting periods beginning on or after October 1, 1982 and, for cost reporting periods beginning before October 1, 1983, is applied in addition to the limitations on reasonable cost established under § 413.30. This section also sets forth rules governing exemptions from, and exceptions and adjustments to, the ceiling.

(2) *Applicability.* (i) This section is not applicable to hospitals reimbursed in accordance with section 1814(b)(3) of the Act, or under State reimbursement control systems that have been approved under section 1886(c) of the Act.

(ii) For cost reporting periods beginning on or after October 1, 1983, this section is applicable to hospitals excluded from the prospective payment system under Subpart B of Part 412 of this chapter, including subprovider psychiatric and rehabilitation units (distinct parts) and those hospitals eligible for special treatment under the prospective payment system as described in § 412.94(b) of this chapter.

(b) *Cost reporting periods subject to the rate of increase ceiling*—(1) *Base period.* Each hospital's initial ceiling will be based on allowable inpatient operating costs per case incurred in the 12-month cost reporting period immediately preceding the first cost reporting period subject to ceilings established under this section, except that, when the immediately preceding cost reporting period is a short reporting period (fewer than 12 months) the first 12-month period beginning on or after the date the hospital's exemption from the ceiling ends will be the base period.

(2) *Periods subject to the ceiling.* Ceilings established under this section will be applied to all full 12-month cost reporting periods that—

(i) Immediately follow either a base period as described in paragraph (b)(1) of this section, or another 12-month cost reporting period subject to the ceiling; and

(ii) Begin on or after October 1, 1982.

(3) *Periods other than 12 months.* Ceilings established under this section will not apply to cost reporting periods of fewer than 12 months that occur along with a change in operations of the facility as a result of changes in ownership, merger, or consolidation. However, ceilings will apply to cost reporting periods of fewer than 12 months that result solely from the approval of a hospital's request for a change in accounting cycle. In the case of such periods, the applicable percentage rate of increase will be adjusted downward by a monthly factor corresponding to the annual percentage rate to reflect fewer months. Ceilings established under this section will apply to cost reporting periods of greater than 12 months with the percentage rate of increase adjusted upward by a monthly factor corresponding to the annual percentage rate to reflect the additional months.

(c) *Procedure for establishing the ceiling (target amount)—(1) Costs subject to the ceiling.* (i) The cost per case ceiling established under this section applies to operating costs incurred by a hospital in furnishing inpatient hospital services.

(ii) For cost reporting periods beginning on or after October 1, 1983, these operating costs *include* operating costs of routine services (as described in § 405.158(c) of this chapter), ancillary service operating costs, and special care unit operating costs. These operating costs *exclude* the costs of malpractice insurance, certain kidney acquisition costs, capital-related costs, and costs a hospital allocates to approved medical education programs (nursing school or approved intern and resident programs) on its Medicare cost report.

(iii) For cost reporting periods beginning on or after October 1, 1983, these operating costs exclude only capital-related costs as described in § 413.130, return on equity capital as described in § 413.157, and the costs of approved medical education programs as described in § 413.85. Further, kidney acquisition costs incurred by hospitals approved as renal transplantation centers will be reimbursed on a reasonable cost basis. Appropriate adjustment to a hospital's base year costs will be made under paragraph (h) of this section.

(2) *Cost determined on a per case basis.* Costs subject to the ceiling as described in paragraph (c)(1) of this section will be determined on a per discharge basis.

(3) *Target rate percentage.* (i) The applicable target rate percentage is determined as follows:

(A) *Federal fiscal year 1986.* The applicable target rate percentage for cost reporting periods beginning on or after October 1, 1985 and before September 30, 1986 is five-twenty-fourths of one percent. For purposes of determining the target amount for cost reporting periods beginning on or after October 1, 1986, the applicable percentage increase with respect to cost reporting periods beginning during Federal fiscal year 1986 is deemed to have been one-half percent.

(B) *Federal fiscal years 1987 and following.* Subject to the limitation set forth in paragraph (c)(3)(i)(C) of this section, the applicable target rate

percentage for cost reporting periods beginning during fiscal year 1987 and in all fiscal years thereafter is determined using the methodology set forth in § 412.63 (e)(1) through (e)(3) of this chapter.

(c) *Limitation for Federal fiscal years 1987 and 1988.* For cost reporting periods beginning in fiscal years 1987 and 1988, the applicable percentage determined under paragraph (c)(3)(i)(B) of this section is not to exceed the prospectively estimated increase in the market basket index for the cost reporting period.

(ii) The market basket index is a hospital wage and price index that incorporates appropriately weighted indicators of changes in wages and prices that are representative of the mix of goods and services included in the most common categories of inpatient hospital operating costs subject to the ceiling as described in paragraph (c)(1) of this section.

(4) *Target amount (ceiling).* The intermediary will establish for each hospital a ceiling on the reimbursable costs per case of that hospital. The ceiling for each 12-month cost reporting period will be set at a target amount determined as follows:

(i) For the first 12-month cost reporting period to which this ceiling applies, the target amount will equal the hospital's allowable operating costs per case for the hospital's base period increased by the target rate percentage for the subject period.

(ii) For subsequent 12-month cost reporting periods, the target amount will equal the hospital's target amount for the previous 12-month cost reporting period increased by the target rate percentage for the subject cost reporting period.

(5) *Applicable target rate percentage.* (1) The intermediary will use the target rate percentage increase applicable to each 12-month cost reporting period to determine the ceiling on the allowable rate of cost increase under this section.

(ii) When a cost reporting period spans portions of two calendar years, the intermediary will calculate an appropriate prorated percentage rate based on the published calendar year percentage rates.

(iii) The applicable target rate percentage will be the prospectively determined percentage published by HCFA. The percentages will be applied prospectively and will be prorated in accordance with paragraph (c)(5)(ii) of this section, but will not be retroactively adjusted if the acutal market basket rate of increase differs from the estimate.

(d) *Application of target amounts in determining reimbursement*—(1) *General process.* (i) At the end of each 12-month cost reporting period subject to this section, the hospital's intermediary will compare a hospital's allowable cost per case with that hospital's target amount for that period.

(ii) The hospital's actual allowable costs will be determined without regard to the lesser of cost or charges provisions of § 413.13, but, for cost reporting periods beginning on or after October 1, 1982 and before October 1, 1983, are subject to other limitations on reimbursable cost established under § 413.30.

(iii) If the hospital's actual allowable costs do not exceed the target amount, reimbursement will be determined under paragraph (d)(2) of this section.

(iv) If the hospital's actual costs exceed the target amount, reimbursement will be determined under paragraph (d)(3) of this section.

(2) *Inpatient operating costs are less than or equal to the target amount.* If a hospital's allowable inpatient operating costs per case do not exceed the hospital's target amount for the applicable cost reporting period, reimbursement to the hospital will be determined on the basis of the lowest of the—

(i) Inpatient operating costs per case plus 50 percent of the difference between the inpatient operating cost per case and the target amount;

(ii) Inpatient operating costs per case plus 5 percent of the target amount; or

(iii) Hospital's allowable inpatient operating cost per case under applicable limits established under § 413.30, if applicable.

(3) *Inpatient operating costs are greater than the target amount.* If a hospital's allowable inpatient operating costs per case exceed the hospital's target amount for the applicable cost reporting period. Reimbursement to the hospital will be determined as follows:

(i) For cost reporting periods beginning on or after October 1, 1982 and before October 1, 1984, reimbursement will be based on the lower the of hospital's—

(A) Target amount plus 25 percent of the allowable operating costs per case in excess of the target amount; or

(B) Allowable cost per case under applicable limits established under § 413.30 if applicable.

(ii) For cost reporting periods beginning on or after October 1, 1984, reimbursement will be based on the hospital's target amount per case.

(e) *Hospital requests regarding applicability of the rate of increase ceiling.* A hospital may request an exemption from, or exception to, the rate of cost increase ceiling imposed under this section. The hospital's request must be made to its fiscal intermediary no later than 180 days from the date on the intermediary's notice of program reimbursements. The intermediary will make a recommendation on the hospital's request to HCFA, which will make the decision. HCFA will respond to the exception request within 180 days from the date HCFA receives the request from the intermediary. The intermediary will notify the hospital of HCFA's decision. The time required for HCFA to review the exception request is considered good cause for the granting of an extension of the time limit to apply for review by the Provider Reimbursement Review Board, as specified in § 405.1841(b) of this chapter. HCFA's decision is subject to review under Subpart R of Part 405 of this chapter.

(f) *Exemptions*—(1) *New hospitals.* New hospitals that request and receive an exemption from HCFA are not subject to the rate of increase ceiling imposed under this section. For purposes of this section, a new hospital is a provider of inpatient hospital services that has operated as the type of hospital for which HCFA granted it approval to participate in the Medicare program, under present or previous ownership, or both, for less than three full years. This exemption expires at the end of the first cost reporting period beginning at least two years after the hospital accepts its first patient.

(2) *Risk-basis HMO.* The items or services are furnished to beneficiaries enrolled in an HMO by a hospital that is either owned or operated by a risk-basis HMO or related to a risk-basis HMO by common ownership or control (see § 417.250(c)).

(g) *Exceptions*—(1) *General procedure.* HCFA may adjust a hospital's operating costs (as described in paragraph (b)(1) of this section) upward or downward, as appropriate, under circumstances as specified in paragraphs (g) (2) and (3) of this section. HCFA will make an adjustment only to the extent that the hospital's operating costs are reasonable, attributable to the circumstances specified, separately identified by the hospital, and verified by the intermediary.

(2) *Extraodinary circumstances.* The hospital can show that it incurred unusual costs (in either a cost reporting period subject to the ceiling or the hospital's base period) due to extraordinary circumstances beyond its control. These circumstances include, but are not limited to, strikes, fire, earthquakes, floods, or similar unusual

occurrences with substantial cost effects.

(3) *Change in case mix.* The hospital—

(i) Has added or discontinued services in a year after its base period described in paragraph (b)(1) of this section;

(ii) Has experienced a change in case mix as a result of the addition or discontinuation of services that results in a distortion in the rate of cost increase; and

(iii) Submits data summarizing the case-mix changes and the resulting changes in costs.

(h) *Adjustments*—(1) *Comparability of cost reporting periods.* (i) HCFA may adjust the amount of the operating costs considered in establishing cost per case for one or more cost reporting periods, including both periods subject to the ceiling and the hospital's base period, to take into account factors that could result in a significant distortion in the operating costs of inpatient hospital services. The adjustments include, but are not limited to, adjustments of the base period costs to include explicitly FICA taxes (if the hospital did not incur costs for FICA taxes in its base period), and services billed under Part B of Medicare during the base period, but paid under Part A during the subject cost reporting period.

(ii) In determining the target amount for cost reporting periods beginning on or after October 1, 1983, the intermediary will adjust the base period costs to explicitly include in the costs subject to the ceiling malpractice insurance costs.

(iii) HCFA may adjust the amount of operating costs, under paragraph (c)(1) of this section, to take into account factors such as a change in the inpatient hospital services that a hospital provides, that are customarily provided directly by similar hospitals, or the manipulation of discharges to increase reimbursement. A change in the inpatient hospital services provided could result from changes that include, but are not limited to, opening or closing a special care unit or changing the arrangements under which such services may be furnished, such as leasing a department.

(2) *Nursing differential.* Because the Medicare inpatient routine nursing salary cost differential does not apply in the cost reporting periods subject to ceilings established under this section, HCFA will adjust base period costs to remove the effect of this differential.

Subpart D—Apportionment

§ 413.50 Apportionment of allowable costs.

(a) Consistent with prevailing practice in which third-party organizations pay for health care on a cost basis, reimbursement under the Medicare program involves a determination of—(1) Each provider's allowable costs; for producing services, and (2) The share of these costs which is to be borne by Medicare, the provider's costs are to be determined in accordance with the principles reviewed in the preceding discussion relating to allowable costs the share to be borne by Medicare is to be determined in accordance with principles relating to apportionment of cost.

(b) In the study and consideration devoted to the method of apportioning cost, the objective has been to adopt methods for use under Medicare that would, to the extent reasonably possible, result in the program's share of a provider's total allowable costs being the same as the program's share of the provider's total services. This result is essential for carrying out the statutory directive that the program's payments to providers should be such that the costs of covered services for beneficiaries would not be passed on to nonbeneficiaries, nor would the cost of services for nonbeneficiaries be borne by the program.

(c) A basic factor bearing upon apportionment of costs is that Medicare beneficiaries are not a cross section of the total population. Nor will they constitute a cross section of all patients receiving services from most of the providers that participate in the program. Available evidence shows that the use of services by persons age 65 and over differs significantly from other groups. Consequently, the objective sought in the determination of the Medicare share of a provider's total costs means that the methods used for apportionment must take into account the differences in the amount of services received by patients who are beneficiaries and other patients serviced by the provider.

(d) The method of cost reimbursement most widely used at the present time by third-party purchasers of inpatient hospital care apportions a provider's total costs among groups served on the basis of the relative number of days of care used. This method, commonly referred to as average-per-diem cost, does not take into account, variations in the amount of service which a day of care may represent and thereby assumes that the patients for whom payment is made on this basis are average in their use of service.

(e) In considering the average-per-diem method of apportioning cost for use under the program, the difficulty encountered is that the preponderance of presently available evidence strongly indicates that the over-age 65 patient is not typical from the standpoint of average-per-diem cost. On the average this patient stays in the hospital twice as long and therefore the ancillary services that he uses are averaged over the longer period of time, resulting in an average per diem cost for the aged alone, significantly below the average per diem for all patients.

(f) Moreover, the relative use of services by aged patients as compared to other patients differs significantly among institutions. Consequently, considerations of equity among institutions are involved as well as that of effectiveness of the apportionment method under the program in accomplishing the objective of paying each provider fully, but only for services to beneficiaries.

(g) A further consideration of long-range importance is that the relative use of services by aged an other patients can be expected to change, possibly to a significant extent in future years. The ability of apportionment methods used under the program to reflect such change is an element of flexibility which has been regarded as important in the formulation of the cost reimbursement principles.

(h) An alternative to the relative number of days of care as a basis for apportioning costs is the relative amount of charges billed by the provider for services to patients. The amount of charges is the basis upon which the cost of hospital care is distributed among patients who pay directly for the services they receive. Payment for services on the basis of charges applies generally under insurance programs in which individuals are indemnified for incurred expenses, a form of health insurance widely held throughout the United States. Also, charges to patients are commonly a factor in determining the amount of payment to hospitals under insurance programs providing service benefits, many of which pay "costs or charges, whichever is less" and some of which pay exclusively on the basis of charges. In all of these instances, the provider's own charge structure and method of itemizing services for the purpose of assessing charges is utilized as a measure of the amount of services received and as the basis for allocating responsibility for

payment among those receiving the provider's services.

(i) An increasing number of third-party purchasers who pay for services on the basis of cost are developing methods that utilize charges to measure the amount of services for which they have responsibility for payment. In this approach, the amount of charges for such services as a proportion of the provider's total charges to all patients is used to determine the proportion of the provider's total costs for which the third-party purchaser assumes responsibility. The approach is subject to numerous variations. It can be applied to the total of charges for all services combined or it can be applied to components of the provider's activities for which the amount of costs and charges are ascertained through a breakdown of data from the provider's accounting records.

(j) For the application of the approach to components, which represent types of services, the breakdown of total costs is accomplished by "cost-finding" techniques under which indirect costs and nonrevenue activities are allocated to revenue producing components for which charges are made as services are furnished.

§ 413.53 Determination of cost of services to beneficiaries.

(a) *Principle.* Total allowable costs of a provider will be apportioned between program beneficiaries and other patients so that the share borne by the program is based upon actual services received by program beneficiaries. The methods of apportionment are defined as follows:

(1) *Departmental method*—(i) *Methodology.* Except as provided in § 413.56 with respect to the direct apportionment of malpractice costs, and in paragraph (a)(1)(ii) of this section with respect to the treatment of the private room cost differential for cost reporting periods starting on or after October 1, 1982, the ratio of beneficiary charges to total patient charges for the services of each ancillary department is applied to the cost of the department; to this is added the cost of routine services for program beneficiaries, determined on the basis of a separate average cost per diem for general routine patient care areas as defined in paragraph (b) of this section, taking into account, in hospitals, a separate average cost per diem for each intensive care unit, coronary care unit, and other intensive care type inpatient hospital units.

(ii) *Exception: Indirect cost of private rooms.* For cost reporting periods starting on or after October 1, 1982, except with respect to a hospital receiving payment under Part 412 of this chapter, the additional cost of furnishing services in private room accommodations is apportioned to Medicare only if these accommodations are furnished to program beneficiaries, and are medically necessary. To determine routine service cost applicable to beneficiaries—

(A) Multiply the average cost per diem (as defined in paragraph (b) of this section) by the total number of Medicare patient days (including private room days whether or not medically necessary);

(B) Add the product of the average per diem private room cost differential (as defined in paragraph (b) of this section) and the number of medically necessary private room days used by beneficiaries; and

(C) Do not include private rooms furnished for SNF-type and ICF-type services under the swing-bed provision in the number of days in paragraphs (a)(1)(ii) (A) and (B) of this section.

(2) *Carve out method.* (i) The carve out method is used to allocate hospital inpatient general routine service costs in a participating swing-bed hospital, as defined in § 413.114(b). Under this method, the total costs attributable to the SNF-type and ICF-type services furnished to all classes of patients are subtracted from total general routine inpatient service costs before computing the average cost per diem for general routine hospital care.

(ii) The cost per diem attributable to the routine SNF-type services furnished by a swing-bed hospital is based on the reasonable cost per diem for services determined in accordance with § 413.114.

(iii) The cost per diem attributable to the routine ICF services furnished by the swing-bed hospital is determined as follows:

(A) If the hospital is located in a State that provides for ICF services under Medicaid, the cost per diem for ICF services furnished by a swing-bed hospital in that State is based on the Statewide average rate paid for routine services in ICFs (other than ICFs for the mentally retarded) during the preceding calendar year under the State Medicaid plan. The Statewide average rate will be computed either by the State and furnished to HCFA, or by HCFA directly based on the best available data.

(B) If the hospital is located in a State that does not provide for ICF services under Medicaid or that does not have a Medicaid program, the cost per diem for ICF services will be based on the average ratio of the ICF rate to the SNF rate in those States that provide for both SNF and ICF services under Medicaid. The ratio will be applied to the SNF cost per diem determined under paragraph (a)(2)(ii) of this section.

(iv) The sum of total SNF-type days furnished to all classes of patients multiplied by the SNF cost per diem, and total ICF-type days furnished to all classes of patients multiplied by the appropriate ICF cost per diem, will be subtracted from inpatient general routine service costs. The cost per diem for inpatient general routine hospital care will be based on the remaining general routine service costs.

(v) Costs other than general inpatient routine service costs will be determined in the same manner as specified in the Departmental Method in paragraph (a)(1) of this section.

(3) *Cost per visit by type-of-service method—HHAs.* For cost reporting periods beginning on or after October 1, 1980, all HHAs must use the cost per visit by type-of-service method of apportioning costs between Medicare and non-Medicare beneficiaries. Under this method, the total allowable cost of all visits for each type of service is divided by the total number of visits for that type of service. Next, for each type of service, the number of Medicare covered visits is multiplied by the average cost per visit just computed. This represents the cost Medicare will recognize as the cost for that service, subject to cost limits published by HCFA (see § 413.30).

(b) *Definitions.* As used in this section—

"Ancillary services" means the services for which charges are customarily made in addition to routine services.

"Apportionment" means an allocation or distribution of allowable cost between the beneficiaries of the Medicare program and other patients.

"Average cost per diem for general routine services" means the following:

(1) For cost reporting periods beginning on or after October 1, 1982, subject to the provisions on swing-bed hospitals, the average cost of general routine services net of the private room cost differential. The average cost per diem is computed by the following methodology:

(i) Determine the total private room cost differential by multiplying the average per diem private room cost differential determined in paragraph (c) of this section by the total number of private room patient days.

(ii) Determine the total inpatient general routine service costs net of the total private room cost differential by subtracting the total private room cost differential from total inpatient general routine service costs.

(iii) Determine the average cost per diem by dividing the total inpatient general routine service cost net of private room cost differential by all inpatient general routine days, including total private room days.

(2) Fro swing-bed hospitals, the amount computed by—(i) Subtracting the costs attributable to SNF-type and ICF-type services from the total allowable inpatient cost for routine services (excluding the cost of services provided in intensive care units, coronary care units, and other intensive care type inpatient hospital units, and nursery costs); and (ii) dividing the remainder (excluding the total private room cost differential) by the total number of inpatient hospital days of care (excluding SNF-type and ICF-type days of care, days of care in intensive care units, coronary care units, and other intensive care type inpatient hospital units, and newborn days and including total private room days).

"Average cost per diem for hospital intensive care type units" means the amount computed by dividing the total allowable costs for routine services in each of these units by the total number of inpatient days of care furnished in each of these units.

"Average per diem private room cost differential" means the difference in the average per diem cost of furnishing routine services in a private room and in a semi-private room. (This differential is not applicable to hospital intensive care type units.) (The method for computing this differential is described in paragraph (c) of this section.)

"Charges" means the regular rates for various services that are charged to both beneficiaries and other paying patients who receive the services. Implicit in the use of charges as the basis for apportionment is the objective that charges for services be related to the cost of the services.

"ICF-type services" means routine services furnished by a swing-bed hospital that would constitute intermediate care facility (ICF) services, as defined in § 440.150 of this chapter, if furnished by an ICF. ICF-type services are not covered under the Medicare program.

"Intensive care type inpatient hospital unit" means a hospital unit that furnishes services to critically ill inpatients. Examples of intensive care type units include, but are not limited to, intensive care units, trauma units, coronary care units, pulmonary care units, and burn units. Excluded as intensive care type units are postoperative recovery rooms, postanesthesia recovery rooms, maternity labor rooms, and subintensive or intermediate care units. (The unit must also meet the criteria of paragraph (d) of this section.)

"SNF-type services" means routine services furnished by a swing-bed hospital that would constitute extended care services if furnished by an SNF. SNF-type services include routine services furnished in the distinct part SNF of a hospital complex that is combined with the hospital general routine service area cost center under § 413.24(d)(5).

"Ratio of beneficiary charges to total charges on a departmental basis" means the ratio of charges to beneficiaries of the Medicare program for services of a revenue-producing department or center to the charges to all patients for that center during an accounting period. After each revenue-producing center's ratio is determined, the cost of services furnished to beneficiaries of the Medicare program is computed by applying the individual ratio for the center to the cost of the related center for the period.

"Routine services" means the regular room, dietary, and nursing services, minor medical and surgical supplies, and the use of equipment and facilities for which a separate charge is not customarily made.

(c) *Method for computing the average per diem private room cost differential.* Compute the average per diem private room cost differential as follows:

(1) Determine the average per diem private room charge differential by subtracting the average pr diem charge for all semi-private room accommodations from the average per diem charge for all private room accommodations. The average per diem charge for private room accommodations is determined by dividing the total charges for private room accommodations by the total number of days of care furnished in private room accommodations. The average per diem charge for semi-private accommodations is determined by dividing the total charges for semi-private room accommodations by the total number of days of care furnished in semi-private accommodations.

(2) Determine the inpatient general routine cost to charge ratio by dividing total inpatient general routine service cost by the total inpatient general routine service charges.

(3) Determine the average per diem private room cost differential by multiplying the average per diem private room charge differential determined in paragraph (c)(1) of this section by the ratio determined in paragraph (c)(2) of this section.

(d) *Criteria for identifying intensive care type units.* For purposes of determining costs under this section, a unit will be identified as an intensive care type inpatient hospital unit only if the unit—

(1) Is in a hospital;

(2) Is physically and identifiably separate from general routine patient care areas, including subintensive or intermediate care units, and ancillary service areas. There cannot be a concurrent sharing of nursing staff between an intensive care type unit and units or areas furnishing different levels or types of care. However, two or more intensive care type units that concurrently share nursing staff can be reimbursed as one combined intensive care type unit if all other criteria are met. Float nurses (nurses who work in different units on an as-needed basis) can be utilized in the intensive care type unit. If a float nurse works in two different units during the same eight hour shift, then the costs must be allocated to the appropriate units depending upon the time spent in those untis. The hospital must maintain adequate records to support the allocation. If such records are not available, then the costs must be allocated to the general routine services cost areas;

(3) Has specific written policies that include criteria for admission to, and discharge from, the unit;

(4) Has registered nursing care available on a continuous 24-hour basis with at least one registered nurse present in the unit at all times;

(5) Maintains a minimum nurse-patient ratio of one nurse to two patients per patient day. Included in the calculation of this nurse-patient ratio are registered nurses, licensed vocational nurses, licensed practical nurses, and nursing assistants who provide patient care. Not included are general support personnel such as ward clerks, custodians, and housekeeping personnel; and

(6) Is equipped, or has available for immediate use, life-saving equipment necessary to treat the critically ill patients for which it is designed. This equipment may include, but is not limited to, respiratory and cardiac monitoring equipment, respirators, cardiac defibrillators, and wall or canister oxygen and compressed air.

(e) *Application*—(1) *Departmental method; Cost reporting periods beginning on or after October 1, 1982.*

(i) The following example illustrates how costs would be determined, using only inpatient data, for cost reporting

periods beginning on or after October 1, 1982, based on apportionment of—

(A) The average cost per diem for general routine services (subject to the private room differential provisions of paragraph (a)(1)(iii) of this section);

(B) The average cost per diem for each intensive care type unit;

(C) The ratio of beneficiary charges to total charges applied to cost by department.

HOSPITAL Y

Department	Charges to program beneficiaries	Total charges	Ratio of beneficiary charges to total charges	Total cost	Cost of beneficiary services
			Percent		
Operating rooms	$20,000	$70,000	28½	$77,000	$22,000
Delivery rooms	0	12,000	0	30,000	0
Pharmacy	20,000	60,000	33⅓	45,000	15,000
X-ray	24,000	100,000	24	75,000	18,000
Laboratory	40,000	140,000	28½	98,000	28,000
Others	6,000	30,000	20	25,000	5,000
Total	110,000	412,000		350,000	88,000

	Total inpatient days	Total cost	Average cost per diem	Program in patient days	Cost of beneficiary services
General routine	30,000	$630,000	$21	8,000	$168,000
Coronary care unit	500	20,000	40	200	8,000
Intensive care unit	3,000	108,000	36	1,000	36,000
	33,500	758,000		9,200	212,000
Total					300,000

(ii) The following illustrates how apportionment based on an average cost per diem for general routine services is determined.

HOSPITAL E

Facts	Private accommodations	Semi-private accommodations	Total
Total charges	$20,000	$175,000	$195,000
Total days	100	1,000	1,100
Programs days	70	400	470
Medically necessary for program beneficiaries	20		20
Total general routine service costs			165,000
Average private room per diem charge ($20,000 private room charges ÷ 100 days)			[1] $200
Average semi-private room per diem charge ($175,000 semi-private charge ÷ 1,000 days)			[1] $175

[1] Per diem.

Average per diem private room cost differential.

1. Averagae per diem private room charge differential ($200 private room per diem—$175, semi-private room per diem), $25.
2. Inpatient general routine cost/charge ratio ($165,000 total costs ÷ $195,000 total charges), 0.8461538.
3. Average per diem private room cost differential ($25 charge differential × .8461538 cost/charge ratio), $21.15.

Average cost per diem for inpatient general routine services.

4. Total private room cost differential ($21.15 average per diem cost differential × 100 private room days), $2,115.
5. Total inpatient general routine service costs net of private room cost differential ($165,000 total routine cost −$2,115 private room cost differential), $162,885.
6. Average cost per diem for inpatient general routine services ($162,885 routine cost net of private room cost differential ÷ 1,100 patient days), $148.08.

Medicare general routine service cost.

7. Total routine per diem cost applicable to Medicare ($148.08 average cost per diem × 470 Medicare private and semi-private patient days), $69,598.
8. Total private room cost differential applicable to Medicare (21.15 average per diem private room cost differential × 20 medically necessary private room days), $423.
9. Medicare inpatient general routine service cost ($423 Medicare private room cost differential + $69,598 Medicare cost of general routine inpatient services), $70,021.

(2) *Carve out method.* The following illustrates how apportionment is determined in a hospital reimbursed under the carve out method (subject to the private room differential provisions of paragraph (a)(1)(ii) of this section):

HOSPITAL K

[Determination of cost of routine SNF-type and ICF-type services and general routine hospital services[1]]

Facts	Days of care		
	General routine hospital	SNF-type	ICF-type
Total days of care	2,000	400	100
Medicare days of care	600	300	
Average medicaid rate	N/A	$35	$20

Total inpatient general routine service costs: $250,000

Calculation of cost of routine SNF-type services applicable to medicare:
$35 × 300 = $10,500

Calculation of cost of general routine hospital services:
Cost of SNF-type services: $35 × 400 ..... $14,000
Cost ICF-type services: $20 × 100 2,000
Total $16,000

Average cost per diem of general routine hospital services:
$250,000 — $16,000 ÷ 2,000 days = $117

Medicare general routine hospital cost:
$117 × 600 = $70,200

Total medicare reasonable cost for general routine inpatient days:
$10,500 + $70,200 = $80,700

§ 413.56 Malpractice insurance costs.

(a) *Apportionment of malpractice insurance premiums and self-insurance fund contributions.* For cost reporting periods beginning on or after July 1, 1979, malpractice insurance costs must be apportioned as set forth in this section. Subject to the rules of administrative finality and reopening as set forth in Subpart R of this part, hospital malpractice insurance premiums and self-insurance fund contributions must be separately accumulated and directly apportioned to Medicare based on the methodology described in paragraph (b) of this section. Allowable malpractice insurance costs of SNFs must be apportioned to Medicare based on the methodology described in paragraph (c) of this section. For purposes of this section, "premium" includes contributions to malpractice self insurance funds.

(b) *Hospital malpractice insurance cost methodology.* (1) *Components of the premium.* The premium is divided into

an administrative component and a risk component as follows:

(i) The administrative component consists of 8.5 percent of the total premium amount, and accounts for an insurer's fixed overhead expenses and a proportionate share of premium and payroll taxes and commissions paid to insurance agents.

(ii) The risk component consists of 91.5 percent of the total premium amount, and accounts for an insurer's anticipated loss experience, expenses associated with losses (including defense costs and claims department overhead costs), and the remaining share of taxes and commissions paid to insurance agents that are not included in the administrative component.

(2) *Apportionment of administrative component.* The administrative component of the premium is reported as an administrative and general cost and apportioned in accordance with § 413.53(a)(1).

(3) *Apportionment of risk component.* (i) The risk component of the premium is apportioned based on a scaling factor, derived from the scaling factor formula described in paragraph (b)(3)(ii) of this section, which accounts for the hospital's Medicare utilization rate and the disproportionately low national ratio of hospital malpractice losses paid to Medicare beneficiaries, as compared to losses paid to all patients. The scaling factor is multiplied by 91.5 percent of the hospital's malpractice insurance premium to determine Medicare's share of the risk component of the premium.

(ii) The scaling factor is derived from the following formula:

$$\frac{u \times (R/U_1)}{[u \times (R/U_1)] + [(1-u) \times (1-R)/(1-U_2)]}$$

U_1 = The national Medicare hospital patient utilization rate, as adjusted for the time lag between incident and claim closure for Medicare patients.

U_2 = The national Medicare hospital patient utilization rate, as adjusted for the time lag between incident and claim closure for non-Medicare patients.

R = The national Medicare malpractice loss ratio, as adjusted for associated claims handling expense.

u = The hospital's own Medicare utilization rate for the cost reporting period based on a ratio of the hospital's total Medicare-covered inpatient days of care to its total inpatient days of care.

R/U_1 = The national Medicare malpractice loss ratio compared to the national Medicare utilization rate.

$(1-R)/(1-U_2)$ = The national non-Medicare malpractice loss ratio compared to the national non-Medicare utilization rate.

(4) *Example:* Apportionment of Medicare's share of the malpractice insurance costs of a hospital that averages 75 percent Medicare utilization during the applicable cost reporting period is calculated as follows:

Step one—The administrative component of the premium (8.5 percent) is included in the administrative and general cost center of the hospital and is apportioned on a utilization basis. This, the hospital would be reimbursed approximately .085 times .75, or 6.38 percent of the administrative component of its premium. (This figure would vary slightly depending upon the hospital's specific Medicare utilization of its patient care departments.)

Step two—The risk component of the premium (91.5 percent) is apportioned on a basis which accounts for the hospital's own Medicare patient utilization rate and the adjusted national Medicare malpractice loss ratio by multiplying 91.5 percent by the .421 scaling factor derived from the scaling factor formula, as follows:

u = 75.0 percent
R = 13.2 percent
U_1 = 38.8 percent
U_2 = 38.1 percent

$$\frac{.75 \times (.132/.388)}{[.75 \times (.132/.388)] + [(1-.75) \times (1-.132)/(1-.381)]} = .421$$

Thus, the hospital would be reimbursed .915 times .421, or 38.54 percent of the risk component of its premium. This means that Medicare reimbursement would account for 6.38 percent plus 38.54 percent, or 44.92 percent of this hospital's total malpractice insurance premium.

(5) *Updating of factors used in determining apportionment.* Based on actual cost reports data, HCFA will periodically calculate the national average of Medicare utilization and the national ratio of hospital malpractice losses paid to Medicare beneficiaries to malpractice losses paid to all hospital patients. Periodically, as warranted by changes in these factors, HCFA will—

(i) Publish a notice in the **Federal Register** describing the proposed changes for public comment; and

(ii) In a subsequent **Federal Register** notice, update the relevant factors and respond to comments.

(6) *Allowable uninsured malpractice losses and related direct costs incurred by a hospital.* If a hospital pays an allowable uninsured malpractice loss to or on behalf of a Medicare beneficiary in order to comply with a deductible or coinsurance policy, or as a result of an award in excess of a reasonable coverage limit, or as a governmental provider, that loss and related direct costs must be directly assigned to Medicare for reimbursement. An uninsured malpractice loss paid to or on behalf of a non-Medicare patient is not an allowable cost.

(c) *SNF malpractice insurance cost methodology.* Costs of malpractice insurance premiums and self-insurance fund contributions, in addition to other allowable malpractice insurance costs of an SNF, are reported as an administrative and general cost and apportioned in accordance with § 413.53(a)(1).

Subpart E—Payments to Providers

§ 413.60 Payments to providers: General.

(a) The fiscal intermediaries will establish a basis for interim payments to each provider. This may be done by one of several methods. If an intermediary is already paying the provider on a cost basis, the intermediary may adjust its rate of payment to an estimate of the result under the Medicare principles of reimbursement. If no organization is paying the provider on a cost basis, the intermediary may obtain the previous year's financial statement from the provider and, by applying the principles of reimbursement, compute or approximate an appropriate rate of payment. The interim payment may be related to the last year's average per diem, or to charges, or to any other ready basis of approximating costs.

(b) At the end of the period, the actual apportionment, based on the cost finding and apportionment methods selected by the provider, determines the Medicare reimbursement for the actual services provided to beneficiaries during the period.

(c) Basically, therefore, interim payments to providers will be made for services throughout the year, with final settlement on a retroactive basis at the end of the accounting period. Interim

payments will be made as often as possible and in no event less frequently than once a month. The retroactive payments will take fully into account the costs that were actually incurred and settle on an actual, rather than on an estimated basis.

§ 413.64 Payments to providers: Specific rules.

(a) *Principle*—(1) *Reimbursement on a reasonable cost basis.* Providers of services paid on the basis of the reasonable cost of services furnished to beneficiaries will receive interim payments approximating the actual costs of the provider. These payments will be made on the most expeditious schedule administratively feasible but not less often than monthly. A retroactive adjustment based on actual costs will be made at the end of reporting period.

(2) *Payments under the prospective payment system.* For cost reporting periods beginning on or after October 1, 1983, hospitals and hospital units (see § 413.1(d)) are paid a prospectively determined rate under Part 412 of this chapter for Medicare Part A inpatient operating costs on a per discharge basis. Part A inpatient hospital operating costs include those costs (including malpractice costs) for general routine services, ancillary services, and intensive care-type unit services with respect to inpatient hospital services but exclude capital-related and direct medical education costs. Payments for capital-related and direct medical education applicable to inpatient costs that are payable under Part A, for certain kidney acquisition costs of renal transplantation centers (see § 405.2102(e)(1) of this chapter), and for medical and other health services furnished to inpatients under Part B and outpatient services with respect to such hospitals and hospital units continue on a reasonable cost basis. The method of payment for hospitals under the prospective payment system is described in paragraph (k) of this section.

(b) *Amount and frequency of payment.* Medicare states that providers of services will be paid the reasonable cost of services furnished to beneficiaries. Since actual costs of services cannot be determined until the end of the accounting period, the providers must be paid on an estimated cost basis during the year. While Medicare provides that interim payments will be made no less often than monthly, intermediaries are expected to make payments on the most expeditious basis administratively feasible. Whatever estimated cost basis is used for determining interim payments during the year, the intent is that the interim payments shall approximate actual costs as nearly as is practicable so that the retroactive adjustment based on actual costs will be as small as possible.

(c) *Interim payments during initial reporting period.* At the beginning of the program or when a provider first participates in the program, it will be necessary to establish interim rates of payment to providers of services. Once a provider has filed a cost report under the Medicare program, the cost report may be used as a basis for determining the interim rate of reimbursement for the following period. However, since initially there is no previous history of cost under the program, the interim rate of payment must be determined by other methods, including the following:

(1) If the intermediary is already paying the provider on a cost or cost-related basis, the intermediary will adjust its rate of payment to the program's principles of reimbursement. This rate may be either an amount per inpatient day, or a percent of the provider's charges for services furnished to the program's beneficiaries.

(2) If an organization other than the intermediary is paying the provider for services on a cost or cost-related basis, the intermediary may obtain from that organization or from the provider itself the rate of payment being used and other cost information as may be needed to adjust that rate of payment to give recognition to the program's principles of reimbursement.

(3) It no organization is paying the provider on a cost or cost-related basis, the intermediary will obtain the previous year's financial statement from the provider. By analysis of such statement in the light of the principles of reimbursement, the intermediary will compute an appropriate rate of payment.

(4) After the initial interim rate has been set, the provider may at any time request, and be allowed, an appropriate increase in the computed rate, upon presentation of satisfactory evidence to the intermediary that costs have increased. Likewise, the intermediary may adjust the interim rate of payment if it has evidence that actual costs may fall significantly below the computed rate.

(d) *Interim payments for new providers.* (1) Newly-established providers will not have cost experience on which to base a determination of an interim rate of payment. In such cases, the intermediary will use the following methods to determine an appropriate rate:

(i) If there is a provider or providers comparable in substantially all relevant factors to the provider for which the rate is needed, the intermediary will base an interim rate of payment on the costs of the comparable provider.

(ii) If there are no substantially comparable providers from whom data are available, the intermediary will determine an interim rate of payment based on the budgeted or projected costs of the provider.

(2) Under either method, the intermediary will review the provider's cost experience after a period of three months. If need for an adjustment is indicated, the interim rate of payment will be adjusted in line with the provider's cost experience.

(e) *Interim payments after initial reporting period.* Interim rates of payment for services provided after the initial reporting period will be established on the basis of the cost report filed for the previous year covering Medicare services. The current rate will be determined—whether on a per diem or percentage of charges basis—using the previous year's costs of covered services and making any appropriate adjustments required to bring, as closely as possible, the current year's rate of interim payment into agreement with current year's costs. This interim rate of payment may be adjusted by the intermediary during an accounting period if the provider submits appropriate evidence that its actual costs are or will be significantly higher than the computed rate. Likewise, the intermediary may adjust the interim rate of payment if it has evidence that actual costs may fall significantly below the computed rate.

(f) *Retroactive adjustment.* (1) Medicare provides that providers of services will be paid amounts determined to be due, but not less often than monthly, with necessary adjustments due to previously made overpayments or underpayments. Interim payments are made on the basis of estimated costs. Actual costs reimbursable to a provider cannot be determined until the cost reports are filed and costs are verified. Therefore, a retroactive adjustment will be made at the end of the reporting period to bring the interim payments made to the provider during the period into agreement with the reimbursable amount payable to the provider for the services furnished to program beneficiaries during that period.

(2) In order to reimburse the provider as quickly as possible, an initial retroactive adjustment will be made as soon as the cost report is received. For

this purpose, the costs will be accepted as reported, unless there are obvious errors or inconsistencies, subject to later audit. When an audit is made and the final liability of the program is determined, a final adjustment will be made.

(3) To determine the retroactive adjustment, the amount of the provider's total allowable cost apportioned to the program for the reporting year is computed. This is the total amount of reimbursement the provider is due to receive from the program and the beneficiaries for covered services furnished during the reporting period. The total of the interim payments made by the program in the reporting year and the deductibles and coinsurance amounts receivable from beneficiaries is computed. The difference between the reimbursement due and the payments made in the amount of the retroactive adjustment.

(g) *Accelerated payments to providers.* Upon request, an accelerated payment may be made to a provider of services if the provider has experienced financial difficulties due to a delay by the intermediary in making payments or in exceptional situations, in which the provider has experienced a temporary delay in preparing and submitting bills to the intermediary beyond its normal billing cycle. Any such payment must be approved first by the intermediary and then by HCFA. The amount of the payment is computed as a percentage of the net reimbursement for unbilled or unpaid covered services. Recovery of the accelerated payment may be made by recoupment as provider bills are processed or by direct payment.

(h) *Periodic interim payment method of reimbursement.*—(1)(i) *Covered services furnished before July 1, 1987.* In addition to the regular methods of interim payment on individual provider billings for covered services, the periodic interim payment (PIP) method is available for Part A hospital and SNF inpatient services and for both Part A and Part B HHA services.

(ii) *Covered services furnished on or after July 1, 1987.* Effective with covered services furnished to beneficiaries on or after July 1, 1987, the PIP method, in addition to the other methods of interim payment on individual provider billings for covered services, is available only for the following:

(A) Part A SNF services.

(B) Part A and Part B HHA services.

(C) Part A services furnished in hospitals receiving payment in accordance with a demonstration project authorized under section 402(a) of Pub. L. 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Pub. L. 92–603 (42 U.S.C. 1395b–1 (note)), or a State reimbursement control system approved under section 1886(c) of the Act and Subpart C of Part 403 of this chapter, if that type of payment is specifically approved by HCFA as a part of the demonstration on control system.

(D) Part A services furnished in hospitals located in a rural area as defined in § 412.62(f) of this chapter that have fewer than 100 beds available for use excluding beds assigned to newborns.

(2) Any participating provider furnishing the services described in paragraph (h)(1) of this section that establishes to the satisfaction of the intermediary that it meets the following requirements may elect to be reimbursed under the PIP method, beginning with the first month after its request that the intermediary finds administratively feasible:

(i) The provider's estimated total Medicare reimbursement for inpatient services is at least $25,000 a year computed under the PIP formula or, in the case of an HHA, either its estimated—

(A) Total Medicare reimbursement for Part A and Part B services is a least $25,000 a year computed under the PIP formula; or

(B) Medicare reimbursement computed under the PIP formula is at least 50 percent of estimated total allowable cost.

(ii) The provider has filed at least one completed Medicare cost report accepted by the intermediary as providing an accurate basis for computation of program payment (except in the case of a provider requesting reimbursement under the PIP method upon first entering the Medicare program).

(iii) The provider has the continuing capability of maintaining in its records the cost, charge, and statistical data needed to accurately complete a Medicare cost report on a timely basis.

(iv) The provider has repaid or agrees to repay any outstanding current financing payment in full, such payment to be made before the effective date of its requested conversion from a regular interim payment method to the PIP method.

(3) No conversion to the PIP method may be made with respect to any provider until after that provider has repaid in full its outstanding current financing payment.

(4) The intermediary's approval of a provider's request for reimbursement under the PIP method will be conditioned upon the intermediary's best judgment as to whether payment can be made to the provider under the PIP method without undue risk of its resulting in an overpayment because of greatly varying or substantially declining Medicare utilization, inadequate billing practices, or other circumstances. The intermediary may terminate PIP reimbursement to a provider at any time it determines that the provider no longer meets the qualifying requirements or that the provider's experience under the PIP method shows that proper payment cannot be made under this method.

(5) Payment will be made biweekly under the PIP method unless the provider requests a longer fixed interval (not to exceed one month) between payments. The payment amount will be computed by the intermediary to approximate, on the average, the cost of covered inpatient or home health services furnished by the provider during the period for which the payment is to be made, and each payment will be made two weeks after the end of such period of services. Upon request, the intermediary will, if feasible, compute the provider's payments to recognize significant seasonal variation in Medicare utilization of services on a quarterly basis starting with the beginning of the provider's reporting year.

(6) A provider's PIP amount may be appropriately adjusted at any time if the provider presents or the intermediary otherwise obtains evidence relating to the provider's costs or Medicare utilization that warrants such adjustment. In addition, the intermediary will recompute the payment immediately upon completion of the desk review of a provider's cost report and also at regular intervals not less often than quarterly. The intermediary may make a retroactive lump sum interim payment to a provider, based upon an increase in its PIP amount, in order to bring past interim payments for the provider's current cost reporting period into line with the adjusted payment amount. The objective of intermediary monitoring of provider costs and utilization is to assure payments approximating, as closely as possible, the reimbursement to be determined at settlement for the cost reporting period. A significant factor in evaluating the amount of the payment in terms of the realization of the projected Medicare utilization of services is the timely submittal to the intermediary of completed admission and billing forms. All providers must complete billings in detail under this method as under regular interim payment procedures.

(i) *Bankruptcy or insolvency of provider.* If on the basis of reliable

evidence, the intermediary has a valid basis for believing that, with respect to a provider, proceedings have been or will shortly be instituted in a State or Federal court for purposes of determining whether such provider is insolvent or bankrupt under an appropriate State or Federal law, any payments to the provider will be adjusted by the intermediary, notwithstanding any other regulation or program instruction regarding the timing or manner of such adjustments, to a level necessary to insure that no overpayment to the provider is made.

(j) *Interest payments resulting from judicial review*—(1) *Application.* If a provider of services seeks judicial review by a Federal court (see § 405.1877 of this chapter) of a decision furnished by the Provider Reimbursement Review Board or subsequent reversal, affirmation, or modification by the Secretary, the amount of any award of such Federal court will be increased by interest payable by the party against whom the judgment is made (see § 413.153 for treatment of interest). The interest is payable for the period beginning on the first day of the first month following the 180-day period which began on either the date the intermediary made a final determination or the date the intermediary would have made a final determination had it been done on a timely basis (see §§ 405.1835(b) and 405.1841(a) of this chapter).

(2) *Amount due.* Section 1878(f) of the Act, 42 U.S.C. 1395oo(f), authorizes a court to award interest in favor of the prevailing party on any amount due as a result of the court's decision. If the intermediary withheld any portion of the amount in controversy prior to the date the provider seeks judicial review by a Federal court, and the Medicare program is the prevailing party, interest is payable by the provider only on the amount not withheld. Similarly, if the Medicare program seeks to recover amounts previously paid to a provider, and the provider is the prevailing party, interest on the amounts previously paid to a provider is not payable by the Medicare program since that amount had been paid and is not due the provider.

(3) *Rate.* The amount of interest to be paid is equal to the rate of return on equity capital (see § 413.157) in effect for the month in which the civil action is commenced.

Example: An intermediary made a final determinaton on the amount of Medicare program reimbursement on June 15, 1974, and the provider appealed that determination to the Provider Reimbursement Review Board. The Board heard the appeal and rendered a decision adverse to the provider. On October 28, 1974, the provider commenced civil action to have such decision reviewed. The rate of return on equity capital for the month of October 1974 was 11.625 percent. The period for which interest is computed begins on January 1, 1975, and the interest beginning January 1, 1975, would be at the rate of 11.625 percent per annum.

(k) *Prospective payments.*—(1) *General rule.*—(i) *Final payment.* For cost reporting periods beginning on or after October 1, 1983, hospitals subject to the prospective payment system are paid for Part A inpatient operating costs on a per discharge basis using prospectively determined rates. The amounts represent final payment based on the submission of a discharge bill. Unless the provisions of paragraphs (k)(2) through (k)(5) of this section apply, year-end retroactive adjustments are not made for prospective payment hospitals.

(ii) *Outlier payments.* Payments for outlier cases (described in Subpart F of Part 412 of this chapter) are not made on an interim basis. The outlier payments are made based on submitted bills and represent final payment.

(iii) *Other payments.* Medical education costs are reimbursed as described in § 413.85, and capital-related costs are reimbursed as described in § 413.130.

(2) *Interim prospective payments per discharge.* (i) Except as provided in paragraph (k)(2)(ii) of this section, prospective payment hospitals meeting the criteria in paragraph (h) of this section may elect to receive periodic interim payments for discharges occurring before July 1, 1987. Therefore, at the discretion of the intermediary, the hospital's prospective payments are estimated and made on a periodic interim basis (26 biweekly payments). These payments are subject to final settlement. Each payment is made two weeks after the end of a biweekly period of services, as described in paragraph (h)(5) of this section. Hospitals electing periodic interim payments may convert to payments on a per discharge basis at any time.

(ii) Prospective payment hospitals located in a rural area as defined in § 412.62(f) of this chapter that have fewer than 100 beds available for use excluding beds assigned to newborns and meet the criteria in paragraph (h) of this section may elect to receive periodic interim payments for discharges occurring on or after July 1, 1987.

(iii) For the hospitals receiving periodic interim payments for inpatient operating costs, the biweekly interim payment amount is based on the total estimated Medicare discharges for the reporting period multiplied by the hospital's estimated average prospective payment amount. These interim payments are reviewed at least twice during the reporting period and adjusted if necessary.

(iv) For purposes of determining periodic interim payments under this paragraph, the intermediary computes a hospital's estimated average prospective payment amount by multiplying its transition payment rates as determined under § 412.70(c) of this chapter, but without adjustment by a DRG weighting factor, by the hospital's case-mix index, and subtracting from this amount estimated deductibles and coinsurance.

(3) *Special interim payments for certain costs.* For capital-related costs and the direct costs of medical education, which are not included in prospective payments but are reimbursed as specified in §§ 413.130 and 413.85, respectively, interim payments are made subject to final cost settlement. Interim payments for capital-related items and the estimated cost of approved medical education programs (applicable to inpatient costs payable under Part A and for kidney acquisition costs in hospitals approved as renal transplantation centers) are determined by estimating the reimbursable amount for the year based on the previous year's experience and on substantiated information for the current year and divided into 26 equal biweekly payments. Each payment is made two weeks after the end of a biweekly period of services, as described in paragraph (h)(5) of this section. The interim payments are reviewed by the intermediary at least twice during the reporting period and adjusted if necessary.

(4) *Special interim payments for the indirect costs of medical education.* Payments for the indirect costs of medical education (described in § 412.118 of this chapter) are paid based on an estimate of the total for the Federal portion of the diagnosis-related group revenue to be received in the current period. The total estimated annual amount of the adjustment is divided into 26 equal biweekly payments and included with other inpatient costs reimbursed on a reasonable cost basis. This estimate is subject to year-end adjustment. Each payment is made two weeks after the end of a biweekly period of services. The interim payments are reviewed by the intermediary at least twice during their reporting period and adjusted if necessary.

(5) *Special interim payments for unusually long lengths of stay.* For

discharges occurring on or after July 1, 1987, a hospital may request an interim payment if a Medicare beneficiary's length of stay exceeds 30 days. The amount of the interim payment is equal to the hospital's Federal rate multiplied by the appropriate diagnosis-related group weighting factor. Only one interim payment per discharge is permitted.

§ 413.74 Payment to a foreign hospital.

(a) *Principle.* Section 1814(f) of the Act provides for the payment of emergency and nonemergency inpatient hospital services furnished by foreign hospitals to Medicare beneficiaries. Section 405.153 of this chapter, together with this section, specify the conditions for payment. These conditions may result in payments only to Canadian and Mexican hospitals.

(b) *Amount of payment.* Effective with admissions on or after January 1, 1980, the reasonable cost for services covered under the Medicare program furnished to beneficiaries by a foreign hospital will be equal to 100 percent of the hospital's customary charges (as defined in § 413.13(b)) for the services.

(c) *Submittal of claims.* The hospital must establish its customary charges for the services by submitting an itemized bill with each claim it files in accordance with its election under § 405.658 of this chapter.

(d) *Exchange rate.* Payment to the hospital will be subject to the official exchange rate on the date the patient is discharged and to the applicable deductible and coinsurance amounts described in §§ 409.80 through 409.83.

Subpart F—Specific Categories of Costs

§ 413.80 Bad debts, charity, and courtesy allowances.

(a) *Principle.* Bad debts, charity, and courtesy allowances are deductions from revenue and are not to be included in allowable cost; however, bad debts attributable to the deductibles and coinsurance amounts are reimbursable under the program.

(b) *Definitions—(1) Bad debts.* Bad debts are amounts considered to be uncollectible from accounts and notes receivable that were created or acquired in providing services. "Accounts receivable" and "notes receivable" are designations for claims arising from the furnishing of services, and are collectible in money in the relatively near future.

(2) *Charity allowances.* Charity allowances are reductions in charges made by the provider of services because of the indigence or medical indigence of the patient. Cost of free care (uncompensated services) furnished under a Hill-Burton obligation are considered as charity allowances.

(3) *Courtesy allowances.* Courtesy allowances indicate a reduction in charges in the form of an allowance to physicians, clergy, members of religious orders, and otheres as approved by the governing body of the provider, for services received from the provider. Employee fringe benefits, such as hospitaliation and personnel health programs, are not considered to be courtesy allowances.

(c) *Normal accounting treatment: Reduction in revenue.* Bad debts, charity, and courtesy allowances represent reductions in revenue. The failure to collect charges for services furnished does not add to the cost of providing the services. Such costs have already been incurred in the production of the services.

(d) *Requirements for Medicare.* Under Medicare, costs of covered services furnished beneficiaries are not to be borne by individuals not covered by the Medicare program, and conversely, costs of services provided for other than beneficiaries are not to be borne by the Medicare program. Uncollected revenue related to services furnished to beneficiaries of the program generally means the provider has not recovered the cost of services covered by that revenue. The failure of beneficiaries to pay the deductible and coinsurance amounts could result in the related costs of covered services being borne by other than Medicare beneficiaries. To assure that such covered service costs are not borne by others, the costs attributable to the deductible and coinsurance amounts that remain unpaid are added to the Medicare share of allowable costs. Bad debts arising from other sources are not allowable costs.

(e) *Criteria for allowable bad debt.* A bad debt must meet the following criteria to be allowable:

(1) The debt must be related to covered services and derived from deductible and coinsurance amounts.

(2) The provider must be able to establish that reasonable collection efforts were made.

(3) The debt was actually uncollectible when claimed as worthless.

(4) Sound business judgment established that there was no likelihood of recovery at any time in the future.

(f) *Charging of bad debts and bad debt recoveries.* The amounts uncollectible from specific beneficiaries are to be charged off as bad debts in the accounting period in which the accounts are deemed to be worthless. In some cases an amount previously written off as a bad debt and allocated to the program may be recovered in a subsequent accounting period; in such cases the income therefrom must be used to reduce the cost of beneficiary services for the period in which the collection is made.

(g) *Charity allowances.* Charity allowances have no relationship to beneficiaries of the Medicare program and are not allowable costs. These charity allowances include the costs of uncompensated services furnished under a Hill-Burton obligation. (Note: In accordance with Sec. 106(b) of Pub. L. 97–248 (enacted September 3, 1982), this sentence is effective with respect to any costs incurred under Medicare except that it does not apply to costs which have been allowed prior to September 3, 1982, pursuant to a final court order affirmed by a United States Court of Appeals.) The cost to the provider of employee fringe-benefit programs is an allowable element of reimbursement.

§ 413.85 Cost of educational activities.

(a) *Reimbursement*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, a provider's allowable cost may include its net cost of approved educational activities, as calculated under paragraph (g) of this section.

(2) *Limit applicable to cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986.* (i) For cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986, a provider's net cost of approved educational activities, as calculated under paragraph (g) of this section, incurred during a cost reporting period is limited, under the authority of section 1861(v)(1)(A) of the Act, to the lesser of the provider's net cost of its program—

(A) For that cost reporting period; or

(B) For a base year that consists of the provider's cost reporting period that began on or after October 1, 1983 but before October 1, 1984. For providers whose cost reporting periods began during the months of October 1983 through June 1984, the provider's net cost of its program is adjusted by an updating factor. The factor is based on the increase in the overall rate of inflation, according to the Consumer Price Index for All Urban Consumers, that occurred during the provider's base year.

(ii) For providers that did not have approved educational activities as of the first day of the cost reporting period that would otherwise be its base year defined in paragraph (a)(2)(i)(B) of this section, and that initiated such activities after the first month of that cost

reporting period, but prior to July 1, 1985, we will establish a base period for applying the limit described in this section. The base period will include allowable costs the provider incurred for approved educational activities prior to July 1, 1985, adjusted in order to be reasonably comparable to the base years of other providers.

(3) *Apportionment.* Once the net cost is determined under this section, it is subject to apportionment for Medicare utilization as described in § 405.403.

(b) *Definition—Approved educational activities.* Approved educational activities means formally organized or planned programs of study usually engaged in by providers in order to enhance the quality of patient care in an institution. These activities must be licensed if required by State law. If licensing is not required, the institution must receive approval from the recognized national professional organization for the particular activity.

(c) *Educational activities.* Many providers engage in educational activities including training programs for nurses, medical students, interns and residents, and various paramedical specialties. These programs contribute to the quality of patient care within an institution and are necessary to meet the community's needs for medical and paramedical personnel. It is recognized that the costs of such educational activities should be borne by the community. However, many communities have not assumed responsibility for financing these programs and it is necessary that support be provided by those purchasing health care. Until communities undertake to bear these costs, the program will participate appropriately in the support of these activities. Although the intent of the program is to share in the support of educational activities customarily or traditionally carried on by providers in conjunction with their operations, it is not intended that this program should participate in increased costs resulting from redistribution of costs from educational institutions or units to patient care institutions or units.

(d) *Activities not within the scope of this principle.* The costs of the following activities are not within the scope of this principle but are recognized as normal operating costs and are reimbursed in accordance with applicable principles—

(1) Orientation and on-the-job training;

(2) Part-time education for bona fide employees at properly accredited academic or technical institutions (including other providers) devoted to undergraduate or graduate work;

(3) Costs, including associated travel expense, or sending employees to educational seminars and workshops that increase the quality of medical care or operating efficiency of the provider;

(4) Maintenance of a medical library;

(5) Training of a patient or patient's family in the use of medical appliances;

(6) Clinical training of students not enrolled in an approved education program operated by the provider; and

(7) Other activities that do not involve the actual operation of an approved education program including the costs of interns and residents in anesthesiology who are are employed to replace anesthetists.

(e) *Approved programs.* In addition to approved medical, osteopathic, dental, and podiatry internships and residency programs[1] recognized professional and paramedical educational and training programs now being conducted by provider institutions, and their approving bodies, and include the following:

Program	Approving bodies
(1) Cytotechnology	Council on Medical Education of the American Medical Association in collaboration with the Board of Schools of Medical Technology, American Society of Clinical Pathologists.
(2) Dietetic internships	The American Dietetic Association.
(3) Hospital administration residencies	Members of the Association of University Programs in Hospital Administration.
(4) Inhalation therapy	Council on Medical Education of the American Medical Association in collaboration with the Board of Schools of Inhalation Therapy.
(5) Medical records	Council on Medical Education of the American Medical Association in collaboration with the Committee on Education and Registration of the American Association of Medical Record Librarians.
(6) Medical technology	Council on Medical Education of the American Medical Association in collaboration with the Board of Schools of Medical Technology, American Society of Clinical Pathologists.
(7) Nurse anesthetists	The American Association of Nurse Anesthetists.
(8) Professional nursing	Approved by the respective State approving authorities. Reported for the United States by the National League for Nursing.
(9) Practical nursing	Approved by the respective State approving authorities. Reported for the United States by the National League for Nursing.
(10) Occupational therapy	Council on Medical Education of the American Medical Association in collaboration with the Council on Education of the American Occupational Therapy Association.
(11) Pharmacy residencies	American Society of Hospital Pharmacists.
(12) Physical therapy	Council on Medical Education of the American Medical Association in collaboration with the American Physical Therapy Association.
(13) X-ray technology	Council on Medical Education of the American Medical Association in collaboration with the American College of Radiology.

(f) *Other educational programs.* There may also be other educational programs not included in the foregoing in which a provider institution is engaged. Appropriate consideration will be given by the intermediary and HCFA to the costs incurred for those activities that come within the purview of the principle when determining the allowable costs for apportionment under the Medicare program.

(g) *Calculating net cost.* Net costs of approved educational activities are determined by deducting, from a provider's total costs of these activities, revenues it receives from tuition. For this purpose, a provider's total costs include trainee stipends, compensation of teachers, and other direct and indirect costs of the activities as determined under the Medicare cost-finding principles in § 413.24.

§ 413.90 Research costs.

(a) *Principle.* Costs incurred for research purposes, over and above usual patient care, are not includable as allowable costs.

(b) *Application.* (1) There are numerous sources of financing for health-related research activities. Funds for this purpose are provided under many Federal programs and by other tax-supported agencies. Also, many foundations, voluntary health agencies, and other private organizations, as well as individuals, sponsor or contribute to the support of medical and related research. Funds available from such sources are generally ample to meet basic medical and hospital research needs. A further consideration is that quality review should be assured as a condition of governmental support for research. Provisions for such review would introduce special difficulties in the Medicare programs.

(2) If research is conducted in conjunction with, and as a part of, the care of patients, the costs of usual patient care are allowable to the extent that such costs are not met by funds

[1] See § 409.15 of this chapter for a listing of such approved programs. For purposes of determination of educational costs in cost reporting periods beginning prior to January 1973, podiatry internships and residency programs approved by the Council on Podiatry Education of the American Podiatry Association were eligible for approval under paragraph (f) of this section.

provided for the research. Under this principle, however, studies, analyses, surveys, and related activities to serve the provider's administrative and program needs, are not excluded as allowable costs in the determination of reimbursement under Medicare.

§ 413.94 Value of services of nonpaid workers.

(a) *Principle.* The value of services in positions customarily held by full-time employees performed on a regular, scheduled basis by individuals as nonpaid members of organizations under arrangements between such organizations and a provider for the performance of such services without direct remuneration from the provider to such individuals is allowable as an operating expense for the determination of allowable cost subject to the limitation contained in paragraph (b) of this section. The amounts allowed are not to exceed those paid others for similar work. Such amounts must be identifiable in the records of the institutions as a legal obligation for operating expenses.

(b) *Limitations: Services of nonpaid workers.* The services must be performed on a regular, scheduled basis in positions customarily held by full-time employees and necessary to enable the provider to carry out the functions of normal patient care and operation of the institution. The value of services of a type for which providers generally do not remunerate individuals performing such services is not allowable as a reimbursable cost under the Medicare program. For example, donated services of individuals in distributing books and magazines to patients, or in serving in a provider canteen or cafeteria or in a provider gift shop, would not be reimbursable.

(c) *Application.* The following illustrates how a provider would determine an amount to be allowed under this principle: The prevailing salary for a lay nurse working in Hospital A is $5,000 for the year. The lay nurse receives no maintenance or special perquisites. A sister working as a nurse engaged in the same activities in the same hospital receives maintenance and special perquisites which cost the hospital $2,000 and are included in the hospital's allowable operating costs. The hospital would then include in its records an additional $3,000 to bring the value of the services rendered to $5,000. The amount of $3,000 would be allowable if the provider assumes obligation for the expense under a written agreement with the sisterhood or other religious order covering payment by the provider for the services.

§ 413.98 Purchase discounts and allowances, and refunds of expenses.

(a) *Principle.* Discounts and allowances received on purchases of goods or services are reductions of the costs to which they relate. Similarly, refunds of previous expense payments are reductions of the related expense.

(b) *Definitions*—(1) *Discounts.* Discounts, in general, are reductions granted for the settlement of debts.

(2) *Allowances.* Allowances are deductions granted for damage, delay, shortage, imperfection, or other causes, excluding discounts and returns.

(3) *Refunds.* Refunds are amounts paid back or a credit allowed on account of an overcollection.

(c) *Normal accounting treatment—Reduction of costs.* All discounts, allowances, and refunds of expenses are reductions in the cost of goods or services purchased and are not income. If they are received in the same accounting period in which the purchases were made or expenses were incurred, they will reduce the purchases or expenses of that period. However, if they are received in a later accounting period, they will reduce the comparable purchases or expenses in the period in which they are received.

(d) *Application.* (1) Purchase discounts have been classified as cash, trade, or quantity discounts. Cash discounts are reductions granted for the settlement of debts before they are due. Trade discounts are reductions from list prices granted to a class of customers before consideration of credit terms. Quantity discounts are reductions from list prices granted because of the size of individual or aggregate purchase transactions. Whatever the classification of purchase discounts, like treatment in reducing allowable costs is required. In the past, purchase discounts were considered as financial management income. However, modern accounting theory holds that income is not derived from a purchase but rather from a sale or an exchange and that purchase discounts are reductions in the cost of whatever was purchased. The true cost of the goods or services is the net amount actually paid for them. Treating purchase discounts as income would result in an overstatement of costs to the extent of the discount.

(2) As with discounts, allowances, and rebates received from purchases of goods or services, refunds of previous expense payments are clearly reductions in costs and must be reflected in the determination of allowable costs. This treatment is equitable and is in accord with that generally followed by other governmental programs and third-party payment organizations paying on the basis of cost.

§ 413.102 Compensation of owners.

(a) *Principle.* A reasonable allowance of compensation for services of owners is an allowable cost provided that the services are actually performed in a necessary function.

(b) *Definitions*—(1) *Compensation.* Compensation means the total benefit received by the owner for the services he furnishes to the institution. It includes the following items:

(i) Salary amounts paid for managerial, administrative, professional, and other services.

(ii) Amounts paid by the institution for the personal benefit of the proprietor.

(iii) The cost of assets and services that the proprietor receives from the institution.

(iv) Deferred compensation.

(2) *Reasonableness.* Reasonableness requires that the compensation allowance—

(i) Be such an amount as would ordinarily be paid for comparable services by comparable institutions; and

(ii) Depend upon the facts and circumstances of each case.

(3) *Necessary.* Necessary requires that the function be—

(i) Such that had the owner not furnished the services, the institution would have had to employ another person to perform the services; and

(ii) Pertinent to the operation and sound conduct of the institution.

(c) *Application.* (1) Owners of provider organizations often furnish services as managers, administrators, or in other capacities. In such cases, it is equitable that reasonable compensation for the services furnished to be an allowable cost. To do otherwise would disadvantage such owners in comparison with corporate providers or providers employing persons to perform similar services.

(2) Ordinarily, compensation paid to proprietors is a distribution of profits. However, if a proprietor furnishes necessary services for the institution, the institution is in effect employing his services, and a reasonable compensation for these services is an allowable cost. In corporate providers, the salaries of owners who are also employees are subject to the same requirements of reasonableness. If the services are furnished on less than a full-time basis, the allowable compensation should reflect an amount proportionate to a full-time basis. Reasonableness of compensation may be determined by reference to, or in

comparison with, compensation paid for comparable services and responsibilities in comparable institutions; or it may be determined by other appropriate means.

§ 413.106 Reasonable cost of physical and other therapy services furnished under arrangements.

(a) *Principle.* The reasonable cost of the services of physical, occupational, speech, and other therapists, and services of other health specialists (other than physicians), furnished under arrangements (as defined in section 1861(w) of the Act) with a provider of services, a clinic, a rehabilitation agency or a public health agency, may not exceed an amount equivalent to the prevailing salary and additional costs that would reasonably have been incurred by the provider or other organization had such services been performed by such person in an employment relationship, plus the cost of other reasonable expenses incurred by such person in furnishing services under such an arrangement. However, if the services of a therapist are required on a limited part-time basis, or to perform intermittent services, payment may be made on the basis of a reasonable rate per unit of service, even though this rate may be greater per unit of time than salary-related amounts, if the greater payment is, in the aggregate, less than the amount that would have been paid had a therapist been employed on a full-time or regular part-time salaried basis. Pursuant to section 17(a) of Pub. L. 93–233 (87 Stat. 967), the provisions of this section are effective for cost reporting periods beginning after March, 1975.

(b) *Definitions*—(1) *Prevailing salary.* The prevailing salary is the hourly salary rate based on the 75th percentile of salary ranges paid by providers in the geographical area, by type of therapy, to therapists working full time in an employment relationship.

(2) *Fringe benefit and expense factor.* The standard fringe benefit and expense factor is an amount that takes account of fringe benefits, such as vacation pay, insurance premiums, pension payments, allowances for job-related training, meals, etc., generally received by an employee therapist, as well as expenses, such as maintaining an office, appropriate insurance, etc., an individual not working as an employee might incur in furnishing services under arrangements.

(3) *Adjusted hourly salary equivalency amount.* The adjusted hourly salary equivalency amount is the prevailing hourly salary rate plus the standard fringe benefit and expense factor. This amount is determined on a periodic basis for appropriate geographical areas.

(4) *Travel allowance.* A standard travel allowance is an amount that is recognized, in addition to the adjusted hourly salary equivalency amount.

(5) *Limited part-time or intermittent services.* Therapy services are considered to be on a limited part-time or intermittent basis if the provider or other organization furnishing the services under arrangements requires the services of a therapist or therapists on an averge of less than 15 hours per week. This determination is made by dividing the total hours of services furnished during the cost reporting period by the number of weeks in which the services were furnished in the cost reporting period regardless of the number of days in each week in which services were performed.

(6) *Guidelines.* Guidelines are the amounts published by HCFA reflecting the application of paragraphs (b) (1) through (4) of this section to an individual therapy service and a geographical area. Other statistically valid data may be used to establish guidelines for a geographical area, provided that the study designs, questionnaires and instructions, as well as the resultant survey data for determining the guidelines are submitted to and approved in advance by HCFA. Such data must be arrayed so as to permit the determination of the 75th percentile of the range of salaries paid to full-time employee therapists.

(7) *Administrative responsibility.* Administrative responsibility is the performance of those duties that normally fall within the purview of a department head or other supervisor. This term does not apply to directing aides or other assistants in furnishing direct patient care.

(c) *Application.* (1) Under this provision, HCFA will establish criteria for use in determining the reasonable cost of physical, occupational, speech, and other therapy services and the services of other health specialists (other than physicians) furnished by individuals under arrangements with a provider of services, a clinic, a rehabilitation agency, or public health agency. It is recognized that providers have a wide variety of arrangements with such individuals. These individuals may be independent practitioners or employees of organizations furnishing various health care specialists. This provision does not require change in the substance of these arrangements.

(2) If therapy services are performed under arrangements at a provider site on a full-time or regular part-time basis, the reasonable cost of such services may not exceed the amount determined by taking into account the total number of hours of services furnished by the therapist, the adjusted hourly salary equivalency amount appropriate for the particular therapy in the geographical area in which the services are furnished and a standard travel allowance.

(3) If therapy services are performed under arrangements on a limited part-time or intermittent basis at the provider site, the reasonable cost of such services is evaluated on a reasonable rate per unit of service basis, except that payment for these services, in the aggregate, during the cost reporting period, may not exceed the amount that would be determined to be reasonable under paragraph (c)(2) of this section, had a therapist furnished the provider or other organization furnishing the services under arrangements 15 hours of service per week on a regular part-time basis for the weeks in which services were furnished by the non-employee therapist.

(4) If an HHA furnishes services under arrangements at the patient's residence or in other situations in which therapy services are not performed at the provider's site, the reasonable cost of such services is evaluated as follows:

(i) *Time records available.* If time records of HHA visits are maintained by the provider, the reasonable cost of such services is evaluated on a unit-of-time basis, by taking into account the total number of hours of service furnished by the therapist, the adjusted hourly salary equivalency amount appropriate for the particular therapy in the geographical area in which the services are furnished, and a standard travel allowance for each visit. However, if the travel time of the therapist is accurately recorded by the therapist, and approved and maintained by the provider, the reasonable cost of such services may be evaluated, at the option of the provider, by taking into account the total number of hours of service furnished by the therapist, including travel time, and the adjusted hourly salary equivalency amount appropriate for the particular therapy in the geographical area in which the services are furnished. This option does not apply to services furnished by HHAs under arrangements with providers other than HHAs.

(ii) *No time records available.* If time records are unavailable or found to be inaccurate, each HHA visit is considered the equivalent of one hour of service. In such cases, the reasonable cost of such services is determined by taking into account the number of visits made by the therapist under arrangements with such agency, the

adjusted hourly salary equivalency amount appropriate for the particular therapy in the geographical area in which the services are furnished and a standard travel allowance.

(iii) *Limited part-time or intermittent services.* If under paragraph (c)(4) (i) or (ii) of this section, the provider required therapy services on an average of less than 15 hours per week, the services are considered limited part-time or intermittent services, and the reasonable cost of such services is evaluated on a reasonable rate per unit of service basis as described in paragraph (c)(3) of this section.

(5) These provisions are applicable to individual therapy services or disciplines by means of separate guidelines by geographical area and apply to costs incurred after issuance of the guidelines but no earlier than the beginning of the provider's cost reporting period described in paragraph (a) of this section. Until a guideline is issued for a specific therapy or discipline, costs are evaluated so that such costs do not exceed what a prudent and cost-conscious buyer would pay for the given service.

(d) *Notice of guidelines to be imposed.* Prior to the beginning of a period to which a guideline will be applied, a notice will be published in the **Federal Register** establishing the guideline amounts to be applied to each geographical area by type of therapy.

(e) *Additional allowances.* (1) If a therapist supervises other therapists or has administrative responsibility for operating a provider's therapy department, a reasonable allowance may be added to the adjusted hourly salary equivalency amount by the intermediary based on its knowledge of the differential between therapy supervisors' and therapists' salaries in similar provider settings in the area.

(2) If a therapist performing services under arrangements furnishes equipment and supplies used in furnishing therapy services, the guidelines amount may be supplemented by the cost of the equipment and supplies, provided the cost does not exceed the amount the provider, as a prudent and cost-conscious buyer, would have been able to include as allowable cost.

(f) *Exceptions.* The following exceptions may be granted but only upon the provider's demonstration that the conditions indicated are present:

(1) *Exception because of binding contract.* A provider will be excepted from the provisions of this section if it has a binding contract in writing with a therapist or contracting organization entered into prior to the date guidelines are published. Before the exception may be granted, however, the provider must submit the contract to its intermediary for a determination under this paragraph, subject to review and approval by the Regional Office. Such an exception may be granted for the contract period, but not longer than one year from the date initial guidelines for the particular therapy are published.

(2) *Exception because of unique circumstances or special labor market conditions.* An exception may be granted under this section by the intermediary if a provider demonstrates that the costs for therapy services established by the guideline amounts are inappropriate to a particular provider because of some unique circumstances or special labor market conditions in the area.

(3) *Exception for services furnished by risk-basis HMO providers.* For special rules concerning services furnished to an HMO's enrollees who are Medicare beneficiaries by a provider owned or operated by a risk-basis HMO (see § 417.201(b) of this chapter) or related to a risk-basis HMO by common ownership or control (see § 417.250(c)) of this chapter.

(4) *Exception for inpatient hospital services.* Effective with cost reporting periods beginning on or after October 1, 1983, the costs of therapy services furnished under arrangements to a hospital inpatient are excepted from the guidelines issued under this section if such costs are subject to the provisions of § 413.40 or Part 412 of this chapter. The intermediary will grant the exception without request from the provider.

(g) *Appeals.* A request by a provider for a hearing on the determination of an intermediary concerning the therapy costs determined to be allowable based on the provisions of this section, including a determination with respect to an exception under paragraph (f) of this section, is made to the intermediary only after submission of its cost report and receipt of the notice of amount of program reimbursement reflecting such determination, in accordance with the provisions of Subpart R of Part 405 of this chapter.

§ 413.110 Determining allowable cost for drugs.

(a) *Principle.* (1) The allowable cost for any multiple-source drug (as described in paragraph (b)(1) of this section) may not exceed the lesser of the—

(i) Actual cost;

(ii) Amount that would be paid by a prudent and cost-conscious buyer for such drug if obtained from the lowest-priced source that is widely and consistently available (whether sold by generic or trade name); or

(iii) "Maximum allowable cost" as defined in 45 CFR 19.5(c).

(2) The allowable cost of any other drug may not exceed what a prudent and cost-conscious buyer would pay for that particular drug.

(b) *Application*—(1) *Multiple-source drugs.* (i) HHS will publish in the **Federal Register**, from time to time, a list of specific multiple-source drugs and their "maximum allowable cost" limitations. (See 45 CFR Part 19.) For these drugs, the allowable cost (see §§ 413.5 and 413.50) may not exceed the drug-ingredient costs incurred in purchasing such drugs that would be paid by a prudent and cost-conscious provider for such drugs if obtained from the lowest-priced source that is widely and consistently available (whether sold by generic or trade name); except that the drug-ingredient cost incurred in purchasing such drugs may, in no case, exceed the maximum allowable cost published in the **Federal Register.**

(ii) The provisions of this paragraph (b)(1) are applicable to those multiple-source drugs purchased by providers on or after the effective date of the final maximum allowable cost determination pursuant to 45 CFR, Part 19. Similarly, an amendment to a maximum allowable cost determination for a drug is applicable to purchases of such drug by providers on or after the effective date of the amended determination.

(2) *Other drugs.* For drugs other than those described in paragraph (b)(1) of this section, the allowable cost (see §§ 413.5 and 413.50) may not exceed what a prudent and cost-conscious buyer would pay for that particular drug.

(3) *Evaluation.* The cost of any drugs will be evaluated in terms of the quantities and purchasing arrangements at which the drugs were, in fact, purchased.

(4) *Charge to beneficiaries.* No charge may be made to the beneficiary for any amount of any drug cost not reimbursed as a result of application of the rule of this section.

(c) *Exceptions.* The following exceptions may be granted but only upon the provider's demonstration that the conditions indicated are present:

(1) *Exception because of medical necessity.* If a physician certifies that in his medical judgment a specific brand is medically necessary for a particular patient, the provisions of paragraph (b)(1) of this section will not apply. However, the physician must certify in his own handwriting the medical necessity for the exception. An example

of an acceptable statement would be, "This band is medically necessary—dispense as written." Merely checking a box on a form will not constitute an acceptable certification. The provider must retain such certification in its records.

(2) *Exception for risk-basis HMO providers.* For special rules concerning providers owned or operated by a risk-basis HMO, or related to a risk-basis HMO by common ownership or control, see § 417.250(c).

(d) *Appeals*—(1) *Amount of reimbursement.* A provider may appeal the amount of reimbursement determined under this section (see Subpart R of Part 405 of this chapter) except that it may not appeal under that subpart the—

(i) Inclusion of any multiple-source drugs on the published listing; or

(ii) Established maximum allowable cost for any drug.

(2) *Inclusion on listing or maximum allowable cost.* The procedures covering the issues described in paragraphs (d)(1)(i) and (d)(1)(ii) of this section are set forth in 45 CFR Part 19.

§ 413.114 Reasonable cost of extended care services furnished by a swing-bed hospital.

(a) *Purpose and basis.* This section implements section 1883 of the Act, which provides for reimbursement for extended care services furnished by small, rural hospitals having a swing-bed approval. Payments to such hospitals for extended care services furnished in general routine inpatient beds are based on the reasonable cost of extended care services, in accordance with paragraph (c) of this section.

(b) *Definition.* A swing-bed hospital is a hospital participating in Medicare that has an approval from HCFA to provide extended care services as defined in § 409.20 of this chapter, and meets the requirements specified in § 482.66 of this chapter.

(c) *Principle.* The reasonable cost of extended care services furnished by a swing-bed hospital is determined as follows:

(1) If a hospital is located in a State participating in Medicaid, the reasonable cost of the routine services is based on the average Statewide rate per patient day paid under the State Medicaid plan for routine services furnished by SNFs in that State during the previous calendar year. The Statewide average rate will be computed either by——

(i) The State and furnished to HCFA; or

(ii) HCFA directly based on the best available data.

(2) If a hospital is located in a State that is not participating in Medicaid, the reasonable cost of the routine services is based on the average reasonable cost per patient day under Medicare for routine services furnished by SNFs in that State during the previous calendar year. HCFA will determine the average reasonable cost using Medicare cost reports, with adjustments to account for cost reporting periods not covering the calendar year preceding the year for which the rate is to be effective.

(3) The reasonable cost of ancillary services furnished as extended care services is determined in the same manner as the reasonable cost of other ancillary services furnished by the hospital in accordance with § 413.55(a)(1).

Subpart G—Capital-Related Costs

§ 413.130 Introduction to capital-related costs.

(a) *General rule.* Capital-related costs and an allowance for return on equity are limited to the following:

(1) Net depreciation expense as determined under §§ 413.134, 413.144, and 413.149, adjusted by gains and losses realized from the disposal of depreciable assets under § 413.134(f).

(2) Taxes on land or depreciable assets used for patient care.

(3) Leases and rentals, including license and royalty fees, for the use of depreciable assets, as described in paragraph (b) of this section.

(4) The costs of betterments and improvements as described in paragraph (c) of this section.

(5) The costs of minor equipment that are capitalized, rather than expensed, as described in paragraph (d) of this section.

(6) Insurance expense on depreciable assets, as described in paragraph (e) of this section.

(7) Interest expense as determined under § 413.153, subject to the qualifications of paragraph (f) of this section.

(8) For proprietary providers, return on equity capital, as determined under § 413.157.

(9) The capital-related costs of related organizations (as described in § 413.17, as determined in accordance with paragraph (g) of this section.

(b) *Leases and rentals.* (1) Subject to the qualifications of paragraphs (b) (2) and (4) of this section, leases and rentals, including licenses and royalty fees, are includable in capital-related costs if they relate to the use of assets that would be depreciable if the provider owned them outright. The terms "leases" and "rentals of assets" signify that a provider has possession, use, and enjoyment of the assets.

(2) A provider must include incurred rental charges in its capital-related costs, as specified in a sale and leaseback agreement with a nonrelated purchaser (including shared service organizations not related within the meaning of § 413.17) involving plant facilities or equipment, only if the following conditions are met:

(i) The rental charges are reasonable based on—

(A) Consideration of rental charges of comparable facilities and market conditions in the area;

(B) The type, expected life, condition, and value of the facilities or equipment rented; and

(C) Other provisions of the rental agreements.

(ii) Adequate alternate facilities or equipment that would serve the purpose are not or were not available at lower cost.

(iii) The leasing was based on economic and technical considerations.

(3) If the conditions of paragraph (b)(2) of this section are not met, the amount a provider may include in its capital-related costs as rental or lease expense under a sale and leaseback agreement may not exceed the amount that the provider would have included in its capital-related costs had the provider retained legal title to the facilities or equipment, such as interest on mortgage, taxes, depreciation, and insurance costs.

(4) A lease that meets the following conditions generally establishes a virtual purchase:

(i) The rental charge exceeds rental charges of comparable facilities or equipment in the area.

(ii) The term of the lease is less than the useful life of the facilities or equipment.

(iii) The provider has the option to renew the lease at a significantly reduced rental, or the provider has the right to purchase the facilities or equipment at a price that appears to be significantly less than what the fair market value of the facilities or equipment would be at the time acquisition by the provider is permitted.

(5)(i) If a lease is a virtual purchase under paragraph (b)(4) of this section, the rental charge is includable in capital-related costs only to the extent that it does not exceed the amount that the provider would have included in capital-related costs if it had legal title to the asset (the cost of ownership), such as straight-line depreciation, insurance, and interest. A provider may not include in its capital-related costs accelerated depreciation in this situation.

(ii) The difference between the amount of rent paid and the amount of rent allowed as capital-related costs is considered a deferred charge and is capitalized as part of the historical cost of the asset when the asset is purchased.

(iii) If an asset is returned to the owner, instead of being purchased, the deferred charge may be included in capital-related costs in the year the asset is returned.

(iv) If the term of the lease is extended for an additional period of time at a reduced lease cost and the option to purchase still exists, the deferred charge may be included in capital-related costs to the extent of increasing the reduced rental to an amount not in excess of the cost of ownership.

(v) If the term of the lease is extended for an additional period of time at a reduced lease cost and the option to purchase no longer exists, the deferred charge may be included in the capital-related costs to the extent of increasing the reduced rental to a fair rental value.

(c) *Betterments and improvements.*

(1) Betterments and improvements are changes which extend the estimated useful life of an asset at least two years beyond its original estimated useful life, or increase the productivity of an asset significantly over its original productivity.

(2) A provider must capitalize and pro-rate the costs of betterments and improvements over the remaining estimated useful life of the asset, as modified by the betterment or improvement.

(d) *Minor equipment.* A provider must include in its capital-related costs the costs of minor equipment that are capitalized rather than charged off to expense if—

(1) The net book value of minor equipment at the time the provider enters the program is prorated over three years (that is, one-third of the net book value is written off each year), and new purchases are also prorated over a 3-year period; or

(2) The cost of minor equipment is prorated over their actual useful lives.

(e) *Insurance.* (1) A provider must include in its capital-related costs the costs of insurance on depreciable assets used for patient care or insurance that provides for the payment of capital-related costs during business interruption.

(2) If an insurance policy also provides protection for other than the replacement of depreciable assets or to pay capital-related costs in the case of business interruption insurance, only that portion of the premium related to the replacement of depreciable assets or to pay capital-related costs in the case of business interruption insurance is includable in capital-related costs.

(f) *Interest expense.* (1) A provider must include in its capital-related costs interest expense, as described in § 413.153, if such expense is incurred in—

(i) Acquiring land or depreciable assets (either through purchase or lease) used for patient care; or

(ii) Refinancing existing debt, if the original purpose of the refinanced debt was to acquire land or depreciable assets used for patient care.

(2) If investment income offset is required under § 413.153(b)(2)(iii), only that portion of investment income that bears the same relationship to total investment income, as the portion of capital-related interest expense bears to total interest expense, is offset against capital-related costs.

(g) *Costs of supplying organizations—*

(1) *Supplying organizations related to the provider.* (i) If the supplying organization is related to the provider within the meaning of § 413.17, except as provided in paragraph (g)(1)(ii) of this section, a provider's capital-related costs include the capital-related costs of the supplying organization.

(ii) If the costs of the services, facilities or supplies being furnished exceed the open market price, or if the provisions of § 413.17(d) apply, no part of the cost to the provider of the services, facilities, or supplies are considered capital-related costs, unless the services, facilities, or supplies would otherwise be considered capital-related.

(2) *Supplying organizations not related to the provider.* If the supplying organization is not related to the provider within the meaning of § 413.17, no part of the charge to the provider may be considered a capital-related cost (unless the services, facilities, or supplies are capital-related in nature) unless—

(i) The capital-related equipmente is leased or rented (as described in paragraph (b) of this section) by the provider;

(ii) The capital-related equipment is located on the provider's premises, or is located offsite and is on real estate owned, leased or rented by the provider; and

(iii) The capital-related portion of the charge is separately specified in the charge to the provider.

(h) *Costs excluded from capital-related costs.* The following costs are not capital-related costs. To the extent that they are allowable, they must be included in determining each provider's operating costs:

(1) Costs incurred for the repair or maintenance of equipment or facilities.

(2) Amounts included in rentals or lease payments for repair or maintenance agreements.

(3) Interest expense incurred to borrow working capital (for operating expenses).

(4) General liability insurance or any other form of insurance to provide protection other than for the replacement of depreciable assets or to pay capital-related costs in the case of business interruption.

(5) Taxes other than those assessed on the basis of some valuation of land or depreciable assets used for patient care. (Taxes not related to patient care, such as income taxes, are not allowable, and are therefore not included among either capital-related or operating costs.)

(6) The costs of minor equipment that are charged off to expense rather than capitalized as described in paragraph (d) of this section.

§ 413.134 Depreciation: Allowance for depreciation based on asset costs.

(a) *Principle.* An appropriate allowance for depreciation on buildings and equipment used in the provision of patient care is an allowable cost. The depreciation must be—

(1) Identifiable and recorded in the provider's accounting records;

(2) Based on the historical cost of the asset or fair market value at the time of donation in the case of donated assets; and

(3) Prorated over the estimated useful life of the asset using—

(i) The straight-line method; or

(ii) Accelerated depreciation under a declining balance method (not to exceed double the straight-line rate) or the sum-of-the-years' digits method in the following situations:

(A) Depreciable assets for which accelerated depreciation was used for Medicare purposes before August 1, 1970, including those assets for which a timely request to change from straight-line depreciation to accelerated depreciation was received by an intermediary before August 1, 1970;

(B) Depreciable assets acquired before August 1, 1970, if no election to use straight-line or accelerated depreciation was in effect on August 1, 1970; and the provider was participating in the program on August 1, 1970;

(C) Depreciable assets of a provider if construction of such depreciable asset began before February 5, 1970, and the provider was participating in the program on February 5, 1970; or

(D) Depreciable assets of a provider if a valid written contract was entered into by a provider participating in the program before February 5, 1970, for

construction, acquisition, or for the permanent financing thereof, and such contract was binding on a provider on February 5, 1970, and at all times thereafter; or

(iii) A declining balance method, not to exceed 150 percent of the straight-line rate, for a depreciable asset acquired after July 31, 1970; however, this declining balance method may be used only if the cash flow from depreciation on the total assets of the institution during the reporting period, including straight-line depreciation on the assets in question, is insufficient (assuming funding of available capital not required currently for amortization and assuming reasonable interest income on such funds) to supply the funds required to meet the reasonable principal amortization schedules on the capital debts related to the provider's total depreciable assets. For each depreciable asset for which a provider requests authorization to use a declining balance mehod for Medicare reimbursement purposes, but not to exceed 150 percent of the straight-line rate, the provider must demonstrate to the intermediary's satisfaction that the required cash flow need exists. For each depreciable asset in which a provider justifies the use of accelerated depreciation, the intermediary must give written approval for the use of a depreciation method other than straight-line before basing any interim payment on this accelerated depreciation or making its reasonable cost determination which includes an allowance from such depreciation.

(b) *Definitions*—(1) *Historical costs.* Historical cost is the cost incurred by the present owner in acquiring the asset. For depreciable assets acquired after July 31, 1970, the historical cost may not exceed the lower of current reproduction cost adjusted for straight-line depreciation over the life of the asset to the time of the purchase, or fair market value at the time of the purchase.

(2) *Fair market value.* Fair market value is the price that the asset would bring by bona fide bargaining between well-informed buyers and sellers at the date of acquisition. Usually the fair market price is the price that bona fide sales have been consummated for assets of like type, quality, and quantity in a particular market at the time of acquisition.

(3) *The straight-line method.* Under the straight-line method of depreciation, the cost or other basis (for example, fair market value in the case of donated assets) of the asset, less its estimated salvage value, if any, is determined first. Then this amount is distributed in equal amounts over the period of the estimated useful life of the asset.

(4) *Declining balance method.* Under the declining balance method, the annual depreciation allowance is computed by multiplying the undepreciated cost of the asset each year by a uniform rate up to double the straight-line rate or 150 percent, as the case may be (see paragraph (a)(3) of this section for limitations on use of accelerated methods of depreciation).

(5) *Sum-of-the-years' digits method.* Under the sum-of-the-years' digits method, the annual depreciation allowance is computed by multiplying the depreciable cost basis (cost less salvage value) by a constantly decreasing fraction. The numerator of the fraction is represented by the remaining years of useful life of the asset at the beginning of each year, and the denominator is always, represented by the sum of the years' digits of useful life at the time of acquisition.

(6) *Current reproduction cost.* Current reproduction cost is the cost at current prices, in a particular locality or market area, of reproducing an item of property or a group of assets. Where depreciable assets are concerned, this means the reasonable cost to have built, reproduce in kind, or, in the case of equipment or similar assets, to purchase in the competitive market.

(7) *Useful life.* The estimated useful life of a depreciable asset is its normal operating or service life to the provider, subject to the provisions in paragraph (b)(7)(i) of this section. Factors to be considered in determining useful life include normal wear and tear, obsolescene due to normal economic and technological changes; climatic and other local conditions; and the providers' policy for repairs and replacement.

(i) *Initial selection of useful life.* In selecting a proper useful life for computing depreciation under the Medicare program providers must use the useful life guidelines published by HCFA. If HCFA has not published applicable useful life guidelines, providers must use—

(A) The edition of the American Hospital Association useful life guidelines, as specified in HCFA Medicare program manuals; or

(B) A different useful life specifically requested by the provider and approved by the intermediary. A different useful life may be approved by the intermediary if the provider's request is properly supported by acceptable factors that affect the determination of useful life. However, such factors as an expected early sale, retirement, demolition or abandonment of an asset, or termination of the provider from the Medicare program may not be used.

(ii) *Application of guidelines.* The provisions concerning the selection of useful life guidelines described in paragraph (b)(7)(i) of this section apply to assets acquired on or after January 1, 1981. For assets acquired before January 1, 1981, providers must use the useful life guidelines published by the American Hospital Association in its 1973 edition of *Chart of Accounts for Hospitals*, or those published by the Internal Revenue Service, or those approved for use by intermediaries as provided in paragraph (b)(7)(i)(B) of this section.

(iii) *Changing useful life.* A change in the estimated useful life may be made if clear and convincing evidence justifies a redetermination of the useful life used by the provider. Such a change must be approved by the intermediary in writing, and the factors cited in paragraph (b)(7) and (b)(7)(i) of this section are applicable in making such redeterminations of useful life. If the request is approved the change is effective with the reporting period immediately following the period in which the provider's request is submitted for approval.

(c) *Recording of depreciation.* Appropriate recording of depreciation includes the identification of the depreciable assets in use, the assets' historical costs, the assets' dates of acquisition, the method of depreciation, estimated useful lives, and the assets' accumulated depreciation.

(d) *Depreciation methods*—(1) *General.* Proration of the cost of an asset over its useful life is allowed on the straight-line method, or, where permitted under § 413.134(a)(3), the declining balance or the sum-of-the-years' digits methods. One method may be used on a single asset or group of assets and another method on others. In applying the declining balance or sum-of-the-years' digits method to an asset that is not new, the undepreciated cost of the asset is treated as the cost of a new asset in computing depreciation.

(2) *Change in method.* Prior to August 1, 1970, a provider may change from the straight-line method to an accelerated method or vice versa, upon advance approval from the intermediary on a prospective basis with the request being made before the end of the first month of the prospective reporting period. Only one such change with respect to a particular asset may be made by a provider. Effective with August 1, 1970, a provider may only change from an accelerated method or optional method (see § 413.139) to the straight-line

method. Such a change may be made without intermediary approval and the basis for depreciation is the undepreciated cost reduced by the salvage value. Thereafter, once straight-line depreciation is selected for a particular asset, an accelerated method may not be established for that asset.

(3) *Recovery of accelerated depreciation*—(i) *General.* If a provider who has used an accelerated method of depreciation for any of its assets terminates participation in the program, or if the Medicare proportion of its allowable costs decreases so that cumulatively substantially more depreciation was paid than would have been paid using the straight-line method of depreciation, the excess of reimbursable cost determined by using accelerated depreciation methods and paid under the program over the reimbursable cost that would have been determined and paid under the program by using the straight-line method of depreciation will be recovered as an offset to current reimbursement due or, if the provider has terminated participation in the program, as an overpayment. In this determination of excess payment, recognition will be given to the effects the adjustment to straight-line depreciation would have on the return on equity capital and on the allowance in lieu of specific recognition of other costs in the respective years.

(ii) *Transaction between related organizations*—(A) *General.* If the termination of the provider agreement is due to a change in provider ownership, as defined in § 489.18, resulting from a transaction between related organizations, as defined in § 413.17, and the criteria in paragraph (b) of this section are met, the excess of reimbursable cost, as determined in paragraph (d)(3)(i) of this section may not be recovered if there is a continuation of participation by the facility in the Medicare program.

(B) *Criteria.* The following criteria must be met if the recovery of excess reimbursable cost is not to be made:

(*1*) The termination of the provider agreement is due to a change in ownership of the provider resulting from a transaction between related organizations.

(*2*) The successor provider continues to participate in the Medicare program.

(*3*) Control and the extent of the financial interest of the owners of the provider before and after the termination remain the same; that is, the successor owners acquire the same percentage of control or financial investment as the transferors had.

(*4*) All assets and liabilities of the terminated provider are transferred to the related successor participating provider.

(C) *Effect of transaction.* In transactions meeting the criteria specified in paragraph (d)(3)(ii)(B) of this section, the provision concerning recovery of excess reimbursable cost (§413.134(d)(3)(i)) is not applied, and the transaction is treated as follows:

(*1*) The successor provider must record the historical cost and accumulated depreciation and the method of depreciation recognized under the Medicare program, and these are considered as incurred by the successor provider for Medicare purposes.

(*2*) The Medicare program's utilization of the terminated provider is considered as having been incurred by the successor provider for Medicare purposes.

(*3*) The equity capital of the terminated provider as of the closing of its final cost reporting period must be wholly contained in the equity capital of the successor provider as of the beginning of its first cost reporting period.

(e) *Funding of depreciation.* Although funding of depreciation is not required, it is strongly recommended that providers use this mechanism as a means of conserving funds for replacement of depreciable assets, and coordinate their planning of capital expenditures with areawide planning activities of community and State agencies. As an incentive for funding, investment income on funded depreciation will not be treated as a reduction of allowable interest expense.

(f) *Gains and losses on disposal of assets*—(1) *General.* Depreciable assets may be disposed of through sale, scrapping, trade-in, exchange, demolition, abandonment, condemnation, fire, theft, or other casualty. If disposal of a depreciable asset results in a gain or loss, an adjustment is necessary in the provider's allowable cost. The amount of a gain included in the determination of allowable cost is limited to the amount of depreciation previously included in Medicare allowable costs. The amount of a loss to be included is limited to the undepreciated basis of the asset permitted under the program. The treatment of the gain or loss depends upon the manner of disposition of the asset, as specified in paragraphs (f)(2) through (f)(6) of this section.

(2) *Bona fide sale or scrapping.* (i) Except as specified in paragraph (f)(3) of this section gains and losses realized from the bona fide sale or scrapping of depreciable assets are included in the determination of allowable cost only if the sale or scrapping occurs while the provider is participating in Medicare. The extent to which such gains and losses are included is calculated by prorating the basis for depreciation of the asset in accordance with the proportion of the asset's useful life for which the provider participated in Medicare. For purposes of this paragraph (f)(2)(i), scrapping refers to the physical removal from the provider's premises of tangible personal properties that are no longer useful for their intended purpose and are only salable for their scrap or junk value.

(ii) If the total amount of gains or losses realized from bona fide sales or scrapping does not exceed $5,000 within the cost reporting period or if the provider's cumulative utilization under the Medicare program is less than 5 percent, the net amount of gains or losses realized from sale or scrapping will be allowed as a depreciation adjustment in the period of disposal. For purposes of this paragraph (f)(2)(ii), the provider's cumulative Medicare utilization precentage is determined by comparing the cumulative total of the Medicare inpatient days for all reporting periods in which depreciation on the asset disposed of was claimed under the Medicare program to the cumulative total of inpatient days of the participating provider for the same reporting periods.

(iii) If the conditions specified in paragraph (f)(2)(ii) of this section are not met, the adjustment to reimbursable cost in the reporting period of asset disposition is calculated as follows:

(A) The total amount of gains or losses shall be allocated to all reporting periods under the Medicare program, based on the ratio of the depreciation allowed on the assets in each reporting period to the total depreciation allowed under the Medicare program.

(B) The results of this allocation are multiplied by the ratio of Medicare reimbursable cost to total allowable cost for each reporting period.

(C) The results of this multiplication are then added.

(iv) If a provider sells more than one asset for a lump sum sale price, the gain or loss on the sale of each depreciable asset must be determined by allocating the lump sum sales price among all the assets sold, in accordance with the fair market value of each asset as it was used by the provider at the time of sale. If the buyer and seller cannot agree on an allocation of the sales price, or if they do agree but there is insufficient documentation of the current fair market value of each asset, the intermediary for the selling provider will require an

appraisal by an independent appraisal expert to establish the fair market value of each asset and will make an allocation of the sales price in accordance with the appraisal.

(3) *Sale within 1 year after termination.* Gains and losses realized from a bona fide sale of depreciable assets within 1 year immediately following the date on which the provider terminates participation in the Medicare program are also included in the determination of allowable cost, in accordance with the procedure specified in paragraph (f)(2) of this section. However, if several assets are sold for a lump sum sales price, the determination of fair market value must be based on the appraised value of the assets as they were last used by the provider while participating in the Medicare program.

(4) *Exchange or trade-in.* Gains or losses realized from the exchange or trade-in of depreciable assets are not included in the determination of allowable cost. When the disposition of an asset is by means of exchange or trade-in, the historical cost of the new asset is the sum of the undepreciated cost of the asset disposed of and the additional cash or other assets transferred or to be transferred to acquire the new asset. However, if the asset disposed of was acquired by the provider before its participation in the Medicare program and the sum of the undepreciated cost and the cash or other assets transferred or to be transferred exceed the list price or fair market value of the new asset, the historical cost of the new asset is limited to the lower of its list price or fair market value.

(5) *Demolition or abandonment.* (i) For purposes of this section, the term "abandonment" means the permanent retirement of an asset for any future purpose, not merely the provider's ceasing to use the asset for patient care purposes. To claim an abandonment under the Medicare program, the provider must have relinquished all rights, title, claim, and possession of the asset with the intention of never reclaiming it or resuming its ownership, possession, or enjoyment.

(ii) If losses resulting from the demolition or abandonment of depreciable assets do not exceed $5,000 within the cost-reporting period, the losses are to be allowed in the period of disposal.

(iii) If losses exceed $5,000 and, at the date of disposition, the demolished or abandoned assets are at least 80 precent depreciated as computed under the straight-line method, such losses are includable in the determination of allowable cost under the Medicare program in the period of disposal and the procedure provided in paragraph (f)(2)(iii) of this section must be used in determining the adjustment to reimbursable cost.

(iv) Losses in excess of $5,000 resulting from the demolition or abandonment of assets, which at the date of disposition are not 80 percent depreciated as computed under the straight-line method, must be capitalized as a deferred charge and amortized as follows:

(A) If the State Health Planning and Development Agency (SHPDA) designated under section 1521 of the Public Health Service Act approves the demolition or abandonment of a depreciable asset as being consistent with the health systems plan of the health service area in which the provider is located, the net loss realized shall be capitalized as a deferred charge and amortized over the remaining life of the demolished or abandoned asset, or at the rate of $5,000 per year, whichever is greater. If no SHPDA exists or if such agency is unable or unwilling to perform this function, the provider must submit a request for approval to the intermediary. The intermediary, after reviewing this request and before issuing the approval, will submit the request along with its recommendation to the appropriate regional office for its approval.

(B) If a provider fails to obtain approval as specified in paragraph (f)(5)(iv)(A) of this section, a loss is not allowable unless the demolished or abandoned assist is replaced. If the asset is replaced, the loss resulting from the unapproved demolition or abandonment must be capitalized as a deferred charge and amortized over the estimated useful life of the replacement asset or at the rate of $5,000 per year, whichever is greater.

(v) If a loss resulting from the demolition or abandonment is deferred and amortized and the provider terminates its participation in the Medicare program or ceases to use a replacement asset in the provision of patient care services, the unamortized deferred charge remaining at that time must not be included in determining allowable cost under the Medicare program.

(vi) Losses on demolition must include the demolition cost incurred by the provider for razing and removal of the asset, less any salvage value recovered by the provider. However, if a provider demolishes a depreciable asset for the purpose of preparing land for future sale, the net demolition cost incurred by the provider (razing and removal cost less salvage recovered) is considered a capital expenditure and added to the historical basis of the land.

(vii) If a provider purchases land on which there is a building, no depreciation will be allowed under the Medicare program unless the building is used in providing patient care. If the building is demolished, the entire purchase price and demolition cost shall be considered the historical cost of the land. If the building is used for patient care, but demolished within 5 years of purchase, the entire purchase price, less allowed depreciation, plus demolition cost will be considered the historical cost of the land.

(6) *Involuntary conversion.* (i) Losses resulting from the involuntary conversion of depreciable assets, such as condemnation, fire, theft, or other casualty, are generally included in the determination of allowable cost on a deferred basis if the asset is restored or replaced. However, losses resulting from a provider's imprudent management of its depreciable assets, such as the failure to obtain proper insurance coverage, are not included in the determination of allowable cost.

(ii) The net allowable loss from involuntary conversion must consist of the undepreciated cost of unrecovered book value of the asset, less amounts received from insurance proceeds gifts and grants received from local, State, or Federal Government, or any other source as a result of the involuntary conversion.

(iii) If the asset is replaced and the net allowable loss in any cost-reporting period does not exceed $5,000, the entire amount must be included in allowable cost in the period in which the loss is incurred. If the asset is replaced and the net allowable loss in any cost-reporting period exceeds $5,000, the loss must be capitalized as a deferred charge and amortized over the useful life of the replacement or restored asset. If a replaced or restored asset ceases to be used in the provision of patient care services or the provider terminates its participation in the Medicare program, the unamortized deferred charge remaining at that time will not be included in determining allowable cost under the Medicare program.

(iv) If the provider fails to replace or restore an involuntarily converted asset, the loss is not included in determining allowable cost. However, if the provider intends to replace or restore the asset but is unable to do so because the designated SHPDA finds such replacement or restoration to be inconsistent with the health systems plan of the provider's health service area, the loss is allowable so long as the provider continues to participate in Medicare. In this case, the loss must be

capitalized as a deferred charge and amortized over the remaining life of the involuntarily converted asset, or at the rate of $5,000 per year, whichever is greater.

(v) If a gain is realized from an involuntary conversion of depreciable assets, the net amount realized reduces the basis of the restored or replacement asset. If the asset is not restored or replaced, the gain is to be treated in accordance with paragraph (f)(2) of this section.

(7) *Effect on equity capital.* The unrecovered loss entered on the books of the provider as a deferred charge, in accordance with paragraphs (f) (5) and (6) of this section, is not includable in the computation of equity capital under § 413.157.

(8) *Sale of replacement or restored assets.* If a provider sells a replacement or restored asset while participating in the Medicare program or within 1 year immediately following the date on which it terminates its participation in the Medicare program, the unrecovered loss entered on the books of the provider as a deferred charge in accordance with paragraphs (f) (5) and (6) of this section will not be included in determining the gain or loss realized from the sale of the replacement or restored asset. However, if the sale of such asset is made to a related organization, as defined in § 413.17, and the purchasing organization continues as a provider in the Medicare program, the remaining deferred charge representing the unrecovered depreciable basis of the demolished, abandoned or destroyed asset must continue to be amortized over the remaining expected useful life of the replacement or restored asset. If the sale is made to an unrelated organization, further amortization of the deferred charge is not allowed.

(g) *Establishment of cost basis on purchase of facility as an ongoing operation*—(1) *Assets acquired after July 1, 1966 and before August 1, 1970.* The cost basis for the assets of a facility purchased as an ongoing operation after July 1, 1966, and before August 1, 1970, is the lowest of the—

(i) Total price paid for the facility by the purchaser, as allocated to the individual assets of the facility;

(ii) Total fair market value of the facility at the time of the sale, as allocated to the individual assets; or

(iii) Combined fair market value of the individually identified assets at the time of the sale.

(2) *Assets acquired after July 31, 1970.* For depreciable assets acquired after July 31, 1970, in addition to the limitations specified in paragraph (g)(1) of this section, the cost basis of the depreciable assets may not exceed the current reproduction cost depreciated on a straight-line basis over the life of the assets to the time of the sale.

(3) *Transactions other than bona fide.* If the purchaser cannot demonstrate that the sale was bona fide, in addition to the limitations specified in paragraphs (g) (1) and (2) of this section, the purchaser's cost basis may not exceed the seller's cost basis, less accumulated depreciation.

(h) *Intergovernmental transfer of facilities.* The basis for depreciation of assets transferred under appropriate legal authority from one governmental entity to another is as follows:

(1) The historical cost incurred by the present owner in acquiring the asset under a bona fide sale. The historical cost may not exceed the lower of current reproduction cost adjusted for straight-line depreciation over the life of the asset to the time of the purchase of fair market value at the time of the purchase.

(2) The fair market value at the time of donation under a bona fide donation of the asset (subject to the limitations set forth under paragraph (i) of this section). An asset is considered donated when a governmental entity acquires the asset without assuming the functions for which the transferor used the asset or making any payment for it in the form of cash, property, or services.

(3) If neither paragraph (h) (1) nor (2) of this section applies, for example, the transfer was solely to facilitate administration or to reallocate jurisdictional responsibility, or the transfer constituted a taking over in whole or in part of the function of one governmental entity by another governmental entity, the basis for depreciation is—

(i) With respect to an asset on which the transferor has claimed depreciation under the Medicare program, the transferor's basis under the Medicare program prior to the transfer. The method of depreciation used by the transferee may be the same as that used by the transferor, or the transferee may change the method, as permitted under paragraph (d)(2) of this section; or

(ii) With respect to an asset on which the transferor has not claimed depreciation under the Medicare program, the cost incurred by the transferor in acquiring the asset (not to exceed the basis that would have been recognized had the transferor participated in the Medicare program) less depreciation calculated on the straight-line basis over the life of the asset to the time of transfer.

(i) *Basis of assets used under the program and donated to a provider.* If an asset that has been used or depreciated under the program is donated to a provider, the basis of depreciation for the asset is the lesser of the fair market value or the net book value of the asset in the hands of the owner last participating in the program. The net book value of the asset is defined as the depreciable basis used under the program by the asset's last participating owner less the depreciation recognized under the program.

(j) *Limitation on Federal participation for capital expenditures.* The allowance for depreciation is not an allowable cost for certain capital expenditures as described in § 413.161.

(k) *Transactions involving a provider's capital stock*—(1) *Acquisition of capital stock of a provider.* If the capital stock of a provider is acquired, the provider's assets may not be revalued. For example, if Corporation A purchases the capital stock of Corporation B, the provider, Corporation B continues to be the provider after the purchase and Corporation A is merely the stockholder. Corporation B's assets may not be revalued.

(2) *Statutory merger.* A statutory merger is a combination of two or more corporations under the corporation laws of the State, with one of the corporations surviving. The surviving corporation acquires the assets and liabilities of the merged corporation(s) by operation of State law. The effect of a statutory merger upon Medicare reimbursement is as follows:

(i) *Statutory merger between unrelated parties.* If the statutory merger is between two or more corporations that are unrelated (as specified in § 413.17), the assets of the merged corporation(s) acquired by the surviving corporation may be revalued in accordance with paragraph (g) of this section. If the merged corporation was a provider before the merger, then it is subject to the provisions of paragraphs (d)(3) and (f) of this section concerning recovery of accelerated depreciation and the realization of gains and losses. The basis of the assets owned by the surviving corporation are unaffected by the transaction. An example of this type of transaction is one in which Corporation A, a nonprovider, and Corporation B, the provider, are combined by a statutory merger, with Corporation A being the surviving corporation. In such a case the assets of Corporation B acquired by Corporation A may be revalued in accordance with paragraph (g) of this section.

(ii) *Statutory merger between related parties.* If the statutory merger is between two or more related corporations (as specified in § 413.17), no revaluation of assets is permitted for those assets acquired by the surviving corporation. An example of this type of transaction is one in which Corporation A purchase the capital stock of Corporation B, the provider. Immediately after the acquisition of the capital stock of Corporation B, there is a statutory merger of Corporation B and Corporation A, with Corporation A being the surviving corporation. Under these circumstances, at the time of the merger the transaction is one between related parties and is not a basis for revaluation of the provider's assets.

(3) *Consolidation.* A consolidation is the combination of two or more corporations resulting in the creation of a new corporate entity. If at least one of the original corporations is a provider, the effect of a consolidation upon Medicare reimbursement for the provider is as follows:

(i) *Consolidation between unrelated parties.* If the consolidation is between two or more corporations that are unrelated (as specified in § 413.17), the assets of the provider corporation(s) may be revalued in accordance with paragraph (g) of this section.

(ii) *Consolidation between related parties.* If the consolidation is between two or more related corporations (as specified in § 413.17), no revaluation of provider assets is permitted.

§ 413.139 Depreciation: Optional allowance for depreciation based on a percentage of operating costs.

(a) *Principle.* With respect to all assets acquired before 1966, the provider, at its option, may choose an allowance for depreciation based on a percentage of operating costs. The operating costs to be used are the provider's 1965 operating costs or the provider's current year's allowable costs, whichever are the lower. The percentage to be applied is 5 percent starting with the year 1966–67, with such percentage being uniformly reduced by one-half percent each succeeding year. The allowance based on operating costs is in addition to regular depreciation on assets acquired after 1965; however, if the optional allowance is selected, the combined amount of such allowance on pre-1966 assets and the straight-line depreciation on assets acquired after 1965 (including the estimated depreciation on assets held on a rental basis during the current year) may not exceed 6 percent of the provider's allowable cost for the current year.

(b) *Definitions*—(1) *Operating costs.* Operating costs are the total costs incurred by the provider in operating the institution or facility.

(2) *Allowable costs.* Allowable costs are the costs of a provider that are includable under the principles for cost reimbursement. Through application of apportionment methods to the total amount of such allowable costs, the share of a provider's total cost that is attributable to covered services for beneficiaries is determined.

(c) *Application.* If a provider has inadequate historical cost records for pre-1966 depreciable assets, the provider may elect to receive an allowance for depreciation on such assets based on a percentage of operating costs. The optional allowance for depreciation for such assets may be used, however, whether or not a provider has records of the cost of pre-1966 depreciable assets currently in use.

(d) *Allowance based on a percentage of operating costs.* (1) The allowance for depreciation based on a percentage of operating costs is to be computed by applying a specified percentage to a base amount equal to the provider's 1965 total operating costs, without adjustments to these principles or the current year's allowable operating costs, whichever is lower. The percentage to be applied is five for the reporting period that starts before or during 1966–67, four and one-half for the reporting period that begins during 1967–68, and continues to decline annually by equal amounts to become zero in 1976–77.

(2) If used as a base for determining the optional allowance for depreciation, neither the 1965 operating costs nor the current year's allowable costs are to include any actual depreciation, estimated depreciation on rented depreciable-type assets, allowance in lieu of specific recognition of other costs, or return on equity capital. Such exclusions are to be made only for the purpose of computing the allowance for depreciation based on operating costs. For other purposes, the excluded amounts are recognized in determining allowable costs and for computing the costs of services furnished to Medicare beneficiaries during the reporting period.

(e) *Change to actual depreciation.* (1) A provider that elects this allowance may at any time before 1976 change to actual depreciation on all pre-1966 depreciable assets. In such case, this option is eliminated and the provider can no longer elect to receive an allowance for depreciation based on a percentage of operating costs.

(2) If the provider desires to change to actual depreciation but either has no historical cost records or has incomplete records, the determination of historical cost may be made through appropriate means involving expert consultation with the determination being subject to review and approval by the intermediary.

(f) *Determination of optional allowance based on percentage of operating costs illustrated.* The following illustrates how the provider would determine the optional allowance for depreciation based on operating costs.

Example No. 1. The provider keeps its records on a calendar year basis. The current year's actual allowable cost and the actual operating cost for 1965 do not include any actual depreciation or rentals on depreciable-type assets. The current year's allowable cost also does not include any allowance in lieu of specific recognition of other costs or return on equity capital.

YEAR 1966

Current year's allowable cost	$1,100,000
Operating cost to 1965[1]	$1,000,000
Percent for determining the allowance	5
Allowance	$50,000

[1] 1965 Operating cost was used in computing the allowance for depreciation based on a percentage of operating costs because it was lower than 1966 allowable cost.

YEAR 1967

Current year's allowable cost	$1,200,000
Operating cost to 1965[1]	$1,000,000
Percent for determining the allowance[2]	5
Allowance	$50,000

[1] 1965 Operating cost was used in computing the allowance for depreciation based on a percentage of operating costs because it was lower than 1967 allowable cost.
[2] Since the reporting period began during the year 1966–1967 (July 1, 1966–June 30, 1967) 5 percent is the percentage to be used.

YEAR 1968

Operating cost to 1965	$1,000,000
Current year's allowable cost[1]	$900,000
Percent for determining the allowance[2]	4½
Allowance	$40,500

[1] The current year's allowable cost was used in computing the allowance for depreciation based on percentage of operating costs because it was lower than 1965 operating cost.
[2] Since the reporting period began during the year 1967–1968 (July 1, 1967–June 30, 1968) 4½ percent is the percentage to be used.

Example No. 2. When the provider pays rent for depreciable-type assets rented prior to 1966, the estimated depreciation on such assets must be deducted from the allowance. The following illustration demonstrates how the allowance is determined.

The provider keeps its records on a calendar year basis. The current year's actual allowable cost and the actual operating cost for 1965 did not include any actual depreciation, allowance in lieu of specific recognition of other costs, or return on equity capital. However, such costs have been adjusted to exclude estimated depreciation on rented depreciable-type assets.

YEAR 1966

Adjusted current year's allowable cost	$1,100,000
Adjusted operating cost for 1965[1]	$1,000,000
Percent for determining the allowance	5
Allowance	$50,000
Less estimated depreciation for depreciable-type assets rented prior to 1966 on which rental is paid in 1966	$3,000
Adjusted allowance	$47,000

[1] 1965 operating cost was used in computing the allowance for depreciation based on a percentage of operating costs because it was lower than 1966 allowable cost.

(g) *Limitation on depreciation if optional allowance is used.* This optional allowance only is subject to a limitation based on the provider's total allowable operating cost for the current year. To determine this limitation, compute the sum of the actual depreciation claimed, the allowance based on a percentage of operating costs, and the estimated straight-line depreciation on depreciable-type assets rented after 1965. If this sum exceeds six percent of the provider's current year's allowable cost (exclusive of any actual depreciation claimed, estimated depreciation on rented depreciable-type assets, allowance in lieu of specific recognition of other costs, and return on equity capital), the allowance for depreciation based on a percentage of operating costs is reduced by the amount of excess. In applying this limitation, if the actual depreciation claimed is on an accelerated basis, it must be converted to a straight-line basis only for use in calculating this limitation. It is presumed that pre-1966 assets will not be retired at a greater than normal rate, and the limitation of six percent, as it affects the availability of the allowance, is designed as a safeguard if the presumption is not borne out. If the provider does not elect to use the optional allowance, the combined allowance for depreciation based on costs of pre-1966 assets and those subsequently acquired is not subject to the six percent limitation.

Example No. 1. The following illustration demonstrates how this limitation would be determined.

YEAR 1966

[The provider keeps its records on a calendar year basis. The current year's actual allowable cost and the actual operating cost for 1965 have been adjusted to exclude actual depreciation, the estimated depreciation on rented depreciable-type assets, allowance in lieu of specific recognition of other costs, and return on equity capital.]

Adjusted operating cost for 1965	$1,000,000
Percent for determining the allowance	5
In 1966 assets were acquired which produce a straight-line depreciation of	$18,000
Estimated depreciation on assets rented in 1966	$2,000
Adjusted allowable operating cost for 1966	$1,100,000

YEAR 1966—Continued

CALCULATION OF ALLOWANCE FOR DEPRECIATION BASED ON A PERCENTAGE OF OPERATING COSTS

Gross allowance	
5 percent times adjusted 1965 operating costs ($1,000,000)	$50,000
Estimated depreciation on assets rented in 1966	2,000
Straight-line depreciation on post-1965 assets	18,000
Total	70,000
6 percent of adjusted 1966 allowable operating cost	66,000
Reduction in allowance	4,000
Allowance	50,000
Reduction	4,000
Adjusted allowance	46,000
Total depreciation allowance for 1966 ($18,000 actual depreciation plus $46,000 allowance based on operating cost)	64,000

Assume in this illustration that the provider had elected to use the declining balance method in computing its allowable depreciation and the rental expense for depreciable-type assets was $3,500. In that case, it would include in its 1966 allowable cost not only the $46,000 allowance based on operating costs but also $36,000 (in this instance 2×straight-line rate is used) in actual depreciation and the rental expense of $3,500—or a total of $85,500 covering all its depreciable assets.

§ 413.144 Depreciation: Allowance for depreciation on fully depreciated or partially depreciated assets.

(a) *Principle.* Depreciation on assets being used by a provider at the time it enters into the Medicare program is allowed. This principle applies even though such assets may be fully or partially depreciated on the provider's books.

(b) *Application.* Depreciation is allowable on assets being used at the time the provider enters into the program. This applies even though such assets may be fully depreciated on the provider's books or fully depreciated with respect to other third-party payers. So long as an asset is being used, its useful life is considered not to have ended, and consequently the asset is subject to depreciation based upon a revised estimate of the asset's useful life as determined by the provider and approved by the intermediary. Correction of prior years' depreciation to reflect revision of estimated useful life should be made in the first year of participation in the program unless the provider has used the optional method (§ 413.139), in which case the correction should be made at the time of discontinuing the use of that method. If an asset has become fully depreciated under Medicare, further depreciation is not appropriate or allowable, even though the asset may continue in use.

(c) *Example of an allowance for a fully-depreciated asset.* For example, if a 50-year-old building is in use at the time the provider enters into the program, depreciation is allowable on the building even though it has been fully depreciated on the provider's books. Assuming that a reasonable estimate of the asset's continued life is 20 years (70 years from the date of acquisition), the provider may claim depreciation over the next 20 years—if the asset is in use that long—or a total depreciation of as much as twenty-seventieths of the asset's historical cost.

(d) *Corrections to depreciation.* If the asset is disposed of before the expiration of its estimated useful life, the depreciation would be adjusted to the actual useful life. Likewise, a provider may not have fully depreciated other assets it is using and finds that it has incorrectly estimated the useful lives of those assets. In such cases, the provider may use the corrected useful lives in determining the amount of depreciation, provided such corrections have been approved by the intermediary.

§ 413.149 Depreciation; Allowance for depreciation on assets financed with Federal or public funds.

(a) *Principle.* Depreciation is allowed on assets financed with Hill-Burton or other Federal or public funds.

(b) *Application.* Like other assets (including other donated depreciable assets), assets financed with Hill-Burton or other Federal or public funds become a part of the provider institution's plant and equipment to be used in furnishing services. It is the function of payment of depreciation to provide funds that make it possible to maintain the assets and preserve the capital employed in the production of services. Therefore, irrespective of the source of financing of an asset, if it is used in the providing of services for beneficiaries of the program, payment for depreciation of the asset is, in fact, a cost of the production of those services. Moreover, recognition of this cost is necessary to maintain productive capacity for the future. An incentive for funding of depreciation is provided in these principles by the provision that investment income on funded depreciation is not treated as a reduction of allowable interest expense under § 413.153(a).

§ 413.153 Interest expense.

(a)(1) *Principle.* Necessary and proper interest on both current and capital indebtedness is an allowable cost. However, interest costs are not allowable if incurred as a result of—

(i) Judicial review by a Federal court (as described in § 413.64(j));

(ii) An interest assessment on a determined overpayment (as described in § 405.376 of this chapter); or

(iii) Interest on funds borrowed to repay an overpayment (as described in § 413.64(j) or § 405.376 of this chapter), up to the amount of the overpayment, unless the provider had made a prior commitment to borrow funds for other purposes (for example, capital improvements).

(2) *Exception.* In those cases of administrative or judicial reversal, interest paid on funds borrowed to repay an overpayment is an allowable cost, in accordance with this section.

(b) *Definitions*—(1) *Interest.* Interest is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short term. This is usually for such purposes as working capital for normal operating expenses. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes, such as acquisition of facilities and equipment, and capital improvements. Generally, loans for capital purposes are long-term loans.

(2) *Necessary.* Necessary requires that the interest be—

(i) Incurred on a loan made to satisfy a financial need of the provider. Loans that result in excess funds or investments would not be considered necessary;

(ii) Incurred on a loan made for a purpose reasonably related to patient care; and

(iii) Reduced by investment income except if such income is from gifts and grants, whether restricted or unrestricted, and that are held separate and not commingled with other funds. Income from funded depreciation or a provider's qualified pension fund is not used to reduce interest expense. Interest received as a result of judicial review by a Federal court (as described in § 413.64(j)) is not used to reduce interest expense.

(3) *Proper.* Proper requires that interest be—

(i) Incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market existing at the time the loan was made; and

(ii) Paid to a lender not related through control or ownership, or personal relationship to the borrowing organization. However, interest is allowable if paid on loans from the provider's donor-restricted funds, the funded depreciation account, or the provider's qualified pension fund.

(c) *Borrower-lender relationship.* (1) Except as described in paragraph (c)(2) below, to be allowable, interest expense must be incurred on indebtedness established with lenders or lending organizations not related through control, ownership, or personal relationship to the borrower. Presence of any of these factors could affect the "bargaining" process that usually accompanies the making of a loan, and could thus be suggestive of an agreement on higher rates of interest or of unnecessary loans. Loans should be made under terms and conditions that a prudent borrower would make in armslength transactions with lending institutions. The intent of this provision is to assure that loans are legitimate and needed, and that the interest rate is reasonable. Thus, interest paid by the provider to partners, stockholders, or related organizations of the provider would not be allowable. If the owner uses his own funds in a business, it is reasonable to treat the funds as invested funds or capital, rather than borrowed funds. Therefore, if interest on loans by partners, stockholders, or related organizations is disallowed as a cost solely because of the relationship factor, the principal of such loans is treated as invested funds in the computation of the provider's equity capital under § 413.157.

(2) Exceptions to the general rule regarding interest on loans from controlled sources of funds are made in the following circumstances. Interest on loans to providers by partners, stockholders, or related organizations made prior to July 1, 1966, is allowable as cost, provided that the terms and conditions of payment of such loans have been maintained in effect without modification subsequent to July 1, 1966. If the general fund of a provider "borrows" from a donor-restricted fund and pays interest to the restricted fund, this interest expense is an allowable cost. The same treatment is accorded interest paid by the general fund on money "borrowed" from the funded depreciation account of the provider or from the provider's qualified pension fund. In addition, if a provider operated by members of a religious order borrows from the order, interest paid to the order is an allowable cost.

(3) If funded depreciation is used for purposes other than improvement, replacement, or expansion of facilities or equipment related to patient care, allowable interest expense is reduced to adjust for offsets not made in prior years for earnings on funded depreciation. A similar treatment is accorded deposits in the provider's qualified pension fund if such deposits are used for other than the purpose for which the fund was established.

(d) *Loans not reasonably related to patient care.* (1) The following types of loans are not considered to be for a purpose reasonably related to patient care:

(i) For loans made to finance acquisition of a facility, that portion of the cost that exceeds—

(A) Historical cost as determined under § 413.134(b); or

(B) The cost basis determined under § 413.134(g) and

(ii) Loans made to finance capital stock acquisitions, mergers, or consolidations for which revaluation of assets is not allowed under § 413.134(k)

(2) In determining whether a loan was made for the purpose of acquiring a facility, we will apply any owner's investment or funds first to the tangible assets, then to the intangible assets other than goodwill and lastly to the goodwill. If the owner's investment or funds are not sufficient to cover the cost allowed for tangible assets, we will apply funds borrowed to finance the acquisition to the portion of the allowed cost of the tangible assets not covered by the owner's investment, then to the intangible assets other than goodwill, and lastly to the goodwill

(e) *Limitation on Federal participation for capital expenditures.* The allowance for depreciation is not an allowable cost for certain capital expenditures as described in § 413.161.

§ 413.157 Return on equity capital of proprietary providers.

(a) *Principle*—(1) *Rate of return.* (i) A reasonable return on equity capital invested and used in the provision of patient care is paid as an allowance in addition to the reasonable cost of covered services furnished to beneficiaries by proprietary providers.

(ii) Except as provided in paragraph (a)(1)(iii) of this section, the amount allowable on an annual basis is determined by applying to the provider's equity capital a percentage equal to one and one-half times the average of the rates of interest on special issues of public debt obligations issued to the Medicare Part A Trust Fund for each of the months during the provider's reporting period or portion thereof covered under the program.

(iii) For cost reporting periods beginning on or after April 20, 1983, the amount allowable in determining the return related to inpatient hospital

services is determined using a percentage equal to the average of the rates of interest as described in paragraph (a)(1)(ii) of this section.

(2) *Proprietary providers.* For the purposes of this part the term "proprietary providers" is intended to distinguish providers, whether sole proprietorships, partnerships, or corporations, that are organized and operated with the expectation of earning profit for the owners, from other providers that are organized and operated on a nonprofit basis.

(b) *Application*—(1) *Computation of equity capital.* Proprietary providers generally do not receive public contributions and assistance of Federal and other governmental programs in financing capital expenditures. Proprietary institutions historically have financed capital expenditures through funds invested by owners in the expectation of earning a return. A return on investment, therefore, is needed to avoid withdrawal of capital and to attract additional capital needed for expansion. For purposes of computing the allowable return, the provider's equity capital means—

(i) The provider's investment in plant, property, and equipment related to patient care (net of depreciation) and funds deposited by a provider who leases plant, property, or equipment related to patient care and is required by the terms of the lease to deposit such funds (net of noncurrent debt related to such investment or deposited funds); and

(ii) Net working capital maintained for necessary and proper operation of patient care activities. However, debt representing loans from partners, stockholders, or related organizations on which interest payments would be allowable as costs but for the provisions of § 413.153(b)(3)(ii), is not subtracted in computing the amount of equity capital as defined in paragraph (b)(1)(i) of this section and this paragraph (b)(1)(ii), in order that the proceeds from such loans be treated as a part of the provider's equity capital. In computing the amount of equity capital upon which a return is allowable, investment in facilities is recognized on the basis of the historical cost, or other basis, used for depreciation and other purposes under the Medicare program.

(2) *Acquisitions after July 1970.* With respect to a facility or any tangible assets of a facility acquired on or after August 1, 1970, the excess of the price paid for such facility or such tangible assets over the historical cost, as defined in § 413.134(b), or the cost basis, as determined under § 413.134(g) (whichever is appropriate), is not includable in equity capital, and loans made to finance such excess portion of the cost of such acquisitions (see § 413.153(d)) are excluded in computing equity capital.

(3) *Acquisitions prior to August 1970.* With respect to a facility or any tangible assets of a facility acquired before August 1970, the excess of the price paid for such facility or assets over the fair market value of tangible assets at the time of purchase is includable in equity capital to the extent that it is reasonable except that the cumulative allowable return for such excess may not exceed 100 percent of such excess. For purposes of this section, the cumulative allowable return means the sum of the allowable rate of return on equity capital for all months starting from August 1, 1970. For example, if the allowable rates of return on equity capital for a provider are 9 percent for the first year (and such year started August 1, 1970), 8.5 percent for the second year, and 10.5 percent for the third year, the cumulative allowable return at the end of the third year would be 28 percent. After the cumulative allowable return equals 100 percent, the inclusion in equity capital of the excess is no longer allowable.

(4) *Computation of return on equity capital.* For purposes of computing the allowable return, the amount of equity capital is the average investment during the reporting period. The rate of return allowed as derived from time to time based upon interest rates in accordance with this principle, is determined by HCFA and communicated through intermediaries. Return on investment as an element of allowable costs is subject to apportionment in the same manner as other elements of allowable costs.

Example of calculation of cumulative allowable return. X purchased a provider on July 1, 1969, paying $100,000 in excess of the fair market value of the assets acquired. Provider X files its cost report on a calendar-year basis. The allowable rate of return on equity capital for August 1, 1970-December 31, 1970 (4.538 percent), is obtained by multiplying the allowable rate of return for the period ending December 31, 1970 (10.891) by 5/12 (a fraction of which the numerator is the number of months from August 1, 1970, to the end of the cost-reporting period and the denominator is the number of months in the cost-reporting period). The cumulative allowable return for Provider X for the period August 1, 1970-December 31, 1973, (32.367 percent) is computed as follows:

Cost reporting year ending	Rate of return on equity capital (percent)
Dec. 31, 1970	4.538
Dec. 31, 1971	8.969
Dec. 31, 1972	8.891
Dec. 31, 1973	9.969
Total	32.367

(The $100,000 paid in excess of the fair market value of the assets acquired is included in equity capital until the sum of the allowable rate of return on equity capital equals 100 percent. Of course, no portion of the $100,000 may be amortized as an allowable cost or is otherwise allowable for any program reimbursement purposes other than for determining the provider's equity capital.

(5) *Unapproved capital; expenditures.* Effective with respect to any capital expenditure, the obligation for which is incurred after December 31, 1972, or after the effective date of an agreement executed between a State and the Secretary pursuant to section 1122 of the Act, whichever date is later (and subject to the exceptions in § 413.161(c)), a provider's investment in plant, property, and equipment related to patient care, and funds deposited by a provider which leases plant, property, or equipment related to patient care that are found to be expenditures which have not been submitted to the designated planning agency are required or have been determined to be inconsistent with health facility planning requirements (as described in §§ 100.101 through 100.109 of this title) are not included in the provider's equity capital for computing the allowance for a reasonable return on equity capital.

§ 413.161 Nonallowable costs related to certain capital expenditures.

(a) *Principle.* Effective with respect to any capital expenditure, as defined in Part 100 of this title, the obligation for which is incurred after December 31, 1972, or after the effective date of an agreement executed between a State and the Secretary pursuant to section 1122 of the Act, whichever date is later, the depreciation, interest on borrowed funds, return on equity capital (in the case of proprietary providers), and any other costs attributable to such capital expenditure, for which the Secretary has determined that such proposed capital expenditure has not been submitted to the designated planning agency as required, or that it has been determined by such agency to be inconsistent with the standards, plans, or criteria developed to meet the need for adequate health care facilities (as defined in § 100.101 through § 100.109 of this title) are not allowable. Other costs related to such capital expenditures include title

fees; permit and license fees; broker commissions; architect, legal, accounting, and appraisal fees; interest, finance, or carrying charges on bonds, or notes; and other costs incurred for borrowing funds. The reasonable costs incurred by a provider for studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisitions, improvement, expansion, or replacement of the plant and equipment that are conducted to enable the provider to properly determine whether the proposed capital expenditure would be in compliance with the standards, plans, or criteria developed by the designated planning agency are allowable, except if the provider makes the capital expenditure and does not receive the required approval.

(b) *Applicability.* Under the principle specified in paragraph (a) of this section, any costs related to capital expenditures, the obligation for which was incurred by or on behalf of a provider subsequent to 1972 (except as described in paragraph (c) of this section), are not allowable if the Secretary has determined that the capital expenditures have not been submitted to the designated planning agency as required or that they have been determined to be inconsistent with the standards, plans, or criteria developed by the designated planning agency or other health planning agency in the State to meet the need for adequate health care facilities in the area covered by the plan or plans so developed (see §§ 100.101 through 100.109 of this title). Costs claimed by a provider in connection with capital assets that are donated or transferred to a provider are also subject to the application of such principle. Such principle also applies to the reasonable equivalent of that portion of any rental expense incurred pursuant to a lease or a comparable arrangement (and to any amounts deposited under the terms of such a lease or comparable arrangement in computing the return on equity capital) that would have been excluded had the provider acquired such a facility or equipment by purchase. The amounts excluded are not subject to reimbursement under any other provisions of Medicare.

(c) *Exceptions.* The limitation on recognition of costs attributable to capital expenditures discussed in this section does not apply to the following:

(1) A provider furnishing health care services as of December 18, 1970, that on such date was committed to a formal plan of expansion or replacement, with respect to such expenditures as may be made or such obligations as may be incurred for capital items included in such plan for which preliminary expenditures toward the plan of expansion or replacement (including payments for studies, surveys, designs, plans, working drawings, specifications, and site acquisition, essential to the acquisition, improvement, expansion, or replacement of the health care facility or equipment concerned) of $100,000 or more, had been made during the three-year period ending December 17, 1970.

(2) Christian Science sanatoria operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

(3) Capital expenditures the obligations for which were incurred by or on behalf of a provider prior to 1973.

(4) Capital expenditures the exclusion of which the Secretary has determined would—

(i) Discourage the operation or expansion of a provider that has demonstrated its capability of providing comprehensive health care services efficiently, effectively, and economically; or

(ii) Otherwise be inconsistent with the effective organization and delivery of health services or the effective administration of Title V, XVIII, or XIX of the Act.

(d) *Appeals.* See § 405.1890 of this chapter for appeal rights of a provider or other person dissatisfied with a determination under section 1122 of the Act (42 U.S.C. 1320a–1).

Subpart H—Payment for End-Stage Renal Disease (ESRD) Services

§ 413.170 Payments for covered outpatient maintenance dialysis treatments.

(a) *Basis and purpose.* This section implements section 1881 (b)(2) and (b)(7) of the Act by—

(1) Setting forth the principles and authorities under which HCFA is authorized to establish a prospective reimbursement system for outpatient maintenance dialysis furnished in or under the supervision of an ESRD facility approved under Subpart U of Part 405 of this chapter (referred to as "facility" in this section). For purposes of this section and § 413.174, outpatient maintenance dialysis means outpatient dialysis, home dialysis and self-dialysis, and home dialysis training as defined in § 405.2102 (f)(2)(ii), (f)(2)(iii), and (f)(3) of this chapter, and includes all items and services specified in § 405.231 (o) and (p) of this chapter.

(2) Providing for procedures and criteria under which a facility may receive an exception to the prospective payment rates established under this section; and

(3) Establishing procedures and criteria for a facility to appeal its reimbursement under the prospective reimbursement system.

(b) *Principles of prospective reimbursement.* (1) Under prospective reimbursement, payments for outpatient maintenance dialysis are based on rates set prospectively by HCFA.

(2) All approved ESRD facilities must accept the prospective payment rates established by HCFA as payment in full for covered outpatient maintenance dialysis.

(3) HCFA will publish the methodology used to establish rates and changes in payment rates in the **Federal Register**, as provided in paragraph (i)(2) of this section.

(c) *Prospective rates for hospital-based and independent ESRD facilities.* (1) In accordance with section 1881(b)(7) of the Act, HCFA will establish prospective rates by a methodology that—

(i) Differentiates between hospital-based facilities and independent ESRD facilities;

(ii) Effectively encourages efficient delivery of dialysis services; and

(iii) Provides incentives for increasing the use of home dialysis.

(2) For purposes of rate-setting and reimbursement under this section, HCFA will consider any facility that does not meet all of the criteria of a hospital-based facility to be an independent facility. A determination under this paragraph is an initial determination under § 405.1502 of this chapter.

(3) For purposes of rate-setting and reimbursement under this section, HCFA will determine that a facility is hospital-based if the—

(i) Facility and hospital are subject to the bylaws and operating decisions of a common governing board. All authority in management flows from this governing board, which has final administrative responsibility, approves all personnel actions, appoints medical staff, and carries out similar management functions;

(ii) Facility's director or administrator is under the supervision of the hospital's chief executive officer and reports through him or her to the governing board;

(iii) Facility personnel policies and practices conform to those of the hospital;

(iv) Administrative functions of the facility (for example, records, billing, laundry, housekeeping, and purchasing)

are integrated with those of the hospital; and

(v) Facility and hospital are financially integrated, as evidenced by the cost report, which must reflect allocation of overhead to the facility through the required step-down methodology.

(4) In determining whether a facility is hospital-based, HCFA will not consider—

(i) An agreement between a facility and a hospital concerning patient referral;

(ii) A shared service arrangement between a facility and a hospital; or

(iii) The physical location of a facility on the premises of a hospital.

(d) *Amount of payments.* (1) If the beneficiary has incurred the full deductible applicable under Part B of Medicare before the treatment, the intermediary will pay the facility 80 percent of its prospective payment rate.

(2) If the beneficiary has not incurred the full deductible applicable under Part B of Medicare before the treatment, the intermediary will subtract the amount applicable to the deductible from the facility's prospective rate, and will pay the facility 80 percent of the remainder, if any.

(e) *Bad debts.* (1) HCFA will reimburse each facility its allowable Medicare bad debts, up to the facility's costs as determined under Medicare principles, in a single lump sum at the end of the facility's cost reporting period.

(2) A facility must attempt to collect deductible and coinsurance amounts owed by beneficiaries before requesting reimbursement from HCFA for uncollectible amounts. Section 413.80 specifies the efforts facilities must make.

(3) A facility must request reimbursement for uncollectible deductible and coinsurance amounts owed by beneficiaries by submitting an itemized list of all specific non-collections related to covered services.

(f) *Procedures for requesting exceptions to payment rates.* (1) All payments for outpatient maintenance dialysis furnished at or through facilities will be made on the basis of prospective payment rates, without exemption.

(2) If a facility projects on the basis of prior year cost and utilization trends that it will have an allowable cost per treatment higher than its prospective rate set under this section, and if these excess costs are attributable to factors related to one or more of the criteria in paragraph (g) of this section, the facility may request HCFA to approve an exception to that rate and set a higher prospective payment rate.

(3) This higher payment rate will be subject to the rules governing the amount of payment in paragraph (d) of this section.

(4) A facility must request an exception to its payment rate within 180 days after—

(i) It is notified of its prospective payment rate; or

(ii) An extraordinary event with substantial cost effects, as described in paragraph (g)(4) of this section.

(5) The facility is responsible for demonstrating to HCFA's satisfaction that the requirements of this section, including the criteria in paragraph (g), are met in full. That is, the burden of proof is on the facility to show that one or more of the criteria are met, and that the excessive costs are justifiable under the reasonable cost principles set forth in this part. The burden of proof is not on HCFA to show that the criteria are not met, and that the facility's costs are not allowable.

(6) If requesting an exception to its payment rate, a facility must submit to HCFA its most recently completed cost report as required under § 413.174, and whatever statistics, data, and budgetary projections are determined by HCFA to be needed to determine if the exception is approvable. HCFA may audit any cost report or other information submitted. The materials submitted to HCFA must—

(i) Separately identify elements of cost contributing to costs per treatment in excess of the facility's payment rate;

(ii) Show that all of the facility's costs, including those costs that are not directly attributable to the exception criteria, are allowable and reasonable under the reasonable cost principles set forth in this part.

(iii) Show that the elements of excessive cost are specifically attributable to one or more conditions specified by the criteria set forth in paragraph (g) of this section; and

(iv) Specify the amount of additional reimbursement per treatment the facility believes is required in order to recover its justifiable excess costs.

(7) HCFA will accept an exception request on the date that HCFA concludes that it has received all materials necessary to determine if the exception is approvable.

(8) In determining the facility's payment rate under the exception process, HCFA will exclude all costs that are not allowable under the reasonable cost principles set forth in this part.

(9) Except for exceptions approved under paragraph (g)(4) of this section, a prospective exception payment rate approved by HCFA will apply for the period from the date the exception request was accepted until the earlier of the—

(i) Date the circumstances justifying the exception rate no longer exist; or

(ii) End of the 12-month period during which the announced rate was to apply.

(10) A prospective exception payment rate approved by HCFA under paragraph (g)(4) of this section will apply from the date of the extraordinary event until the end of the 12-month period during which the announced rate was to apply, unless HCFA determines that another date is more appropriate. If HCFA does not extend the exception period, and the facility believes that it continues to require an exception to its rate, the facility must reapply in accordance with paragraph (f) of this section.

(g) *Criteria for approval of exception requests.* HCFA may approve exceptions to an ESRD facility's prospective payment rate if the facility demonstrates with convincing objective evidence that its total per treatment costs are reasonable and allowable under § 413.174, and that its per treatment costs in excess of its payment rate are directly attributable to any of the following criteria:

(1) *Atypical service intensity (patient mix).* A substantial proportion of the facility's outpatient maintenance dialysis treatments involve atypically intense dialysis services, special dialysis procedures, or supplies that are medically necessary to meet special medical needs of the facility's patients. The facility is able to demonstrate clearly that these services, procedures or supplies and its per treatment costs are prudent and reasonable when compared to those of facilities with a similar patient mix. Examples that may qualify under this criterion are more intense dialysis services that are medically necessary for patients such as—

(i) Patients who have been referred from other facilities on a temporary basis for more intense care during a period of medical instability, and who return to the original facility after stabilization;

(ii) Pediatric patients, who require a significantly higher staff-to-patient ratio than typical adult patients; or

(iii) Patients with medical conditions that are not commonly treated by ESRD facilities, and that complicate the dialysis procedure.

(2) *Isolated essential facility.* The facility is the only supplier of dialysis in its geographical area, its patients cannot obtain dialysis services elsewhere without substantial additional hardship.

and its excess costs are justifiable. HCFA will consider local permanent residential population density, typical local commuting distances for medical services, volume or treatments, and dialysis facility usage by area residents other than the applying facility's patients, in determining whether an exception requested on this is approvable.

(3) *Education costs.* The facility has excess costs attributable to an approved nursing education program or intern-resident program as specified in § 413.85. The amount of the increase in the facility's rate is limited to the amount that is properly allocated to the outpatient dialysis department, and to what is reasonable when compared to the costs of other similar facilities that have educational programs.

(4) *Extraordinary circumstances.* The facility incurs excess costs beyond its control due to a fire, earthquake, flood, or other natural disaster. HCFA will not recognize such costs in cases when a facility chose not to maintain adequate insurance protection against such losses (through the purchase of insurance, the maintenance of a self-insurance program, or other equivalent alternative) or chose not to file a claim for losses covered by insurance, or not to utilize its self-insurance program.

(5) *Self-dialysis Training Costs.* The facility incurs per treatment costs for furnishing self-dialysis and home dialysis training that exceed the facility's payment rate for such training sessions.

(6) *Frequency of Dialysis.* The facility has a substantial proportion of patients who dialyze less frequently than three times per week. Per treatment payment rates granted under this exception will be no more than the amount that results in weekly reimbursement per patient equal to three times the facility's prospective composite rate, exclusive of any exception amounts.

(h) *Appeals.* (1) *Appeals under section 1878 of the Act.* A facility that disputes the amount of its allowable Medicare bad debts reimbursed by HCFA under paragraph (e) of this section may request a review from the intermediary or the Provider Reimbursement Review Board (PRRB) in accordance with subpart R of Part 405 of this chapter.

(2) *Other Appeals.* A facility that has requested higher payment per treatment in accordance with paragraph (f) of this section may request a review from the intermediary or the PRRB if HCFA has denied the request in whole or in part. In such a case, the procedure in subpart R of Part 405 of this chapter will be followed to the extent that it is applicable. The PRRB, subject to review by the Administrator under § 405.1875 of this chapter, will have the authority to determine whether the HCFA action under review conformed to the provisions of paragraph (f).

(3) *Procedure.* (i) The facility must request a review within 180 days of the date of the decision on which review is sought.

(ii) The facility may not submit to the intermediary or the PRRB any additional information or cost data that were not submitted to HCFA at the time the facility requested an exception to its prospective payment rate.

(4) *Determining amount in controversy.* For purposes of determining PRRB jurisdiction under Subpart R of Part 405 of this chapter for the appeals described in paragraph (h)(2) of this section—

(i) The amount in controversy per treatment will be determined by subtracting the amount of program payment from the amount the facility requested under paragraph (f) of this section; and

(ii) The total amount in controversy will be calculated by multiplying the amount per treatment by the projected estimated number of treatments for the exception request period (as specified in paragraphs (f) (7) and (8) of this section).

(i) *Notification of changes in rate-setting methodologies and payment rates.* (1) HCFA or the facility's intermediary will notify each facility annually of its payment rate. This notice will include changes in individual facility payment rates resulting from corrections or revisions of particular geographic labor cost adjustment factors.

(2) Changes in payment rates resulting from incorporation of updated cost data, or general revisions of geographic labor cost adjustment factors, will be announced by notice published in the **Federal Register** without opportunity for prior public comment. Other revisions of the rate-setting methodology will be published in the **Federal Register** in accordance with the Department's established rulemaking procedures.

§ 413.174 Recordkeeping and cost reporting requirements for outpatient maintenance dialysis.

(a) *Purpose and scope.* This section implements section 1881(b)(2)(B)(i) of the Act by specifying recordkeeping and cost reporting requirements for ESRD facilities approved under Subpart U of Part 405 of this chapter. The records and reports will enable HCFA to detemine the costs incurred in furnishing outpatient maintenance dialysis as defined in § 413.170(a)(1).

(b) *Recordkeeping and reporting requirements.* (1) Each facility must keep adequate records and submit the appropriate HCFA-approved cost report in accordance with §§ 413.20 and 413.24, which provide rules on financial data and reports, and adequate cost data and cost finding, respectively.

(2) The cost reimbursement principal set forth in this part (beginning with § 413.134, Depreciation, and excluding the principles listed in paragraph (b)(4) of this section), apply in the determination and reporting of the allowable cost incurred in furnishing outpatient maintenance dialysis treatments to patients dialyzing in the facility, or incurred by the facility in furnishing home dialysis services, supplies, and equipment.

(3) Allowable cost is the reasonable cost related to dialysis treatments. Reasonable cost includes all necessary and proper expenses incurred by the facility in furnishing the dialysis treatments, such as administrative costs, maintenance costs, and premium payments for employee health and pension plans. It includes both direct and indirect costs and normal standby costs. Reasonable cost does not include costs that—

(i) Are not related to patient care for outpatient maintenance dialysis;

(ii) Are for services or items specifically not reimbursable under the program;

(iii) Flow from the provision of luxury items or services (items or services substantially in excess of or more expensive than those generally considered necessary for the provision of needed health services); or

(iv) Are found to be substantially out of line with other institutions in the same area that are similar in size, scope of services, utilization, and other relevant factors.

(4) The following principles of this part do not apply in determining adjustments to allowable costs as reported by ESRD facilities:

(i) Section 413.157, Return on equity capital of proprietary providers;

(ii) Section 413.178, Reimbursement of OPAs and histocompatibility laboratories;

(iii) Section 413.9, Cost related to patient care (except for the principles stated in paragraph (b)(3) of this section); and

(iv) Sections 413.64, Payment to providers, and § 413.13, § 413.30, § 413.35, § 413.40, § 413.74, § 413.56, and § 405.465 through § 405.482 of this chapter, Effect of principles.

§ 413.178 Reimbursement of independent organ procurement agencies and histocompatibility laboratories.

(a) *Principle.* Covered services furnished after September 30, 1978 by organ procurement agencies (OPAs) and histocompatibility laboratories in connection with kidney acquisition and transplantation will be reimbursed under the principles for determining reasonable cost contained in this part. Services furnished by independent OPAs and histocompatibility laboratories, that have an agreement with the Secretary in accordance with paragraph (c) of this section, will be reimbursed by making an interim payment to the transplant hospitals using these services and by making a retroactive adjustment, directly with the OPA or laboratory, based upon a cost report filed by the OPA or laboratory. (The reasonable costs of services furnished by hospital based OPAs or laboratories will be reimbursed in accordance with the principles contained in §§ 413.60 and 413.64.)

(b) *Definitions.* For purposes of this section:

(1) "OPA" means an organization that meets the definition in § 405.2102(q) of this chapter.

(2) "Histocompatibility laboratory" means a laboratory meeting the standards and providing the services set forth in § 405.2171(d) of this chapter.

(3) "Independent"—An OPA or a histocompatibility laboratory is independent unless it—

(i) Performs services exclusively for one hospital;

(ii) Is subject to the control of the hospital in regard to the hiring, firing, training and paying of employees; and

(iii) Is considered as a department of the hospital for insurance purposes (including malpractice insurance, general liability insurance, worker's compensation insurance, and employee retirement insurance).

(c) *Agreements with independent OPAs and laboratories.* (1) Any independent OPA or histocompatibility laboratory that wishes to have the cost of its pretransplant services reimbursed under the Medicare program must file an agreement with HCFA under which the OPA or laboratory agrees—

(i) To file a cost report in accourdance with § 413.24(f) within three months after the end of each fiscal year;

(ii) To permit HCFA to designate an intermediary to determine the interim reimbursement rate payable to the transplant hospitals for services provided by the OPA or laboratory and to make a determination of reasonable cost based upon the cost report filed by the OPA or laboratory;

(iii) To provide such budget or cost projection information as may be required to establish an initial interim reimbursement rate;

(iv) To pay to HCFA amounts that have been paid by HCFA to transplant hospitals and that are determined to be in excess of the reasonable cost of the services provided by the OPA or laboratory; and

(v) Not to charge any individual for items or services for which that individual is entitled to have payment made under section 1881 of the Act.

(2) An independent OPA or histocompatibility laboratory whose services were being reimbursed under Medicare on October 1, 1978, and that wishes to continue being reimbursed under Medicare must file an agreement by January 13, 1979.

(3) The initial cost report due from an OPA or laboratory is for its first fiscal year ending after September 30, 1978, during any portion of which it had an agreement with the Secretary under paragraph (c) (1) and (2) of this section. The initial cost report covers only the period covered by the agreement.

(d) *Interim reimbursement.* (1) Hospitals eligible to receive Medicare reimbursement for renal transplantation will be paid for the pretransplantation services of an independent OPA or histocompatibility laboratory that has an agreement with the Secretary under paragraph (c) of this section, on the basis of an interim rate established by an intermediary for that OPA or laboratory.

(2) The interim rate will be based on the average cost per service incurred by an OPA or laboratory, during its previous fiscal year, associated with procuring a kidney for transplantation. This interim rate may be adjusted if necessary for anticipated cost changes. If there is not adequate cost data to determine the initial interim rate, it will be determined according to the OPA's or laboratory's estimate of its projected costs for the fiscal year.

(3) Payments made on the basis of the interim rate will be reconciled directly with the OPA or laboratory after the close of its fiscal year, in accordance with paragraph (e) of this section.

(4) Information on the interim rate for all independent OPA's and histocompatibility laboratories shall be disseminated to all transplant hospitals and intermediaries.

(e) *Retroactive adjustment.* (1) *Cost reports.* Information provided in cost reports by independent OPA's and histocompatibility laboratories must meet the requirements for cost data and cost finding specified in paragraphs (a) through (e) of § 413.24. These cost reports must provide a complete accounting of the cost incurred by the agency or laboratory in providing covered services, the total number of Medicare beneficiaries who received those services, and any other data necessary to enable the intermediary to make a determination of the reasonable cost of covered services provided to Medicare beneficiaries.

(2) *Audit and adjustment.* A cost report submitted by an independent OPA or histocompatibility laboratory will be reviewed by the intermediary and a new interim reimbursement rate for the succeeding fiscal year will be established based upon this review. A retroactive adjustment in the amount paid under the interim rate will be made in accordance with § 413.64(f). If the determination of reasonable cost reveals an overpayment or underpayment resulting from the interim reimbursement rate paid to transplant hospitals, a lump sum adjustment will be made directly between the intermediary and the OPA or laboratory.

(f) *Appeals.* Any OPA or histocompatibility laboratory that disagrees with an intermediary's cost determination under this section is entitled to an intermediary hearing, in accordance with the procedures contained in §§ 405.1811 through 405.1833, if the amount in controversy is $1,000 or more.

VI. Part 416 is amended as follows:

PART 416—AMBULATORY SURGICAL SERVICES

A. The authority citation for Part 416 continues to read as follows:

Authority: Secs. 1102, 1832(a)(2), 1833, 1863, and 1864 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(2), 1395l, 1395z, and 1395aa).

§ 416.120 [Amended]

B. In § 416.120 (a) and (b), references to "Part 405, Subpart D" are changed to read "Part 413."

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS AND HEALTH CARE PREPAYMENT PLANS

VII. A. The authority citation for Part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act as amended (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); section 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); and section 1301 of the Public Health Service Act (42 U.S.C. 300e).

B. Subpart B is amended as follows:

Subpart B—Health Maintenance Organizations

§ 417.240 [Amended]

1. In § 417.240(a), reference to "Subpart D of Part 405" is changed to read "Parts 412 and 413."

§ 417.241 [Amended]

2. a. In § 417.241(b), reference to "§ 405.402" is changed to read "§ 413.5 of this chapter."

b. In § 417.241(d), reference to "Subpart D of Part 405" is changed to read "Parts 412 and 413."

§ 417.242 [Amended]

3. a. In § 417.242(b), reference to "Subpart D of Part 405" is changed to read "Parts 412 and 413."

b. In § 417.242(b)(1), reference to "§§ 405.415, 405.417, and 405.418" is changed to read "§§ 413.134, 413.144, and 413.149 of this chapter."

c. In § 417.242(b)(2), reference to "§ 405.419" is changed to read "§ 413.153 of this chapter."

d. In § 417.242, paragraphs (b)(3) and (b)(4), reference to "§ 405.420" is changed to read "§ 413.80 of this chapter."

e. In § 417.242(b)(5), reference to "§ 405.421" is changed to read "§ 413.85 of this chapter."

f. In § 417.242(b)(6), reference to "§ 405.422" is changed to read "§ 413.90 of this chapter."

g. In § 417.242(b)(8), reference to "§ 405.424" is changed to read "§ 413.94 of this chapter."

h. In § 417.242(b)(9), reference to "§ 405.425" is changed to read "§ 413.98 of this chapter."

i. In § 417.242(b)(10), reference to "§ 405.426" is changed to read "§ 413.102 of this chapter."

j. In § 417.242(b)(11), reference to "§ 405.427" is changed to read "§ 413.17 of this chapter."

k. In § 417.242(b)(12), reference to "§ 405.429" is changed to read "§ 413.157 of this chapter."

l. In § 417.242(b)(13), reference to "§§ 405.402, 405.415, 405.419, 405.429, and 405.435" is changed to read "§§ 413.5, 413.134, 413.153, 413.157, and 413.161 of this chapter."

m. In § 417.242(b)(14)(i)(*a*), reference to "§ 405.402(g) and § 405.502(e)" is changed to read "§§ 405.502(e) and 413.5(f) of this chapter."

n. In § 417.242(b)(14)(i)(*b*), reference to "§ 405.460" is changed to read "§ 413.30 of this chapter."

o. In § 417.242(b)(14)(i)(*c*), reference to "§ 405.432" is changed to read "§ 413.106 of this chapter.".

p. In § 417.242(b)(14)(i)(*d*), reference to "§ 405.433" is changed to read "§ 413.110 of this chapter."

q. In § 417.242(d)(14)(ii), reference to "§ 405.455" is changed to read "§ 413.13 of this chapter."

r. In § 417.242(h), reference to "Subpart D of Part 405" is changed to read "Parts 412 and 413."

§ 417.243 [Amended]

4. a. In § 417.243(b)(1), reference to "§§ 405.452, 405.453, and 405.480" is changed to read "§§ 405.480, 413.55, and 413.24 of this chapter" and reference to § 405.401" is changed to read "§ 413.1 of this chapter."

b. In § 417.243(b)(3), references to "Subpart D of Part 405" are changed to read "Parts 412 and 413."

c. In § 417.243(g), the second footnote in the table, reference to "Subpart D of Part 405" is changed to read "Parts 412 and 413."

§ 417.244 [Amended]

5. In § 417.244(c), reference to "Subpart D of Part 405" is changed to read "Parts 412 and 413," and reference to "§ 405.453" is changed to read "§ 413.24 of this chapter."

§ 417.247 [Amended]

6. In § 417.247, all references to "Subpart D of Part 405" are changed to read "Parts 412 and 413."

§ 417.254. [Amended]

7. In § 417.254(c), references to "Subpart D of Part 405" are changed to read "Parts 412 and 413."

C. Subpart C is amended as follows:

Subpart C—Health Maintenance Organizations and Competitive Medical Plans.

§ 417.530 [Amended]

1. In § 417.530, reference to "Subpart D of Part 405" is changed to read "Parts 412 and 413."

§ 417.532 [Amended]

2. In § 417.532(g), reference to "Subpart D of Part 405" is changed to read "Parts 412 and 413."

§ 417.536 [Amended]

3.a. In § 417.536(a), reference to "Subpart D of Part 405" is changed to read "Parts 412 and 413."

b. In § 417.536(d), reference to "§§ 405.415, 405.417, and 405.418" is changed to read "§§ 413.134, 413.144, and 413.149."

c. In § 417.536(c), reference to "§ 405.419" is changed to read "§ 413.153."

d. In § 417.536(d), reference to "§ 405.421" is changed to read "§ 413.85."

e. In § 417.536(e), reference to "§ 405.426" is changed to read "§ 413.102."

f. In § 417.536(f), reference to "§ 405.420" are changed to read "413.80."

g. In § 417.536(h), reference to "§ 405.422" is changed to read "§ 413.90."

h. In § 417.536, reference to "§ 405.424" and "§ 405.425" respectively are changed to read "§ 413.94" and "§ 413.98."

i. In § 417.536(k), reference to "§ 405.427" is changed to read "§ 413.17."

j. In § 417.536(l), reference to "§ 405.429" is changed to read "§ 413.157."

k. In § 417.536(m), introductory text, reference to "Subparts D and E of Part 405" is changed to read "Subpart E of Part 405, and Parts 412 and 413."

l. In § 417.536(m)(1), reference to "§ 405.439, 405.542, and 405.544" is changed to read "§§ 405.542, 405.544, and 413.170."

m. In § 417.536(m)(2), reference to "§ 405.432" is changed to read "§ 413.106."

n. In § 417.536(m)(3), reference to "§ 405.433" is changed to read "§ 413.110."

o. In § 417.536(m)(4), reference to "§ 405.460" is changed to read "§ 413.30."

p. In § 417.536(m)(5), reference to "§ 405.455" is changed to read "§ 413.13."

§ 417.548 [Amended]

a. In § 417.548, all references to "Subpart D of Part 405" are changed to read "Parts 412 and 413."

b. In § 417.548, the introductory text to paragraph (b), reference to "Part 405" is changed to read "Parts 405, 412, and 413."

§ 417.554 [Amended]

5. In § 417.554, §"§ 405.452, 405.453, 405.480 of this chapter, and in Part 412 of this chapter" is changed to read "§ 405.480, Part 412 of this chapter, and §§ 413.55 and 413.24."

§ 417.558 [Amended]

6. In § 417.558, all references to "Subpart D of Part 405" are changed to read "Parts 412 and 413."

§ 417.568 [Amended]

7. In § 417.568(c), reference to "Subpart D of Part 405" is changed to read "Parts 412 and 413" and reference to ""§ 405.453" is changed to read "§ 413.24."

§ 417.576 [Amended]

8. In § 417.576, all references to "Subpart D of Part 405" are changed to read "Parts 412 and 413."

§ 417.586 [Amended]

9. In § 417.586(b)(2), reference to "Subpart D of Part 405" is changed to read "Parts 412 and 413."

D. Subpart D is amended as follows:

Subpart D—Health Care Prepayment Plans

§ 417.800 [Amended]

1. In § 417.800(d)(1), reference to "Subpart D of Part 405" is changed to read "Parts 412 and 413."

VIII. Part 420, Subpart D is amended as follows:

PART 420—PROGRAM INTEGRITY

Subpart D—Access to Books, Documents, and Records of Subcontractors

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

Authority: Secs. 1102, 1861(u), 1861(v), 1862(d), 1862(e), 1866(b), 1871, 1902(a), and 1903(i) of the Social Security Act (42 U.S.C. 1302, 1395x(u), 1395x(v), 1395y(d), 1395y(e), 1395cc(b), 1395hh, 1396(a), and 1396b(i)).

§ 420.301 [Amended]

B. 1. In § 420.301 reference to "§ 405.427" is changed to read "§ 413.17."

IX. Part 421, Subpart C is amended as follows:

PART 421—INTERMEDIARIES AND CARRIERS

Subpart C—Carriers

A. The authority citation for Part 421 continues to read as follows:

Authority: Secs. 1102, 1815, 1816, 1833, 1842, 1861(u), 1871, 1874, and 1875 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395h, 1395l, 1395u, 1395x(u), 1395hh, 1395kk, and 1395ll), and 42 U.S.C. 1395b–1.

§ 421.200 [Amended]

B. 1. In § 421.200(b), reference to "Part 405, Subpart D," is changed to read "Parts 413."

X. Part 447 is amended as follows:

PART 447—PAYMENTS FOR SERVICES

A. The authority citation for Part 447 continues to read as follows:

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

B. Subpart C is amended as follows:

Subpart C—Payment for Inpatient Hospital and Long-Term Care Facility Services

§ 447.252 [Amended]

1. In § 447.252(c), reference to "§ 405.460" is changed to read "§ 413.30."

C. Subpart D is amended as follows:

Subpart D—Payment Methods for Other Institutional and Noninstitutional Services

§ 447.371 [Amended]

1. In § 447.371(a) reference to "Subpart D of Part 405" is changed to read "Part 413."

XI. Part 482 is amended as follows:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

A. The authority citation for Part 482 continues to read as follows:

Authority: Secs. 1102, 1814(a)(7), 1861(e), (f), (k), (r), (v)(l)(G), and (z), 1864, 1871, 1883, 1886, and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1395f(a)(7), 1395x(e), (f), (k), (r), (v)(l)(G), and (z), 1395aa, 1395hh, 1395tt, 1395ww, 1396d(a)).

B. Subpart E is amended as follows:

Subpart E—Requirements for Specialty Hospitals

§ 482.66 [Amended]

1. In § 482.66, the introductory text to paragraph (a), reference to "§ 405.434" is changed to read "§ 413.114 of this chapter."

2. In § 482.66(a)(1), reference to "§ 405.453(d)(5)" is changed to read "§ 413.24(d)(5) of this chapter."

XII. Part 489 is amended as follows:

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

A. The authority citation for Part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh).

B. Subpart A is amended as follows:

Subpart A—General Provisions

§ 489.12 [Amended]

1. In § 489.12(b)(2), reference to "§ 405.454(k)" is changed to read "§ 413.64(i)."

C. Subpart C is amended as follows:

Subpart C—Allowable Charges

§ 489.32 [Amended

1. In § 489.32(b), reference to "§ 405.461" is changed to read "§ 413.35."

(Catalog of Federal Domestic Assistance Programs: No. 13773, Medicare—Hospital Insurance. No. 13774, Medicare—Supplementary Medical Insurance)

Dated: July 10, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 15, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86–21810 Filed 9–29–86; 8:45 am]

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Tuesday
September 30, 1986

Part VI

Environmental Protection Agency

40 CFR Part 141

Water Polluton Control; National Primary Drinking Water Regulations; Radionuclides; Advance Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[WH-FRL-2901-3]

Water Pollution Control; National Primary Drinking Water Regulations; Radionuclides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This action under the Safe Drinking Water Act (as amended in 1986) provides advance notice of a proposed rule for Maximum Contaminant Level Goals (MCLGs) and National Primary Drinking Water Regulations (NPDWR) including Maximum Contaminant Levels (MCLs) for radionuclides in drinking water. MCLGs and MCLs are being considered for radium-226, radium-228, natural uranium, radon, gross alpha, and gross beta and photon emitters. This advance notice is being published to invite discussion and to seek public comment concerning regulation of radionuclides in drinking water. These radionuclides are known as probable human carcinogens and, in addition, uranium is chemically toxic to the kidneys.

MCLGs are non-enforceable health goals which are to be set at levels which will result in no known or anticipated adverse health effects with an adequate margin of safety. When the MCLGs are proposed, the Agency will also propose MCLs and monitoring requirements. MCLs are enforceable standards and are to be set as close to the MCLGs as feasible, taking into account cost, availability of treatment technologies and other practical considerations.

DATES: Written comments should be submitted by December 29, 1986. A public meeting will be held in Washington, DC, on November 13, beginning at 9 a.m. in Room 3 North Conference Center, EPA, 401 M Street, SW., Washington, DC 20460.

ADDRESSES: Send written comments to Comments Clerk, Criteria and Standards Division, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A copy of the comments and supporting documents will be available for review during normal business hours at the EPA, Room 2409 (rear), 401 M Street SW., Washington, DC 20460. It is requested that anyone planning to attend the public meeting (especially those who plan to make statements) register in advance by calling or writing Ms. Teresa Malone at 202/382-7575, EPA, WH-550, 401 M St., SW., Washington, DC 20460. Persons planning to make statements at the meetings are encouraged to submit written copies of their remarks at the time of the hearing.

Reference cited in Appendix G consititute the record for this proceeding and will be available for inspection at the above address and at the Drinking Water Supply Branches of EPA's Regional offices:

I. JFK. Federal Bldg., Boston, MA 02203 Phone: (617) 223-6486, Jerome Healy

II. 26 Federal Plaza, Room 824, New York, NY 10278, Phone: (212) 264-1800, Walter Andrews

III. 841 Chestnut St., Philadelphia, PA 19107, Phone: (215) 597-9873, Bernie Sarnoski

IV. 345 Courtland Street, Atlanta, GA 30365, Phone: (404) 881-3781, Robert Jourdan

V. 230 S. Dearborn St., Chicago, IL 60604, Phone: (312) 886-6176, Joseph Harrison

VI. 1201 Elm St., Dallas TX 75270, Phone: (214) 767-2620, James Graham

VII. 726 Minnesota Ave., Kansas City, KS 66101, Phone: (913) 236-2815, Gerald R. Foree

VIII. 1860 Lincoln St., Denver, Co 80295, Phone: (303) 837-2731. Marc Alston

IX. 215 Fremont St., San Francisco, CA 94105, Phone: (415) 974-8076, William Thurston

X. 1200 Sixth Ave., Seattle, WA 98101, Phone: (206) 442-1225, Jerry Opatz

Copies of the draft health criteria documents for radium, radon, uranium and man-made radionuclides are available for a fee from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll free number is 800/336-4700; local: 703/487-4650.

FOR FURTHER INFORMATION CONTACT: Joseph A. Cotruvo, Ph.D., Director, Criteria and Standards Division, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 382-7575.

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Part I—Introduction and Background

I. Authority

National Primary Drinking Water Regulations are authorized by the Safe Drinking Water Act, 42 U.S.C. 300f, et seq., as amended by the Safe Drinking Water Act Amendments of 1986 (Pub. L. 99-339, 100 Stat. 642 (1986)). Section 1412 (b)(1) requires EPA to establish National Primary Drinking Water Regulations for 83 contaminants including the radionuclides addressed in this notice by June, 1989, unless the Administrator substitutes up to seven contaminants whose regulation provides greater health protection (section 1412(b)(2)). EPA is to propose MCLGs and MCLs simultaneously and also promulgate them together (section 1412(a)(3)).

II. Organization

This notice is divided into four parts. Part I summarizes today's notice and presents relevant background information including previous regulations establishing standards for radionuclides in drinking water and the statutory mandate to revise these standards. Part II describes in detail the rationale for establishing MCLGs for radionuclides. Part III provides information related to establishing MCLs for radionuclides. Part IV asks for public comments.

III. Summary of Today's ANPRM

EPA is considering proposing MCLGs and MCLs in drinking water for the following radionuclides: Radium-226, radium-228, natural uranium, and radon. EPA is also considering proposing MCLGs and MCLs for gross alpha particle activity and gross beta and photon activity.

In addition, EPA is considering proposing a definition for the term "natural uranium" and adding it to the current list and amending the definition of man-made particle and photon emitters. These definitions would read as follows:

"Natural uranium" means uranium with combined uranium-234 plus uranium-235 plus uranium-238 which has a varying isotopic composition but typically is 0.006% uranium-234, 0.7% uranium-235, and 99.27% uranium-238.

"Man-made beta particle and photon emitters" means all radionuclides emitting beta partices and/or photons except thorium-232, uranium-235 and uranium-238 and their progeny.

IV. Background

A. Statutory Mandate

Section 1412 of the Safe Drinking Water Act ("SDWA" or the "Act") requires EPA to establish primary drinking water regulations for contaminants in public water systems. As enacted in 1974, EPA was required to first promulgate interim regulations for a limited group of contaminants, and later, revised regulations for these and other contaminants.

The 1986 Amendments to the SDWA require MCLGs and MCLs to be developed simultaneously and eliminate the distinction between interim and revised regulations (section 1412 (a)). MCLGs are to be set at a level which, in the Administrator's judgment, "no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin or safety." Section 1412(b)(4). The legislative history provides the following further quidance on selecting these levels:

[t]he recommended maximum level . . . must include an adequate margin of safety, unless there is no safe threshold for a contaminant. In such a case, the level should be set at zero level. (House Report No. 93–1185, July 10, 1974, at 20).

MCLGs are non-enforceable health goals.

For each contaminant for which an MCLG has been established, either an MCL or a treatment technique is to be set. See section 1401(1), 42 U.S.C. 300f. A treatment technique is to be established only if "it is not economically or technologically feasible" to ascertain the level of the contaminant in drinking water. MCLs are enforceable standards, and must be set as close to the MCLGs as feasible. Feasible means "with the use of the best technology, treatment techniques and other means, which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are generally available (taking cost into consideration)." Section 1412(b)(5). MCLs are to be proposed at the same time that MCLGs are proposed.

MCLSs are not legally enforceable against public water systems or the public. By promulgating MCLGs, EPA does not force public water systems to reduce contaminants to these levels. Thus, non-compliance with an MCLG cannot be the basis for an enforcement action under section 1414 of the SDWA.

Rather, MCLGs serve as goals for the Agency when establishing MCLs. In some cases, MCLs will be set very close to the MCLGs, while in other cases, control processes or economic considerations may dictate higher MCLs. Public water systems must comply with MCLs.

B. The 1976 Interim Regulations

The National Interim Primary Drinking Water Regulations (NIPDWR) for radionuclides were promulgated on July 9, 1976 (41 FR 28404). The interim MCLs were set at 5 pCi/l for radium-226 and 228, 15 pCi/l for gross alpha particle activity (excluding radon and uranium) and a total dose equivalent of 4 mrem/yr for man-made radioactivity. See 40 CFR 141.15 and 141.16. Uranium and radon were excluded because of uncertainties about their occurrence, toxicity, and routes of exposure.

A separate standard was set for radium because, at the time of promulgation, EPA believed that radium was the most toxic of the radionuclides. The 5 pCi/l concentration was selected as the most appropriate level to protect public health, considering cost and feasibility. It was calculated that this level produced a radiation dose to the bone of 150 mrem/yr, or an excess cancer risk rate of approximately 1 case per ten thousand per lifetime (U.S. EPA, 1976).

The gross alpha particle activity standard was designed primarily as a screening device to measure for compliance with the MCL for radium. The regulations require that if the gross alpha particle activity is greater than 5 pCi/l, then the level of radium must be determined. In addition, the standard serves as a gross indicator for high levels of other natural radionuclides.

The gross beta particle activity standard was intended as a screening device to measure for man-made radionuclides. The regulations state that gross beta particle activity, tritium, and strontium concentrations must be determined in every sample. They further specify that the combination of all man-made radionuclides cannot result in a dose that exceeds 4 mrem/yr. Strontium was singled out because it is one of the most toxic fission products, and tritium because it cannot be detected by the gross beta screening procedure. If the gross beta particle activity is greater than 50 pCi/l, then the drinking water must be again analyzed to determine which other radionuclides are present. The dose resulting from these radionuclides cannot exceed 4 mrem/yr. This dose level was chosen because it was felt that the corresponding concentrations were achievable and well below the 170 mrem/yr maximum dose recommended by the Federal Radiation Council for the general public (Federal Radiation Council, 1961).

In general, the interim regulation requires quarterly sampling for one year every four years. For natural radionuclides, the monitoring strategy involves testing for gross alpha particle activity. If the gross alpha particle activity exceeds 5 pCi/l, then the sample is analyzed for radium-226. If the radium-226 activity exceeds 3 pCi/l, the sample must be analyzed for radium-228. Monitoring for man-made radionuclides is only required of surface water systems serving more than 100,000 people.

C. Protective Action Guidance and Indoor Radon Guidelines

Other guidelines/standards have been developed by EPA to address exposure to radionuclides. Protective action guidance (PAG) has been developed jointly by EPA's Office of Drinking Water and the Office of Radiation Programs; the PAG is intended as emergency guidance to be used when responding to a release of man-made radionuclides from a nuclear accident.

The recommended guidances for drinking water are 1.5 rem dose commitment to the thyroid, or 0.5 rem dose commitment to the whole body, bone marrow, or other organs. (Dose commitment means the total dose equivalent summed over the remaining life due to a short term exposure.)

In addition, EPA has set standards which address exposure to indoor radon for houses near uranium mill tailings (40 CFR Part 192). The clean-up standard is 0.02 working levels (WL). A WL corresponds approximately to the potential alpha particle energy concentration of short lived progeny in air which are in rado-activity equilibrium with a radon-222 concentration of 100 pCi per liter of air. Since equilibrium is rarely achieved, the 0.02 WL is usually translated to 4 pCi/1 of air, thus assuming that the equilibrium factor is about one half. The 4 pCi/1 standard, which is intended to (among other things) reduce radon to as close to background (i.e., 200 mrem/year) as possible, is about three times higher than indoor background.

The EPA has also developed guidance for homeowners that presents information on indoor radon and suggests appropriate time frames for action, depending on the actual level of exposure (A Citizen's Guide to Radon, USEPA and USHHS, August 1986, OPA–86–004). This guidance is part of the Agency's non-regulatory program of technical assistance to States and citizens on indoor radon. The recommendations in the guidance are provided to assist States and citizens with their decisions concerning the reduction of radon in dwellings. The recommendations are not regulatory standards, and do not establish requirements for EPA's regulatory programs.

Part II—Rationale for MCLG's for Radionuclides

As enacted in 1974, section 1412(e) of the SDWA required EPA to work with the National Academy of Sciences (NAS), or another equivalent body, to develop MCLGs for potentially harmful contaminants in drinking water as part of the National Revised Primary Drinking Water Regulations. NAS responded to EPA's invitation in 1977 to provide proposals for MCLGs by providing a significant volume of health, occurrence and exposure data, particularly about uranium (NAS, 1977). Under the 1986 SDWA Amendments, the Administrator is directed to request comment from the EPA Science Advisory Board (SAB) prior to proposal of MCLGs and national primary drinking water regulations. EPA is no longer required to consult with the NAS (section 1412 (e)). The Agency will request SAB comment prior to proposals of any MCLGs for radionuclides and has provided a copy of this advance notice to the SAB for comment.

Two subsequent investigations have added substantially to our knowledge in this area. First, the International Commission for Radiological Protection (ICRP) has developed an approach that allows direct comparison of the damage from radioactivity (i.e., effective dose) to different organs. And second, using data from the report of the Biological Effects of Ionizing Radiation Committee (BEIR III) of the NAS, EPA has developed a comparable approach described later in this notice. Consequently, this rulemaking will rely more heavily on the information developed by the ICRP and BEIR III Committee than on the data submitted by the NAS in 1977.

To supplement this information and to provide a public forum for many of the issues relevant to this rulemaking, EPA assembled experts in radioactivity at a National Workshop for Radioactivity in Drinking Water in Easton, Maryland, on May 24–26, 1983. The proceedings of this workshop were published in the May 1985 issue of *Health Physics* and provided a major input to the development of this rulemaking.

The Agency published an Advance Notice of Proposed Rulemaking (ANPRM) for radionuclides (and other pollutants not addressed in this proposal) on October 5, 1983 (48 FR 455502). A public meeting was held in Washington, DC, on December 13, 1983. Thirteen comments were received concerning the radionuclide part of the ANPRM. These comments are discussed in the relevant sections of this preamble. As described in the October 1983 ANPRM, this action for radionuclides is Phase III of EPA's program to promulgate revised primary drinking water regulations.

The remaining part of this notice discusses a possible proposal for MCLGs for various radionuclides. Initially presented are data on the widespread occurrence of certain radionuclides in drinking water supplies followed by a discussion of the adverse health effects resulting from exposure to these pollutants. Next, the preamble describes the risk to the U.S. population from current levels of radionuclides in drinking water. Finally, the notice concludes that MCLGs should be set at zero for radium-226, radium-228, natural uranium, radon, gross alpha particle activity, and gross beta and photon activity to satisfy the statutory mandate to establish levels at which "no known or anticipated adverse effects on persons will occur, with an adequate margin of safety."

Additional information and data are provided in the Appendices including a brief discussion on the fundamentals of radioactivity in Appendix A.

I. Exposure and Potential Risks of Radionuclides in Drinking Water

There are approximately 2000 known radioisotopes, or radionuclides. These isotopes emit radiation as they decay (alpha particles, beta particles and gamma rays or photon radiations). They can be classified roughly into two categories: Natural and man-made. The natural radionuclide are largely alpha particle emitters with some beta particle activity. The most significant natural radionuclides (as determined by occurrence in drinking water and health effects) are radium-226, radium-228, uranium and radon-222. The natural radionuclides involve three decay series which start with either uranium-238, thorium-232 or uranium-235. These are called the uranium, thorium and actinium series, respectively. Each series decays by either alpha particle or beta particle decay through several radionuclides (including such radionuclides as radium, radon, polonium and thorium) and ending with a stable isotope of lead. In general, each radionuclide also decays by gamma ray emission.

The man-made radionuclides fall into two subcategories. For those radionuclides of elements higher than uranium on the Periodic Table (the transuranics), generally both alpha and beta particle decay modes occur. By contrast, for radionuclides of elements below lead in the Periodic Table, essentially none exhibit alpha particle decay properties. They undergo decay by beta and/or gamma ray emission.

Humans are exposed to radiation from numerous sources. They include cosmic rays, radiation from the ground, and intake of radionuclides in food and drinking water. The most significant of these sources is exposure to the lung due to background levels of radon. As shown in Table 1, the annual average effective dose equivalent for natural background in the United States is approximately 200 mrem/yr. About one half of the dose equivalent arises from inhalation of radon–222 and its decay products. Previously accepted estimates of natural background were about 100 mrem/year and did not include the contribution due to radon.

The estimates in Table 1 were derived using the approach of the International Commission for Radiological Protection

(ICRP), which allows direct comparsion of the effective dose for different organs (ICRP reports 26 and 30). A similar approach has been developed by the EPA using data developed by the BEIR III Committee of the NAS (see the Background Document for Final NESHAP Rule for Radionuclides). Both approaches are designed to reflect the differences in the distribution of, and sensitivity to, radionuclides among body organs. As shown in Table 1, the "annual dose equivalent" is the amount of, in this case, background radiation that each organ receives per year.

TABLE 1.—AVERAGE ANNUAL EFFECTIVE DOSE EQUIVALENT TO HUMANS FROM NATURAL BACKGROUND USING DATA FROM THE UNSCEAR REPORT (UNITED NATIONS, 1982)[3]

Organ	Weighting factor [1]	Annual dose equivalent (mSv/y)	Annual effective dose equivalent (mSv/y) [2]
Gonads	0.25	0.97	0.24
Breast	0.15	0.95	0.14
Lung:			
Mean Dose	0.12	0.96	
Trachial/Bronchial	0.06	14.0	
Pulmonary	0.06	1.8	
Total			1.0
Red Bone Marrow	0.12	1.1	0.13
Bone Surfaces	0.03	1.9	0.057
Thyroid	0.03	0.88	0.026
Other	0.30	0.97	0.29
			[4] 1.9

[1] The weighting factors used here are those from ICRP report 26. The effective dose equivalent calculations in Appendix A use the weighting factors derived by the U.S. Environmental Protection Agency's Office of Radiation Programs using the information in the BEIR III report.
[2] 1 mSv/y (one milliSievert) equals 100 mrem/y.
[3] Weighting Factor X Annual dose equivalent = Annual effective dose equivalent.
[4] mSv/y 200 m Rem/years.

The "weighting factor" reflects the particular radiosensitivity of different organs, and is expressed as the fraction of the total risk for the entire body attributable to each organ. The "annual effective dose" for each organ is calculated by multiplying the "annual dose equivalent" by the assigned "weighting factor." The sum of the annual dose equivalents for each organ provides an estimate of the total effect of the radiation on the body which, in the case of background, is 200 mrem/yr.

As described later in Section II of this part of the preamble, the ICRP and EPA/BEIR models assign different weighting factors to each organ. Furthermore, the ICRP uses a time span of 50 years for calculating the dose and associated risks from exposure to radiation, whereas EPA uses a time span of 70 years. The subsequent presentation of the risks from radionuclides in drinking water is based on calculations using the EPA/BEIR model.

A. Occurrence in Drinking Water

The estimates of radionuclide levels in drinking water presented in this section are based on a number of sources of data. First is the compilation of nationwide monitoring data for compliance with the Interim Regulations for Radionuclides. Compliance data has been submitted for approximately 50,000 of the 60,000 public water supplies. However, because only levels about the interim standards are usually reported to EPA, these data are of limited use in predicting nationwide occurrence levels.

A second source of data are several nationwide surveys and regional studies of various radionuclides. For States with a limited data base, extrapolations have been made from better-studied States which have similar hydrogeological conditions.

The following sections discuss for each radionuclide the available data and methods used to estimate concentrations expected to occur in public drinking water supplies.

Because the data are limited, it is impossible to determine precise statistical distributions. The uncertainty in the data can be inferred by an examination of the estimated range of values involved. Table 2 summarizes the available data on naturally occurring radionuclides in terms of population-weighted averages.

The population-weighted average is calculated as follows:

$$\text{Sum of} \left[\frac{\text{concentration in the public water supply} \times \text{population consuming that water}}{\text{total exposed population (roughly 216 million)}} \right]$$

This average is used as a mechanism for estimating the population risk from exposure to radionuclides, which is described in Section III.B of this preamble.

Of the several radionuclides that comprise the natural decay series, in general, only radium, uranium and radon have been found at detectable levels in drinking water. Most of the man-made radionuclides have half-lives too short to be transported through a drinking water system. However, approximately 200 man-made radionuclides do have half-lives long enough to be considered potential contaminants in drinking water. Thus, they are included as a class in this discussion.

As a general statement, the data demonstrate that radium, uranium, and radon are seldom found in high concentrations together. Relatively higher levels of these radionuclides are found in certain areas of the country: Radium in the mid-west and Appalachian region, natural uranium in the Rocky Mountains, and radon in the northeast.

The concentrations of radon in drinking water range from less than 10 pCi/l in typical surface waters to a reported high of 2,000,000 pCi/l in ground water from a private well. Public water supplies with concentrations at the lower end of this range are found throughout the United States. Similarly, public water supplies with low levels (i.e., 1–10 pCi/l) of uranium can be found throughout the United States. Radium is likely to also have widespread occurrence but the lower level of detection is not much below the current standard for ^{226}Ra (i.e., 5 pCi/l) and thus, similar data does not exist as it does for uranium and radon.

The EPA is currently conducting the National Inorganics and Radionuclides Survey (NIRS) in which drinking water samples from about 1,000 public water systems are being analyzed for radium-226, radium-228, uranium, gross alpha particle activity and radon-222. Survey results are expected in early 1987, and the preliminary occurrence estimates used in this ANPRM will be revised to reflect that statistically based sample.

TABLE 2.—POPULATION WEIGHTED AVERAGE CONCENTRATION OF NATURAL RADIONUCLIDES IN U.S. COMMUNITY DRINKING WATER (FOR BOTH SURFACE AND GROUND WATER SUPPLIES)

Radionuclide	Average population-weighted concentrations in U.S. community water supplies (average of surface and ground water supplies) (pCi/l)
Radium-226	0.3–0.8
Radium-228	0.4–1.0
Natural uranium	0.3–2.0
Radon-222	50–300
Lead-210	<0.11
Polonium-210	<0.13
Thorium-230	<0.04
Thorium-232	<0.01

1. *Radium-226.* The occurrence of radium-226 in drinking water was

estimated using several sources. These are discussed below and included:

(1) Compliance Monitoring data with the Interim Regulations,

(2) EPA survey of 2500 public water systems

(3) Limited studies of East Coast acquifers

The screening protocol used in determining compliance with the Interim Regulation for radium-226 reflects only samples in which the gross alpha particle activity exceeded 15 pCi/l (see Figure 1 in Appendix B). Approximately 50,000 systems have monitored for gross alpha. From the resulting radium-226 monitoring, it is estimated that about 500 systems exceed the radium-226 MCL of 5 pCi/l. The largest radium-226 concentration reported for any drinking water system was approximately 200 pCi/l. Few supplies exceed 50 pCi/l. About ⅔ of the drinking water supplies that exceed 5 pCi/l are below 10 pCi/l. About 150 systems exceeded the gross alpha MCL of 15 pCi/l.

EPA's Office of Radiation Programs conducted a nationwide survey in 1980–81 of 2,500 public ground water supplies in 27 States which represented 45 percent of the drinking water consumed in the United States (Horton, 1984). The survey had two limitations: it included samples primarily from ground water systems serving more than 1,000 people, and it also employed a gross alpha particle activity screening step of 5 pCi/l/.

Other available data includes a study of radium-226 and radium-228 in the Coastal Plain and Piedmont regions of the east coast (Michael, 1981) and a study of radium-226 in New England States (Hess, 1985). All of this data is summarized in Appendix B and was used to estimate a population-weighted average concentration of radium-226 in ground water systems. Based upon existing data, it is likely that radium-226 is responsible for about one-half of the gross alpha particle activity (see Figures 2 in Appendix B), except for States which have very high uranium levels in ground water, for which radium-226 would constitute an even smaller fraction. Where the radium-226 data from the EPA study or other regional studies appeared to be representative, these numbers were used directly.

For systems serving 1,000 or more people, the average radium-226 concentrations in these large ground water systems in individual states was estimated to range from 0.1–3.0 pCi/l, with a population-weighted value ranging between 0.4 and 1.0 pCi/l. Sufficient occurrence data were not available to estimate comparable values for smaller ground water systems (<1000 people); however, the limited data that are available showed that smaller systems seem to have slightly higher concentrations than large systems. A factor of 1.5 was used as a conservative means of relating the estimates of typical concentrations in smaller and larger systems. The radium-226 content of these systems was estimated to be 0.6–1.5 pCi/l. These small systems represent 4 percent of the total population using community water supplies and 11 percent of the community ground water users.

Surface water supplies serve sixty-six percent of drinking water users. The radium-226 average content of all surface water supplies was estimated to range from 0.1–0.5 pCi/l (National Workgroup, see Cothern, et al., 1984).

Using the above estimates for small and large ground water and surface water supplies, the population-weighted average value for radium-226 in all community drinking water supplies is estimated to range between 0.3 and 0.8 pCi/l.

Between 300 and 3000 public drinking water supplies are estimated to have radium-226 concentrations exceeding 1 pCi/l, a level corresponding to a projected excess cancer risk of 1 in 100,000 as shown in Table 7.

2. *Radium-228.* Because of the limited available data for radium-228 occurrence in ground water, direct calculations of the population-weighted average cannot be made. However, several studies have shown that the radium-228/radium-226 activity ratio in natural waters is about one (Draft Radium Health Effects Criteria Document, 1985) with a range of 0.2 to 5. To estimate the radium-228 occurrence, the available data on radium-228 were used and were augmented by use of a factor of 1.0 for the ratio of radium-228/radium-226. The resultant range of the population-weighted average for radium-228 is estimated to be in the range of 0.4–1.0 pCi/l.

In 1982–83, EPA sponsored two studies to determine the feasibility of using aquifer type and water quality characteristics to predict the occurrence of radium-228 in drinking water. The results of these studies showed that there were distinct differences in the relative distribution of radium-228 by aquifer type and water quality; a summary of the conclusions is given below.

Aquifers having low activity of radium-228 are carbonate, metamorphic rock, quartzose sand, sandstone and basic igneous rock aquifers. Those with high levels of radium-228 include granite, arkosic sand and quartzose sandstone aquifers with high total dissolved solids. These results should be useful in determining monitoring requirements.

3. *Natural Uranium.* Natural uranium contains three isotopes: Uranium-234, uranium-235 and uranium-238. The corresponding percentages for these isotopes are 0.006, 0.72 and 99.27%. The occurrence of natural uranium in surface and ground water was estimated using the data base from the USGS National Uranium Resource Evaluation (NURE) Program. In this program, over 34,000 surface water and over 55,000 ground water samples were analyzed during the late 1970's for natural uranium by delayed neutron activation analysis. About 28,000 of these samples were identified as possible drinking water sources.

Natural uranium concentrations in ground water were found to be generally higher than in surface water. The largest reported concentration was about 600 pCi/1; and only a few supplies exceed 50 pCi/1 (see Figure 3 in Appendix B). The arithmetic average for these samples was 2 pCi/1, the median and the mode were both 0.1–0.2 pCi/1. The average population-weighted concentration of natural uranium in drinking water (considering both surface and ground water supplies) for individual states ranged from less than 0.1 to 6.7 pCi/1. The expected range of nationwide average population-weighted occurrence is 0.3 to 2.0 pCi/1. Between 100 and 2000 public drinking water supplies are estimated to have concentrations exceeding 7 pCi/1 (Table 8), a level corresponding to a projected excess cancer risk of 1 in 100,000.

4. *Radon.* Data on the concentration of radon in ground water for large systems (greater than 1,000 people) has been collected by EPA's Office of Radiation Programs. About 2,500 systems were sampled across the country.

In addition, studies have been made of radon occurrence in water systems in New England States (Hess, 1985) that add roughly 1,500 more systems. Both data sources were combined to produce the estimates shown in Appendix B. For those few States for which there was not adequate data, the concentrations were extended from neighboring States with similar geology. In the Hess study, some small systems and private wells were also sampled. Averages of the mean population-weighted radon-222 level in both large and small ground water systems were estimated to be 240 pCi/1 and 780 pCi/1, respectively. The average radon-222 concentration in all community ground water systems was estimated to be 420 pCi/1, with a range between 200 and 600 pCi/1.

Being a gas, radon would not be expected to occur in surface waters. Available data, while limited, confirms that surface water has radon-222 concentrations less than detectable levels. (i.e., 5–10 pCi/1).

The occurrence interval for nationwide, population-weighted average radon concentration was estimated to between 50 and 300 pCi/1. Radon levels have been detected in drinking water supplies as high as 2,000,000 pCi/1 in private wells and many exceed 100,000 pCi/1 (see Figure 4 in Appendix B).

Table 9 provides estimates of the number of public water systems that exceed various levels of radon in drinking water. As noted above, surface water systems do not normally contain radon. Of the approximately 48,000 ground water systems, Table 9 shows that radon contamination can be characterized as follows: many systems have radon but mostly at low levels. The estimates in Table 9 shows that 10,000 to 40,000 systems could have radon at very low levels; (i.e. 10 pCi/1 which corresponds to a 1 in 1,000,000 excess cancer risk rate); however, this is a very broad range and will be refined as new data are collected. Similarly, relatively broad ranges are estimated at higher radon levels: Somewhere between 1,000 and 10,000 systems may have radon above 1000 pCi/1 and some 500–4,000 systems may have radon above 10,000 pCi/1. These estimates were based upon the studies conducted by EPA's ORP and by Hess (1985). Additional data should be available in early 1987 from EPA's National Inorganics and Radionuclides Survey. This survey was a survey of some 1200 systems statistically designed to provide estimates of national exposure via public drinking water systems. Additional data also being requested from the public, to help in more carefully defining the nature and distribution of risks associated with radon in drinking water supplies.

5. *Other Natural Radionuclides.* Thorium isotopes generally occur in water at low concentrations below detection levels of usual analytical procedures. Thorium-232 has been detected in ground waters but has rarely exceeded 0.1 pCi/1. An upper limit for the mean concentration detected in drinking water is estimated at one-tenth of this value, or 0.01 pCi/1.

The uranium-238 progeny, thorium-230, is more likely to occur in solution than thorium-232. Around uranium mineralization zones in New Mexico, thorium-230 activities as high as 0.4 pCi/1 have been observed in water uncontaminated by process wastewater. An estimate of the upper limit of thorium-230 concentration in drinking water is 0.04 pCi/1, four times that for thorium-232.

As decay products of radon, lead-210 and polonium-210 activity in ground water is expected to be higher than for thorium isotopes. Polonium-210 concentrations as high as 2.7 pCi/l have been measured in ground water near uranium mines. An average lead-210 concentration of about 0.02 pCi/l was found in Connecticut ground waters. Activity in surface water for both lead-210 and polonium-210 should be very low due to sorption onto suspended sediments and the lack of radon-222 in solution. From the available data on lead-210 in ground water, its occurrence range in drinking water is estimated to be 0.04–0.11 pCi/l. To estimate the mean polonium-210 concentration, it was assumed that the polonium-210/lead-210 activity ratio in natural water was the same as the average uranium-234/uranium-238 in seawater, namely 1.15 (see Uranium Health Criteria Document). Thus, the occurrence range for polonium-210 is estimated to be 0.04–0.13 pCi/l.

Compliance data required by the interim regulations indicate that only one system contained polonium-210 above the detection limit (5 pCi/l), none contained lead-210 and only one had thorium. These and other progeny of uranium-238 and thorium-232 and decay products and thus could exist in drinking water. The man-made alpha particle-emitting radionuclides such as americium-241 and plutonium-239 could possibly also exist in drinking water. However, based on the above data, it appears that alpha emitters other than radium, uranium and radon would be a rare occurrence.

6. *Man-made Radionuclides.* Radionuclides produced by nuclear fission may enter drinking water supplies through human activities such as nuclear weapons testing (i.e., fallout), discharges from nuclear power plants or medical facilities, leaching from a radionuclide waste depository or by other nuclear accidents. Monitoring by systems serving over 100,000 people has been conducted as part of the implementation of the interim regulations for these radionuclides. The levels detected did not exceed the prescribed screening level of 50 pCi/l. Other data, while limited, on man-made radionuclides in drinking water does not show occurrence above this level.

The Agency believes, however, that some occurrence of man-made radionuclides below 50 pCi/l is likely. The radionuclides for which some data exist are strontium-90 (see Report 76 of the National Council for Radiation Protection and Measurement) and tritium. The concentration of strontium-90 in the Great Lakes is in the range of 0.5 to 1.0 pCi/l. Tritium has been reported in private drinking water supplies in several areas. These data suggest that there is the potential for these and other man-made radionuclides to occur in drinking water.

B. Other Sources of Exposure

The average activities of naturally-occurring radionuclides ingested or inhaled are shown in Table 3.

TABLE 3.—AVERAGE RELATIVE SOURCE CONTRIBUTION TO THE DAILY INTAKE OF NATURAL RADIONUCLIDES

[The drinking water contribution assumes that 2 liters per day is ingested]

Radionuclide	Source	pCi/d	Reference
Radium-226.	Air	0.007	a
	Food	1.4	b
		1.7	c
		1.1	a
	Drinking water	Generally small from surface supplies.	a
		0.01–0.2	c
		0.6–2	d
Radium-228.	Air	0.007	a
	Food	1.1	b
		1.1	a
	Drinking water	0.8–2	d
Uranium-234, Uranium-238.	Air	0.0007	a
	Food	0.9	b
		0.8	c
		0.37	a
	Drinking water	0.03–1	c
		Generally negligible.	a
		0.6–4	d
Lead-210.	Air	0.3	a
	Food	1.4	b
		1.2	c
		3.0	a
	Drinking water	0.02	c
		<0.22	d
Polonium-210.	Air	0.06	a
	Food	1.8	b
		1.2	c
		3.0	a
	Drinking water	0.02	c
		<0.26	d
Thorium-230.	Air	0.0007	a
	Food	Probably negligible.	a
	Drinking water	<0.06	d
Thorium-232.	Air	0.0007	a
	Food	negligible	a
	Drinking water	<0.02	d
Radon-222.	Outdoors (1.8 Bq/m³)*	970	a, e
	Indoors (15 Bq/m³) (g)	8100	a
	Drinking water	100–600	d, e, f

a United Nations, 1982.
b NCRP report 45.
c NCRP report 77.
d Cothern, et al., 1986

e Assuming an average adult inhalation rate of 20 cubic meters/day.
f Assuming that a concentration of radon per liter of air is 10^{-4} times the concentration per liter of water.
g The NCRP report 77 reports a value of 0.2 working level months/yr (WLM/yr) for the average exposure in the U.S. which is about the same as this value.
* Becquerel per cubic meter (See Appendix A).

The contribution of drinking water to the total intake of the radionuclides varies considerably. Although the overall contribution to the annual effective dose equivalent (about 200 mrem/y) from radionuclides in drinking water sources is a relatively small fraction of the total natural background (including air, food and drinking water), the individual contribution from some isotopes is noteworthy.

For radium-226, radium-228, and uranium, within the uncertainties of the data, about as much is ingested through drinking water as is consumed in food. For people who consume drinking water above the average level of radium, the fraction of radium ingested from drinking water will be larger than from food. For thorium, the amount ingested in food and water is likely to be small because thorium is highly insoluble.

The radionuclides considered here have different transport characteristics in the environment. Thus, the concentrations of each radionuclide in drinking water are relatively independent, and the individual contributions of effective dose equivalent can be summed arithmetically. From Table 5, the total drinking water contribution is in the range 0.2 to 5 mrem/y compared to the total of approximately 200 mrem/y from all sources as shown in Table 1.

The contribution to exposure due to specific radionuclides can be seen by comparing the activity (Table 3) and the annual effective dose equivalent (Table 5). Except for special cases like radon-222 and lead-210 the contribution to exposure from air sources is negligible. The ranges of values given here are best scientific estimates; they are given for comparison and to provide some idea of the uncertainty in those calculations.

The average daily intake of radium-226 from food is in the range of 1.1 to 1.7 pCi/d and the drinking water source contributes in the range of 0.6 to 2 pCi/d on average. The total annual effective dose equivalent from radium-226 is about 0.7 mrem/y to which drinking water contributes about 0.06–1 mrem/y.

The average daily intake of radium-228 from food is about 1.1 pCi/y, and drinking water contributes around 0.8 pCi/d on average. The total annual effective dose equivalent from radium-228 is about 1.3 mrem/y to which the drinking water contribution is in the range of 0.05–1 mrem/y.

The average daily intake of natural uranium from food is in the range of 0.4–0.9 pCi/d, and drinking water contributes in the range of 0.6-4 pCi/d on average. The drinking water contribution to total average annual effective dose equivalent is in the range of 0.01–0.3 mrem/y. However many people are exposed at higher levels than this average.

Drinking water contributes radon-222 to indoor air from showers, washing clothes and dishes, flushing toilets, and other similar activities. The human intake of airborne radon associated with average drinking water from a ground water source is in the range of 100–600 pCi/day. The annual effective dose equivalent due to radon-222 in indoor air is in the range of 70 to 120 mrem/y to which drinking water contributes in the range of 0.08 to 3 mrem/y. (See Appendix E.) At the national workshop, the contribution of radon-222 from drinking water was estimated to be in the range of 5 to 12 percent of the total in indoor air. There are circumstances where radon from drinking water could provide 90% or more of the indoor air radon concentration. These would occur if the drinking water were highly contaminated with radon, while negligible direct contribution of radon to indoor air occurred from geological sources. The general range used for estimating risks in this notice is that 2% to 5% is the drinking water contribution to average exposure for indoor air radon levels. This estimate is based upon more recent occurrence, exposure and dose equivalent estimates (Cothern, et al., 1986).

II. Health Effects of Radionuclides

There are three general types of deleterious effects on humans caused by radioactivity. These include developmental and teratogenic effects, genetic effects, and somatic effects such as carcinogenesis (including leukemia), cataract of the lens of the eye, non-malignant damage to the skin, and gonadal cell damage/impairment of fertility.

Of the somatic effects, the most important are cancers. The mechanism that causes cancer is not known at this time. For bone cancer, it has been suggested that the mechanism involves two initiation events (cell killing and cell replacement) in a cell at or near the bone surface. For all cancers, the effect of nuclear radiations (alpha, beta and gamma) is thought to be ionization in the cell which can lead to changes in the DNA leading to cellular abnormalities.

This section briefly describes the types of cancer associated with exposure to radionuclides that occur in drinking water. For uranium, the section also addresses the toxic effects on the kidneys. Extensive data on the health effects of radionuclides are contained in the BEIR III Committee's report referred to earlier in this preamble and the EPA Health Criteria Documents.

A. Radium—226 and 228

At low and medium doses of internally deposited radium, the most severe biological damage is cancer arising from skeletal tissue. For radium-226, two types of malignancy are induced: Bone sarcomas and head carcinomas. Among some 3,700 persons in the United States who were exposed to radium-226 and radium-228 by dial painting in the early part of this century, medical administration and other means, a total of 85 cases of bone sarcoma and 36 cases of head carcinoma had been observed as of December 1982.

For isotopes of radium other than radium-226, the primary malignacy of concern is bone sarcoma, not head carcinoma. For example, no head carcinomas have been observed in the follow-up of 2,324 German patients injected with radium-224, although 55 have developed bone sarcomas. Similarly, no head carcinomas have been observed in persons internally contaminated with radium-228, unless the ^{226}Ra dose was also high. This suggests that when radium-226 decays to radon-222 within the body, the accumulation of radon-222 gas in the head cavities is the major inducer of these carcinomas. For pure radium-224 and radium-228, which do not produce radon-222 gas, the risk from head carcinomas is regarded as negligible compared to that from bone sarcomas (see Draft Radium Criteria Document). Animal studies on mice and beagle dogs confirm the above epidemiology results.

B. Uranium

The half lives of the three isotopes that comprise natural uranium and their relative occurrence are different. At equilibrium, the activities of uranium-234 and uranium-238 are the same. However, uranium-235 is from a different natural radioactive series. Thus if the isotope mixture differs from that which occurs naturally, those relative contributions to toxicity may be different from that which exist for natural occurrences.

The NAS (Drinking Water and Health, Vol. V) observed that "there is no evidence that naturally occurring uranium-238 is carcinogenic." It is true that no direct evidence is known. However, it is known that uranium

accumulates in bone in a similar way to radium. Uranium emits alpha and gamma radiation. Hence it is reasonable to believe that uranium will lead to health effects in endosteal bone and red bone marrow in ways similar to the effect caused by ingested radium (i.e., radium is also a bone seeker).

The primary chemically toxic effect of natural uranium is on the kidneys (Draft Criteria Document for Uranium). This has beem evidence for over a century from both medical administration to humans and numerous animal studies. Nephritis (inflammation of the kidneys) and changes in urine composition are the clear symptoms. Thus, both kidney structure and function are affected (see Draft Uranium Criteria Document). The Adjusted Acceptable Daily Intake for uranium is 60 ug/1 and is computed by allocation of the ADI for a 70 kg adult consuming 2 liters of water per day. The calculation is shown below:

$$AADI = \frac{(NOAEL)(\text{animal } f_1)(\text{adult weight})}{(\text{safety factor})(\text{water consumption/day})(\text{human } f_1)}$$

$$= \frac{(1 \text{ mg/kg/day})(0.01)(70 \text{ kg})}{(100)(2 \text{ l/day})(0.05)}$$

= 60 micrograms/l or 40 pCi/l (rounded off to one significant figure)

Included in the above determination of the AADI for uranium is a NOAEL (No observed adverse effect level) of 1 mg/kg/day (*Drinking Water and Health*, Volume V, 1984), a safety factor or 100 since only animal data is used, animal (animal f_1) uptake of 1%, and human uptake (human f_1) of 5%.

The National Academy of Sciences in a calculation similar to that described above (*Drinking Water and Health*, Vol. V) estimated a value of 35 micrograms/1 (μg/l) as a chronic suggested no-adverse-response level. However, the NAS assumed that only 10% of overall exposure to natural uranium comes from drinking water, while the above estimate of 60 μg/l did not include contributions from other sources. EPA estimates that uranium from drinking water contributes approximately 95% or higher of that ingested if the uranium levels are 10 pCi/l and higher. In addition, the EPA AADI includes consideration of the fraction of uranium that goes to the blood in animals and in humans. The exposure due to air is minimal.

The Canadian Government, using the same NOAEL or 1 mg/kg/day level, has set a guideline for uranium at 20 micrograms/l based upon 50% exposure from drinking water sources.

C. Radon

While radium and uranium enter the body by the ingestion route, radon, being a gas, is volatilized during showers, baths and other activities such as washing clothes and dishes. Thus, radon can be inhaled as well as ingested, and it is estimated from existing data that inhalation is more toxic than the ingestion route.

Several studies have found a direct link between exposure to radon and its progeny and the incidence of lung cancers in the human population (Draft Radon Criteria Document). Lung cancer actually encompases a wide range of histological types. In order to make valied estimates, some care must be taken to ensure that the dose from the radon in mines and the dose in dwellings are delivered to the same critical cells at risk. Three bronchogenic carcinomas are found in humans and are typically designated as squamous, glandular, and undifferentiated. From the information discussed in the Radon Criteria Document, EPA has concluded for this proposal that the critical cells are those of the basal epithelium.

The question arises, as to whether there might be another agent in the mines which is the true causal factor, with radiation acting only as a co-factor. A number of agents have been suggested, including silica, compounds of cobalt and nickel, bismuth and arsenic. Of these, only arsenic has shown any significant correlation with lung cancer induction, although exposure to silica has produced numerous instances of silicosis. The nature of this correlation has been reviewed and the general opinion is that only radiation shows a consistently significant correlation among all study populations. Animal studies confirm the results found in the human population studies.

D. Man-made Radionuclides

For the apporoximately 200 man-made radionuclides subject to this proposal data from human and animal studies were used to identify adverse effects to different organs. From this evidence, these radionuclides have been determined to be carcinogenic. The health criteria document for man-made radionuclides addresses these studies. Appendix C lists for each radionuclides the concentration in drinking water corresponding to a dose of 4 mrem/yr which is the Interim MCL.

The interim regulations for man-made radionuclides included all radionuclides emitting beta particles and/or photons listed in NBS Handbook 69, except for the uranium-235 and uranium-238. The definition of man-made beta particle and photon emitters may be proposed to be amended by dropping the reference to NBS Handbook 69. A generalized definition is considered more appropriate than a specific list because of the possibility of the occurrence of other man-made radionuclides. Thus, the list of radionuclides in Appendix C is not considered to be all-inclusive. This list is the same as that included in the supporting documentation for the interim regulations except that three radionuclides have been added. These include: Potassium-40, americium-241, and plutonium-239. Public comments are requested on this amended definition.

III. Risks From Radionuclides

A. Methodology for Estimating Risk

In order to determine the risk or probability of cancer from exposure to radionuclides, two things are needed: First, a methodology to estimate the dose recevied to all significantly irradiated organs and, second, a dose-risk model to estimate the associated risks. These two components, as used in this notice, are addressed in this section.

1. *Annual Effective Dose Equivalent.* As discussed earlier in this preamble, the "annual dose equivalent" (i.e., amount of radiation distributed) to different organs for the naturally occurring radionuclides in drinking water has been estimated in this rulemaking usng the ICRP 30 dosimetric models. The annual dose equivalent is then adjusted by a "weighting factor" to reflect the particular radiosensitivity of the organ. These weighting factors were derived by EPA based on data from the BEIR III Committee of the National Academy of Sciences, and are listed in Appendix D. The "annual effective dose equivalent" for each organ is calculated by multiplying the "annual dose equivalent" by the assigned "weighting factor." The sum of the annual effective does for each organ provides an estimate of the total effect of the radiation on the body.

The annual effective dose equivalent rates for ingestion of natural radionuclides in drinking water used in this notice are listed in Table 4.

TABLE 4.—ANNUAL EFFECTIVE DOSE EQUIVALENT RATE FOR INGESTION OF RADIONUCLIDES CALCULATED USING DIFFERENT WEIGHTING FACTORS

Radionuclide	Annual effective dose equivalent rate	
	Per pCi/l Using EPA weighting factors *	(mrem/yr) Using the ICRP 26 weighting factors
Radium-226	0.65	0.94
Radium-228	.38	.37
Uranium-234	.10	.18
Uranium-238	.096	.15
Lead-210	.25	.30
Polonium-210	.47	.31
Thorium-230	.24	.51
Thorium-232	.21	.51

*These weighting factors were derived by the U.S. Environmental Protection Agency using data from the BEIR III report.

Also included in the table are the corresponding values using the ICRP, instead of the EPA/BEIR weighting factors. The different values in the ICRP and EPA models are attributable primarily to a number of different factors including assumptions concerning the calculation of weighting factors, different risk calculations and possibly different health data. In general, for the estimates of risk presented in this notice, the overall uncertainty is a factor of four or five. This uncertainty is particularly important for uranium.

The fraction of ingested natural uranium that goes to the blood (f_1) is estimated by the ICRP to be 0.05. However, ICRP comments further that "A higher value of absorption, in the region of 0.2, is indicated by dietary data from occupationally unexposed persons but that this is for extremely low levels of intake (about a microgram/day) of uranium which is probably in an organically complexed form." See also a similar analysis in NCRP (84). A recent analysis developed at the National Workshop (Health Physics, Vol. 48, No. 5) suggests that f_1 is in the range of 0.003 to 0.078, with the "best" value being 0.014. However that report also gives the range of days-equivalent (ratio of body burden to daily intake) for uranium in the skeleton of 1 to 40 days. Using their two component model and the ICRP 30 recommended values for the lifetimes and transfer fractions gives a range of f_1 for this days-equivalent range of 0.0058 to 0.23. For the present analysis, in order to allow for this uncertainty, the dose equivalent estimate for uranium from Appendix D is assumed to have an uncertainty factor of 4 using $f_1 = 0.05$. Thus the range includes f_1 from 0.0125 to 0.20.

In the radium watch dial painter studies, few if any leukemias have been reported, and it has been suggested that the ICRP risk factor for alpha-particle induced leukemia is about a factor of 10 too high (Workshop on Radioactivity in Drinking Water). Since a significant part of the effective dose equivalent arises from exposure of red bone marrow, it could be that the values listed in Appendix D are an overestimate. However, the discrepancy in the total effective dose equivalent rate would be less than a factor of two.

The annual effective dose equivalent estimate for radon is calculated separately in Appendix E. The method assumes that the values are distributed log-normally. This is a common assumption for environmental and radiological variables. As can be seen in the analysis in Appendix E, the largest contribution to the uncertainty in the effective dose calculations for radon is due to the transfer factor from water to air.

The methodology used to estimate the annual effective dose equivalent for man-made radionuclides is also based on the ICRP 30 dosimetric model (see Draft Health Criteria Document for Man-made Radionuclides).

2. *Dose-Risk Model.* In addition to determining the damage to the body from ingested radionuclides (i.e., the annual effective dose equivalent), the Agency must have an approach for estimating the associated risks of damage (in this case, cancer) from such exposure. At levels above 100 rem total dose equivalent, deleterious effects in humans can usually be observed. For low doses, there is no well demonstrated observable adverse effect. One problem in determining the dose-response curve is that the probability of an effect at low levels is very small. Therefore, in order for health effects studies to be statistically valid, the number of people exposed would have to be on the order of hundreds of millions, or more. Also, because many of the deleterious effects can occur spontaneously, or from causes other than radioactivity, the numbers of people exposed that are required by the statistical analysis is prohibitively large. Thus, statistically valid human data may never be available to determine the actual effects of low level radiation.

The Agency believes it is prudent to use a linear, no-threshold model to extrapolate data from high doses to estimate the risk of cancer from low level doses of ingestion due to radionuclides in drinking water. Accordingly, using the health effects data reported by the BEIR III Committee and a linear no-threshold model, the Agency calculated the risk of cancer attributable to radionuclides in drinking water. The latency period used in the calculations for bone cancer and leukemia was 2 years, while that for all other cancers was 10 years. The plateau period (time during which the health effect occurs) for bone cancer and leukemia was assumed to be 25 years, while that for all other cancers was throughout the entire lifetime. These parameters were felt to be most representative of existing knowledge. The risk levels for the natural radionuclides are presented in Appendices D and E. These risk levels are shown also for specific organs for each radionuclide. The risk levels for the man-made radionuclides is 200 excess deaths in a cohort of 100,000 people exposed to 0.1 rem/yr. This estimate, which is based on the BEIR III Committee's report, corresponds to a lifetime risk rate of 8×10^{-5} per person when exposed to the current interim drinking water standard of 4 mrem/yr.

The current risk assessment and estimates of effective dose equivalent are admittedly a snapshot in time of a moving object. For example, EPA's Radiation Science Advisory Board has recommended that many of the specific organ risk estimates be reduced by about a factor of 2.5 to compensate for an error they have discovered in the procedure. In addition, the dosimetry involved in evaluating the health effects for atomic bomb survivors is currently being re-examined. It has been suggested that the new risk estimates based on this study will be a factor of two higher.

However, the overall uncertainty in the current risk estimates for radionuclides in drinking water is of the order of 4 or 5. Also, if the direction of the changes mentioned above are correct, they will almost cancel each other out. Public comments are requested on these risk estimates and the procedures that were used to calculate them.

B. Risk from Drinking Water

1. *Per Capita Dose.* The average dose equivalent due to ingesting radionuclides from drinking water by the average person in the United States is presented in Table 5.

TABLE 5.—ANNUAL EFFECTIVE DOSE EQUIVALENTS DUE TO RADIONUCLIDES IN COMMUNITY DRINKING WATER SUPPLIES

Radionuclide	Population weighted average concentration (pCi/1)	Effective dose equivalent rate per concentration (mrem/y/pCi/1)*	Average Drinking water per capita effective dose equivalent rate† (mrem/y)
Radium-226	0.3–0.8	0.14–2.2	0.06–1
Radium-228	0.4–1.0	0.085–1.4	0.05–1
Natural uranium	0.3–2.0	0.021–0.31	0.01–0.3
Radon-222	50–300	0.0008–0.020	0.08–3
Lead-210	<0.11	0.25	<0.03
Polonium-210	<0.13	0.47	<0.06
Thorium-230	<0.04	0.1830	<0.007
Thorium-232	<0.01	0.16	<0.002
			0.2 to 5

*Uncertainty of a factor of 4 is assumed for radium and uranium.
†Rounded off to one significant figure.
a f_1=0.05 used and the contributions from uranium-234 and uranium-238 assumed to be equal.
b The values given are the geometric means of the ranges shown.
c U_{nat} is an average of uranium-234 and uranium-238 assuming equal activity contributions.

This estimate was derived by combining the population-weighted drinking water concentrations in Table 2 with the values for annual effective dose equivalent for each radionuclide in Appendices D and E. The average estimated total dosage from all natural radionuclides is in the range of 0.2 to 5 mrem/yr.

2. *Population Risk.* Population risk from exposure to natural radionuclides in drinking water is calculated as follows:

Population Risk=(Occurrence in pCi/1) (Individual Risk in excess cases/70 years/pCi/1) (U.S. Population)

- Occurrence is the occurrence concentration level (in units of pCi/1) (from Table 5)
- Individual risk is the individual risk rate (in units of excess cases/70 years/person/pCi/1). 70 years=lifetime
- Population is the total population exposed to drinking water in public water systems

The population risk for natural radionuclides for which MCLGs are being considered are calculated as follows and summarized in Table 6. (See Appendices E and F for more details concerning these calculations).

Radium-226

(0.3–0.8) pCi/1x(2.2–35)x10^{-6} excess cases/70 years/person/pCi/1x216x10^{6} people

=3–60 excess cases/year in the U.S.

Radium-228

(0.4–1.0) pCi/1x(1.7–26)x10^{-6} excess cases/70 years/person/pCi/1x216x10^{6} people

=3–60 excess cases/year in the U.S.

Natural uranium

(0.3–2.0) pCi/1x(0.35–5.6)x10^{-6} excess cases/70 years/person/pCi/1x216x10^{6} people

=1–10 excess cases/year in the U.S.

Radon-222

(50–300) pCi/1x(0.2–60)x10^{-7} excess cases/70 years/person/pCi/1x216x10^{6} people

=30–600 excess cases/year in the U.S.

TABLE 6.—ESTIMATES OF POPULATION RISK FOR SOME NATURALLY OCCURING RADIONUCLIDES [1]

Radionuclide	Estimates of yearly population risk (number of fatal cancers due to current exposures in drinking water)
Radium-226	3–60
Radium-228	3–60
Uranium-natural	1–10
Radon-222	[2] 30–600

[1] Rounded off to one significant figure.
[2] Includes both ingestion and inhalation.

$$\frac{8\times10^{-5}\ \text{cases/70 years/person}}{50\ \text{pCi/l}}$$

Man-made Radionuclides. Population risks for man-made radionuclides are based upon the measured concentrations of strontium-90 in drinking water. For strontium-90 in drinking water, the concentration that leads to a dose equivalent rate of 4 mrem/yr (the interim drinking water standard) is 50 pCi/1. This dose equivalent level is estimated to produce a risk level of 8x10^{-5}/lifetime. It has been estimated that 20 million people consume drinking water from the Great Lakes at 0.2 to 1.0 pCi/1. Of the remaining 80 million people in localities that use surface water for drinking water, a number of drinking water systems have detected concentrations in the range of 0.1 to 1.0 pCi/l. Available data thus suggests that roughly one-half of the surface water used for drinking water has strontium-90 levels in the range of 0.2 to 1.0 pCi/l. Thus, the estimated population risk due to strontium-90 (assuming that one-half the population consuming surface water is 50 million people) is:

$$(0.2\ \text{to}\ 1.0\ \text{pCi/l})\ 50\times10^{6}\ \text{people}$$

=0.2–1 cases/year

Other radionuclides besides strontium-90 may also exist in drinking water supplies. The ORP data show gross beta particle activity about twice the levels of strontium-90 shown. However, data are limited. For the estimation purposes here, it is assumed that the total contribution of other radionuclides in drinking water to overall risk is not more than a factor of 2 greater than that due to strontium-90. Thus, the upper risk estimate calculated above is raised by a factor of 2. The levels of strontium-90 appear to be slowly decreasing so the lower population risk estimate is calculated at one-third of that due to the current levels of strontium-90 to compensate for this. Since the upper limit is an approximation of the maximum exposure levels, it is not lowered by this factor of one-third. Thus the estimated range of population risk due to strontium-90 and other man-made radionuclides in drinking water is suggested to be in the range of less than 1 to about 2 cases/year.

Tables 7 through 9 summarize available public water system occurrence data and risk levels for uranium, radon and radium-226, respectively. The occurrence from radium-228 can be taken as being similar to radium-226. Man-made radionuclides in drinking water have not been detected at levels above 50 pCi/l and generally are expected only in emergency situations at those levels from such sources as the nuclear fuel cycle, medical applications and other industrial sources.

TABLE 7.—ESTIMATES OF THE NUMBER OF PUBLIC DRINKING WATER SUPPLIES THAT EXCEED VARIOUS LEVELS OF RADIUM-226 [1]

Lifetime risk level	Radium-226 concentration (pCi/l)	Annual effective dose equivalent (mrem/yr)	No. of public drinking water supplies that exceed the concentration in the column 2
10^{-3}	100	100	1–10
10^{-4}	10	10	30–300
10^{-5}	1	1	300–3000
10^{-6}	0.1	0.1	(below detection level).

[1] Rounded off to one significant figure.

TABLE 8.—ESTIMATES OF THE NUMBER OF PUBLIC DRINKING WATER SUPPLIES THAT EXCEED VARIOUS LEVELS OF NATURAL URANIUM [1]

Lifetime risk level	Uranium concentration (pCi/l)	Annual effective dose equivalent (mrem/yr)	No. of public drinking water supplies that exceed the concentration in column 2
10^{-3}	700	100	1–10
10^{-4}	70	10	20–500
10^{-5}	7	1	100–2000

[1] Rounded off to one significant figure.

TABLE 9.—ESTIMATES OF THE NUMBER OF PUBLIC GROUND DRINKING WATER SOURCES THAT EXCEED VARIOUS LEVELS OF RADON [1]

Lifetime risk level	Radon concentration (pCi/l)	Annual effective dose equivalent (mrem/yr)	No. of public drinking water supplies that exceed the concentration in column 2
10^{-3}	10,000	100	500–4,000
10^{-4}	1,000	10	1000–10,000
10^{-5}	100	1	5000–30,000
10^{-6}	10	0.1	10,000–40,000

[1] Rounded off to one significant figure.

IV. MCLGs

Section 1412 of the SDWA requires the Agency to establish MCLGs at a level which, in the Administrator's judgment, no known or anticipated adverse effects on the health of persons will occur, and which allows an adequate margin of safety.

In selecting which radionuclides should be considerd for regulation, both health effects and occurrence will be considered. As shown in Table 10, the naturally-occurring radionuclides, radium, natural uranium, and radon are frequently found in drinking water. Other alpha emitters are found to a lesser extent and at generally lower levels. Man-made radionuclides, particularly strontium and tritium, have also been detected in drinking water.

As amended, Safe Drinking Water Act section 1412 (b)(1) requires regulation of 83 contaminants by June 19, 1989. These contaminants include radium 226 and 228, uranium, radon, gross alpha particle activity, and beta particle and photon radioactivity and others listed in specified advance notices of proposed rulemaking. S. 124, Safe Drinking Water Act amendments of 1986, printed in Cong. Rec. H2325, H2333 (May 5, 1986).

TABLE 10.—SUMMARY OF RISK LEVELS AND OCCURRENCE FOR RADIONUCLIDES IN DRINKING WATER [*]

Estimated lifetime risk level	Annual effective dose equivalent [1] (mrem/yr)	pCi/1			
		Radium – 226	Radium – 228	Natural uranium [2]	Radon – 222
Risk levels:					
10^{-3}	100	100	200	700	10,000
10^{-4}	10	10	20	70	1,000
10^{-5}	1	1	2	7	100
10^{-6}	0.1	0.1	0.2	0.7	10
Occurrence: Population weighted concentration averages:					
All supplies		0.3–0.8	0.4–1.0	0.3–2.0	50–300
Ground water supplies		1.6	1.8	3	approx. 400
Surface water supplies				1	
Actual concentration		0–200	0–50	0–600	0–500,000

[*] The calculations in this table involve uncertainties of the order of 4 to 5.
[1] Rounded off to one significant figure. Note that the dose limit for man-made radioactivity in drinking water under the Interim Regulations is 4 mrem/year, at the end of 70 yr.
[2] Using $f_1 = 0.05$

These contaminants are to be regulated unless EPA substitutes other contaminants (no more than 7) whose regulation would provide greater health protection. See section 1412(b)(2). At this time, EPA has no plans to substitute other contaminants for radionuclides.

All of the radionuclides in this notice are considered to be Group A human carcinogens (see EPA's proposed categorization scheme for carcinogens 49 FR 46294—promulgated on August 22, 1986). The scheme characterizes substances based on the experimental weight of evidence, taking into account the quality and adequacy of the experimental data and the kinds of responses induced by a suspect carcinogen. The classification scheme is generally an adaption of a similar system developed by the International Agency for Research on Cancer. The scheme comprises five groups.

Group A indicates human carcinogens based on sufficient evidence from epidemiological studies that support a causal association between human exposure to the substance and cancer.

Group B involves probable human carcinogens; it includes the cases where the evidence of human carcinogenicity from epidemiological studies are inadequate, but the supporting animal data are sufficient.

Group C includes compounds for which equivocal evidence of carcinogenicity exists.

Groups D and E includes compounds not considered carcinogenic because of inadequate or no evidence.

Categorization of the radionuclides in this notice as Group A is based upon considerable epidemiologic evidence (including that of the survivors of the Hiroshima and Nagasaki atomic bombings). Although direct epidemiology studies do not exist for ingested uranium, it is classified as a Group A carcinogen because there is sufficient information that it deposits in bone and emits alpha particles and gamma rays in a way similar to ingested radium for which epidemiology studies do exist. EPA is inviting comment on its intent to propose to set the MCLG for uranium based upon carcinogenic properties.

In the Interim Regulations, MCL's were established for radium, gross alpha particle activity and gross beta and photon activity. EPA is planning on proposing to retain the practice of establishing levels for (1) individual radionuclides known to frequently occur in drinking water, and (2) classes of radionuclides which in aggregate may be cause for concern. The individual radionuclides for which an MCLG at zero may be proposed are radium-226, radium-228, uranium and radon.

An MCL for gross alpha particle activity was set in the Interim Regulations expecting that radionuclides other than radium-226, radium-228, natural uranium or radon-222 would be found in drinking water. While compliance monitoring data have only occasionally detected other natural radionuclides in drinking water, this does not preclude their possible existence. EPA feels that an MCLG and MCL for gross alpha particle activity would provide protection from alpha emitters that could potentially occur in drinking water, and it also provides a ceiling on the aggregate exposure and aggregate risk to all alpha emitting radionuclides.

An MCLG may be proposed for gross beta particle and photon emitters because of the occurrence and potential occurrence of specific beta particle and gamma emitting man-made isotopes which may present potential adverse health effects. Radionuclides included in a possible gross beta and photon emitters MCLG are listed in Appendix C.

As explained above "gross alpha emitters" and "gross beta and photon emitters" are categories of radionuclides that include many specific isotopes. Regulation of categories of contaminants is authorized by SDWA legislative history. H.R. Rep. No. 93–1185, 93rd Cong. 2d Sess. at 10–11 (1974). Because the radionuclides in these categories all have the same health effects at the same dose equivalent (i.e., they are carcinogens believed to exhibit no threshold), and MCLG of zero for each category is appropriate. This possible categorical MCLG is also, in effect, a "total radionuclide" MCLG, in that all radionuclides with adverse health effects are included and the same MCLG would apply to each.

Gross alpha particle activity may also be useful as an inexpensive screening method. When the MCLs are proposed, this parameter may be proposed to be a monitoring screen which would trigger additional monitoring if detected above the MCL. Gross beta and photon emitters also provide a useful screening method to monitor for man-made radionuclides. If detected, the character of the radioactivity also needs to be determined by isotopic analysis. EPA expects to design monitoring requirements using these screening methods to reflect the probability of detection and variability to maximize efficiency and minimize costs.

Part III—MCLs for Radionuclides

When the Agency proposes MCLGs for radionuclides, the Agency will propose MCLs for these same contaminants. MCLs must be set as close to the MCLGs as feasible. "Feasible" means "with the use for the best technology, treatment techniques and other means, which the Administrator finds after examination for efficacy under field conditions and not solely under laboratory conditions are available (taking cost into consideration)" Section 1412(b)(5).

Provided in this part of the notice are brief presentations on available analytical methods and treatment technologies for radionuclides. When the MCLs are proposed, additional supporting data wil be available.

I. Analytical Methods

Analytical methods shown in Table 11 represent several of the methods being considered for inclusion in the revised regulations. The column referring to validation indicates if the method has been validated according to the EPA validation procedures. Also shown below are some rough estimates of the costs for analyzing radioactivity in drinking water samples.

Radionuclide	Approximate cost for analysis in drinking water
Radium-226	$100
Radium-228	100
Uranium natural	25
Radon-222	25
Gross alpha particle activity	25
Gross beta particle activity	25
Tritium	30
Strontium-89 and -90	75
Cesium-134 and Iodine-131	30

Under the SDWA, if the levels of a contaminant cannot be feasibly measured in drinking water to establish an MCL, EPA may require use of treatment technique. The Agency believes that these contaminants can be feasibly measured by the methods listed in Table 11 and that the costs are reasonable. Public water systems have been using these methods to monitor for most of these contaminants under the Interim Regulations. Exceptions are for uranium and radon for which methods have been validated or will be validated for use in compliance monitoring.

Monitoring requirements will be flexible and, as in the Interim Regulations, may use gross alpha and gross beta as an inexpensive screening method. Gross alpha is an indicator for natural radionuclides, and gross beta for man-made radionuclides. The revised regulations may require that drinking water be analyzed initially for these two paramaters and, only if certain action levels are exceeded, would analysis for individual radionuclides be required.

TABLE 11.—ANALYTICAL METHODS FOR RADIONUCLIDES

Method	Reference	Has it been validated?*
RADIUM		
Alpha-emitting radium isotopes (method 903.0)	Krieger & Whittaker	Yes.
Radium-226-radon emanation technique (method 903.1)	do	Yes.
New York State Department of Health (Ra-226 and -228)		No.
Total radium (method 304)	Standard methods	Yes.
Radium-226 (method 305)	do	Yes.
Coincidence spectrometry	McCurdy & Mellor	No.
Gamma ray spectrometry (Ra-226 and Ra-228)	Michel et al	No.
Solid state nuclear track detector	Terradex Corp., 460 Wiget Lane, Walnut Creek, CA 94598.	Terradex is preparing equivalency test results.
Radiochemical determination of Ra-226 in water samples (method Ra-03)	Lieberman	No.
Radiochemical determination of Ra-228 in water samples (method Ra-05)	do	No.
Ra-228 by liquid scintillation counting (method 904.1)	USEPA	No.
Radium-228 (method 904.0)	Krieger & Whittaker	No.
GROSS ALPHA PARTICLE ACTIVITY		
Gross alpha and gross beta radioactivity (method 900.0)	do	Yes.
Gross radium alpha screening (method 900.1)	do	Single lab tested.
Gross alpha activity in drinking water by coprecipitation (method 00–02)	Lieberman	Single lab tested (being collaboratively tested).
Gross alpha and beta (method 703)	Standard methods	Yes.
Gross alpha particle activity (method D–1943)	ASTM	Yes.
GROSS BETA PARTICLE ACTIVITY		
Gross alpha and beta radioactivity (method 900.0)	Krieger & Whittaker	Yes.
Gross beta particle activity (method D–1890)	ASTM	Yes.
URANIUM		
Radiochemical (method 908.0)	Krieger & Whittaker	Yes.
Fluorometric (method 908.1)	do	Yes.
Laser induced fluorometry (method 908.2)	USEPA	No.
ASTM method D–2907	ASTM	Yes.

TABLE 11.—ANALYTICAL METHODS FOR RADIONUCLIDES—Continued

Method	Reference	Has it been validated?*
RADON		
Liquid scintillation (including modification using mineral oil so sample can be mailed	Prichard & Gesell	Underway.
Solid state nuclear track detector	Terradex Corp., 460 N. Wiget Lane, Walnut Creek, CA 94598.	Do.
Lucas cell	Lucas 1964, 1957	Do.
MAN-MADE RADIONUCLIDES		
Radioactive cesium (method 901.0)	Krieger & Whittaker	Single lab tested.
Gamma emitting radionuclides (method 901.1)	do	Yes.
Radioactive iodine (method 902.0)	do	Yes.
Radioactive strontium (method 905.0)	do	Yes.
Tritium (method 906.0)	do	Yes.
Strontium 89,90 (method 303)	Standard methods	Yes.
Tritium (method 306)	do	Yes.
Gamma ray spectroscopy (method D-2459)	ASTM	Yes.

*Yes, means multi-lab validation.

II. Treatment Methods

The methods available for removing radionuclides from drinking water were examined at the National Workshop held in 1983 and published in the May 1985 issue of *Health Physics*. What follows is a short summary of the available treatment methods and preliminary costs of installation.

Processes that are effective in removing radium from drinking water include lime softening, cation exchange, reverse osmosis, and selective adsorption. The efficiencies of these processes have been demonstrated in some cases by full scale operating facilities, but mostly by pilot plants and laboratory plants.

Due to the absence of standards limiting the presence of uranium in drinking water, development of treatment techniques to remove uranium from water has been aimed solely at recovery operations from mine process waters and effluents. Recent studies indicate that a number of treatment techniques have the potential to reduce uranium levels in drinking waters. These treatment techniques include anion exchange, lime softening, reverse osmosis and, under certain conditions, conventional coagulation using alum or iron salts. There are two methods available that are effective in removing radon from drinking water. These methods are adsorption by granular activated carbon (GAC) and aeration.

If an accident occurs from man-made radionuclides, the water may contain several radioisotopes. Each radioisotope may have its own chemical properties which may require different removal technologies. With the exception of most cations of valence 3, 4, or 5, conventional coagulation techniques using alum and ferric salts are not effective in removing most man-made radioisotopes from water. By contrast, lime-soda processes under optimum conditions can remove 95–99% of a number of radioisotopes from the water. Mixed bed ion exchange resins can also be very effective in decontaminating waters containing man-made radioisotopes. For example, during the post-accident cleanup at Three Mile Island, water containing low level radioactivity was successfully decontaminated with mixed bed ion exchange demineralizers. Another effective method for removing dissolved radioisotopes from water is reverse osmosis. Studies have shown that this technology will consistently remove over 90 percent of radioisotopes such as cesium, zirconium, strontium, cobalt, and cadmium. It appears that reverse osmosis is capable of removing most man-made radioisotopes dissolved in water.

The Agency has developed preliminary cost estimates for technologies that may feasibly remove radionuclides from drinking water. Depending upon size, estimated costs range from 30¢ to 80¢ per 1000 gallons for cation ion exchange, 30¢ to 110¢/1000 gallons for iron and manganese treatment and 160¢ to 320¢/1000 gallons for reverse osmosis.

Preliminary cost estimates are that aeration would range in costs from 10¢ to 75¢/1000 gallons for systems serving about 100,000 people and 100–500 people, respectively. Although no packed tower columns have been installed specifically for radon removal, the characteristics of radon gas are similar to the characteristics of certain volatile organic chemicals (e.g., tetrachloroethylene) known to be strippable by aeration. Cost estimates are not available at this time for reduction of radon in drinking water supplies by GAC.

Preliminary cost estimates for removing radon from household drinking water systems by point of entry treatment devices are a capital cost of $400 to $800 for GAC and about $900 for aeration. Operating costs are estimated at $20/year and $80/year, respectively. These costs are based upon treatment of 200 gallons per day of water containing 30,000 pCi/l radon.

Part IV—Request for Public Comments

EPA recognizes that many significant questions surround the issue of the control of radionuclides in drinking water. The Agency has attempted in this proposal to portray current scientific uncertainties in a measured and objective manner. In this way, any data gaps or errors in logic which may exist can be identified and corrected. For that reason, careful review and throughful comment on the information in this ANPRM are encouraged. Specifically:

1. Should natural radioisotopes other than radium, uranium, and radon be regulated? On what basis? What other radionuclides have been detected in drinking water or would be likely to be found?

2. Should separate MCLGs and MCLs be set for radium-226 and radium-228?

3. Should an MCLG and MCL for gross alpha be set to limit aggregate exposure and risk from all alpha emitting radionuclides or should gross alpha only be used as a screen in monitoring requirements with no MCLG or MCL set?

4. In view of the lack of direct evidence of radiotoxicity for uranium, is setting an MCLG for uranium at zero appropriate? It is based upon similar effects of ingested radium. How much of ingested uranium reaches the blood stream?

5. In the calculation of the effective dose equivalent, should the weighting factors developed by the ICRP or those developed by EPA based on BEIR III be used? Why?

6. It is appropriate to average the risk values estimated by the relative and absolute risk models for determining an estimated risk value? Is the number of health effects likely to be underestimated? overestimated?

7. Should the Agency combine the individual MCLs for radionuclides so as to set only one dose equivalent MCL standard (mrem/yr) for all the radionuclides found in drinking water?

8. Given the relatively low levels of man-made radionuclides in drinking water, should the Agency establish an MCLG and MCL for this class of radionuclides? Instead, is a health advisory (non-enforceable guidance) more appropriate to address the potential for elevated levels due to accidents?

9. Is the amended definition of gross beta and photon emitters adequate and is the definition of natural uranium adequate?

10. Public comments are requested on the availability (i.e., economics and technical feasibility) of the analytical methods and the estimated costs. Comments are also requested on levels of analytical measurement that would represent (1) the method detection limit and (2) the practical quantitation level (PQL). (See 50 FR 46880 and 46902)

11. Additional data are requested on the availability, performance, and costs of treatment for control of each of the radionuclides being considered for regulation. Which technologies should be identified as best available treatment for the purpose of setting MCLs? for variances?

List of Subjects in 40 CFR Part 141

Chemicals, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: September 4, 1986.

A. James Barnes,

Acting Administrator.

Appendix A—Fundamentals of Radioactivity in Drinking Water

To assist commenters, the following section provides a summary of concepts and definitions involving radioactivity. The definitions include those in the Interim Regulations along with several additions one of which is being considered (i.e., curie) to be added to 40 CFR 141.2.

Definitions

(a) "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors which account for differences in biological effectivess due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

(b) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem" (mrem) is 1/1000 of a rem.

(c) "Curie" means a special unit of activity equal to a nuclear transformation rate of 3.7×10^{10} disintegrations/second. One picocurie is equal to 10^{-12} curies.

(d) "Gross alpha particle emission activity" means as inferred from measurements on a dry sample.

(e) "Man-made beta particle and photon emitters" means all radionuclides emitting beta particles and/or photons except thorium-232, uranium-235 and uranium-238 and their progeny.

(f) "Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

(g) "Becquerel" (Bq) is a special unit of radioactivity in the international system of units (SI). One Becquerel is equal to one disintegration per second.

(h) "Sievert" (Sv) means the unit of dose equivalent in the international system of units (SI) from ionizing radiation to the total body or any internal organ or organ system. One Sievert equals 100 rem.

(i) "Effective dose equivalent" means the sum of the products of the dose equivalents in individual organs and the organ weighting factor.

(j) "Organ weighting factor" means the ratio of the stockastic risk for that organ to the total risk when the whole body is irradiated uniformly.

(k) "Natural uranium" means uranium with combined uranium-234 plus uranium-235 plus uranium-238 which has a varying isotopic composition but typically is 0.006% uranium-234, 0.7% uranium-235, and 99.27% uranium-238.

(l) "Activity" means the nuclear transformations of a radioactive substance which occur in a specific time interval.

Fundamentals of Nuclear Chemistry

This section has been included to provide background information for those not familiar with nuclear chemistry. It is written in broad and general terms and there may be minor exceptions to some of the specific statements.

An atom consists of a heavy concentration of mass at the center (the nucleus) surrounded by shells of electrons in different orbits. The primary constituents of the nucleus are neutrons and protons. The neutrons have no net electric charge while the protons have a positive charge. The orbital electrons have a negative charge and in the un-ionized atoms are equal in number to the protons, making the atom neutral in overall charge.

The number of protons in the nucleus determines the chemical element and its atomic number. A given element can have more than one particular number of neutrons. Variation in the number of neutrons does not change the chemical properties (the element is the same) but it can produce considerable change in the stability of the element to radioactive decay. Atoms with the same number of protons but different number of neutrons are called "isotopes". For example, if an atom has 86 protons, it is radon. There are three principal isotopes of radon containing 133, 134 and 136 neutrons. The atomic mass number is the total number of protons and neutrons in the nucleus and this sum is usually used to label isotopes. The three isotopes of radon have atomic masses of 86+133=219, 86+134=220 and 86+136=222. Symbolically these can be written as:

Radon-219 Radon-220 Radon-222

Since the atomic number and the chemical symbol are synonomous, the number of protons is usually omitted in the nomenclature.

These radionuclides decay by emission of alpha and beta particles and gamma rays. An alpha particle, the heaviest nuclear radiation, consists of two protons and two neutrons. (A proton or neutron is about 2,000 times as massive as an electron.) A beta particle is an electron emitted from the nucleus as a result of neutron decay. An electron can be "created" and ejected from a nucleus by a neutron decaying into a proton (which remains in the nucleus) and an electron (which is ejected as a beta particle). As a result of this process the nucleus has one more proton and thus has become the atom of a different element with atomic number one greater than the parent atom. A gamma ray is a form of electromagnetic radiation. Other forms of electromagnetic radiation are light, radio waves, infrared radiation, ultraviolet radiation and x-rays.

The process of alpha and beta radioactive decay leads to a different element while gamma ray emission does not. The isotope that decays is called the parent. The resulting isotope (if a different element) is called the progeny. For example, radon-222 decays by emitting an alpha particle to the progeny polonium. This reaction is written:

Radon-222——>Polonium-218+helium-4

The atomic numbers (number of protons) for radium, polonium and helium (the alpha particles) are 88, 84 and 2, respectively. Note that the atomic numbers and atomic mass numbers balance on the two sides of this equation. Note that the atomic mass decreased by 4 due to the loss of two neutrons and two protons, and the atomic number decreased by 2 due to the loss of two protons.

Beta decay causes the atomic number to increase by one. Beta decay can be described as a neutron in the nucleus converted to a proton. An example of beta decay is radium-228 which decays to actinium. This reaction is written:

Radium-228——>Actinium-228+beta particle

The atomic numbers are 88 for Ra and 89 for Ac (the beta decay described here is the negative kind and positive beta decay also exists). The atomic numbers and atomic mass numbers balance in this equation since the atomic number for an electron is −1 and its atomic mass number is zero. Gamma decay changes neither the atomic number nor the element; it only involves a loss of energy.

Not all atoms are equally stable and different isotopes characteristically decay at different rates. The concept of half life is used to quantitatively describe these differences. The half life of an isotope is the time required for one half of the atoms present to decay. Half lives can range from billions of years or more (the half life of uranium-238 is 4.5×10^9 years) to millionths of a second (the half life of polonium-214 is

164×10^{-6} sec) and even less. For example, the half lives of radon-219 and radon-220 are too short to survive transport through a drinking water distribution system.

Fission can also contribute radioactivity to drinking water. This process, the source of immense energy, is triggered by adding a neutron to certain nuclei. The phenomenon occurs for heavy nuclei, the classical examples being isotopes of uranium (uranium-235), thorium (thorium-232) and plutonium (plutonium–239). When a neutron is added, each of these isotopes breaks into two roughly equal parts. Each of the parts (called fission fragments) is itself a radioactive nucleus and decays through a sequence of isotopes by beta and gamma decay. In the context of this report, radioisotopes are man-made or naturally occurring and can be determined on the basis of alpha particle emissions. A naturally occurring decay series includes alpha emissions, while a man-made radioisotope involves a decay series generally lacking in alpha emissions (except for the heavy transuranic elements).

Generally units such as mg/l, micrograms/liter or ppm are used to describe the concentrations in drinking water of pollutants, toxic and hazardous substances. However, certain unique properties of radioactive substances limit the utility of these units and alternative units are used to directly compare the health effects of different radionuclides.

Three important concepts are needed to describe radioactivity:

- How many radiations of a particular kind and energy are emitted per second
- How much radiation or how much energy is imparted to tissue (called absorbed dose)

For radioactivity the number of particles emitted (alpha, beta or gamma) is what does the damage and not the mass of the radionuclides. Thus it is essential to have a unit that describes the activity. The activity is related to the half life, and thus longer half lives mean lower activity. Historically by definition one gram of radium is said to have 1 curie (1 Ci) of activity. By comparison, 1 gm of uranium-238 has an activity of 0.36 millionth of a curie. One curie is equivalent to 3.7×10^{10} disintegrations per second. The International System (SI) unit for activity is the Becquerel (Bq) which is equal to one disintegration/second.

The effect of radioactivity depends not only on the number of radiations emitted/second but on the kind of radiations (alpha, beta or gamma) and their energies. These latter two properties are described in terms of the absorbed dose or punch given to tissue or matter.

A common unit of absorbed dose is called the rad, and one rad is equivalent to one hundred ergs (metric unit of energy) in one gram of matter (for perspective on the size of an erg, 10 million ergs/sec is one watt). In general these units are quite large and engineering shorthand is used to describe the day-to-day activities. Shown below are some commonly used prefixes.

Greek, prefix and abbreviation	Value	Shorthand exponential notation	Description
milli—m	1/1000	10^{-3}	one part per thousand
micro—Greek m	1/1,000,000	10^{-6}	one part per million
nano—n	1/1,000,000,000	10^{-9}	one part per billion
pico—p	1/1,000,000,000,000	10^{-12}	
femto—f	1/1,000,000,000,000,000	10^{-15}	
atto—a	1/1,000,000,000,000,000,000	10^{-18}	

Thus 1 picocurie is a millionth millionth of a curie and is abbreviated 1 pCi. Also 1 millirad (1 mrad) is one thousandth of a rad. These latter are common levels of activity and radiation strength found relating to drinking water.

Because of the particle mass and charge, 1 rad of alpha particles creates more damage than 1 rad of gamma rays. To compensate for this difference in effect, a new unit was created—the rem. This is called the dose equivalent. The dose is measured in rads and the dose equivalent is measured in rem.

Frequently, however, the rem is called dose. The dose equivalent is a useful administrative tool. The rad and rem are related by a quality factor as follows:

Number of rems = Q times the number of rads

Where Q is the quality factor which has been assigned the following value:

Q = 1 for beta particles and all elecromagnetic radiations (gamma rays and x-rays)

Q = 10 for neutrons from spontaneous fission and protons

Q = 20 for alpha particles and fission fragments

The quality factor is meant to describe the relative harm caused by various types of radiation. The International System (SI) unit corresponding to the rem is the Sievert (Sv). One Sievert equals 100 rem.

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Appendix B: Data Used to Estimate Concentrations of Radium and Radon in Drinking Water

State	Population(000) Surface Water	Ground Water (<1000 people per system)	Ground Water (>1000 people per system)	Concentration (pCi/l) Radium-226 population weighted	Notes*	Radon-222 population weighted (<1000 people per system)	Notes*	Radon-222 population weighted (>1000 people per system)	Notes*
AL	2286	105	848	0.25	c	160	a,b	160	d
AK	199	61	119	0.1	f	100	f	100	f
AZ	1243	143	1319	0.2	i	120	a,b	320	d
lAR	804	128	708	0.5	f	75	a,b	75	a,b
CA	19178	412	4480	0.4	f	500	f	500	f
CO	2687	123	311	0.2	i	380	d	380	d
CT	2179	77	291	0.15	=MA	1500	=MA	770	=MA
DE	356	36	192	0.2	c	100	b	126	d
DC	1857	-	-	-	h	0	h	0	h
FL	1696	390	8607	0.6	f	1000	a,b,f	148	d
GA	2476	224	1708	0.8	j	1100	=SC	150	d
HA	125	20	719	0.1	f	50	f	50	f
ID	145	119	438	1.1	f	256	d	256	d
IL	7441	986	2936	2.5	k	100	b	167	d
IN	2121	150	1542	0.3	c	105	a,d	105	d
IA	697	255	1293	3.0	k	250	a,b	200	a,b
KS	1626	137	826	1.1	c	250	b	106	d
KY	2838	35	153	0.3	c	250	f	110	d
LA	1904	238	1658	0.5	f	180	f	180	f
ME	628	36	140	0.6	c	10,000	e	2000	e

Appendix B: Data Used to Estimate Concentrations of Radium and Radon in Drinking Water (cont.)

State	Population(000)			Concentration (pCi/l)					
				Radium-226		Radon-222			
	Surface Water	Ground Water (<1000 people per system)	Ground Water (>1000 people per system)	population weighted	Notes*	population weighted (<1000 people per system)	Notes*	population weighted (>1000 people per system)	Notes*
MD	3221	71	1673	0.5	=SC	700	=VA	450	=VA
MA	4799	33	1073	0.15	c	1500	a,b	770	d
MI	5468	238	1333	0.5	f	105	=IN	105	=IN
MN	1266	215	2207	1.4	c	210	d	210	d
MS	258	358	1618	0.2	c	150	f	82	d
MO	3371	192	1164	1.5	1/2 IA	300	f	100	a
MT	399	76	75	0.2	i	500	b	328	d
NB	362	143	435	1.1	=KS	300	=SD	290	=SD
NV	1106	44	100	0.2	i	550	d	550	d
NH	473	35	131	0.15	c	1400	a	1183	d
NJ	4890	79	2993	0.4	c	150	=DE	300	a
NM	196	103	867	0.3	i	200	a,b,f	180	d
NY	12547	354	3988	0.15	c	500	f	132	d
NC	2953	410	743	0.8	k	1100	=SC	278	d
ND	325	75	139	0.2	i	300	=SD	150	d
OH	6261	260	2571	0.25	c	200	b,f	169	d
OK	1814	134	495	1.1	f	250	b,f	160	d
OR	1545	100	273	0.2	c	300	a,b	264	d
PA	9010	323	1129	0.8	c	1000	a,d	720	d
PR	2830	15	476	0.5	f	500	f	200	f

Appendix B: Data Used to Estimate Concentrations of Radium and Radon in Drinking Water (cont.)

State	Population(000)			Concentration (pCi/l)					
				Radium-226		Radon-222			
	Surface Water	Ground Water (<1000 people per system)	Ground Water (>1000 people per system)	population weighted	Notes*	population weighted (<1000 people per system)	Notes*	population weighted (>1000 people per system)	Notes*
RI	738	9	148	0.3	c	3400	c	1511	d
SC	1719	148	573	0.5	l	1100	a	276	d
SD	153	93	249	2.0	i	300	i	290	d
TN	2282	280	1201	0.25	c	100	b	24	d
TX	10512	688	4041	1.0	f	150	g	150	g
UT	1588	64	686	0.2	i	500	f	360	d
VT	281	52	57	0.35	c	250	a	656	d
VIds	70	-	-	0	h	0	h	0	h
VA	2990	276	1425	0.5	=SC	700	a,b	450	a,b
WA	1807	279	2025	0.2	=OR	300	a,b	264	=OR
WV	1161	87	305	0.5	=PA	1000	=PA	720	=PA
WI	1606	214	1437	1.4	k	750	a,b	234	d
WY	258	41	93	0.6	i	880	b	415	d
Guam	89	1	19	0.1	f	50	f	50	f
Am Samoa	16	4	18	0.1	f	50	f	50	f
US				0.3-0.8 pCi/l		240 pCi/l		780 pCi/l	

*Two capital letters indicate that another state was used as a surrogate

a = Hess, C.T. et al., "The Occurrence of Radioactivity in Public Water Supplies in the United States," Health Physics 48,553-586 (1983), Table 9

b = Hess, Table 10

c = 1/2 the gross alpha particle activity. Horton T.R., "Methods and Results of EPA's Study of Radon in Drinking Water, EPA 520/5-83-027," Eastern Environmental Reseach Facility, U.S. EPA, Office of Radiation Programs, Montgomery, AL., Table 3.3

d = Horton, Table 3.2

e = Hess, Table 7

f = Estimate from various sources of data and aquifer type

g = Hess, Table 8

h = Surface water only

i = Horton, Table 3.5

j = Cline W. et al., "Radium and Uranium Concentrations in Georgia Community Water Supplies," Health Physics 44, 1-12 (1983),

k = Michael J. and Pollman C.D. "A Model for the Occurrence of ^{228}Ra in Ground Water," U.S. EPA, Office of Drinking Water, Washington, D.C., 1982; and Michael J. and Pollman C.D. "A Model for the Occurrence of ^{228}Ra in Ground Water II: Application to the North-Central United States," U.S. EPA, Office of Drinking Water, Washington, D.C., 1983.

l = King P.T. et al., "Groundwater Geochemistry of ^{228}Ra, ^{226}Ra and ^{222}Rn," Geochem. Cosmochim. Acta 46, 1173-1182 (1982).

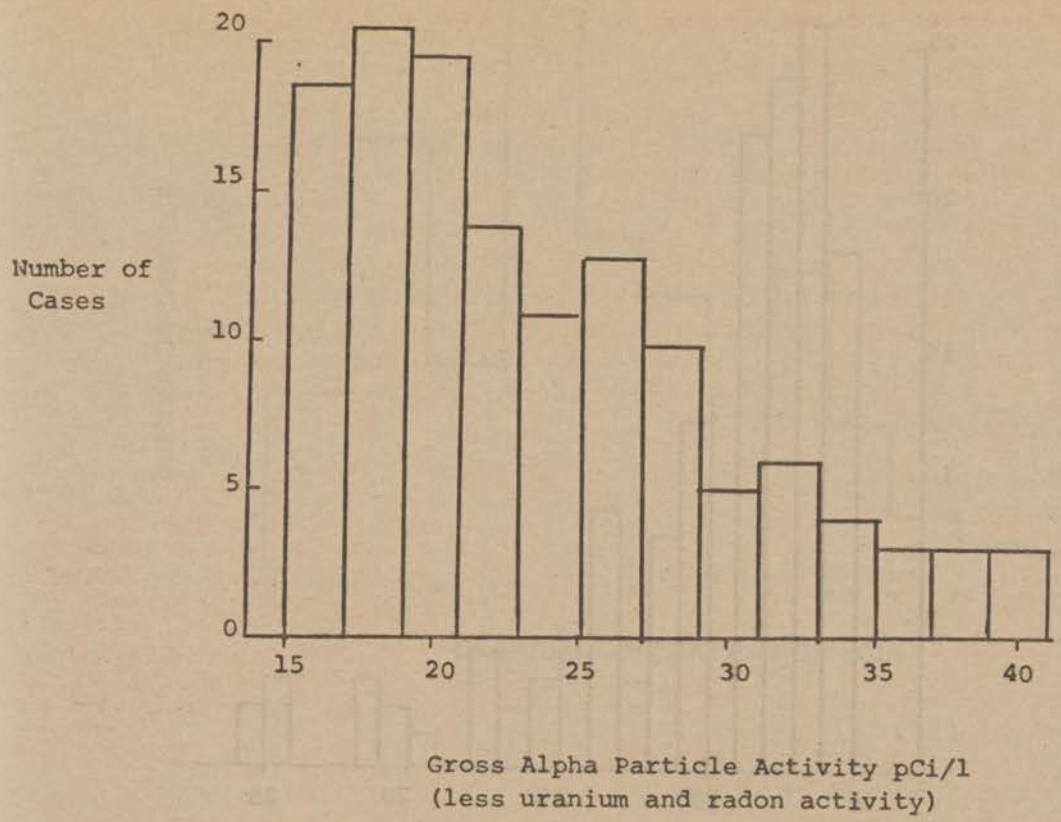

Figure 1. Histogram showing the distribution of gross alpha particle activity (less uranium and radon activity) for public drinking water supplies in the United States. (from Cothern and Lappenbusch, 1984).

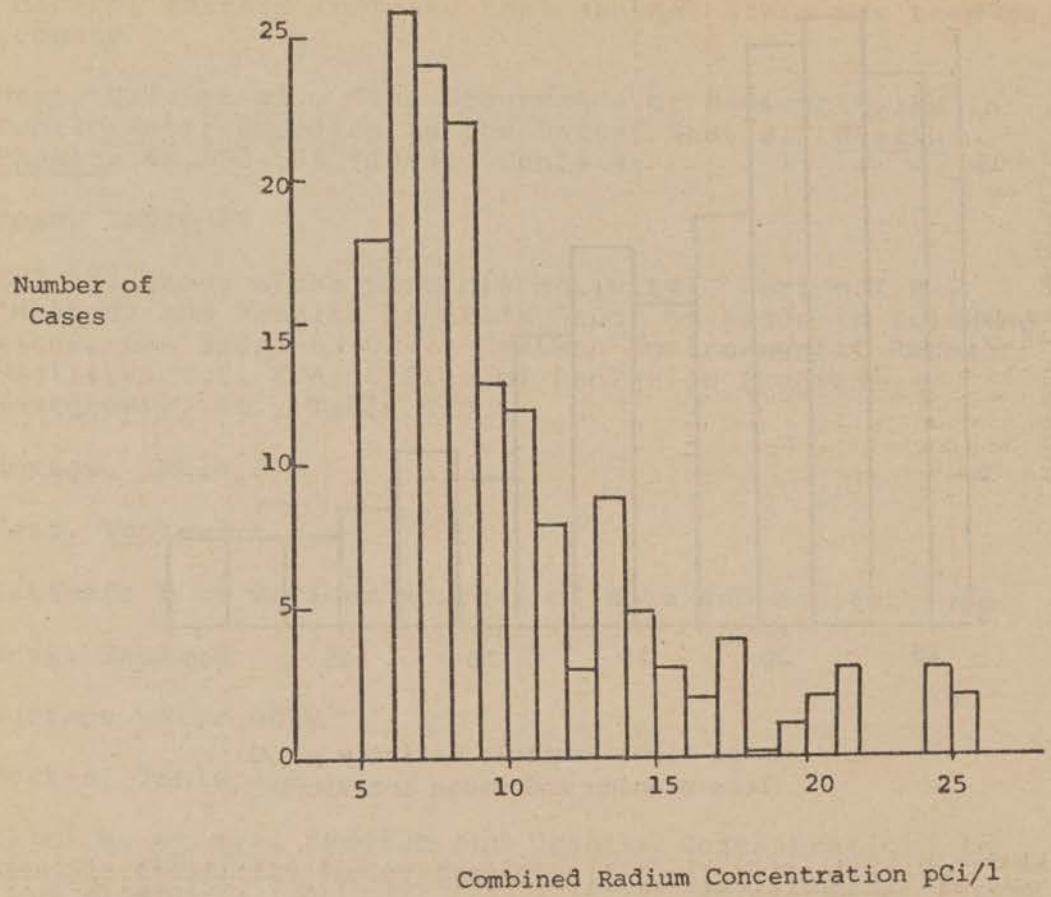

Figure 2. Histogram showing the distribution of radium activities exceeding 5 pCi/l for public drinking water supplies in the United States. Five cases exceeded 26 pCi/l for those reported here. (from Cothern and Lappenbusch, 1984).

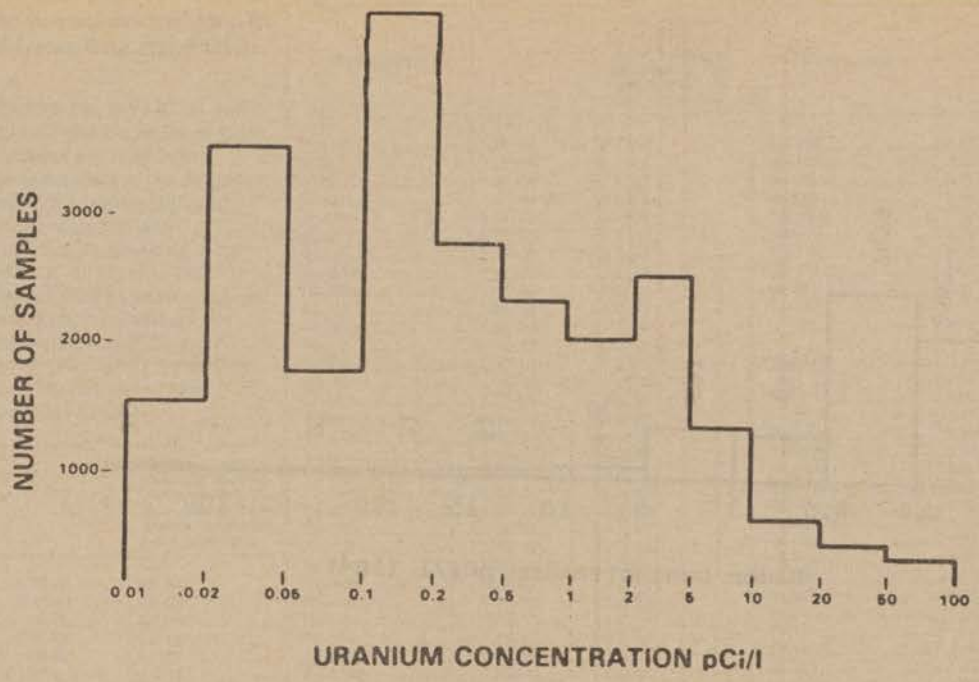

Figure 3. Histogram of uranium concentrations in domestic waters of the United States. A total of approximately 22,000 samples were involved in this study. (from Cothern and Lappenbusch, 1983).

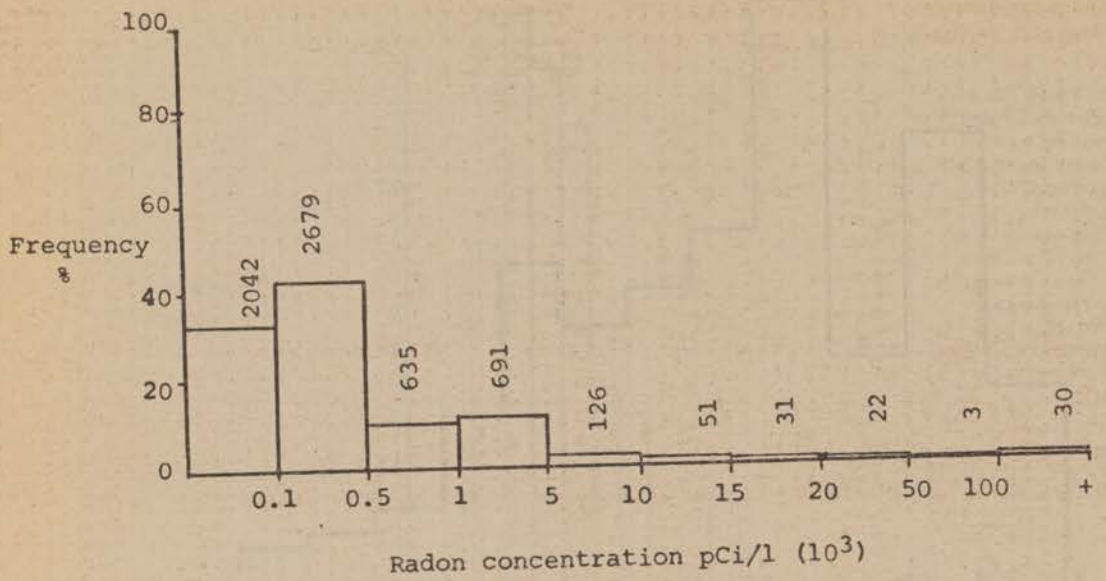

Figure 4. Histogram showing the radon concentrations in picocuries per liter for public ground drinking water supplies in the United States. (from the proceeding of the National Workshop on Radioactivity in Drinking Water published as the May 1985 issue of Health Physics).

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Appendix C.—Radionuclides Included in the Definition of Gross Beta and Photon Emitters

Radionuclides included in the MGLG and MCL for gross beta and photon emitters will include all radionuclides emitting beta particles and/or photons except the daughter products of thorium-232, uranium-235 and uranium-238. The following list was referenced in the Interim Regulations. Also included are Am–241, K–40 and Pu–239. Several radionuclides listed have two values listed for f_1 (uptake). Public comments are requested on which value would be more appropriate for use in calculating compliance. For Simplicity the abbreviations of the elements are used in this table.

Radionuclide	f_1	Concentration (pCi/L) in drinking water yielding a risk equal to that from a dose rate of 4 mrem/year
H-3	1.0E-00	9.E 04
Be-7	5.0E-03	1.E 05
C-14	1.0E-00	3.E 03
F-18	1.0E-00	5.E 04
Na-22	1.0E-00	5.E 02
Na-24	1.0E-00	4.E 03
Si-31	1.0E-02	3.E 04
P-32	8.0E-01	7.E 02
S-35	8.0E-01	1.E 04
	1.0E-01	1.E 04
Cl-36	1.0E-00	2.E 03
Cl-38	1.0E-00	3.E 04
K-40	1.0E-00	3.E 02
K-42	1.0E-00	5.E 03
Ca-45	1.0E-01	2.E 03
Ca-47	3.0E-01	1.E 03
Sc-46	1.0E-04	2.E 03
Sc-47	1.0E-04	5.E 03
Sc-48	1.0E-04	2.E 03
V-48	1.0E-02	2.E 03
Cr-51	1.0E-01	8.E 04
Cr-51	1.0E-02	9.E 04
Mn-52	1.0E-01	2.E 03
Mn-54	1.0E-01	3.E 03
Mn-56	1.0E-01	1.E 04
Fe-55	1.0E-01	1.E 04
Fe-59	1.0E-01	1.E 03
Co-57	3.0E-01	6.E 03
	5.0E-02	1.E 04
Co-58m	3.0E-01	1.E 05
	5.0E-02	1.E 05
Co-58	3.0E-01	2.E 03
	5.0E-02	4.E 03
Co-60	3.0E-01	2.E 02
	5.0E-02	9.E 02
Ni-59	5.0E-02	3.E 04
Ni-63	5.0E-02	1.E 04
Ni-65	5.0E-02	2.E 04
Cu-64	5.0E-01	2.E 04
Zn-65	5.0E-01	4.E 02
Zn-69m	5.0E-01	8.E 03
Zn-69	5.0E-01	1.E 05
Ga-72	1.0E-03	3.E 03
Ge-71	1.0E-00	7.E 05
As-73	5.0E-01	1.E 04
As-74	5.0E-01	2.E 03
As-76	5.0E-01	2.E 03
As-77	5.0E-01	8.E 03
Se-75	8.0E-01	6.E 02
	5.0E-02	5.E 03
Br-82	1.0E-00	3.E 03
Rb-86	1.0E-00	6.E 02
Rb-87	1.0E-00	6.E 02
Sr-85m	3.0E-01	4.E 05
	1.0E-02	5.E 05
Sr-85	3.0E-01	4.E 03
	1.0E-02	1.E 04
Sr-89	3.0E-01	9.E 02
	1.0E-02	1.E 03
Sr-90	3.0E-01	5.E 01
	1.0E-02	7.E 02
Sr-91	3.0E-01	5.E 03
	1.0E-02	4.E 03
Sr-92	3.0E-01	8.E 03
	1.0E-02	7.E 03
Y-90	1.0E-04	1.E 03
Y-91m	1.0E-04	2.E 05
Y-91	1.0E-04	1.E 03
Y-92	1.0E-04	7.E 03
Y-93	1.0E-04	3.E 03
Zr-93	2.0E-03	1.E 04
Zr-95	2.0E-03	3.E 03
Zr-97	2.0E-03	2.E 03
Nb-93m	1.0E-02	2.E 04
Nb-95m	1.0E-02	5.E 03
Nb-95	1.0E-02	5.E 03
Nb-97m	1.0E-02	3.E 06
Nb-97	1.0E-02	5.E 04
Mo-99	8.0E-01	2.E 03
Mo-99	5.0E-02	2.E 03
Tc-96m	8.0E-01	2.E 05
Tc-96	8.0E-01	3.E 03
Tc-97m	8.0E-01	5.E 03
Tc-97	8.0E-01	4.E 04
Tc-99m	8.0E-01	1.E 05
Tc-99	8.0E-01	5.E 03
Ru-97	5.0E-02	2.E 04
Ru-103	5.0E-02	4.E 03
Ru-106	5.0E-02	3.E 02
Rh-103m	5.0E-02	1.E 06
Rh-105	5.0E-02	8.E 03
Rh-106	5.0E-02	2.E 06
Pd-103	5.0E-03	1.E 04
Pd-109	5.0E-03	5.E 03
Ag-105	5.0E-02	5.E 03
Ag-109m	5.0E-02	2.E 07
Ag-110m	5.0E-02	7.E 02
Ag-110	5.0E-02	3.E 06
Ag-111	5.0E-02	2.E 03
Cd-109	5.0E-02	5.E 02
Cd-115m	5.0E-02	7.E 02
Cd-115	5.0E-02	2.E 03
In-113m	2.0E-02	1.E 05
In-114m	2.0E-02	5.E 02
In-114	2.0E-02	1.E 06
In-115m	2.0E-02	4.E 04
In-115	2.0E-02	6.E 01
Sn-113	2.0E-02	4.E 03
Sn-125	2.0E-02	9.E 02
Sb-122	1.0E-01	2.E 03
	1.0E-02	2.E 03
Sb-124	1.0E-01	1.E 03
	1.0E-02	1.E 03
Sb-125	1.0E-01	4.E 03
	1.0E-02	4.E 03
Te-125m	2.0E-01	2.E 03
Te-127m	2.0E-01	9.E 02
Te-127	2.0E-01	2.E 04
Te-129m	2.0E-01	8.E 02
Te-129	2.0E-01	6.E 04
Te-131m	2.0E-01	7.E 02
Te-131	2.0E-01	2.E 04
Te-132	2.0E-01	6.E 02
I-125	1.0E-00	1.E 03
I-126	1.0E-00	5.E 02
I-129	1.0E-00	1.E 02
I-131	1.0E-00	7.E 02
I-132	1.0E-00	7.E 03
I-133	1.0E-00	4.E 02
I-134	1.0E-00	2.E 04
I-135	1.0E-00	2.E 03
Cs-131	1.0E-00	2.E 04
Cs-134m	1.0E-00	1.E 05
Cs-134	1.0E-00	8.E 01
Cs-135	1.0E-00	8.E 02
Cs-136	1.0E-00	5.E 02
Cs-137	1.0E-00	1.E 02
Ba-131	1.0E-01	7.E 03
Ba-137m	1.0E-01	3.E 06
Ba-140	1.0E-01	1.E 03
La-140	1.0E-03	1.E 03
Ce-141	3.0E-04	4.E 03
Ce-143	3.0E-04	3.E 03
Pr-142	3.0E-04	2.E 03
Pr-143	3.0E-04	2.E 03
Nd-149	3.0E-04	3.E 04
Pm-149	3.0E-04	3.E 03
Sm-151	3.0E-04	3.E 04
Sm-153	3.0E-04	4.E 03
Eu-152	1.0E-03	2.E 03
Eu-154	1.0E-03	1.E 03
Eu-155	1.0E-03	7.E 03
Gd-153	3.0E-04	1.E 04
Gd-159	3.0E-04	6.E 03
Tb-160	3.0E-04	2.E 03
Dy-165	3.0E-04	4.E 04
Dy-166	3.0E-04	2.E 03
Ho-166	3.0E-04	2.E 03
Er-169	3.0E-04	7.E 03
Er-171	3.0E-04	9.E 03
Tm-170	3.0E-04	2.E 03
Tm-171	3.0E-04	3.E 04
Yb-175	3.0E-04	7.E 03
Lu-177	3.0E-04	5.E 03
Hf-181	2.0E-03	3.E 03
Ta-182	1.0E-03	2.E 03
W-181	3.0E-01	4.E 04
	1.0E-02	4.E 04
W-185	3.0E-01	7.E 03
	1.0E-02	6.E 03
W-187	3.0E-01	6.E 03
	1.0E-02	5.E 03
Re-183	8.0E-01	7.E 03
Re-186	8.0E-01	2.E 03
Re-187	8.0E-01	7.E 05
Re-188	8.0E-01	2.E 03
Os-185	1.0E-02	5.E 03
Os-191m	1.0E-02	3.E 04
Os-191	1.0E-02	5.E 03
Os-193	1.0E-02	4.E 03
Ir-190	1.0E-02	2.E 03
Ir-192	1.0E-02	2.E 03
Ir-194	1.0E-02	2.E 03
Pt-191	1.0E-02	9.E 03
Pt-193m	1.0E-02	6.E 03
Pt-193	1.0E-02	9.E 04
Pt-197m	1.0E-02	4.E 04
Pt-197	1.0E-02	8.E 03
Au-196	1.0E-01	9.E 03
Au-198	1.0E-01	3.E 03
Hg-197	2.0E-02	1.E 04
Hg-203	2.0E-02	5.E 03
Tl-202	1.0E-00	4.E 03
Tl-204	1.0E-00	2.E 03
Pb-203	2.0E-01	1.E 04
Bi-206	5.0E-02	2.E 03
Bi-207	5.0E-02	2.E 03
Pa-233	1.0E-03	3.E 03
Pu-239		4.E 01
Am-241		4.E 00

Appendix D—Risk and Effective Dose Equivalent Rates Using Organ Weighting Factors

Calculations of the risk and effective dose equivalent rate per pCi/L for ingestion of: Radium-226, radium-228, uranium-234, uranium-238, polonium-210, lead-210, thorium-230, and thorium-232 are presented in Tables D.1 through D.8. The risk and dose equivalent calculations were done at Oak Ridge National Laboratory under EPA contract using the Modified ICRP 30 model and assuming an ingestion rate of two liters of drinking water per day. The weighting factors were derived by EPA based on the Report of the BEIR III Committee of the National Academy of Science.

TABLE D.1.—RISK AND EFFECTIVE DOSE EQUIVALENT RATE PER pCi/1 FOR RADIUM-226 ($F_1 = 0.20$)

Organ	Lifetime risk per million persons exposed	70 Year dose equivalent rate (mrem/yr)	Weighting factor	Effective dose equivalent rate (mrem/yr)
Red Bone Marrow	3.74	1.68	0.16	0.269
Endosteal Bone	.88	19.86	.009	.18
Thyroid	.42	0.24	.099	.024
Breast	.68	0.24	.13	.031
Lungs	.92	0.24	.21	.050

TABLE D.1.—RISK AND EFFECTIVE DOSE EQUIVALENT RATE PER pCi/1 FOR RADIUM-226 (F_1=0.20)—Continued

Organ	Lifetime risk per million persons exposed	70 Year dose equivalent rate (mrem/yr)	Weighting factor	Effective dose equivalent rate (mrem/yr)
Stomach	.44	0.24	.084	.020
Intestine	.32	0.36	.039	.014
Liver	.44	0.24	.085	.020
Pancreas	.30	0.24	.058	.014
Urinary Tract	.12	0.24	.025	.006
Other	.60	0.24	.11	.026
Totals	8.8			.65

TABLE D.2—RISK AND EFFECTIVE DOSE EQUIVALENT RATE PER pCi/L FOR RADIUM-228 (F_1=0.20)

Organ	Lifetime risk per million persons exposed	70 year dose equivalent rate (mrem/yr)	Weighting factor	Effective dose equivalent rate (mrem/yr)
Red Bone Marrow	1.96	0.71	0.16	0.114
Endosteal Bone	.39	7.02	.009	.063
Thyroid	.42	.24	.099	.024
Breast	.67	.24	.13	.031
Lungs	.92	.24	.21	.050
Stomach	.43	.24	.084	.020
Intestine	.23	.27	.039	.011
Liver	.53	.29	.85	.025
Pancreas	.30	.24	.058	.014
Urinary Tract	.13	.25	.025	.006
Other	.59	.24	.011	.026
Totals	6.6			.38

TABLE D.3.—RISK AND EFFECTIVE DOSE EQUIVALENT RATE PER pCi/1 FOR URANIUM-234 (F_1=0.05]

Organ	Lifetime risk per million persons exposed	70 Year dose equivalent rate (mrem/yr)	Weighting factor	Effective dose equivalent rate (mrem/yr)
Red Bone Marrow	0.44	0.20	0.16	0.032
Endosteal Bone	.14	3.12	.009	.028
Thyroid	.01	.01	.099	.001
Breast	.02	.01	.13	.001
Lungs	.03	.01	.21	.002
Stomach	.02	.01	.084	.001
Intestine	.07	.08	.039	.003
Liver	.01	.01	.085	.001
Pancreas	.01	.01	.058	.001
Urinary Tract	.64	1.20	.025	.030
Other	.02	.01	.11	.001
Totals	1.4			.10

TABLE D.4.—RISK AND EFFECTIVE DOSE EQUIVALENT RATE PER pCi/1 FOR URANIUM-238 (F_1=0.05)

Organ	Lifetime risk per million persons exposed	70 Year dose equivalent rate (mrem/yr)	Weighting factor	Effective dose equivalent rate (mrem/yr)
Red Bone Marrow	0.46	0.21	0.16	0.034
Endosteal Bone	.12	2.71	.009	.024
Thyroid	.01	.01	.099	.001
Breast	.02	.01	.13	.001
Lungs	.02	.01	.21	.002
Stomach	.02	.01	.084	.001
Intestine	.06	.07	.039	.003
Liver	.01	.01	.085	.001
Pancreas	.01	.01	.058	.001
Urinary Tract	.57	1.08	.025	.027
Other	.02	.01	.11	.001
Total	1.3			.096

TABLE D.5.—RISK AND EFFECTIVE DOSE EQUIVALENT RATE PER pCi/L FOR LEAD-210 (F_1=0.02)

Organ	Lifetime risk per million persons exposed	70 Year dose equivalent rate (mrem/yr)	Weighting factor	Effective dose equivalent rate (mrem/yr)
Red Bone Marrow	0.97	0.42	0.16	0.067
Endosteal Bone	.23	4.93	.009	.044
Thyroid	.04	.03	.099	.003
Breast	.07	.03	.13	.004
Lungs	.10	.03	.21	.006
Stomach	.05	.03	.084	.003
Intestine	.03	.04	.039	.002
Liver	2.15	1.50	.085	.128
Pancreas	.03	.03	.058	.002
Urinary Tract	.31	.72	.025	.018
Other	.06	.03	.11	.003
Totals	4.0			.25

TABLE D.6.—RISK AND EFFECTIVE DOSE EQUIVALENT RATE PER pCi/1 FOR POLONIUM-210 (F_1=0.10)

Organ	Lifetime risk per million persons exposed	70 Year dose equivalent rate (mrem/yr)	Weighting factor	Effective dose equivalent rate (mrem/yr)
Red Bone Marrow	0.50	0.16	0.16	0.026
Endosteal Bone	.01	.12	.009	.0011
Thyroid	.43	.23	.099	.023
Breast	.69	.23	.13	.030
Lungs	.94	.23	.21	.048
Stomach	.45	.23	.084	.019
Intestine	.27	.30	.039	.012
Liver	2.34	1.18	.085	.100
Pancreas	.31	.23	.058	.013
Urinary Tract	3.95	6.86	.025	.172
Other	.60	.23	.11	.025
Totals	10.5			.47

TABLE D.7.—RISK AND EFFECTIVE DOSE EQUIVALENT RATE PER pCi/1 FOR THORIUM-230 (F_1=0.002)

Organ	Lifetime risk per million persons exposed	70 Year dose equivalent rate (mrem/yr)	Weighting factor	Effective dose equivalent rate (mrem/yr)
Red Bone Marrow	1.64	0.84	0.16	0.134
Endosteal Bone	.42	10.44	.009	.094
Thyroid	.003	.002	.099	.0002
Breast	.01	.002	.13	.0003
Lungs	.01	.004	.21	.0004
Stomach	.01	.004	.0084	.0003
Intestine	.06	.07	.039	.003
Liver	.03	.02	.085	.002
Pancreas	.002	.004	.058	.0002
Urinary Tract	.005	.004	.025	.0001
Other	.005	.004	.11	.0004
Totals	2.2			.24

TABLE D.8.—RISK AND EFFECTIVE DOSE EQUIVALENT RATE PER pCi/1 FOR THORIUM-232 (F_1=0.002)

Organ	Lifetime risk per million persons exposed	70 Year dose equivalent rate (mrem/yr)	Weighting factor	Effective dose equivalent rate (mrem/yr)
Red Bone Marrow	1.48	0.77	0.16	0.123
Endosteal Bone	.38	9.56	.009	.086
Thyroid	.002	.002	.099	.0002
Breast	.004	.002	.13	.0003
Lungs	.006	.002	.21	.0004
Stomach	.008	.004	.084	.0003
Intestine	.06	.06	.039	.002
Liver	.03	.01	.085	.001
Pancreas	.002	.002	.058	.0001
Urinary Tract	.001	.002	.025	.0001
Other	.004	.002	.11	.0002
Totals	2.0			.21

Appendix E—Risk Estimation and Effective Dose Equivalent for Radon in Drinking Water

The calculations of risk and dose equivalent in Appendix C involve products of quantities that have a range of possible values. These ranges are, in general, not determined by knowing the functional distribution but are estimates, often rough estimates, of the uncertainty. However, in order to propagate these uncertainities when the quantities are combined, the form of the distribution needs to be either detemined or assumed.

One assumption for the form of the distribution that has wide application for environmental variables is that they are lognormally distributed. Under this assumption, the logarithms of values for the random varible are normally distributed.

To determine the dose equivalent factor for radon using the range 0.031 to 0.033 Sv/WLM from ICRP, and the weighting factor of 0.21 derived from BEIR III:

$z = a_1\ a_2\ a_3\ Y_1\ Y_2\ Y_3\ Y_4$

where:

a_1 = number of working levels corresponding to a concentration of 100 pCi/l of radium-222 in secular equilibrium with its short lived progeny = 1 WL/100 pCi/l_a

a_2 = 100 mrem/Sv

a_3 = 1000 mrem/rem

Y_1 = the radium-222 equilibrium factor = 0.3 to 0.7

Y_2 = equivalent occupational working months per year for a member of a population = (12 to 24) months/year, this range of values is intended to compensate for the uncertainties in the residency time and breathing rate

Y_3 = transfer factor from water to air = (0.17 to 3.5) $\times 10^{-4}$. The units for this value are the ratio of picocuries per liter of air to picocuries per liter of water

Y_4 = mean dose equivalent from ICRP 32 using the BEIR III weighting factor. The ICRP 32 lung model mean dose equivalent for the pulmonary region is 0.031 to 0.33 Sv/WLM and the BEIR III weighting factor is 0.21 for the lung. This gives a range of 0.0065 to 0.0069 Sv/WLM for the effective dose equivalent factor. Alternatively the mean dose equivalent for the whole lung (0.042 to 0.043 Sv/WLM) can be used. This would give a range of 0.0088 to 0.0090 Sv/WLM for the effective dose equivalent factor. In order to allow for the uncertainties in estimating this factor it is estimated here to be in the range of 0.004 to 0.01 Sv/WLM.

Then combining the error ranges by summing them as geometric standard deviations yield $z = (0.02 \text{ to } 5.4) \times 10^{-3}$ mSv per year per Bq/lw or $(0.8 \text{ to } 20) \times 10^{-3}$ mrem per year per pCi/lw).

The lifetime lung cancer mortality associated with radon in drinking water is calculated as:

$r = a_1 \text{ X } a_2 \text{ X } Y_1 \text{ X } Y_2 \text{ X } Y_3 \text{ X } Y_4$

where:

a_1 = the number of years of exposure—70 years (the average lifetime).

a_2 = the number of WLs corresponding to a concentration of 100 pCi/L_a of radon-222 in secular equilibrium with its short-lived progeny = 1 WL/100 pCi Rn/l_a, where 1_a is liters of air

Y_1 = the radon-222 equilibrium factor = 0.3 to 0.7 (to compensate for the lack of equilibrium)

Y_2 = equivalent occupational working months per year for a member of the population = (12 to 14) months/year; this allows for variation in residency time and breathing rate

Y_3 = transfer factor for radon from water to air = $(0.17 \text{ to } 3.5) \times 10^{-4}$

Y_4 = lifetime lung cancer mortality risk for exposure of 1 WLM = $(1.5 \text{ to } 4.5) \times 10^{-4}$/WLM (from ICRP report 32). This risk factor is consistent but not exactly the same as that being considered by EPA's ORP. The resulting risk estimate is expressed as a range to provide this consistency.

Assuming that the errors propagate geometrically, the combined value is in the range of 2×10^{-8} to 600×10^{-8} excess cases of lung cancer/pCi/L_w (where L_w is liters of water).

Appendix F—Method for the Propagation of Uncertainty and Risk and Effective Dose Equivalent Calculations for Radon

The calculations of risk and dose equivalent in this notice involve products of quantities that have a range of possible values. These ranges are, in general, not determined by knowing the functional distribution but are estimates, often rough estimates, of the uncertainty. However, in order to propagate these uncertainties when the quantities are combined, the form of the distribution needs to be either determined or assumed.

One assumption for the form of the distribution that has wide application for environmental variables is that they are lognormally distributed. Under this assumption the logarithms of values for the random variable are normally distributed.

If x is normally distributed random variables with mean m_x and variances s_x^2 then, $y = e^x$ is a log normally distributed random variable where:

$\ln y = x$ and $m_{lny} = m_x$

m_{lny} = limit as n approaches infinity of one over n times the summation over i of $\ln y_i$

= (1/n) ln [summation over i of the product of y_i]

= ln [summation over i of the products of y_i]$^{1/n}$

and

$e^{m_{lny}}$ = [summation over i of the products of y_i]$^{1/n}$

= e^{mx}

= the geometric mean of y

and by definition

$s_G = \exp\{s_{luy}\}$ = the geometric standard deviation

In general

$s_G = [^{y}\text{upper}/^{y}\text{lower}]^{1/n}$

and if the upper percential (^{y}upper) is 97.5% and lower percentile (^{y}lower) is 2.5% then n is approximately 4 and if the upper and lower percentiles represent a confidence range of approximately 67% then n = 2. It is here assumed that the ranges of values given in this appendix represent the 95% confidence interval. If $y_{97.5\,o/o}$ is the value at the 97.5% point on the distribution and $y_{2.5\,o/o}$ is the value at the 2.5% point on the distribution, then

$s_G = [y_{97.5\,o/o}/y_{2.5\,o/o}]^{1/4}$

for the 95% confidence level and the geometric mean is

$y_{50\,o/o} = [y_{97.5\,o/o}/y_{2.5\,o/o}]^{1/2}$

If z is equal to the product of i different values of y and j different values of the constants a then,

$\ln z_{50\,o/o}$ = summation over i of $(y_{50\,o/o})_i$ + summation over j of a_j

and

$$s^2_{lnz} = \text{summation over i of } (s^2_{lny})_i$$

Thus the procedure for determining the range of uncertainty at the 95% confidence level is to calculate the s_G, $y_{50\,o/o}$ and

s^2_{lny} for each variable. Then the s^2_{lny}

values can be summed and from it the s_G of the product is the one fourth power of the ratio of $z_{97.5\,o/o}/z_{2.5\,o/o}$. The $z_{50\,o/o}$ = the product of the $y_{50\,o/o}$ and the a's is equal to the square root of the product of $z_{97.5\,o/o}$ and $z_{2.5\,o/o}$.

Appendix G—References

The following supporting documentation for this proposal is available for inspection at the EPA in Washington, DC and in EPA regional offices, addresses located at the beginning of this notice.

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Federal Register

Tuesday
September 30, 1986

Part VII

Department of Agriculture

Food and Nutrition Service

7 CFR Part 210

National School Lunch Program; Revision; Interim Rule With Request for Comments

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

National School Lunch Program, Revision

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rulemaking is a complete reorganization of 7 CFR Part 210, the regulations covering the National School Lunch Program and the Commodity School Program. Since the January 20, 1970 issuance, Part 210 has been amended with over 60 final rules. This revision is intended to resolve ambiguities and inconsistencies; eliminate unnecessary, duplicative and obsolete provisions; and clarify both lanuage and style so that Part 210 is easily understood. Further, this rulemaking makes several policy changes which are addressed in detail in the following preamble.

DATES: Effective October 30, 1986. To be assured of consideration, comments must be postmarked on or before February 27, 1987.

ADDRESSES: Comments must be mailed to Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, Alexandria, Virginia 22302. Comments received on the proposed rule are available for public inspection in Room 509, 3101 Park Center Drive, Alexandria, Virginia 22302 during regular business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Pastura, at the above address, or phone (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This interim rule has been reviewed under Executive Order 12391 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

The Department is issuing this rule as an interim rule rather than a final rule. The Department has already solicited and considered public comments concerning this rulemaking effort. In a typical rulemaking, the Department would now issue a final rule. However, because this rulemaking involves an extensive reorganization of the Part 210 regulations, the Department has determined that a second round of public comments would be beneficial. Therefore, we are issuing this as an interim rule in order to provide States and local school food authorities with the opportunity to comment based on actual operating experience with the new regulations. These comments will be considered in the development of final regulations.

Although this rule reflects a number of changes to Part 210, the reporting and recordkeeping requirements remain unchanged. These requirements have been approved by the Office of Management and Budget (OMB) for use through June 30, 1987 (OMB No. 0584–0006).

The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and 48 FR 29112, June 24, 1983.)

Background

The last major revision of 7 CFR Part 210, the regulations governing the National School Lunch Program and the Commodity School Program, was published in the **Federal Register** on January 20, 1970 (35 FR 753). Since that time, Part 210 was amended by well over 60 final and interim rules, many of which were promulgated quickly in response to legislation or litigation. As a result, Part 210 contained ambiguities and inconsistencies as well as duplicative and obsolete provisions.

On February 12, 1985, the Department published a proposed revision of Part 210 in the **Federal Register** (50 FR 5950). The proposal was intended to clear up ambiguities and inconsistencies; remove unnecessary, duplicative and obsolete provisions; examine the organization of Part 210 and its components; rewrite as necessary to ensure that Part 210 is easily understood; and, based on the resultant revisions, redesignate paragraphs and sections to accommodate the changes. In addition to these nonsubstantive revisions, several substantive policy changes were proposed.

The Department provided a 60-day comment period which ended on April 15, 1985. During the comment period, 927 comments were received from a variety of sources, including State educational agencies, school personnel, advocacy groups, and the general public. The Department would like to thank all those commenters who responded to the proposal. Especially appreciated were the many detailed suggestions which proved helpful in formulating this interim rule.

General Comments

Of the 927 comments, 871 (94%) addressed the service of whole milk to children. Only 58 (6%) of the commenters addressed other aspects of Part 210 (two of whom also addressed the whole milk issue). Of the 58 commenters addressing other issues, the major areas of concern included the elimination of Federal reimbursement for second meals and the substitution of food for handicapped children.

Since commenters did not express any opposition to the reorganization of Part 210, the Department has adopted the new format. A redesignation table has been provided at the end of this preamble to facilitate use of this interim rule. The redesignation table indicates the old section numbers and the corresponding new section numbers. All regulatory citations identified in this preamble refer to the redesignated sections unless otherwise indicated.

The remainder of this preamble discusses concerns expressed by commenters and the specific changes being made to the previously proposed regulations. For ease in reference, the commenter concerns and any corresponding changes are explained under the interim rule section headings. The preamble does not address sections for which no substantive objections were raised by commenters or those comments which resulted in nonsubstantive revisions which simply serve to clarify the regulatory wording. Several sections were not included in the proposed rule, i.e., competitive food services and the appendices. These sections are reprinted in this interim rule to present Program regulations in their entirety. Please note that the petitioning procedures for foods of minimal

nutritional value are now located in Appendix B.

Subpart A—General

Section 210.1 General purpose and scope.

The Department proposed a number of nonsubstantive changes to paragraph (a) *Purpose of the Program.* One of these changes made reference to the National School Lunch Program as a "grant-in-aid" program. Several commenters misinterpreted the Department's use of this terminology to reflect a move away from or a reduction in the existing performance-based funding. No such change was intended; rather the "grant-in-aid" terminology was derived from the National School Lunch Act (42 U.S.C. 1751–1760, 1779) which authorizes performance-based funding. To allay this and other similar concerns, paragraph (a) has been revised to more clearly reflect the ongoing practice of providing States with general and special cash assistance and donations of foods for each reimbursable lunch served to schoolchildren.

Section 210.2 Definitions.

The Department proposed an abbreviated definition of *"Child"* which, as one commenter pointed out, inadvertently omitted reference to nonprofit child care centers in Puerto Rico. In order to rectify this omission and to further elucidate the Department's policy, the interim rule expands upon the definition to address its applicability to traditional schools, residential child care centers, and nonprofit child care centers in Puerto Rico.

Several commenter concerns suggested that some confusion exists regarding the definition of "child." The Department would like to take this opportunity to restate the intent behind this definition. In traditional schools, a child is a student of high school grade or under, as determined by the State educational agency, including students who are mentally or physically handicapped, as defined by the State and who are participating in a school program established for the mentally or physically handicapped. In residential child care institutions and nonprofit child care centers in Puerto Rico, a child means a person under 21 chronological years of age who is enrolled in the institution or center. Readers should note that the definition of child as it pertains to residential child care centers and nonprofit child care centers has been clarified, per commenter request, to ensure that Federal reimbursement is claimed for only those meals served to children enrolled in the participating center or institution.

Definitions *"Competitive foods"* and *"Food of minimal nutritional value"* remain unchanged but have been moved to § 210.11 *Competitive food services.*

New definitions *"Food component"* and *"Food item"* have been added to clarify the meal pattern requirements. "Food component" is defined to mean one of the four food groups which compose the reimbursable school lunch (meat or meat alternate, milk, bread or bread alternate and fruit/vegetable). "Food item" is defined to mean one of the five food servings that compose the reimbursable school lunch (meat or meat alternate, milk, bread or bread alternate and two (2) servings of vegetables, fruits, or a combination of both).

The definition of *"Lunch"* has been expanded, per commenter request, to indicate the Department's policy that lunch is the meal served at or about mid-day, unless otherwise exempted by FNS.

A number of diverse concerns were identified regarding the definition of *"School."* Several commenters requested an increase in the $1,500 tuition limitation placed on private schools. Since section 12(d)(5) of the National School Lunch Act specifically excludes "private schools whose average yearly tuition exceeds $1,500 per child"; the Department is unable to consider the recommended increases.

Upon review of serveral comment letters, it became apparent that the eligibility of preprimary classes to participate in the National School Lunch Program has been misunderstood. Under both previous version of Part 210 as well as under the interim Part 210 presented herein, preprimary classes are eligible to participate (a) when they are recognized a part of the educational system of the State regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grades, or (b) when they are conducted in a school having classes of primary or higher grades regardless of whether such preprimary classes are recognized as part of the educational system of the State. The Department has revised the denfinition to clarify the conditions of eligibility for preprimary classes and, per commenter suggestion, to pair the examples with the appropriate type of school.

The definition *"School food authority"* has been revised to recognize special accommodations between public schools and private schools or residential child care institutions, when approved by FNS.

The Department's proposed definition and use of *"State agency"* was intended to acknowledge Federal and alternate agency administration of nonprofit private schools and residential child care centers when State educational agencies are unable to assume administration. As several commenters pointed out, the proposed definition would not have achieved the intended effect. Rather, contracy to the provisions of the National School Lunch Act, the proposal authorized agencies other than State educational agencies to administer the Program regardless of whether or not State educational agency was able to assume administration. The Department has corrected this error by revising the definition of State agency and by expanding § 210.3 to more clearly delegate the authority for Program administration. Specifically, this interim rule ensures that, in accordance with the National School Lunch Act, the responsibility for the Program rests with the State educational agency. Consistent with the provisions of this Act and the Intergovernmental Act of 1968 (42 U.S.C. 4201 et seq.), this interim rule also acknowledges Federal and alternate agency administration of the Program in those situations where the State educational agency is unable to assume Program administration.

A commenter recommendation that the term "full price lunch" be used consistently in lieu of paid lunch was considered; however, neither term accurately reflects the cash and donated food assistance provided by the Department for such lunches. For this reason, a new definition, *"Subsidized lunch"*, has been added. A subsidized lunch means a lunch served to children who are either not eligible for or elect not to receive the free and reduced price benefits offered under 7 CFR Part 245. The Department subsidizes these lunches with both general cash assistance and donated foods. Currently, the Federal cash and commodity assistance level approximates 34 cents per subsidized lunch.

"Uniform Federal Assistance Regulations" has been redesignated "7 CFR Part 3015" and expanded to include OMB Circulars A–124 and A–128, entitled "Patents—Small Business Firms and Nonprofit Organizations" and "Audits of State and Local Governments," respectively. In addition, the definition has been expanded to include the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.) and Executive Order 12372.

Section 210.3 Administration.

As discussed under the definition of "State agency," paragraphs (b) *States* and (c) *FNSRO* have been revised to ensure that the primary responsibility for Program administration rests with the State education agency. This interim rule also acknowledges Federal and alternate agency administration of the Program in those situations where the State educational agency is unable to assume Program administration. Paragraph (d) *School food authorities* has been expanded to clarify that school food authorities must follow the applicable regulations and instructions.

Subpart B—Assistance to States and School Food Authorities

Section 210.4 Cash and donated food assistance to States.

In response to commenter concern, the Department has expanded the fourth sentence of paragraph (b)(1) *Cash assistance* to more accurately reflect the total cash assistance level available to each State. The proposal provided that the "total of these payments to each State for any fiscal year is calculated by multiplying the number of lunches of each type—paid, free and reduced price—reported, in accordance with the provisions of § 210.5(b) for each month of service during the fiscal year, by the applicable national average payment rates prescribed by FNS." While this is indeed an accurate portrayal of how a State's maximum entitlement is computed, the regulatory language has been further clarified to acknowledge that FNS' responsibility to pay for lunches served extends only in so far as those lunches are reported to FNS. Thus, the regulatory language has been expanded to ensure that FNS' payment will not exceed the lesser of the State's entitlement as computed above, or the amount reported to FNS as reimbursed to school food authorities. Several commenters noted that the proposal did not specify when adjustments to the per meal national average payment rates would be announced in the **Federal Register.** In response to commenter concern, the interim rule specifies that annual adjustments are announced in July of each year.

Section 210.5 Payment process to States.

The proposed paragraph (d)(3) *End of year report* set forth the requirements for submission of the final Financial Status Report (SF–269) for each fiscal year. Among the provisions of this paragraph, State agencies were required to liquidate all obligations before final closure of a fiscal year grant. As one commenter correctly pointed out, liquidation before final grant closure is not always possible. For this reason, this requirement has been removed from the interim rule.

The same commenter also recommended expansion of paragraph (d)(3) to reflect the procedures for adjustments subsequent to the final closure of a fiscal year grant. The proposal did not address any such adjustments since State agencies are required, without exception, to submit final grant closeout reports to FNS within 120 days after the end of each fiscal year. FNS is not responsible for reimbursing Program obligations reported later than the 120 day deadline. Any adjustments subsequent to final closure are made at FNS' discretion in compliance with internal operating procedures. Given the discretionary nature of post grant closeout adjustments, the Department does not believe the inclusion of references in the regulatory language to be appropriate.

Section 210.6 Use of Federal funds.

One commenter requested clarification of proposed paragraph (b) *Transfer of funds* which enables a State agency, with FNS approval, to transfer funds within a fiscal year among programs authorized under the Child Nutrition Act of 1966 and the National School Lunch Act, as amended. An extensive review of the history of the FNS payment process indicates that revisions made in the last 10 years have rendered this provision obsolete.

Under the existing payment process, the Department provides each State with program specific funds on a cash as needed basis. State agencies may use these funds for the program for which the funds were made available or for any other Child Nutrition Program; provided that the funds are used for the fiscal year in which initially made available. State agencies must report the use of funds on a quarterly basis and the number of lunches served, by type, on a monthly basis. At the end of each fiscal year, FNS reconciles the number of lunches served with the use of program funds. For any fiscal year, total FNS payments to each State under the Program will not exceed the lesser of the total amount reported to FNS as reimbursed to school food authorities or the total of amounts calculated by multiplying the number of lunches of each type—subsidized, reduced price and free by the applicable national average payment rates prescribed by FNS.

Section 210.7 Reimbursement for school food authorities.

Paragraph (a) *General* of the proposed rule restated the provision which permitted payment for lunches served in accordance with Parts 210 and 245 in the month preceding the month in which the agreement is taken, "provided that both months are in the same fiscal year." A number of commenters took issue with the proviso requiring both months to be in the same fiscal year. Several commenters recommended replacing the term "fiscal year" with "school year" since most State agencies take agreements with school food authorities on a school year basis (i.e., July 1—June 30). One commenter suggested that the proviso was unnecessary and should be removed.

The Department reviewed the relevant regulatory history and can find no reason to retain the proviso. Therefore, the proviso has been removed from the interim rule. State agencies and school food authorities are reminded, however, that the restrictions concerning the content of the Claim for Reimbursement, as specified in § 210.8(b), continue to apply. Under § 210.8(b), the Claim for Reimbursement for any month is required to include only lunches served in that month. If the first or last month of Program operations for any year contains 10 operating days or less, such month may be combined with the Claim for Reimbursement for the appropriate adjacent month; except that the claim for Reimbursement may not combine operations occurring in two fiscal years. In recognition of these requirements, the interim rule cross-references § 210.8(b) so that "Subject to the provisions of § 210.8(b), such payments may be made for lunches served . . . in the calendar month preceding the calendar month in which the agreement is executed."

The proposed paragraph (a) also stated that school food authorities may not claim or be eligible for special cash assistance reimbursement for free and reduced price meals in excess of the number of children approved for such meals in accordance with Part 245. One commenter recommended clarifications of this restriction whereas another commenter recommended expanding this restriction to address the provision of § 210.10(b) which prohibits school food authorities from claiming reimbursement for any excess lunches produced. The Department has revised this provision in response to commenter suggestions.

Section 210.8 Method of reimbursement.

Paragraph (a) *Monthly claims* states that Claims for Reimbursement which are not postmarked and/or submitted within 60 days will not be paid "unless FNS determines that an exception should be granted." As commenters pointed out, several types of adjustments do not require FNS approval. These adjustments include changes to categories of meals with no requested increase in entitlement, exclusively downward adjustments to final local agency claims, exclusively downward adjustments to State agency final reports, and adjustments to local agency claims resulting from independent audits or State agency on-site reviews. In recognition of these adjustments, paragraph (a) has been revised to prohibit late claims unless otherwise authorized by FNS. The Department believes this wording acknowledges both the adjustments which do not require FNS approval, as well as those adjustments which require an exception request. This wording also addresses one commenter's concern regarding the omission of FNS' policy of allowing State agencies to grant each local agency a one-time only exception for the submission of a late claim that was within its control.

Per commenter request, paragraph (b) *Content of claim* has been revised to authorize school food authorities to submit either consolidated or individual school claims. This provision was inadvertently dropped from the proposal and is reinstated in this interim rule. Similarly, the requirement that commodity school data be separated from that of other schools was dropped from the proposal and has been reinstated.

Subpart C—Requirements for School Food Authority Participation

Section 210.9 Agreement with State agency.

Proposed paragraph (a) *Application* required an official of a local public school district or individual private school to make written application to the State agency for any school which desires to operate the Program. Commenters pointed out that referencing local public school districts or individual private schools served to exclude other groups of eligible institutions. For this reason, paragraph (a) has been revised to require an official of a school food authority, i.e., the governing body responsible for program administration in one or more schools, to make written application to the State agency for any school in which it desires to operate the Program. The terms "in which it" were inadvertently removed from the proposal and have been restored in this interim rule.

Prior to the proposal, the regulatory language was somewhat vague regarding the frequency of the school food authority/State agency agreement. However, a provision in § 210.14(a–3) of the previous Part 210 indicated that an agreement could not be extended into the subsequent fiscal year until specified information had been submitted. The proposed rule would have explicitly required school food authorities to enter into a written agreement *each fiscal year.* A number of commenters pointed out that this provision would require a change in current operating procedures since many agreements are on a school year rather than on a fiscal year basis. Upon further review of the regulatory history, the Department has concluded that the reference to "fiscal year" is obsolete. The term "fiscal year" was included in Part 210 at a time when the Federal fiscal year coincided with the school year, i.e., July 1—June 30. In October 1976, the Federal fiscal year was changed to October 1—September 30, however, the provision in the previous § 210.14(a–3) remained unchanged. Paragraph (b) of the interim rule has been revised to delete reference to "fiscal year" and expand the provision to require each school food authority to maintain a current written agreement on file at the State agency each year. State agencies may allow school food authorities to amend a previous year's agreement in lieu of taking a new agreement annually; provided that a current written agreement is on file each year. The revisions to paragraph (b) made paragraph (c) *Renewal of agreement* redundant and, for this reason, paragraph (c) has been removed from this interim rule.

Rather than highlighting the key provisions of Part 210, the Department proposed to simplify the agreement by requiring school food authorities and participating schools to "comply with all provisions of 7 CFR Parts 210 and 245." A number of commenters were concerned that the proposed condensation of the agreement was too vague and would not provide school food authorities with sufficient information regarding the responsibilities inherent in Program participation. In response to commenter concerns, the interim rule reinstates provisions (e)(1)–(e)(18) of the previous § 210.8. These provisions have, however, been regrouped so that related requirements appear in sequence. The contents of the agreement have been expanded to reference the Department's regulations regarding financial management (7 CFR Part 3015).

Section 210.10 Lunch components and quantities.

The proposed paragraph (a) *Meal pattern definitions* has been revised by moving the definition of "Milk" to § 210.10(d)(1).

Proposed paragraph (b) *General* elminated Federal reimbursement for any lunches that are produced in excess of one lunch per child per day. Of the 30 commenters, addressing this provision, 10 approved and 20 disapproved of this action.

Commenters who were supportive of the provision suggested that the elimination of reimbursement for excess lunches would improve Program integrity by eliminating the incentive to provide more than one lunch per child per day. A number of commenters who disapproved cited concern that school food service would be unfairly penalized since the number of lunches served is often subject to uncontrolled factors such as unanticipated drops in participation, inclement weather, student illness, transportation problems, etc. A corollary concern was that schools would be encouraged to underproduce, particularly in satellite schools where lunch costs are high.

While the Department recognizes the concerns of commenters, the interim rule remains as proposed. Fiscal constraints mandate that no Federal reimbursement may be claimed for lunches served in excess of one reimbursable lunch per child per day. The Department believes this change will reduce waste and encourage good management practices on the part of school food authorities.

The Department would like to remind school food authorities that, since no Federal reimbursement may be claimed, the manner of service of excess food is totally at the discretion of the school food authority. The Department would, however, encourage schools to consider serving increased portion sizes to older students. The table presented in § 210.10(c) offers guidance on increased portion sizes for older students.

Several commenters recommended deletion of the required production and participation records. They contended that the prohibition on claiming reimbursement for excess lunches obviated the need for such records. The Department envisions a number of uses for these records other than the monitoring of excess lunches. Schools can use the historical perspective provided by production and participation records to assist in

forecasting the number of lunches and quantities of each food item needed to provide one lunch per child per day. Further, State agencies may use these records to facilitate a review of meal pattern compliance. While the Department has retained production and participation records in this interim rule, commenters are encouraged to address the usefulness of this provison.

Several commenters representing one State agency recommended deleting the word "approximate" from the text in paragraph (c) "*Minimum required lunch quantities*" and the accompanying table of the proposal. Commenters suggested that "approximate per lunch minimums" presents a contradiction in terms. The Department concurs that indeed the quantities of foods identified in paragraph (c) are per lunch *minimums;* however, given the inexact nature of food service, the wording has been changed to require schools to ensure that lunches are served with the objective of providing the per lunch minimums.

Under paragraph (d)(1) *Milk* of the proposal, the Department simply restated the requirements from the previous Part 210 which have been in effect since August 22, 1978 (43 FR 37165). The regulations continue to require schools to offer unflavored fluid lowfat milk, skim milk, or buttermilk as a beverage. Therefore, if a school serves another form of milk (flavored or whole), it shall also "offer unflavored fluid lowfat milk, skim milk, or buttermilk as a beverage choice."

Of the 871 commenters addressing this provision, 814 were from the general public, many of whom identified themselves as members of dairy farming families or as associated with the dairy industry. Twenty-four comments were received from representatives of dairy industry groups and 30 from dairy professional organizations.

Over 93 percent (811) of the total milk commenters opposed the existing (and proposed) milk requirement; less than 2 percent (14) favored the requirement; and 5 percent (46) were unclear or did not address the issue of whether whole or lowfat milk should be required in the Program.

Of the 14 supportive comments, 13 using the same form letter, all reiterated the same nutritional concern, i.e., the existing lowfat milk requirement should be retained because milk (in any form) is better for children than carbonated beverages.

Of the 811 commenters who disapproved of the existing requirement, many did not appear to understand that the regulations do allow the service of whole milk at local option. A significant proportion also held misconceptions about the nutrient content of lowfat milk as compared to whole milk. The negative comments formed two major groups, those wanting whole milk "returned" to the lunch program preferably as the required type of milk, and those recommending a choice between lowfat and whole milk.

The interim rule remains as proposed since no compelling nutritional evidence supports a change. In fact, the recently published "Dietary Guidelines for Americans" (Second Edition, 1985) recommends the use of lowfat or skim milk products. Data compiled by the Department's Agricultural Research Service indicate that lowfat and skim milk have more calcium and fewer calories than whole milk. One cup of vitamin D—fortified whole milk has 150 calories, 33 milligrams of cholestrol, and 291 milligrams of calcium whereas one cup of vitiam D—fortified lowfat milk (2 percent) has 125 calories, 18 milligrams of cholesterol, and 313 milligrams of calcium. A comparable amount of skim milk has 90 calories, 5 milligrams of cholesterol, and 316 milligrams of calcium.

While the Department does not intend to revise the milk requirement at this time, all interested parties are reminded that the current requirements do not restrict local school officials from offering whole milk. Under the previous as well as interim regulations, a school may choose to offer flavored or whole milk as long as it also offers lowfat, skim or buttermilk. In fact, in § 210.10(f) the Department states "To provide variety and to encourage consumption and participation, schools should, wherever possible, provide a selection of foods and milk from which children may make choices."

Several commenters addressed the appropriateness of the provision of paragraph (d)(1) *Milk* which continues to allow school food authorities which served 6 fluid ounces of milk to Group III children prior to May 1, 1980, to continue to do so. On September 9, 1977 (42 FR 45328), the Department proposed to reduce the fluid milk requirement from 8 ounces to 6 ounces since the school lunch pattern for Group III provides more than one-third of the Recommended Dietary Allowance (RDA) for major nutrients in milk (calcium, protein, Vitamin A, and riboflavin) when 6 ounces of milk are provided to children in grades K–3. A number of commenters noted administrative problems, e.g., they could not procure milk in 6 ounce containers. In response to these administrative difficulties, the Department published an interim rule (43 FR 37165) which restored the 8 ounce requirement. Subsequently, the 8 ounce milk requirement was finalized (45 FR 32502), however, an exception to this requirement was provided since several school food authorities had secured and were serving supplies of 6 ounce milk portions. The exception authorized school food authorities serving 6 ounce portions to Group III children prior to May 1, 1980, to continue to do so. For review and audit purposes, the school food authorities were requested to document the date that they began such service and the reason for adopting this portion size. Given the extensive regulatory history and the administrative difficulties that would arise for school food authorities providing 6 ounce portions, the Department does not believe this interim rule is the appropriate vehicle to revise or remove this provision. On the contrary, the Department has reverted to the regulatory language used in the previous Part 210, thus, maintaining the need to retain the documentation of the reasons for 6 ounce portions.

Paragraph (d)(2) *Meat or meat alternate* has been revised to reinstate the following sentence which was inadvertently deleted from the proposal. "When the school determines that the portion size of a meat alternate is excessive, it shall reduce the portion size of that particular meet alternate and supplement it with another meat or meat alternate to meet the full requirement."

One commenter recommended revising paragraph (d)(2) to delete the requirement that schools must serve meat or meat alternates in a main dish or in a main dish and only one other menu item. The Department is concerned that deletion of this provision would result in a meal with no recognizable entree. Recordkeeping and meal pattern accountability could become more cumbersome if more items are credited, especially when offer vs. serve is implemented. For these reasons, the interim rule remains as proposed.

Readers should note that paragraph (d)(2) incorporates the provisions of the final rule allowing nuts and seeds and nut and seed butter as meat alternates. This rule was published in the **Federal Register** on May 7, 1986 (51 FR 16807).

A number of diverse comments were received requesting clarifications of paragraph (e) *Offer versus serve.* In response to these comments, the interim rule clarifies that the term "items" refers to food items. In addition, the fourth sentence has been revised to read "The price of a reimbursable lunch shall not be affected if a student declines food items or accepts smaller portions."

Further clarification was requested for paragraph (f) *Choice*. In response to these requests, the second sentence has been revised and a third sentence has been added as follows: "When a school offers a selection of more then one type of lunch or when it offers a variety of foods and milk for choice within the required lunch pattern, the school shall offer *all* children the same selection regardless of whether the children are eligible for free or reduced price lunches or pay the school food authority designated full price. The school may establish different unit prices for each type of lunch served provided that the benefits made available to children eligible for free or reduced price lunches are not affected." The Department would like to emphasize that the provision is intended to ensure that (a) schools may establish different unit lunch charges, and (b) children eligible for free and reduced price meals are not charged extra for their choice of meals.

One commenter recommended deleting paragraph (g) *Lunch period* on the basis that the establishment of a lunch/service period is a management practice and should not be regulated. The Department believes guidelines for the service of lunches under the Program is within its scope of responsibility and, therefore, the interim rule remains as proposed. One commenter recommended expanding this paragraph to exclude service of dinners. In response, the definition of "Lunch" in § 210.2 has been revised to reflect the Department's intent that lunches be served at or about mid-day unless otherwise exempted by FNS.

Several commenters took issue with the requirements of proposed paragraph (h) *Infant lunch pattern*. While this paragraph was simply a restatement of the previous Part 210, commenter pointed out that the proposed infant pattern does not reflect recent advances in child development and infant nutrition. The Department concurs with commenters suggestions and intends to publish a proposed rule updating the infant pattern for all child nutrition programs. A proposed rule will provide all interested parties with an opportunity to comment. Until such time, the interim rule remains as proposed.

The proposed paragraph (j) *Exceptions* required school food authorities to make substitutions in foods for handicapped students who are under the aegis of 7 CFR Part 15b and whose handicap restricts their diet. Schools could continue to make substitutions for nonhandicapped students who are unable, because of medical or other special dietary needs, to consume the regular lunch. In either case, the proposal would have required substitutions to be made only when supported by a statement of the need for substitutions from a medical doctor that included recommended alternate foods. Eleven commenters focused on the statement from a medical doctor. Five commenters recommended expanding the provision to allow statements from other State recognized medical authorities. In order to curtail abuse of the Department's meal pattern exception policy without creating an administrative burden, the Department has finalized this provision so that unless otherwise exempted by FNS, substitutions to the meal patterns are limited to those handicapped students with a statement from a medical doctor, or, in the case of nonhandicapped students, a statement from a recognized medical authority. In response to one commenter's concern that the statement could be written for groups of unnamed children, the proposed wording has been revised to ensure that substitutions are made on a case by case basis. Readers should note that proposed paragraph (j) has been redesignated as paragraph (i) of the interim rule.

Paragraph (j)(5) of the proposed rule, newly redesignated (i)(5), enabled FNS to temporarily allow schools to serve lunches that do not meet the requirements of § 210.10 in the event of a natural disaster. In response to a commenter concern, this provision has been expanded to cover other catastrophes.

Section 210.11 Competitive food services.

A number of commenters requested the inclusion of the provisions regarding competitive food services in the final rule. Because a proposed rule on competitive food was outstanding at the time the Part 210 rewrite was proposed, the Department intentionally reserved sections of the proposed Part 210 to accommodate the final competitive foods rule which was subsequently published in the **Federal Register** on May 17, 1985 (50 FR 20545). This interim rule incorporates all provisions of the final competitive foods rule, as published on May 17. The Department would like to point out that while no changes have been made to the regulatory language in this rule, the definitions for "Competitive foods" and "Food of minimal nutritional value" have been relocated from old § 210.2 to new paragraph (a) *Definitions* of this section; and paragraph (b) *Petitioning procedures* has been moved to Appendix B. Other than these organizational changes, no changes whatsoever regarding competitive food policy have been made in this interim rule.

Section 210.13 Facilities management.

In response to commenter request, paragraph (b) *Storage* has been expanded to protect the facilities for the handling, storage and distribution of purchased as well as donated foods from theft, spoilage, and other loss.

Section 210.14 Resource management.

One commenter pointed out that proposed paragraph (a) *Nonprofit school food service* reflected a technical error which interjected a degree of uncertainty regarding the use of revenues received by the nonprofit school food service. The interim rule has been revised to restate the restriction correctly, i.e., such revenues *shall* not be used to purchase land or buildings or to construct buildings (revision underlined).

Proposed paragraph (c) *Financial management system* reiterated the provision in § 210.14(a–1) of the previous Part 210 which states ". . . School Food Authorities shall be required to account separately for other food services which are operated by the School Food Authority." A number of commenters misunderstood this provision believing that it was an attempt to regulate how school food authorities account for food services which are established outside of the nonprofit school food service. In recognition of commenter concern, the interim rule revises this provision to read "School food authorities shall keep records for the nonprofit school food service, cited in paragraph (a) of this section, separate from records for any other food service which may be operated by the school food authority."

As commenters pointed out, proposed paragraph (d) *Purchasing practices* is obsolete and proposed paragraph (e) *Procurement* is redundant of § 210.21. These paragraphs have been removed from the interim rule thus causing proposed paragraph (f) *Use of donated foods* to be redesignated as paragraph (d).

Section 210.15 Reporting and recordkeeping.

Paragraph (a) *Reporting summary* has been revised to more clearly reflect the reports which a school food authority must submit to either the State agency or distributing agency, as appropriate. Paragraph (a)(3) has been expanded to require a response, including corrective action planned, which identifies performance standard violations which

fall below the specified error tolerance levels, as indicated in § 210.18(k).

Proposed paragraph (a)(5) incorrectly cited information for a State to compute net cash resources, as a reporting requirement. This paragraph has been removed, resulting in a redesignation of proposed paragraphs (a)(6)–(a)(9).

Proposed paragraph (b) *Recordkeeping summary* has been revised as follows. The terms "working papers" has been removed from paragraph (b)(1). Paragraph (b)(4) incorrectly cited records to account for State funding toward the State matching requirements of § 210.17 as a school food authority responsibility; this paragraph has been removed. Proposed paragraph (b)(5) has been revised to more clearly reference the required records concerning net cash resources and has been incorporated into related paragraph (b)(3) of this interim rule. The removal of proposed paragraphs (b)(4) and (b)(5) resulted in a redesignation of the remaining paragraphs.

Section 210.16 Food service management companies.

In response to a commenter suggestion, proposed paragraph (a) *General* has been expanded to include a new paragraph (a)(5) which clearly acknowledges the school food authorities' responsibility to retain signature authority on the agreement, free and reduced price policy, and claims for reimbursement. Subsequent paragraphs have been redesignated to accommodate this revision.

This interim rule revises proposed paragraph (c), *Contracts*, so that paragraph (c)(1) clearly requires food service management companies to make records which support the school food authority's Claim for Reimbursement, available to the school food authority upon request. In addition, paragraph (c)(3) expands the specifications developed by the school food authority for each food component specified in § 210.10, to include condition of the product and delivery time.

One commenter recommended revising paragraph (d), *Duration of contract*, by increasing the current 3-year bidding cycle to 5 years. Under the recommended 5-year cycle, the contract would cover an unspecified period of time not to exceed 1 year, with four yearly renewals. While the 5-year cycle may provide a more stable environment, as suggested by the commenter, the Department remains concerned that contract requirements may be compromised without more frequent competition. For this reason the interim rule remains as proposed.

Subpart D—Requirements for State Agency Participation

Section 210.17 Matching Federal funds.

Several commenters expressed concerns regarding the method of computing a State's required match. Commenters pointed out that under the previous and proposed rule, States must match 30 percent of the funds received by the State under section 4 of the National School Lunch Act during the school year beginning July 1, 1980. The amount of section 4 funding provided to States has, however, been substantially reduced since school year 1980–81, resulting in some State revenue matches in excess of 30 percent. While the Department recognizes the legitimacy of commenter concerns, the matching requirements are required under section 7 of the National School Lunch Act, and thus, cannot be changed.

Under the previous Part 210 matching requirements, State revenues were to be appropriated or used specifically for (National School Lunch) Program purposes. However, in a final rule published September 6, 1983 (48 FR 40194), the Department restructured the financial accountability provisions to require school food authorities to maintain appropriate revenue and expenditure records to demonstrate the nonprofitability of the school food service *as a whole*, rather than for each child nutrition program. While this change simplified Federal Program requirements by removing most Program specific restrictions, it created a conflict with the State matching requirement which required State revenues to be appropriated or used for Program specific purposes.

In acknowledgment of this basic contradiction, the proposed paragraph (a) *State revenue matching* authorized State revenue matching funds to be used for programs governed by Part 210, Part 215 (the Special Milk Program), and Part 220 (the School Breakfast Program). Three commenters questioned whether it would be prudent to allow the State's matching funds to be used for the Special Milk Program and the School Breakfast Program. Since the Department cannot accede to the commenters' concerns without reinstating Program specific accountability restrictions, the interim rule remains substantively unchanged from the proposal.

Section 210.18 Monitoring responsibilities.

Under paragraph (c) *Improved management* the Department restated the provision of the previous Part 210 which required State agencies in cooperation with school food authorities to develop, implement and monitor a system to improve poor food service management practices leading to poor student acceptance of menu items and/or low student participation. Two commenters opposed this requirement on the grounds that a State agency should not be required to develop and implement such a system. One of these commenters suggested revising this provision to require the State agency to perform a technical assistance evaluation which would include recommendations for improvement.

The other commenter recommended deleting this provision since the State agency has not authority to develop or implement management practices in a school food authority. The Department concurs with commenter concerns and has broadened the interim rule to require State agencies to work with school food authorities toward improving the school food authorities' management practices.

The Department proposed to replace a phrase in paragraph (c) concerning what constitutes poor student acceptance of menu items with a more general statement which would have provided State agencies the flexibility of determining poor student acceptance. One commenter supported the flexibility provided by the proposed wording whereas another commenter suggested that the broader wording undercuts program responsiveness to student needs. The interim rule reinstates the definition of poor student acceptance to ensure that minimum standards of responsiveness are met. State agencies are not, however, limited to the Department's measure of poor student acceptable.

Seven commenters expressed concern regarding the provision in proposed paragraph (d) *Food service management companies* which requires each State agency to annually monitor not less than 20 percent of all school food authorities which have contracted with food service management companies. Commenters argued that this requirement is unnecessary since the monitoring requirements under § 210.18(f) ensure adequate coverage of such school food authorities. The Department does not concur with commenters' contention that the Assessment, Improvement and Monitoring System (AIMS) provides adequate coverage. Under the AIMS requirement, States review school food authority compliance with four performance standards. Coverage under AIMS does not, however, review for compliance with the provisions of § 210.16 and the corresponding school

food authority/food service management company agreement. For this reason the interim rule remains essentially unchanged. The Department has, however, revised this provision, per commenter request, to ensure that the review of these school food authorities is on the same cycle as AIMS reviews, i.e., once every 4 years. To avoid any monitoring overlap, States would be advised to coordinate the required school food authority/food service management company review requirement with the AIMS review cycle.

Paragraph (d) of the proposed rule removed a phrase from the previous Part 210, i.e., "State agencies, or FNSRO where applicable, shall provide assistance upon request of a school food authority to assure compliance with program requirements." This phrase was removed since it was redundant of similar passages. One commenter requested its inclusion since the intent of the provision is nowhere explicitly stated. The Department has compiled with commenter request and restored the phrase to paragraph (d).

Both the previous final rule and paragraph (f) *Assessment, Improvement and Monitoring System (AIMS)* of the proposal offered State agencies the option of meeting the AIMS requirements through an AIMS review or AIMS audit of all participating school food authorities over a specified period of time. Six commenters took exception to the AIMS audit. Five of these commenters suggested that the AIMS audit contravenes the intent of the Single Audit Act of 1984 (31 U.S.C. 7501–7507) which requires State agencies and school food authorities to obtain a single audit pursuant to the Act in *lieu* of any financial or compliance audit of any individual Federal assistance program. To resolve any overlap in audit activity, several commenters recommended the elimination of the AIMS audit whereas other commenters urged revision and refinement of the AIMS audit.

Commenters seeking revision to the AIMS audit recommended allowing school food authorities to utilize the annual compliance audits being conducted under the Single Audit Act to account for the applicable AIMS review/audit requirements under 7 CFR Part 210. This would entail expanding the existing AIMS requirements to allow State agencies to count audits conducted by locally contracted independent auditors toward meeting the AIMS requirements.

The Department would like to take issue with two aspects of commenter opposition to AIMS audit, i.e., the suggested audit overlap and the use of locally contracted auditors. The Department believes the concern regarding an overlap of audit requirements is specious. Under Part 210, State agencies are required to monitor school food authority compliance with four basic performance standards. The primary method of monitoring is the AIMS review; however, to accommodate the diversity of available resources among States, the Department authorized State agencies to use an "audit" conducted by State agency, State or State contracted auditors. This "AIMS audit" may be viewed as a substitute or as an alternative to the required State agency AIMS reviews.

Audit work done to comply with the AIMS requirements is not intended to duplicate or conflict with work done to implement the Single Audit Act. These are two separate requirements and both must be met. In the absence of specific audit requirements, the Single Audit Act of 1984 requires each State and school food authority which receives $25,000 per year in Federal financial assistance to have annual financial and compliance audits unless they are currently performing such examinations on a biennial basis as required by State and local law. If they are, they may continue that schedule. States and school food authorities that are currently performing biennial audits because of nonstatutory policy will be required to move to an annual cycle within 3 years. Such audits are done on an organizational basis, rather than on a grant by grant basis and are made in accordance with an audit guide developed by the General Accounting Office. Guidance on auditing program matters is provided in "compliance supplements" to the General Accounting Office audit guide. Because the Program is a significant grant, transactions will likely be examined frequently. However, that does not ensure that single audit coverage of the Program will satisfy AIMS requirements. The compliance supplement pertaining to the Program does not cover AIMS Performance Standard 3 nor does it provide the same intensity of coverage for Performance Standard 1 and 2. The AIMS audit is a comprehensive substitute for an AIMS review. The required single audit cannot be used as a substitute for an AIMS audit unless it duplicates all aspects of an AIMS audit.

Single audit coverage may, however, be counted towards meeting part of the AIMS requirement provided that the single audit is conducted by a State, State agency or State contracted auditor. Similarly, the Department would encourage States to count the AIMS audit findings toward meeting the single audit requirements. If a State finds the AIMS audit to be an onerous responsibility, the Department would encourage the State to consider replacing the AIMS audit with the AIMS review.

The Department also takes issue with the commenter recommendation to expand the audit option to allow locally contracted independent auditors to conduct AIMS audits. This recommendation is in direct conflict with the Department's ongoing commitment to retaining the AIMS process as a State level responsibility. This commitment has been demonstrated in related regulatory history as well as through the provision of State administrative expense funds.

Several commenters suggested revision to paragraph (g) *AIMS definitions.* One commenter recommended revising proposed paragraph (g)(3)(iv) which establishes AIMS Performance Standard 4, i.e., "Meals claimed for reimbursement within the School Food Authority contain food components as required by § 210.10." This commenter suggested expanding Performance Standard 4 to reference the offer versus serve provision established under § 210.10(e). The Department has not implemented this recommendation since specific reference to only one of several possible exceptions to the five food item lunch might create confusion. The performance standard is broad enough to cover the offer versus serve provision as well as all other aspects of the school lunch meal requirements. The interim rule does, however, replace the term "food components" with "food items" to reflect the distinctions made under § 210.10. A corresponding change has been made to paragraphs (i)(1)(iv) and (i)(4)(iv) of this section.

Five commenters were concerned about the apparent elimination of reference to the Commodity School Program in the definition of "Large School Food Authority." These commenters noted that the definition established under the previous final rule referred to the two largest school food authorities participating in the "National School Lunch or Commodity School Programs . . ." whereas the proposal referred to the two largest school food authorities participating "in the Program." The Department would like to point out that § 210.2 defines "Program" to include the Commodity School Program, thus no reason for concern exists.

In response to commenter concerns, several nonsubstantive, technical

changes have been made to paragraph (i) *AIMS reviews.* While most of these changes are not addressed, one change may potentially be misunderstood and, for this reason, is addressed in this preamble. Under the previous final rule, the Department established the criterion for a statistically valid sample of the applications for all children attending the reviewed school. This requirement was supplemented with AIMS guidance regarding statistical sampling methods, including a chart which provided the sample sizes needed to meet the required confidence level. In an effort to simplify the regulatory language, the Department proposed to substitute the technical language regarding sampling with the chart derived from the AIMS guidance. Based on commenter concerns and the apparent confusion regarding the proposed substitution, the interim rule has removed the proposed chart and reinstated the technical sampling wording. A corresponding change was made to paragraph (1) to reinstate the recordkeeping requirement associated with statistical sampling from the previous final rule.

While the Department did not propose changes to paragraph (i)(1)(iv), a number of commenters made recommendations for change. The paragraph, as proposed, required the State agency to "determine by observation of a representative sample of meals that all meals contain all required components." Several commenters urged expanding this paragraph to address offer versus serve. The Department did not implement this recommendation for the same reason that Performance Standard 4, as previously discussed remains unchanged. Several other commenters addressed the number of meals that must be observed in order to determine compliance with Performance Standard 4. One commenter recommended establishing a minimum number of meals which must be observed (i.e., 10 percent) whereas another commenter recommended requiring the use of a statistical sampling table to determine the number of meals to observe.

The interim rule remains as proposed since the Department continues to support the need to provide reviewers/auditors with a flexible framework for monitoring this standard. In AIMS-related guidance the Department has suggested that at least 25 percent of the meals be reviewed. However, for various reasons a 25 percent sample may not give a representative picture of the school's meal service. The reviewer/auditor may decide that a larger sample is necessary, or on the other hand, may find that time constraints dictate a smaller sample.

Paragraph (i)(3) *Method of selecting school food authorities and schools to review* has been revised slightly to accommodate several commenter suggestions and has been restructured so that the criteria for school food authority selection prefaces the criteria for school selection.

The interim rule does not include the commenter recommendation to expand reference to second AIMS reviews to "second and subsequent AIMS reviews" since AIMS does not require reviews subsequent to the second review. Rather, fiscal and corrective action are required for any violations found on the second AIMS review and, if these violations are in excess of the AIMS error tolerance level, the State agency is required to report those violations to the FNS Regional Office.

Similarly, the interim rule does not accommodate the commenter recommendation to differentiate between the first and the second four-year cycles by referencing "first AIMS cycle" versus "second AIMS cycle." The Department believes that the regulatory language should be broad enough to cover any cycle, i.e., first, second, etc. State agencies are, however, encouraged to expand upon the terminology, as needed, to improve implementation of AIMS in each State.

Per commenter request, paragraph (i)(4) *Error tolerance for AIMS reviews* has been slightly revised to clarify that second reviews must occur in all large and *at least* one quarter of all small school food authorities which exceed one or more error tolerance levels. The insertion of "at least" clarifies that State agencies are clearly authorized to review more than 25 percent of the small school food authorities. Corresponding changes have been made to paragraphs (g)(2) and (g)(5) of this section.

Paragraph (l) *AIMS reporting and recordkeeping* has been revised to include timeframes for the retention of AIMS records. Specifically, AIMS records are to be retained for a minimum of 3 years *after the date of the exit conference* or after the year in which problems have been resolved, *whichever is later.*

Section 210.19 Additional responsibilities.

Several minor changes have been made to § 210.19. Paragraph (a) *General program management* has been expanded to require State agencies to provide *an adequate number of* consultative, technical, and managerial personnel to administer the Program. While the basic requirement is simply a restatement of the previous final rule wording, the terms "an adequate number of" serve to clarify the Department's intent. Paragraph (b)(2) *Plentiful foods* has been deleted since the Department no longer provides State agencies with information on foods available in plentiful supply.

Under paragraph (c) *Fiscal action* a new sentence has been added to clearly specify the State agencies' ongoing responsibility for ensuring program integrity at the school food authority level. Paragraph (c)(2) *Failure to collect* has been revised to clarify FNS action in response to a State agency's failure to disallow a claim or recover an overpayment from a school food authority. The revised wording does not represent a change in operating procedures. Paragraph (c)(3) *Interest charge* addresses the interest charge that FNS will assess against a State agency if an agreement cannot be reached with the State agency for payment of its debt. One commenter recommended expanding the regulatory language to address the right of a State agency to pass on the interest charge to a school food authority. The Department acknowledges the right of the State agency to pass on this charge. However, as this recommendation expands upon internal State agency operating procedures, the interim rule is not viewed as the appropriate vehicle for implementation.

A number of commenters suggested changes to paragraph (c)(5) *Exception* which allows a State agency to pursue corrective action in lieu of fiscal action when a school food authority is found during a review or audit, to be failing to meet the minimum quantities of food items required for the meal pattern in § 210.10. Several commenters, representing one State agency, were concerned that the regulatory language enables State auditors to review quantities. These commenters recommended deleting references to audits since auditors are not trained to evaluate quantities. The Department would like to point out that this paragraph simply represents current operating policy which allows both auditors and reviewers to monitor quantities. While State agencies may elect to limit the review of quantities to reviewers, the Department does not intend to mandate this practice.

One commenter recommended expanding the State agency's authority to waive Federal as well as State level claims arising from a school food authority's failure to meet quantity requirements. Another commenter urged expanding paragraph (c)(5) to allow

State agencies to waive claims for quantity as well as component violations. The Department does not believe either change would be in keeping with Department responsibility for program integrity; thus, the interim rule remains as proposed. Further, the suggested component waiver would be in direct conflict with the AIMS requirements.

Per commenter request, paragraph (d)(2) *AIMS* has been expanded to state that as part of a management evaluation of a State agency, FNS will evaluate the State's progress in effectively meeting the AIMS requirements *consistent with the administrative responsibilities placed upon the State agency by this part.* (New wording italicized.)

Section 210.20 Reporting and recordkeeping.

One commenter recommended expanding paragraph (b) *Recordkeeping summary* to include "documentation supporting all school food authority claims paid by the State agency as required under § 210.5" and "records supporting the State agency's review of net cash resources as required under § 210.18." The interim rule has been expanded to include these two recordkeeping requirements.

Subpart E—State Agency and School Food Authority Responsibilities

Section 210.22 Audits.

Paragraph (b) *Audit procedure* has been expanded to more clearly identify the focus of audits required under 7 CFR Part 3015, the Department's Uniform Federal Assistance Regulations. The interim rule does not, however, include the basic requirements of Part 3015 as suggested by commenters since Part 3015 is an extensive document covering all areas of financial assistance.

Section 210.23 Other responsibilities.

Paragraph (c) *Retention of records* has been revised to more clearly state which records must be retained and the length of time for which they must be retained.

Subpart F—Additional Provisions

Section 210.27 State Food Distribution Advisory Council.

While the Department did not intend to propose significant changes to the State Food Distribution Advisory Council, several commenters pointed out that the term "State agency" was inappropriately applied throughout this section. The interim rule restores references to State educational agency and where appropriate, distributing agency. Two commenters recommended changes which would make the food acquisition process more responsive to the needs of participating schools.

In response to these comments, the interim rule makes a number of changes to Paragraphs (a), *Council composition,* (c) *Council timeframes* and (d) *Council responsibilities.* Paragraph (a) now requires the State educational agency, in cooperation with the State distributing agency to establish a State Food Distribution Advisory Council. Paragraphs (c) and (d) have been revised to require the Council to submit its report to both the State educational agency *and,* if a different entity, the State distributing agency. These changes are intended to increase the involvement in Council activities for those State distributing agencies which are a separate entity from the State educational agency. Further, the Department intends that such distributing agencies are always apprised of Council recommendations, particularly those recommendations which are directly related to the responsibilities of distributing agencies, i.e, ordering available donated foods according to school needs, storing donated foods and distributing the donated foods within the State.

Paragraph (c) has also been revised to provide each Council more time in which to prepare the required report. In the previous Part 210, the Council report was due to the State educational agency no later than January 15; this interim rule extends the due date to February 15. A corresponding change has been made to the date by which the State educational agency must report Council recommendations to FNSRO. Previously due no later than February 15, this date has been extended to March 15. The extension will allow Councils more time to make specific recommendations and provide feedback on donated foods distributed in the fall of the same reporting school year.

Paragraph (d) has been revised to clarify that the Council advise the State educational *and distributing* agency on the *types and* amounts of *available donated* food items *to order,* the *preferred available package* size, *and donated foods school food authorities would like processed and desired end products.* The Council may also advise the State educational and distributing agency on intrastate distribution systems, delivery schedules and State food distribution program operations. *Recommendations for the Department regarding national purchasing practices, changes in donated food specifications, and packaging improvements may also be included in the report.* (New wording italicized.) These revisions are expected to assist in improving the food acquisition process by providing a greater degree of specificity in the Council report and distinguishing between State areas of responsibilities and Departmental responsibilities. This specificity will enable State distributing agencies to retrieve the necessary information to improve intrastate distribution of donated foods to schools.

While the Department makes every effort to acquire foods for schools on the basis of nationwide food preferences, other intervening factors also affect which foods are actually made available. These factors include the price of foods, the level of Program funding, as well as the availability of foods through surplus removal programs and price support activities. As a result, the specific foods that are donated may vary from time to time and may not always be in concert with the Council recommendations.

State food distribution program activities also interject a degree of uncertainty into which foods are actually received by schools. While some foods may be made available nationally, intrastate distribution system constraints may prevent individual schools from receiving the specific types and or amounts of foods desired.

The Department is hopeful that the regulatory clarifications made in this interim rule will provide more precise information where needed without restricting the flexibility of States to design a report to meet program needs. It is also hoped that these changes will allow for greater participation of State distributing agencies in Council activities, where necessary, since the distributing agencies' commodity intrastate operations and ordering policies greatly affect the types and amounts of donated foods schools receive.

List of Subjects in 7 CFR Part 210

Food assistance programs, National School Lunch Program, Commodity School Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Redesignation Table

For the assistance of readers, the following table shows where the provisions of the previous Part 210 are located in the new Part 210.

REDESIGNATION TABLE

Previous Part 210	1986 Part 210
210.1	
210.1(a)	210.1(a)
210.1(b)	210.1(a)

REDESIGNATION TABLE—Continued

Previous Part 210	1986 Part 210
210.1(c)	210.1(a), (b)
210.2	
210.2(a), (b)	210.2
210.2(b-1)	210.18(g)
210.2(b-2)	210.18(g)
210.2(b-3)	210.18(g)
210.2(b-4)	210.18(g)
210.2(c)	210.2
210.2(c-1)-(c-2)	210.2
210.2(c-3)	210.11
210.2(d)	deleted
210.2(e)-(h)	210.2
210.2(h-1)	210.11
210.2(h-2), (h-3)	210.2
210.2(h-4), (h-5)	210.10(a)
210.2(h-6)	210.18(g)
210.2(h-7), (h-8)	210.2
210.2(h-9)	deleted
210.2(i)	210.10(d), (i)
210.2(l)	210.2
210.2(l-1)	deleted
210.2(1-1)	210.2
210.2(m)	deleted
210.2(n)-(q)	210.2
210.2(q-1)	deleted
210.2(q-2)	210.18(g)
210.2(r)-(w)	210.2
210.3	
210.3(a)	210.3(a)
210.3(b)	210.3(b)
210.3(b) proviso	210.3(c)
210.3(b-1)	210.3(b), (c)
210.3(b-2)	deleted
210.3(c)	210.3(b)
210.4	
210.4(a)	210.4(a), (b)
210.4(b)	210.4(a), (c)
210.4(c)	210.4(b)
210.4(d)	210.4(b)
210.5	
210.5(a)	210.5(a)
210.5(b)	210.5(c)
210.5(c)	210.5(b)
210.5a	
210.5a	deleted
210.6	
210.6(a)	210.17(a)
210.6(b)	210.17(b)
210.6(c)	210.17(c)
210.6(d)	210.17(d)
210.6(e)	210.17(e)
210.6(f)	210.17(h)
210.6(g)	210.17(g)
210.6(h)	210.17(f)
210.7	
210.7(a)	210.6
210.7(b)	210.14(a)
210.7(c)	210.25
210.7(d)	210.25
210.8	
210.8(a)	210.9(a)
210.8(b)	210.9(a)
210.8(c)	deleted
210.8(d)	deleted
210.8(e)	210.9(b)
210.8(e)(1)	210.9(b)(1), 210.14(a)
210.8(e)(2)	210.9(b)(2), 210.14(b)
210.8(e)(3)	210.9(b)(5), 210.10(b), (g)
210.8(e)(4)	210.9(b)(6), 210.10(b)
210.8(e)(5)	210.9(b)(7), 210.23(a)
210.8(e)(6)	210.9(b)(11), 210.23(b)
210.8(e)(7)	210.9(b)(8), 210.7(a)
210.8(e)(8)	210.9(b)(9), 210.8(a)
210.8(e)(9)	210.9(b)(13), 210.13(a)
210.8(e)(10)	deleted
210.8(e)(11)	210.9(b)(14), 210.14(d)
210.8(e)(12)	210.9(b)(15), 210.13(b)
210.8(e)(13)	210.9(b)(3), 210.14(c)
210.8(e)(14)	210.9(b)(16), 210.19(d), 210.23(c)
210.8(e)(15)	210.9(b)(10), 210.23(b)
210.8(e)(16)	210.9(b)(18)
210.8(e)(17)	210.9(b)(12), 210.14(d)
210.8(e)(18)	210.9(b)(17)
210.8(f)	210.19(e)
210.8a	
210.8a(a)	210.16(a), (c)
210.8a(b)	210.16(c)
210.8a(c)	210.16(a)
210.8a(d)	210.16(d)
210.8a(e)	210.16(b)
210.8a(f)	210.16(a)

REDESIGNATION TABLE—Continued

Previous Part 210	1986 Part 210
210.9	
210.9	210.23(a)
210.9a	
210.9a(a)	210.12(a)
210.9a(b)	210.12(a)
210.9a(c)	210.12(b)
210.9a(d)	210.12(c)
210.9a(e)	210.12(d)
210.10	
210.10(a)(1)	210.10(c)
210.10(a)(2)	210.10(b), (c)
210.10(a)(2)(i)	210.10(d)(1)
210.10(a)(2)(ii)	210.10(d)(2)
210.10(a)(2)(iii)	210.10(d)(3)
210.10(a)(2)(iv)	210.10(d)(4)
210.10(a)(3)	210.10(g)
210.10(a)(4)	210.10(c)
210.10(a)(5)	210.10(e)
210.10(a)(6)	210.10(f)
210.10(b)	210.10(h)
210.10(c)	210.10(i)(6)
210.10(d)	210.10(i)(6)
210.10(e)	210.10(i)(6)
210.10(f)	210.10(i)(3)
210.10(g)	210.10(i)(1)
210.10(h)	210.10(i)(2)
210.10(i)	210.10(i)(4)
210.10(j)	210.10(i)(5)
210.11	
210.11(a)	210.7(a), 210.10(b)
210.11(b)	210.7(b)
210.11(c)	210.7(b)
210.11(d)	deleted
210.11(e)	210.7(b)
210.12	
210.12	210.7(a)
210.13	
210.13(a)	210.8(a)
210.13(b)	210.8(a), (b)
210.13(b-1)	210.8(b), 210.15(b)(1)
210.13(c)	210.8(c)
210.14	
210.14(a)(1)	210.19(a)
210.14(a)(2)	210.18(f), 210.19(a), 210.23
210.14(a)(3)	210.18(g), (i)
210.14(a)(4)	210.18(j)
210.14(a)(5)	210.18(h)
210.14(a)(6)	210.18(k)
210.14(a)(7)	210.18(f)
210.14(a-1)	210.14(c), 210.19(a)
210.14(a-2)	deleted
210.14(a-3)	deleted
210.14(b)	210.18(d)
210.14(c)	210.18(d)
210.14(d)	210.19(b)
210.14(e)	deleted
210.14(f)	210.18(c)
210.14(g)	210.5(d), 210.17(g), 210.18(1), 210.23(c)
210.14(h)	210.18(e)
210.14(i)	210.18(a)
210.15	
210.15	210.18(b)
210.15b	
210.15b(a)	210.11
210.15b(b)	Appendix B
210.16	
210.16(a), (b), (c), (e), (f), (h), (i).	210.19(c)
210.16(d)	210.19(c), 210.23
210.16(g)	deleted
210.17	
210.17(a)	210.22(a), (c)
210.17(b), (c)	deleted
210.17(d), (e), (f)	210.19(d)
210.18	
210.18	210.26
210.19	
210.19	210.24
210.19a	
210.19a(a), (b), (c)	210.21(a), (b), (c)
210.20	
210.20(a)	210.27(a), (c)
210.20(b)	210.27(a), (b)
210.20(c)	210.27(a)
210.20(d)	210.27(d)
210.20(d-1)	210.27(e)
210.20(d-2)	210.27(f)
210.20(e)	210.27(g)
210.21	
210.21	210.28

REDESIGNATION TABLE—Continued

Previous Part 210	1986 Part 210
210.22	
210.22	210.29

Accordingly, Part 210 is revised as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

Subpart A—General

Sec.

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Appendices

Appendix A—Alternate Foods for Meals
Appendix B—Categories of Foods of Minimal Nutritional Value
Appendix C—Child Nutrition Labeling Program

Authority: Sec. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779.

Subpart A—General

§ 210.1 General purpose and scope.

(a) *Purpose of the Program.* Section 2 of the National School Lunch Act (42 U.S.C. 1751) states; "It is declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of foods and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs." Pursuant to this act, the Department provides States with general and special cash assistance and donations of foods acquired by the Department to be used to assist schools in serving nutritious lunches to children each school day.

Under the Program, cash and donated food assistance are also provided to residential child care institutions to assist those institutions in serving nutritious lunches to children. In furtherance of Program objectives, participating schools shall serve lunches that are nutritionally adequate, as set forth in these regulations, and shall to the extent practicable, ensure that participating children gain a full understanding of the relationship between proper eating and good health.

(b) *Scope of the regulations.* This part sets forth the requirements for participation in the National School Lunch and Commodity School Programs. It specifies Program responsibilities of State and local officials in the areas of program administration, preparation and service of nutritious lunches, payment of funds, use of program funds, program monitoring, and reporting and recordkeeping requirements.

§ 210.2 Definitions.

For the purpose of this part:

"Act" means the National School Lunch Act, as amended.

"AIMS" means the Assessment, Improvement and Monitoring System. This is a management improvement system used in the National School Lunch and the Commodity School Programs.

"Child" means—(a) a student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (a) and (b) of the definition of "*School*," including students who are mentally or physically handicapped as defined by the State and who are participating in a school program established for the mentally or physically handicapped; or (b) a person under 21 chronological years of age who is enrolled in an institution or center as described in paragraphs (c) and (d) of the definition of "School."

"CND" means the Child Nutrition Division of the Food and Nutrition Service of the Department.

"Commodity School Program" means the Program under which participating schools operate a nonprofit lunch program in accordance with this part and elect to receive donated food assistance in lieu of general cash assistance. States administering the Commodity School Program shall receive special cash and donated food assistance in accordance with § 210.4(c).

"Department" means the United States Department of Agriculture.

"Distributing agency" means a State agency which enters into an agreement with the Department for the distribution to schools of donated foods pursuant to Part 250 of this chapter.

"Donated foods" means food commodities donated by the Department for use in nonprofit lunch programs.

"Fiscal year" means a period of 12 calendar months beginning October 1 of any year and ending with September 30 of the following year.

"FNS" means the Food and Nutrition Service, United States Department of Agriculture.

"FNSRO" means the appropriate Regional Office of the Food and Nutrition Service of the Department.

"Food component" means one of the four food groups which compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and vegetable/fruit.

"Food item" means one of the five food servings that compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and two (2) servings of vegetables, fruits, or a combination of both.

"Food service management company" means a commercial enterprise or a nonprofit organization which is or may be contracted with by the school food authority to manage any aspect of the school food service.

"Free lunch" means a lunch served under the Program to a child from a household eligible for such benefits under 7 CFR Part 245 and for which neither the child nor any member of the household pays or is required to work.

"Handicapped student" means any child who has a physical or mental impairment as defined in § 15b.3 of the Department's nondiscrimination regulations (7 CFR Part 15b).

"Lunch" means a meal which meets the school lunch pattern for specified age/grade groups of children as designated in § 210.10 and, unless otherwise exempted by FNS, which is served at or about mid-day.

"National School Lunch Program" means the Program under which participating schools operate a nonprofit lunch program in accordance with this part. General and special cash assistance and donated food assistance are made available to schools in accordance with this part.

"Net cash resources" means all monies, as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a school food authority's nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

"Nonpofit", when applied to schools or institutions eligible for the Program, means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended; or, in the Commonwealth of Puerto Rico, certified as nonprofit by the Governor.

"Nonprofit school food service" means all food service operations conducted by the school food authority principally for the benefit of schoolchildren, all of the revenue from which is used solely for the operation or improvement of such food services.

"OIG" means the Office of the Inspector General of the Department.

"Program" means the National School Lunch Program and the Commodity School Program.

"Reduced price lunch" means a lunch served under the Program: (a) To a child from a household eligible for such benefits under 7 CFR Part 245; (b) for which the price is less than the school food authority designated full price of the lunch and which does not exceed the maximum allowable reduced price specified under 7 CFR Part 245, and (c) for which neither the child nor any member of the household is required to work.

"Reimbursement" means Federal cash assistance including advances paid or payable to participating schools for lunches meeting the requirements of § 210.10 and served to eligible children.

"Revenue", when applied to nonprofit school food service, means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not

limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

"School" means: (a) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; *except for* private schools with an average yearly tuition exceeding $1,500 per child. The term "high school grade or under" includes classes of preprimary grade when recognized as part of the education system of the State: (b) any public or nonprofit private classes of preprimary grade when they are conducted in those schools defined in paragraph (a) of this definition having classes of primary or of higher grade; (c) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term "residential child care institutions" includes, but is not limited to: homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more; or (d) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

"School food authority" means the governing body which is responsible for the administration of one or more schools; and which has the legal authority to operate the Program therein or is otherwise approved by FNS to operate the Program.

"School year" means a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

"Secretary" means the Secretary of Agriculture.

"7 CFR Part 3015", means the Uniform Federal Assistance Regulations published by the Department to implement Office of Management and Budget Circulars A-21, A-87, A-102, A-110, A-122, A-124, and A-128; the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.); and Executive Order 12372.

"State" means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, or the Trust Territory of the Pacific Islands.

"State agency" means (a) the State educational agency; (b) any other agency of the State which has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools, as specified in § 210.3(b); or (c) the FNSRO, where the FNSRO administers the Program as specified in § 210.3(c).

"State educational agency" means, as the State legislature may determine (a) the chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (b) a board of education controlling the State department of education.

"State food distribution advisory council" means a group which meets to advise the State educational agency and the State distributing agency with respect to the needs of schools participating in the Program concerning the manner of selection and distribution of commodities.

"Subsidized lunch" (paid lunch) means a lunch served to children who are either not eligible for or elect not to receive the free and reduced price benefits offered under 7 CFR Part 245. The Department subsidizes each paid lunch with both general cash assistance and donated foods. Although a paid lunch student pays for a large portion of his or her lunch, the Department's subsidy accounts for a significant portion of the cost of that lunch.

"Tuition" means the basic charge required for a student to enroll at a school, excluding any amount paid for the cost of room and board, transportation, books, supplies, equipment, and fees. The following monies shall not be included when calculating a school's average yearly tuition per child—(a) academic scholarship aid from public or private organizations or entities given to students, or to schools for students, and (b) State, county or local funds provided to schools operating principally for the purpose of educating handicapped children for whose education the State, county or local government is primarily or solely responsible. In schools which vary tuition, the average yearly tuition is determined by adding the total tuition for the period of time in which the majority of children are in attendance and dividing by the total number of students enrolled during that period.

§ 210.3 Administration.

(a) *FNS.* FNS will act on behalf of the Department in the administration of the Program. Within FNS, the CND will be responsible for Program administration.

(b) *States.* Within the States, the responsibilty for the administration of the Program in schools, as defined in § 210.2, shall be in the State educational agency. If the State educational agency is unable to administer the Program in public or private nonprofit residential child care institutions or nonprofit private schools, then Program administration for such schools may be assumed by FNSRO as provided in paragraph (c) of this section, or such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer such schools. Each State agency desiring to administer the Program shall enter into a written agreement with the Department for the administration of the Program in accordance with the applicable requirements of this part; Part 235; Part 245; Parts 15, 15a, 15b, and 3015 of Department regulations; and FNS instructions.

(c) *FNSRO.* The FNSRO will administer the Program in nonprofit private schools or public or nonprofit private residential child care institutions if the State agency is prohibited by law from disbursing Federal funds paid to such schools. The FNSRO will administer the Program in all nonprofit private schools or public or nonprofit private residential child care institutions which have been under continuous FNS administration since October 1, 1980 unless the administration of the Program in such schools is assumed by the State. The FNSRO will, in each State in which it administers the Program, assume all responsibilities of a State agency as set forth in this part and Part 245 of this chapter as appropriate. References in this part to "State agency" include FNSRO, as applicable, when it is the agency administering the Program.

(d) *School food authorities.* The school food authority shall be responsible for the administration of the Program in schools. State agencies shall ensure that school food authorities administer the Program in accordance with the applicable requirements of this part; Part 245; Parts 15, 15a, 15b, and

3015 of Departmental regulations; and FNS instructions.

Subpart B—Assistance to States and School Food Authorities

§ 210.4 Cash and donated food assistance to States.

(a) *General.* To the extent funds are available, FNS will make cash assistance available in accordance with the provisions of this section to each State agency for lunches served to children under the National School Lunch and Commodity School Programs. To the extent donated foods are available, FNS will provide donated food assistance to distributing agencies for each lunch served in accordance with the provisions of this part and Part 250 of this chapter.

(b) *Assistance for the National School Lunch Program.* The Secretary will make cash and/or donated food assistance available to each State agency and distributing agency, as appropriate, administering the National School Lunch Program, as follows:

(1) *Cash assistance:* Cash assistance payments are composed of a *general* cash assistance payment, authorized under section 4 of the Act, and a *special* cash assistance payment, authorized under section 11 of the Act. General cash assistance is provided to each State agency for *all* lunches served to children in accordance with the provisions of the National School Lunch Program. Special cash assistance is provided to each State agency for lunches served under the National Lunch Program to children determined eligible for free or reduced price lunches in accordance with Part 245 of this chapter. The total of these payments to each State for any fiscal year shall not exceed the lesser of amounts reported to FNS as reimbursed to school food authorities in accordance with § 210.5(d)(2) or the total calculated by multiplying the number of lunches of each type (i.e. subsidized, reduced price, and free) reported, in accordance with the provisions of § 210.5(d)(1) for each month of service during the fiscal year, by the applicable national average payment rates prescribed by FNS. In accordance with section 11 of the Act, FNS will prescribe annual adjustments to the per meal national average payment rate (general cash assistance) and the special assistance national average payment rates (special cash assistance) which are effective on July 1 of each year. These adjustments, which reflect changes in the food away from home series of the Consumer Price Index for all Urban Consumers, are annually announced by Notice in July of each year in the **Federal Register**. FNS will also establish maximum per meal rates of reimbursement within which a State may vary reimbursement rates to school food authorities. These maximum rates of reimbursement are established at the same time and announced in the same Notice as the national average payment rates.

(2) *Donated food assistance.* For each school year, FNS will provide distributing agencies with donated foods for lunches served under the National School Lunch Program as provided under Part 250 of this chapter. The per lunch value of donated food assistance is adjusted by the Secretary annually to reflect changes as required under section 6 of the Act. These adjustments, which reflect changes in the Price Index for Foods Used in Schools and Institutions, are effective on July 1 of each year and are announced by Notice in the **Federal Register** in July of each year.

(c) *Assistance for the Commodity School Program.* FNS will make special cash assistance available to each State agency for lunches served in commodity schools in the same manner as special cash assistance is provided in the National School Lunch Program. Payment of such amounts to State agencies is subject to the reporting requirements contained in § 210.5(d). FNS will provide donated food assistance in accordance with Part 250 of this chapter. Of the total value of donated food assistance to which it is entitled, the school food authority may elect to receive cash payments of up to 5 cents per lunch for lunches served in its commodity school(s) for donated foods processing and handling expenses. Such expenses include any expenses incurred by or on behalf of a commodity school for processing or other aspects of the preparation, delivery, and storage of donated foods. The school food authority may have all or part of these cash payments retained by the State agency for use on its behalf for processing and handling expenses by the State agency or it may authorize the State agency to transfer to the distributing agency all or any part of these payments for use on its behalf for these expenses. Payment of such amounts to State agencies is subject to the reporting requirements contained in § 210.5(d). The total value of donated food assistance is calculated on a school year basis by adding:

(1) The applicable national average payment rate (general cash assistance) prescribed by the Secretary for the period of July 1 through June 30 multiplied by the total number of lunches served during the school year under the Commodity School Program; and

(2) The national average value of donated foods prescribed by the Secretary for the period of July 1 through June 30 multiplied by the total number of lunches served during the school year under the Commodity School Program.

§ 210.5 Payment process to States.

(a) *Grant award.* FNS will specify the terms and conditions of the State agency's grant in a grant award document and will generally make payments available by means of a Letter of Credit issued in favor of the State agency. The State agency shall obtain funds for reimbursement to participating school food authorities through procedures established by FNS in accordance with 7 CFR Part 3015. State agencies shall limit requests for funds to such times and amounts as will permit prompt payment of claims or authorized advances. The State agency shall disburse funds received from such requests without delay for the purpose for which drawn. FNS may, at its option, reimburse a State agency by Treasury Check. FNS will pay by Treasury Check with funds available in settlement of a valid claim if payment for that claim cannot be made within the grant closeout period specified in paragraph (d) of this section.

(b) *Cash-in-lieu of donated foods.* All Federal funds to be paid to any State in place of donated foods will be made available as provided in Part 240 of this chapter.

(c) *Recovery of funds.* FNS will recover any Federal funds made available to the State agency under this part which are in excess of obligations reported at the end of each fiscal year in accordance with the reconciliation procedures specified in paragraph (d) of this section. Such recoveries shall be reflected by a related adjustment in the State agency's Letter of Credit.

(d) *Substantiation and reconciliation process.* Each State agency shall maintain Program records as necessary to support the reimbursement payments made to school food authorities under §§ 210.7 and 210.8 and the reports submitted to FNS under this paragraph. The State agency shall ensure such records are retained for a period of 3 years or as otherwise specified in § 210.23(c).

(1) *Monthly report.* Each State agency shall submit a final Report of School Program Operations (FNS–10) to FNS for each month. The final reports shall be limited to claims submitted in accordance with § 210.8 and shall be

postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not submitted within this time limit unless FNS grants an exception. Upward adjustments to a State's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downroad adjustments to a State's report shall always be made regardless of when it is determined that such adjustments are necessary. FNS authorization is not required for downward adjustments. Any adjustments to a State's report shall be reported to FNS in accordance with procedures established by FNS.

(2) *Quarterly report.* Each State agency shall also submit to FNS a quarterly Financial Status Report (SF–269) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter.

(3) *End of year report.* Each State agency shall submit a final Financial Status Report for each fiscal year. This final fiscal year grant closeout report (SF–269) shall be postmarked and/or submitted to FNS within 120 days after the end of each fiscal year or part thereof that the State agency administered the Program. Obligations shall be reported only for the fiscal year in which they occur. FNS will not be responsible for reimbursing Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred. Grant closeout procedures are to be carried out in accordance with 7 CFR Part 3015.

§ 210.6 Use of Federal funds.

General. State agencies shall use Federal funds made available under the Program to reimburse or make advance payments to school food authorities in connection with lunches served in accordance with the provisions of this part; *except that,* with the approval of FNS, any State agency may reserve an amount up to one percent of the funds earned in any fiscal year under this part for use in carrying out special developmental projects. Advance payments to school food authorities may be made at such times and in such amounts as are necessary to meet the current fiscal obligations. All Federal funds paid to any State in place of donated foods shall be used as provided in Part 240 of this chapter.

§ 210.7 Reimbursement for school food authorities.

(a) *General.* Reimbursement payments to finance nonprofit school food service operations shall be made only to school food authorities operating under a written agreement with the State agency. Subject to the provisions of § 210.8(b), such payments may be made for lunches served in accordance with provisions of this part and Part 245 in the calendar month preceding the calendar month in which the agreement is executed. These reimbursement payments include general cash assistance for all lunches served to children under the National School Lunch Program and special cash assistance payments for free or reduced price lunches served to children determined eligible for such benefits under the National School Lunch and Commodity School Programs. The school food authority shall not claim reimbursement for any excess lunches produced, as provided in § 210.10(b), nor shall it claim or be eligible for special cash assistance reimbursement for free or reduced price lunches in excess of the number of children approved for and served such lunches in each school food authority. Approval shall be in accordance with Part 245 of this chapter.

(b) *Assignment of rates.* At the beginning of each school year, State agencies shall establish the per meal rates of reimbursement for school food authorities participating in the Program. These rates of reimbursement may be assigned at levels based on financial need; *except that,* the rates are not to exceed the maximum rates of reimbursement established by the Secretary under § 210.4(b) and are to permit reimbursement for the total number of lunches in the State from funds available under § 210.4. Within each school food authority, the State agency shall assign the same rate of reimbursement from general cash assistance funds for lunches served to children at the subsidized lunch rate and for lunches served to children free or at a reduced price. Assigned rates of reimbursement may be changed at any time by the State agency; *provided that* notice of any change is given to the school food authority. The total general and special cash assistance reimbursement paid to any school food authority for lunches served to children during the school year are not to exceed the sum of the products obtained by multiplying the total reported number of lunches, by type, served to eligible children during the school year by the applicable maximum per lunch reimbursements prescribed for the school year for each type of lunch.

§ 210.8 Method of reimbursement.

(a) *Monthly claims.* To be entitled to reimbursement under this part, each school food authority shall submit to the State agency, a monthly Claim for Reimbursement, as described in paragraph (b) of this section. A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless otherwise authorized by FNS. The State agency shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claims review process or otherwise. In taking such corrective action, State agencies may make adjustments on claims filed within the 60-day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of School Program Operations (FNS–10) for the claim month required under § 210.5(d). Upward adjustments in Program funds claimed which are not reflected in the final FNS–10 for the claim month shall not be made unless authorized by FNS. Downward adjustments in amounts claimed shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary.

(b) *Content of claim.* The Claim for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Report of School Program Operations required under § 210.5(d). The State agency may authorize a school food authority to submit a consolidated Claim for Reimbursement for all schools under its jurisdiction, *provided that* the data on each school's operations required in this section are maintained on file at the local office of the school food authority, and the claim separates consolidated data for commodity schools from data for other schools. Unless otherwise approved by FNS, the Claim for Reimbursement for any month shall include only lunches served in that month except if the first or last month of Program operations for any year contains 10 operating days or less, such month may be combined with the Claim for Reimbursement for the appropriate adjacent month; however, Claims for Reimbursement may not combine operations occurring in two fiscal years.

(c) *Advance funds.* The State agency may advance funds available for the Program to a school food authority in an amount equal to the amount of

reimbursement estimated to be needed for one month's operation. Following the receipt of claims, the State agency shall make adjustments, as necessary, to ensure that the total amount of payments received by the school food authority for the fiscal year does not exceed an amount equal to the number of lunches by reimbursement type served to children times the respective payment rates assigned by the State in accordance with § 210.7(b). The State agency shall recover advances of funds to any school food authority failing to comply with the 60-day claim submission requirements in paragraph (a) of this section.

Subpart C—Requirements For School Food Authority Participation

§ 210.9 Agreement with State agency.

(a) *Application.* An official of a school food authority shall make written application to the State agency for any school in which it desires to operate the Program. Applications shall provide the State agency with sufficient information to determine eligibility. The school food authority shall also submit for approval a Free and Reduced Price Policy Statement in accordance with Part 245 of this chapter.

(b) *Annual agreement.* Each year, the State agency shall require each school food authority to maintain a current written agreement on file with the State agency. The State agency may allow school food authorities to amend a previous year's agreement in lieu of taking a new agreement annually provided that each year a current written agreement is on file at the State agency. The agreement shall contain a statement to the effect that the "School Food Authority and participating schools under its jurisdiction, shall comply with all provisions of 7 CFR Parts 210 and 245." This agreement shall provide that each school food authority shall, with respect to participating schools under its jurisdiction:

(1) Maintain a nonprofit school food service and observe the limitations on the use of nonprofit school food service revenues set forth in § 210.14(a) and the limitations on any competitive school food service as set forth in § 210.11(b);

(2) Limit its net cash resources to an amount that does not exceed 3 months average expenditures for its nonprofit school food service or such other amount as may be approved by the State agency;

(3) Maintain a financial management system as prescribed under § 210.14(c);

(4) Comply with the requirements of the Department's regulations regarding financial management (7 CFR Part 3015);

(5) Serve lunches which meet the minimum requirements prescribed in § 210.10 during the lunch period;

(6) Price the lunch as a unit;

(7) Serve lunches free or at a reduced price to all children who are determined by the school food authority to be eligible for such meals under 7 CFR Part 245;

(8) Claim reimbursement at the assigned rates only for lunches served in accordance with the agreement;

(9) Submit Claims for Reimbursement in accordance with § 210.8;

(10) Comply with the requirements of the Department's regulations regarding nondiscrimination (7 CFR Parts 15, 15a, 15b);

(11) Make no discrimination against any child because of his or her inability to pay the school food authority designated full price of the lunch in accordance with the approved Free and Reduced Price Policy Statement;

(12) Enter into an agreement to receive donated foods as required by 7 CFR Part 250;

(13) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations;

(14) Accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the Department;

(15) Maintain necessary facilities for storing, preparing and serving food;

(16) Upon request, make all accounts and records pertaining to its school food service available to the State agency and to FNS, for audit or review, at a reasonable time and place. Such records shall be retained for a period of 3 years after the date of the final Claim for Reimbursement for the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the 3 year period as long as required for resolution of the issues raised by the audit;

(17) Maintain files of currently approved and denied free and reduced price applications, respectively. If applications are maintained at the school food authority level, they shall be readily retrievable by school.

(18) Retain the individual applications for free and reduced price lunches submitted by families for a period of 3 years after the end of the fiscal year to which they pertain or as otherwise specified under paragraph (16) above.

§ 210.10 Lunch components and quantities.

(a) *Meal pattern definitions.* For the purpose of this section:

(1) "Infant cereal" means any iron-fortified dry cereal especially formulated and generally recognized as cereal for infants and that is routinely mixed with formula or milk prior to consumption.

(2) "Infant formula" means any iron-fortified formula intended for dietary use solely as a food for normal, healthy infants; excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

(b) *General.* School food authorities shall ensure that participating schools provide nutritious and well-balanced lunches to children in accordance with the provisions of this section. The requirements and recommendations of this section are designed so that the nutrients of the lunch, averaged over a period of time, *approximate* one-third of the Recommended Dietary Allowances for children of each age/grade group as specified in paragraph (c) of this section. School food authorities shall ensure that each lunch is priced as a unit. Except as otherwise provided herein, school food authorities shall ensure that sufficient quantities of food are planned and produced so that lunches provided contain all the required food items in at least the amounts indicated in the table presented under paragraph (c) of this section. School food authorities shall ensure that lunches are planned and produced on the basis of participation trends, with the objective of providing one reimbursable lunch per child per day. Production and participation records shall be maintained to demonstrate positive action toward providing one reimbursable lunch per child per day. Any excess lunches that are produced may be served, but shall *not* be claimed for general or special cash assistance provided under § 210.4.

(c) *Minimum required lunch quantities.* Schools that are able to provide quantities of food to children solely on the basis of their ages or grade level should do so. Schools that cannot serve children on the basis of age or grade level shall provide all school age children Group IV portions as specified in the table presented in this paragraph. Schools serving children on the basis of age or grade level shall plan and produce sufficient quantities of food to provide Groups I–IV no less than the amounts specified for those children in the table presented in this paragraph,

and sufficient quantities of food to provide Group V no less than the specified amounts for Group IV. It is recommended that such schools plan and produce sufficient quantities of food to provide Group V children the larger amounts specified in the table. Schools that provide increased portion sizes for Group V may comply with children's requests for small portion sizes of the food items; however, schools shall plan and produce sufficient quantities of food to at least provide the serving sizes required for Group IV. Schools shall ensure that lunches are served with the objective of providing the per lunch minimums for each age and grade level as specified in the following table:

SCHOOL LUNCH PATTERN—PER LUNCH MINIMUMS

Food components	Food items	Minimum quantities				Recommended quantities, Group V, 12 years and older (7–12)
		Group I age 1–2 (Preschool)	Group II age 3–4 (Preschool)	Group III age 5–8 (K–3)	Group IV age 9 and older (4–12)	
Milk (as a beverage)	Unflavored fluid lowfat, skim, or buttermilk must be offered (whole or flavored fluid milk optional).	¾ cup (6 fl. oz.)	¾ cup (6 fl. oz.)	½ pint (8 fl. oz.)	½ pint (8 fl. oz.)	½ pint (8 fl. oz.)
Meat or Meat Alternate (quantity of the edible portion as served).	Lean meat, poultry, or fish	1 oz	1½ oz	1½ oz	2 oz	3 oz.
	Cheese	1 oz.	1½ oz.	1½ oz.	2 oz.	3 oz.
	Large egg	½	¾	¾	1	1½.
	Cooked dry beans or peas	¼ cup	⅜ cup	⅜ cup	½ cup	¾ cup.
	Peanut butter or other nut or seed butters.	2 Tbsp.	3 Tbsp.	3 Tbsp.	4 Tbsp.	6 Tbsp.
The following meet 50% of the requirement and must be combined with 50% of the above:						
	Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 oz. of nuts/seeds = 1 oz. of cooked lean meat, poultry, or fish).	½ oz. = 50%	¾ oz. = 50%	¾ oz. = 50%	1 oz. = 50%	1½ oz. = 50%.
Vegetable or Fruit	2 or more servings of vegetables or fruits or both.	½ cup	½ cup	½ cup	¾ cup	¾ cup.
Bread or Bread Alternate (Servings per week).	Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains.	5 per week-minimum of ½ per day.	8 per week-minimum of 1 per day.	8 per week-minimum of 1 per day.	8 per week-minimum of 1 per day.	10 per week-minimum of 1 per day.

(d) *Lunch components.* This section specifices the basic food components of the school lunch pattern which shall be served as food items in quantities specified in paragraph (c) of this section.

(1) *Milk.* Schools shall offer unflavored fluid lowfat milk, unflavored fluid skim milk, or buttermilk as a beverage. Therefore, if a school serves another form of fluid milk (flavored or whole), it shall also offer unflavored fluid lowfat milk, skim milk, or buttermilk as a beverage choice. All milk served shall be pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk; *except that,* in the meal pattern for infants under 1 year of age, the milk shall be unflavored types of whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meets such standards. All milk shall contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk. School food authorities that served ¾ cup (6 fluid ounces) of milk to Group III children prior to May 1, 1980 may continue to do so. Such school food authorities shall retain documentation of the date on which they began such service and the reasons for adopting this portion size.

(2) *Meat or meat alternate.* The quantity of meat or meat alternate shall be the quantity of the edible portion *as served.* When the school determines that the portion size of a meat alternate is excessive, it shall reduce the portion size of that particular meat alternate and supplement it with another meat/meat alternate to meet the full requirement. To be counted as meeting the requirement, the meat or meat alternate shall be served in a main dish or in a main dish and only one other menu item. The Department recommends that if schools do not offer children choices of meat or meat alternates each day, they serve no one meat alternate or form of meat (ground, diced, pieces, etc.) more than three times in a single week.

(i) Vegetable protein products, cheese alternate products, and enriched macaroni with fortified protein defined in Appendix A may be used to meet part of the meat or meat alternate requirement when used as specified in Appendix A. An enriched macaroni product with fortified protein as defined in Appendix A may be used as part of a meat alternate or as a bread alternate, but not as both food components in the same meal.

(ii) Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall not be used as meat alternates due to their low protein and iron content. Nut and seed meals or flours shall not be used as a meat alternate except as defined in this part under Appendix A: Alternate Foods for Meals. As noted in the School Lunch Pattern table of this section, nuts or seeds may be used to meet no more than one-half of the meat/meat alternate requirement. Therefore, nuts and seeds must be combined in the meal with another meat/meat alternate to fulfill the requirement.

(3) *Vegetable or fruit.* Full strength vegetable or fruit juice may be counted to meet not more than one-half of the vegetable/fruit requirement. Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but not as both food components in the same meal.

(4) *Bread or bread alternate.* (i) All breads or bread alternates such as bread, biscuits, muffins or rice, marcaroni, noodles, other pastas or cereal grains such as bulgur or corn

grits, shall be enriched or whole grain or made with enriched or whole grain meal or flour.

(ii) Unlike the other component requirements, the bread requirement is based on minimum daily servings *and* total servings per week. Schools shall serve daily at least one-half serving of bread or bread alternate to children in Group I *and* at least one serving to children in Groups II–V. Schools which serve lunch at least 5 days a week shall serve a total of at least five servings of bread or bread alternate to children in Group I and eight servings per week to children in Groups II–V. Schools serving lunch 6 or 7 days per week should increase the weekly quantity by approximately 20 percent (⅕) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (⅕) for each day less than five. The servings for biscuits, rolls, muffins, and other bread alternates are specified in the *Food Buying Guide for Child Nutrition Programs (PA 1331),* an FNS publication.

(e) *Offer versus serve.* Each school shall offer its students all five required food items as set forth in the table presented under paragraph (c). Senior high students shall be permitted to decline up to two food items. Students below the senior high level may be permitted to decline up to two food items, or only one food item, at the discretion of the school food authority. The price of a reimbursable lunch shall not be affected if a student declines food items or accepts smaller portions. State educational agencies shall define "senior high."

(f) *Choice.* To provide variety and to encourage consumption and participation, schools should, whenever possible, provide a selection of foods and types of milk from which children may make choices. When a school offers a selection of more than one type of lunch or when it offers a variety of foods and milk for choice within the required lunch pattern, the school shall offer all children the same selection regardless of whether the children are eligible for free or reduced price lunches or pay the school food authority designated full price. The school may establish different unit prices for each type of lunch served provided that the benefits made available to children eligible for free or reduced price lunches are not affected.

(g) *Lunch period.* Schools shall serve lunches which meet the requirements of this part during a period designated as the lunch period by the school food authority. With State approval, schools that serve children 1–5 years old are encourage to divide the service of the specified quantities and food items into two distinct service periods. Such schools may divide the quantities and/or food items between these service periods in any combination that they choose.

(h) *Infant lunch pattern.* When infants under 1 year of age participate in the Program, an infant lunch pattern shall be served. Foods within the infant lunch pattern shall be of texture and consistency appropriate for the particular age group being served. The amount of food in the lunch may be offered to the infant during a span of time consistent with the infant's eating habits. The infant lunch pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(1) *0 to 4 months*—4 to 6 fluid ounces of infant formula; 0 to 1 tablespoon of infant cereal; and 0 to 1 tablespoon of fruit or vegetable of appropriate consistency or a combination of both.

(2) *4 to 8 months*—6 to 8 fluid ounces of infant formula; 1 to 2 tablespoons of infant cereal; 1 to 2 tablespoons of fruit or vegetable of appropriate consistency or a combination of both; and 0 to 1 tablespoon of meat, fish, poultry, or egg yolk, or 0 to ½ ounce (weight) of cheese or 0 to 1 ounce (weight or volume) of cottage cheese or cheese food or cheese spread of appropriate consistency.

(3) *8 months to 1 year*—6 to 8 fluid ounces of infant formula, or 6 to 8 fluid ounces of whole fluid milk and 0 to 3 fluid ounces of full strength fruit juice; 3 to 4 tablespoons of fruit or vegetable of appropriate consistency or infant cereal or combination of such foods; and 1 to 4 tablespoons of meat, fish, poultry, or egg yolk, or ½ to 2 ounces (weight) of cheese or 1 to 4 ounces (weight or volume) of cottage cheese or cheese food or cheese spread of appropriate consistency.

(i) *Exceptions.* Exceptions to and variations of the food items or quantities specified in this section are restricted to the following:

(1) *Medical or dietary needs.* Schools shall make substitutions in foods listed in this section for handicapped students who are under the aegis of 7 CFR Part 15b and whose handicap restricts their diet. Schools may also make substitutions for nonhandicapped students who are unable to consume the regular lunch because of medical or other special dietary needs. Substitutions shall be made on a case by case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FNS. Such statement shall, in the case of a handicapped student, be signed by a medical doctor or, in the case of a nonhandicapped student, by a recognized medical authority.

(2) *Ethnic, religious or economic variations.* FNS may approve variations in the food items of the lunch on an experimental or on a continuing basis in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, or economic needs.

(3) *American Samoa, Puerto Rico, and Virgin Islands.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the bread or bread alternate requirement.

(4) *Trust Territories.* FNS, with the concurrence of officials of the Trust Territory of the Pacific Islands, has established a meal pattern which is consistent with local food consumption patterns and which, given available food supplies and food service equipment and facilities, provides optimum nutrition consistent with sound dietary habits for participating children. The State agency shall attach to and make a part of the written agreement required under § 210.9, the requirements of that pattern. Because the Commonwealth of the Northern Mariana Islands was part of the Trust Territories when this special meal pattern was established, this meal pattern shall also apply to the Commonwealth and be made part of their written agreement.

(5) *Natural disaster.* In the event of a natural disaster or other catastrophe, FNS may temporarily allow schools to serve lunches for reimbursement that do not meet requirements of this section.

(6) *Insufficient milk supply.* The inability of a school to obtain a supply of milk shall not bar it from participation in the Program and is to be resolved as follows:

(i) If emergency conditions temporarily prevent a school that normally has a supply of unflavored fluid lowfat milk, skim milk or buttermilk from obtaining delivery of such milk, the State agency may approve the service of lunches during the emergency period with an available alternate form of milk or without milk.

(ii) If a school is unable to obtain a supply of unflavored fluid lowfat milk, skim milk, or buttermilk on a continuing basis, the State agency may approve the service of another type of fluid milk. The Department recommends that the State agency approve for service the available fluid milk with the lowest fat and sugar content. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the

Commonwealth of the Northern Marianas, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk, or as otherwise provided under written exception by FNS.

(iii) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of lunches without milk if the school uses an equivalent amount of canned, whole or nonfat dry milk in the preparation of the lunch.

§ 210.11 Competitive food services.

(a) *Definitions.* For the purpose of this section:

(1) "Competitive foods" means any foods sold in competition with the Program to children in food service areas during the lunch periods.

(2) "Food of minimal nutritional value" means—(a) in the case of artificially sweetened foods, a food which provides less than five percent of the United States Recommended Dietary Allowances (USRDA) for each of eight specified nutrients per serving; and (b) in the case of all other foods, a food which provides less than five percent of the USRDA for each of eight specified nutrients per 100 calories and less than five percent of the USRDA for each of eight specified nutrients per serving. The eight nutrients to be assessed for this purpose are—protein, vitamin A, vitamin C, niacin, riboflavin, thiamin, calcium, and iron. All categories of food of minimal nutritional value and petitioning requirements for changing the categories are listed in Appendix B of this part.

(b) *General.* State agencies and school food authorities shall establish such rules or regulations as are necessary to control the sale of foods in competition with lunches served under the Program. Such rules or regulations shall prohibit the sale of foods of minimal nutritional value, as listed in Appendix B of this part, in the food service areas during the lunch periods. The sale of other competitive foods may, at the discretion of the State agency and school food authority, be allowed in the food service area during the lunch period only if all income from the sale of such foods accrues to the benefit of the nonprofit school food service or the school or student organizations approved by the school. State agencies and school food authorities may impose additional restrictions on the sale of and income from all foods sold at any time throughout schools participating in the Program.

§ 210.12 Student, parent and community involvement.

(a) *General.* School food authorities shall promote activities to involve students and parents in the Program. Such activities may include menu planning, enhancement of the eating environment, Program promotion, and related student-community support activities. School food authorities are encouraged to use the school food service program to teach students about good nutrition practices and to involve the school faculty and the general community in activities to enhance the Program.

(b) *Food service management problems.* School food authorities experiencing food service management problems shall comply with the provisions of § 210.18(c) with regard to the required design of activities to involve parents and students in the school food service program.

(c) *Food service management companies.* School food authorities contracting with a food service management company shall comply with the provisions of § 210.16(a) regarding the establishment of an advisory board of parents, teachers and students.

(d) *Residential child care institutions.* Residential child care institutions shall comply with the provisions of this section, to the extent possible.

§ 210.13 Facilities management.

(a) *Health standards.* The school food authority shall ensure that food storage, preparation and service is in accordance with the sanitation and health standards established under State and local law and regulations.

(b) *Storage.* The school food authority shall ensure that the necessary facilities for storage, preparation and service of food are maintained. Facilities for the handling, storage, and distribution of purchased and donated foods shall be such as to properly safeguard against theft, spoilage and other loss.

§ 210.14 Resource management.

(a) *Nonprofit school food service.* School food authorities shall maintain a nonprofit school food service. Revenues received by the nonprofit school food service are to be used only for the operation or improvement of such food service, except that such revenues shall not be used to purchase land or buildings or to construct buildings. Expenditures of nonprofit school food service revenues shall be in accordance with the financial management system established by the State agency under § 210.19(a) of this part.

(b) *Net cash resources.* The school food authority shall limit its net cash resources to an amount that does not exceed 3 months average expenditures for its nonprofit school food service or such other amount as may be approved by the State agency in accordance with § 210.19(a).

(c) *Financial management system.* The school food authority shall maintain a financial management system in accordance with § 210.19(a) of this part. School food authorities shall keep records for the nonprofit school food service cited in paragraph (a) of this section, separate from records for any other food service which may be operated by the school food authority.

(d) *Use of donated foods.* The school food authority shall enter into an agreement with the distributing agency to receive donated foods as required by Part 250 of this chapter. In addition, the school food authority shall accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the Department.

§ 210.15 Reporting and recordkeeping.

(a) *Reporting summary.* Participating school food authorities are required to submit forms and reports to the State agency or the distributing agency, as appropriate, to demonstrate compliance with Program requirements. These reports include, but are not limited to:

(1) A Claim for Reimbursement as specified by the State agency in accordance with § 210.8;

(2) An application and agreement for Program operations between the school food authority and the State agency, and a Free and Reduced Price Policy Statement as required under § 210.9;

(3) Documentation of corrective action taken for any program deficiency found on any review/audit as required under § 210.18(k);

(4) A formal corrective plan whenever AIMS performance standard violations in excess of error tolerances are disclosed on either a first or second review as specified under § 210.18(i);

(5) A written response to AIMS audit findings under § 210.18(k);

(6) Estimated average daily number of lunches to be served and the resultant need for USDA donated foods as required under § 210.19(b);

(7) A commodity school's preference whether to receive part of its donated food allocation in cash for processing and handling of donated foods as required under § 210.19(b);

(8) A written response to audit findings pertaining to the school food

authority's operation as required under § 210.22; and

(9) Information on civil rights complaints and their resolution as required under § 210.23.

(b) *Recordkeeping summary.* In order to participate in the Program, a school food authority shall maintain records to demonstrate compliance with Program requirements. These records include but are not limited to:

(1) Documentation of participation data by school in support of the Claim for Reimbursement, as required under § 210.8(b);

(2) Production and participation records to demonstrate positive action toward providing one lunch per child per day as required under § 210.10(b);

(3) Records of revenues and expenditures to demonstrate that the food service is being operated on a nonprofit basis, as required under § 210.14(a) including net cash resources, or the information necessary for the State to compute net cash resources through a reveiw or audit as specified under § 210.18(b); and

(4) Currently approved and denied applications for free and reduced price lunches and description of the verification activities, as required under 7 CFR Part 245.

§ 210.16 Food service management companies.

(a) *General.* Any school food authority (including a State agency acting in the capacity of a school food authority) may contract with a food service management company to manage its feeding operation in one or more of its schools. Any school food authority that employs a food service management company shall:

(1) Adhere to the procurement standards specified in § 210.21 when contracting with the food service management company;

(2) Ensure that the food service operation is in conformance with the school food authority's agreement under the Program;

(3) Monitor the food service operation through periodic on-sit visits;

(4) Retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals;

(5) Retain signature authority on the State agency-school food authority agreement, free and reduced price policy statement and claims;

(6) Ensure that all federally donated foods received by the school food authority and made available to the food service management company accrue only to the benefit of the school food authority's nonprofit school food service and are utilized therein;

(7) Maintain applicable health certification and assure that all State and local regulations are being met by a food service management company preparing or serving meals at a school food authority facility;

(8) Ahdere to and include all the requirements of the section in any contractual agreement with a food service management company; and

(9) Establish an advisory board composed of parents, teachers, and students to assist in menu planning.

(b) *Invitation to bid.* In addition to adhering to the procurement standards under § 210.21, school food authorities contracting with food service management companies shall ensure that:

(1) The invitation to bid or request for proposal contains a 21-day cycle menu to be used as a standard for the purpose of basing bids or estimating average cost per meal. If a school food authority has no capability to prepare a cycle menu, it may, with State agency approval, request that a 21-day cycle menu be developed and submitted by each food service management company which intends to submit a bid or proposal to the school food authority.The food service managment company must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with the approval of the school food authority

(2) Any invitation to bid or request for proposal indicates that nonperformance subjects the food service management company to specified sanctions in instances where the food service management company violates or breaches contract terms. The school food authority shall indicate these sanctions in accordance with the procurement provisions stated in § 210.21.

(c) *Contracts.* Contracts that permit all receipts and expenses to accrue to the food service management company and "cost-plus-a-percentage-of-cost" and "cost-plus-a-percentage-of-income" contracts are prohibited. Contracts that provide for management fees established on a per meal basis are allowed. Contractual agreements with food service management companies are to include the following:

(1) The food service management company shall maintain such records as the school food authority will need to support its Claim for Reimbursement under this part, and shall, at a minimum, report claim information to the school food authority promptly at the end of each month. Such records shall be made available to the school food authority, upon request, and shall be retained in accordance with § 210.23(c).

(2) The food service management company shall have State or local health certification for any facility outside the school in which it proposes to prepare meals and the food service management company shall maintain this health certification for the duration of the contract.

(3) No payment is to be made for meals that are spoiled or unwholesome at time of delivery, do not meet detailed specifications as developed by the school food authority for each food component specified in § 210.10, or do not otherwise meet the requirements of the contract. Specifications shall cover items such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.

(d) *Duration of contract.* The contract between a school food authority and food service management company shall be of a duration of no longer than 1 year; and options for the yearly renewal of a contract may not exceed 2 additional years. All contracts shall include a termination clause whereby either party may cancel for cause with 60-day notification.

Subpart D—Requirements For State Agency Participation

§ 210.17 Matching Federal funds.

(a) *State revenue matching.* For each school year, the amount of State revenues appropriated or used specifically by the State for program purposes shall not be less than 30 percent of the funds received by such State under section 4 of the National School Lunch Act during the school year beginning July 1, 1980; *provided that,* the State revenues derived from the operation of such programs and State revenues expended for salaries and administrative expenses of such programs at the State level are not considered in this computation. However, if the per capita income of any State is less than the per capita income of the United States, the matching requirements so computed shall be decreased by the percentage by which the State per capita income is below the per capita income of the United States.

(b) *Private school exemption.* No State in which the State agency is prohibited by law from disbursing State appropriated funds to nonpublic schools shall be required to match general cash assistance funds expended for meals served in such schools, or to disburse to such schools any of the State revenues required to meet the requirements of paragraph (a) of this section.

Furthermore, the requirements of this section do not apply to schools in which the Program is administered by a FNSRO.

(c) *Territorial waiver.* American Samoa and the Commonwealth of the Northern Mariana Islands shall be exempted from the matching requirements of paragraph (a) of this section if their respective matching requirements are under $100,000.

(d) *Applicble revenues.* The following State revenues, appropriated or used specifically for program purposes which are expended for any school year shall be eligible for meeting the applicable percentage of the matching requirements prescribed in paragraph (a) of this section for that school year:

(1) State revenues disbursed by the State agency to school food authorities for program purposes, including revenue disbursed to nonprofit private schools where the State administers the program in such schools;

(2) State revenues made available to school food authorities and transferred by the school food authorities to the nonprofit school food service accounts or otherwise expended by the school food authorities in connection with the nonprofit school food service program; and

(3) State revenues used to finance the costs (other than State salaries or other State level administrative costs) of the nonprofit school food service program, i.e.,:

(i) Local program supervision;

(ii) Operating the program in participating schools; and

(iii) The intrastate distribution of foods donated under Part 250 of this chapter to schools participating in the program.

(e) *Distribution of matching revenues.* All State revenues made available under paragraph (a) of this section are to be disbursed to school food authorities participating in the Program, except as provided for under paragraph (b) of this section. Distribution of matching revenues may be made with respect to a class of school food authorities as well as with respect to individual school food authorities.

(f) *Failure to match.* If, in any school year, a State fails to meet the State revenue matching requirement, as prescribed in paragraph (a) of this section, the general cash assistance funds utilized by the State during that school year shall be subject to recall by and repayment to FNS.

(g) *Reports.* Within 90 days after the end of each school year, each State agency shall submit an Annual Report of Revenues (FNS–13) to FNS. This report identifies the State revenues to be counted toward the State revenue matching requirements specified in paragraph (a) of this section.

(h) *Accounting system.* The State agency shall establish or cause to be established a system whereby all expended State revenues counted in meeting the matching requirements prescribed in paragraph (a) of this section are properly documented and accounted for.

§ 210.18 Monitoring responsibilities.

(a) *General program compliance.* Each State agency shall require that school food authorities comply with the applicable provisions of this part. The State agency shall ensure compliance through audits, supervisory assistance reviews, visits to participating schools, or by other means.

(b) *Net cash resources.* Each State agency shall monitor through review or audit or by other means, the net cash resources of the nonprofit school food service in each school food authority participating in the Program. In the event that such resources exceed 3 months average expenditures for the school food authority's nonprofit school food service or such other amount as may be approved by the State agency, the State agency may require the school food authority to reduce the price children are charged for meals, improve food quality or take other actions designed to improve the nonprofit school food service. In the absence of any such action, the State agency shall make adjustments in the rate of reimbursement under the Program.

(c) *Improved management.* The State agency shall work with the school food authority toward improving the school food authority's management practices where the State agency has found poor food service management practices leading to decreasing or low student participation and/or poor student acceptance of the Program or of foods served. Efforts shall include the promotion of student and parent involvement in Program activities. This student and parent involvement is to assist in the correction of the school food authority's particular management problems and shall be in addition to the general requirement of student and parent involvement for all school food authorities set forth in § 210.12. Poor student acceptance is indicated by a substantial number of students who routinely and over a period of time:

(1) Do not favorably accept a particular menu item;

(2) Return foods; or

(3) Choose less than all five food items as authorized under § 210.10(e).

(d) *Food service management companies.* Each State agency shall annually review each contract between any school food authority and food service management company to ensure compliance with all the provisions and standards set forth in § 210.16. Each State agency shall perform an on-site review of each school food authority contracting with a food service management company at least once every 4 years. Such reviews shall include an assessment of the school food authority's compliance with § 210.16. The State agency may require that all food service management companies that wish to contract for food service with any school food authority in the State must register with the State agency. State agencies shall provide assistance upon request of a school food authority to assure compliance with Program requirements.

(e) *Investigations.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. States agencies shall maintain on file evidence of such investigations and actions. FNS and OIG may make investigations at the request of the State agency or where FNS or OIG determines investigations are appropriate.

(f) *Assessment, Improvement and Monitoring System (AIMS).* Each State agency shall perform AIMS reviews, audits or a combination thereof of all school food authorities participating in the Program in accordance with the provisions of this section. In lieu of implementing AIMS, a State agency may develop a different compliance monitoring system. Any State developed monitoring system shall:

(1) Be equivalent to AIMS in scope;

(2) Monitor compliance with AIMS Performance Standards 1–4;

(3) Include on-site visits of all school food authorities on a cyclical basis;

(4) Require that corrective action be taken and documented for any Program deficiency found;

(5) Provide for fiscal action and set forth the State agency's criteria for taking such action;

(6) Provide for the maintenance of a detailed description of the system and records of all monitoring visits and activities which demonstrate the degree of compliance with AIMS performance standards, corrective actions needed and taken, and fiscal action taken; and

(7) Receive approval by the appropriate FNSRO prior to implementation.

(g) *AIMS definitions.* The following definitions are provided in order to clarify AIMS requirements:

(1) "AIMS audits" means on-site evaluations of school food authorities participating in the Program for compliance with AIMS performance standards, by State auditors or State contracted auditors once every 2 years, in accordance with USDA's audit quide or an audit guide approved by FNS and USDA's OIG.

(2) "AIMS error tolerance level" means the degree of error of an AIMS performance standard as specified in paragraph (i)(4) of this section which, if exceeded in a reviewed school food authority, triggers a second AIMS review in all large school food authorities and in at least 25 percent of those small school food authorities which exceed error tolerance levels on a first AIMS review.

(3) "AIMS performance standards" means the following standards which measure compliance with Program regulations:

(i) Performance Standard 1—Within the school food authority, each child's application for free and reduced price meals is correctly approved or denied in accordance with the applicable provisions of Part 245.

(ii) Performance Standard 2—The numbers of free and reduced price meals claimed for reimbursement by each school for any review period are, in each case, less than or equal to the number of children in that school correctly approved for free and reduced price meals, respectively for the review period, times the days of operation for the review period.

(iii) Performance Standard 3—The *system* used for counting and recording meal totals, by type, claimed for reimbursement at both the school food authority and school levels yields correct claims.

(iv) Performance Standard 4—Meals claimed for reimbursement within the school food authority contain food items as required by § 210.10.

(4) "AIMS reviews" means on-site evaluation of school food authorities participating in the Program once every 4 years by the State agency or State auditors for compliance with the AIMS performance standards and follow-up reviews, as required.

(5) "Corrective action plan" means the written description a school food authority submits to the State agency to explain how and when a program deficiency will be corrected.

(6) "Large school food authority" means, in any State: (a) the two largest school food authorities that participate in the Program and have enrollments of 2,000 students or more each; and (b) all other school food authorities that participate in the Program and have enrollments of 40,000 students or more each.

(7) "Small school food authority" means, in any State, a school food authority that participated in the Program and is not a large school food authority.

(h) *Number of schools reviewed or audited under AIMS.* The number of schools within the school food authority which must be included in a review or audit is dependent upon the total number of schools in the school food authority. The minimum number of schools the State agency shall review or aduit is illustrated in Table A:

TABLE A

Number of schools in the school food authority	Minimum number of schools to be reviewed or audited
1 to 5	1
6 to 10	2
11 to 20	3
21 to 40	4
41 to 60	6
61 to 80	8
81 to 100	10
101 or more	[1] 12

[1] Twelve plus 5 pecent of the number of schools over 100. Fractions shall be rounded to the nearest whole number.

(i) *AIMS reviews.* States performing AIMS reviews shall monitor compliance with the AIMS performance standards described in paragraph (g) of this section. On the first AIMS review, the State agency shall review the school food authority for Performance Standards 1–4. On second AIMS reviews, the State agency shall, at a minimum, review the school food authority for the performance standards which exceeded error tolerances in the first review.

(1) *Scope of AIMS reviews.* In reviewing performance standards:

(i) The State agency shall analyze and determine the adequacy of local approval procedures for free and reduced price meals by examining the eligibility determinations made within the school food authority. The State agency shall review the applications for all children for whom application was made attending the reviewed schools, or a statistically valid sample of the applications for such children. If a statistically valid sample is chosen, the State agency shall ensure that the sample size is large enough so that there is a 95 percent chance that the actual error rate for all applications is not less than 2 percentage points less than the error rate found in the sample (i.e., the lower bound of the one-sided 95 percent confidence interval is no more than 2 percentage points less than the point estimate). In addition, the State agency shall determine the need for a second review and base fiscal action upon the error rate found in the sample. The State agency shall also ensure that the system to update the application file is adequate.

(ii) The State agency shall ensure that, at a minimum, for each school reviewed, the number of free meals claimed in the school food authority's most recent Claim for Reimbursement does not exceed the number of children correctly approved for free meals for the claim period times the days of operation of that school, as reported to the school food authority for the claim month. The State agency shall apply the same procedure to the claim for reduced price meals.

(iii) The State agency shall ensure that each school reviewed has an adequate system for counting and recording meals served by reimbursement type and that the school food authority properly consolidates meal counts from its schools.

(iv) The State agency shall determine by observation of a representative sample of meals that meals contain food items as required in § 210.10.

(2) *Timing of AIMS reviews.* The first AIMS review of a school food authority shall be completed within the school year in which the review was begun. A second AIMS review, when required, is recommended to be conducted in the same school year as the first review and is required to be conducted no later than December 31 of the school year following the first review.

(3) *Method of selecting school food authorities and schools to review.*

(i) Each school year, the State agency shall use its own criteria to select school food authorities for AIMS reviews; *provided that* all participating school food authorities are reviewed at least once every 4 years and that school food authorities, found on the first review to exceed error tolerance levels are subject to second reviews as specified in paragraph (i)(4) of this section.

(ii) On a first AIMS review of a school food authority, the State agency shall select the required minimum number of schools to review on a proportionate basis from each type of attendance unit (elementary school, middle school, high school, etc.), and shall select schools within attendance unit grouping either randomly or by using State agency criteria which shall be kept on file at the State agency. If using its own criteria, the State agency shall ensure that some of the schools selected are chosen because of the likelihood of problems.

On a second AIMS review, the State agency shall choose schools using State agency criteria, which may include random selection. State agency criteria for selecting schools for second AIMS reviews shall also be kept on file. The minimum number of schools to be selected and reviewed during a first or second AIMS review of a school food authority is specified in paragraph (h) of this section.

(4) *Error tolerance for AIMS review.* State agencies shall ensure that corrective action plans are completed by all school food authorities which are found on first reviews to exceed the error tolerances described below. Further, State agencies shall conduct second reviews of: all large school food authorities found to exceed such tolerances on first reviews; and at least 25 percent of small school food authorities found to exceed such tolerances on first reviews. An error tolerance is exceeded when:

(i) For AIMS Performance Standard 1, 10 percent or more (but not less than 10 children) of the children listed on reviewed applications and attending reviewed schools in a school food authority are incorrectly approved or denied for free or reduced price meal benefits; and/or

(ii) For AIMS Performance Standard 2, a number of schools reviewed in a school food authority, as specified in Table B of paragraph (i)(5), claim reimbursement for more free or more reduced price meals, respectively, than the number of children correctly approved for such meals for the test period times the days of operation for the period; and/or

(iii) For AIMS Performance Standard 3, a number of schools reviewed in a school food authority, as specified in Table B of paragraph (i)(5), have an inadequate system for counting and recording meal totals by type claimed for reimbursement, or the school food authority does not use valid procedures for consolidating claims; and/or

(iv) For AIMS Performance Standard 4, 10 percent or more of the total meals observed in a school food authority are missing one or more required food items.

(5) *Performance standards 2 and 3 tolerances.* Table B indicates the number of schools violating Performance Standards 2 or 3, thus necessitating a corrective action plan in the applicable school food authority and a second review in all large school food authorities and at least 25 percent of the small school food authorities which exceed error tolerance levels on a first AIMS review.

TABLE B

Number of schools reviewed	Number of schools [1]
1 to 10	1
11 to 20	2
21 to 30	3
31 to 40	4
41 to 50	5
51 to 60	6
61 to 70	7
71 to 80	8
81 to 90	9
91 to 100	10
101 or more	[2] 10

[1] Number of schools violating Performance Standards 2 or 3 respectively, thus necessitating a second review of the school food authority.

[2] 10 plus the number identified above for the appropriate increment.

(6) *Corrective action plans for AIMS reviews.* Corrective action plans are required to address AIMS performance standard deficiencies exceeding the error tolerance levels described in this section. The following procedures shall be followed to develop a corrective action plan:

(i) The State agency shall assist the school food authority in developing a mutually agreed upon corrective action plan.

(ii) The corrective action plan shall identify the corrective actions and timeframes needed to correct the deficiencies found during the review. Corrective action shall include all necessary fiscal actions as described in § 210.19(c), including adjusting data to be used in preparing the Claim for Reimbursement.

(iii) The plan shall be written, signed by the proper official of the school food authority, and submitted to and approved by the State agency within 60 days following the exit conference of a review. State agencies may extend this deadline to 90 days. Extensions beyond 90 days may be made, for cause, with written justification to and approval by FNSRO.

(iv) The State agency shall require the school food authority to implement an amended or extended corrective action plan when error tolerance levels are exceeded on a second AIMS review.

(7) *New violations found on a second AIMS review.* If, during the course of a second AIMS review, a performance standard violation is found that has not been noted on a previous AIMS review, the State agency shall institute and document appropriate corrective action. If the violation exceeds the error tolerance level, the State agency shall require a corrective action plan and the completion of corrective action. The State agency shall take fiscal action as described in § 210.19(c) of this part for any degree of violation of AIMS Performance Standards 2, 3, and 4.

(j) *AIMS audits.* Audits by State agency, State or State contracted auditors may be used as an alternative to AIMS reviews. If the State agency chooses this option, the audit must ensure that the four performance standards listed under paragraph (g) of this section are being complied with by the audited school food authority. This includes performing all activities described in paragraph (i)(1) of this section. Additionally, a State using AIMS audits in place of AIMS reviews shall:

(1) Audit school food authorities once every 2 years;

(2) Take fiscal action in accordance with § 210.19(c);

(3) Have a documented system for achieving corrective action;

(4) Select schools within a school food authority based upon generally accepted audit principles; and

(5) Use USDA's audit guide or a State audit guide approved by FNS and the Department's OIG. A State agency shall submit its guide to FNSRO by February 1 of each year; except that portions of the guide which do not change annually need not be resubmitted. State agencies shall provide the title of the sections that remain unchanged, as well as the year of the last guide in which the sections were submitted.

(k) *AIMS exit conference, notification and corrective action.* The State agency and the school food authority shall hold an exit conference at the close of an AIMS review or audit to discuss the deficiencies observed, the extent of the deficiencies and the corrective action needed to correct the deficiencies. If a corrective action plan is required as described in paragraph (i)(6) of this section, it shall be discussed during the exit conference. After every AIMS review or audit, the State shall provide written notification of the review or audit findings to the school food authority's superintendent or authorized representative who signed the State agency/school food authority agreement. The State shall require that the school food authority take and document corrective action for any program deficiency found on any review or audit. Corrective action may include training, assistance, recalculation of data to ensure the correctness of any claim that the school food authority is preparing at the time of the review, or other actions.

(l) *AIMS reporting and recordkeeping.* Each State agency shall report to FNSRO the name of any school food authority which exceeds an error tolerance level on a second AIMS reviews and the type and extent of the

regulatory violations. Each State agency shall keep records which document the details of all AIMS review or audits and demonstrate the degree of compliance with AIMS performance standards. AIMS records shall be kept on file by the State agency for a minimum of 3 years after the date of the exit conference or after the year in which problems have been resolved, whichever is later. When necessary, the records must include a corrective action plan as described in this section. Additionally, the State agency must have on file:

(1) Criteria for selecting schools on first and second reviews, if the selection is not random;

(2) Its system for selecting small school food authorities for second review; and

(3) Documentation demonstrating compliance with the statistical sampling requirements specified in § 210.18(i).

§ 210.19 Additional responsibilities.

(a) *General program management.* Each State agency shall provide an adequate number of consultative, technical and managerial personnel to administer programs and monitor performance in complying with all program requirements. Such personnel shall, at a minimum, visit participating schools to monitor for compliance with Program regulations and instructions, the Department's nondiscrimination regulations (7 CFR Parts 15, 15a and 15b), and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015). Each State agency shall establish a financial management system under which school food authorities shall account for all revenues and expenditures of their nonprofit school food service. The system shall prescribe the allowability of nonprofit school food service expenditures in accordance with this part, and, as applicable, 7 CFR Part 3015. The system shall permit determination of school food service net cash resources, and shall include any criteria for approval of net cash resources in excess of 3 months' average expenditures.

(b) *Commodity distribution information.* The State agency shall periodically access school needs for donated foods under 7 CFR Part 250, notify the distributing agency of the school's commodity needs, and recommend appropriate variations in rates of distribution. In assessing the commodity needs of schools, usage history and existing donated food inventories should be considered. As early as practicable each school year, but no later than September 1, the State agency shall forward to the distributing agency and FNSRO an estimate of the average daily number of lunches to be served by National School Lunch Program schools; an estimate of the average daily number of lunches to be served by commodity schools; and the amount of any cash payments in lieu of commodities for donated food processing and handling expenses to be received by or on behalf of commodity schools in accordance with § 240.5 of this chapter. The State agency shall promptly revise the information required by this paragraph to reflect additions or deletions of eligible schools and provide any necessary adjustment in the number of lunches served.

(c) *Fiscal action.* Fiscal action includes, but is not limited to, the recovery of overpayments through direct assessment or offset of future claims; disallowance of overclaims as reflected in unpaid Claims for Reimbursement; and correction of records to ensure that unfiled Claims for Reimbursement are corrected when filed. State agencies are responsible for ensuring program integrity at the school food authority level. As such, they shall take fiscal action against school food authorities for Claims for Reimbursement that are not properly payable under this part. In taking fiscal action, State agencies shall use their own procedures, within the constraints of this part, and shall maintain all records pertaining to action taken under this section. The State shall determine the extent of fiscal action based on the severity and longevity of the problems. The State agency may refer to FNS for assistance in making a claims determination under this paragraph.

(1) *AIMS.* When a State agency chooses to conduct AIMS reviews, as described in § 210.18(i), fiscal action may be taken on a first review; *except* fiscal action shall be taken when, under Performance Standard 3, the number of meals claimed for school food authority reimbursement has been incorrectly aggregated from individual school reports so that an excessive number of meals has been claimed. State agencies shall take fiscal action on the second review for any degree of violation of AIMS Performance Standards 2, 3 and 4. When a State agency chooses to conduct AIMS audits, as described in § 210.18(j), fiscal action shall be assessed for any degree of violation of Performance Standards 2, 3 and 4. When a State agency develops its own compliance monitoring system in accordance with § 210.18(f), fiscal action shall be taken in accordance with the criteria established under that system. These criteria shall be consistent in principle with the fiscal action requirements for AIMS reviews and audits as set forth in this section.

(2) *Failure to collect.* If a State agency fails to disallow a claim or recover an overpayment from a school food authority, as described in this section, FNS will notify the State agency that a claim may be assessed against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning overpayment. If, after considering all available information, FNS determines that a claim is warranted, FNS will assess a claim in the amount of such overpayment against the State agency. If the State agency fails to pay any such demand for funds promptly, FNS will reduce the State agency's Letter of Credit by the sum due in accordance with FNS' existing offset procedures for Letter of Credit. In such event, the State agency shall provide the funds necessary to maintain Program operations at the level of earnings from a source other than the Program.

(3) *Interest charge.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit, interest will be charged against the State agency.

(4) *Use of recovered payment.* The amounts recovered by the State agency from school food authorities may be utilized during the fiscal year for which the funds were initially available, first, to make payments to school food authorities for the purposes of the Program; and second, to repay any State funds expended in the reimbursement of claims under the Program and not otherwise repaid. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of this part.

(5) *Exception.* In the event that the State agency finds, during a State review or State audit, that a school food authority is failing to meet the quantities for each food item required under the meal pattern in § 210.10, the State agency need not disallow payment or collect an overpayment arising out of such failure, if the State agency takes such other action as, in its opinion, will have a corrective effect.

(6) *Claims adjustment.* FNS will have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. FNS will also have the authority to waive such claims if FNS determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the

Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

(d) *Management evaluations.* Each State agency shall provide FNS with full opportunity to conduct management evaluations of all State agency Program operations and shall provide OIG with full opportunity to conduct audits of all State agency Program operations. Each State agency shall make available its records, including records of the receipt and disbursement of funds under the Program, upon a reasonable request by FNS, OIG, or the Comptroller General of the United States. FNS and OIG retain the right to visit schools and OIG also has the right to make audits of the records and operations of any school.

(1) *Disregard overpayment.* In conducting management evaluations or audits for any fiscal year, the State agency, FNS, or OIG may disregard any overpayment which does not exceed $35 or, in the case of State agency administered programs, does not exceed the amount established under State law, regulations, or procedure as a minimum amount for which claim will be made for State losses. However, no overpayment is to be disregarded where there are unpaid claims of the same fiscal year from which the overpayment can be deducted or there is substantial evidence of violations of criminal law or civil fraud statutes.

(2) *AIMS.* As a part of its management evaluation of a State agency, FNS will evaluate the State's progress in effectively meeting the AIMS requirements consistent with administrative responsibilities placed upon the State agency by this part.

(e) *Additional requirements.* Nothing contained in this part shall prevent a State agency from imposing additional requirements for participation in the Program which are not inconsistent with the provisions of this part.

§ 210.20 Reporting and recordkeeping.

(a) *Reporting summary.* Participating State agencies shall submit forms and reports to FNS to demonstrate compliance with Program requirements. The reports include but are not limited to:

(1) Requests for cash to make reimbursement payments to school food authorities as required under § 210.5(a);

(2) Information on the amounts of Federal Program funds expended and obligated to date (SF–269) as required under § 210.5(d);

(3) Statewide totals on Program participation (FNS–10) as required under § 210.5(d);

(4) Information on State funds provided by the State to meet the State matching requirements (FNS–13) specified under § 210.17(g);

(5) Names of school food authorities found in violation of AIMS performance standards on AIMS second reviews, together with information on the type and extent of violations, as required under § 210.18(l); and

(6) Results of the commodity preference survey and recommendations for commodity purchases as required under § 210.27(d).

(b) *Recordkeeping summary.* Participating State agencies are required to maintain records to demonstrate compliance with Program requirements. The records include but are not limited to:

(1) Accounting records and source documents to control the receipt, custody and disbursement of Federal Program funds as required under § 210.5(a);

(2) Documentation supporting all school food authority claims paid by the State agency as required under § 210.5(d);

(3) Documentation to support the amount the State agency reported having used for State revenue matching as required under § 210.17(h);

(4) Records supporting the State agency's review of net cash resources as required under § 210.18(b);

(5) Reports on the results of investigations of complaints received or irregularities noted in connection with Program operations as required under § 210.18(e);

(6) Confirmation of a State agency's approval of a school food authority's AIMS corrective action plan as required under § 210.18(i);

(7) Records of all AIMS reviews and audits, including records of action taken to correct program deficiencies as required under § 210.18(l);

(8) State agency criteria, for selecting schools for AIMS reviews and small school food authorities for AIMS second reviews as required under § 210.18(l);

(9) Documentation of action taken to disallow improper claims submitted by school food authorities, as determined through claims processing, AIMS reviews, AIMS audits, USDA audits, etc. as required by § 210.19(c);

(10) Records of USDA audit findings, State agency's and school food authorities' responses to them and of corrective action taken as required by § 210.22(a);

(11) Records pertaining to civil rights responsibilities as defined under § 210.23(b); and

(12) Records pertaining to the annual food preference survey of school food authorities as required by § 210.27(d).

Subpart E—State Agency and School Food Authority Responsibilities

§ 210.21 Procurement.

(a) *General.* State agencies and school food authorities shall comply with the requirements of 7 CFR Part 3015 concerning the procurement of supplies, food, equipment and other services with Program funds. These requirements ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in 7 CFR Part 3015 do not relieve the State agency or school food authority of any contractual responsibilities under its contracts. The State agency or school food authority is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State, or Federal authority that has proper jurisdiction.

(c) *Procurement procedure.* The State agency or school food authority may use its own procurement procedures which reflect applicable State and local laws and regulations, *provided that* procurements made with Program funds adhere to the standards set forth in 7 CFR Part 3015.

§ 210.22 Audits.

(a) *General.* State agencies and school food authorities shall comply with the requirements of 7 CFR Part 3015 concerning the audit requirements for recipients and subrecipients of the Department's financial assistance.

(b) *Audit procedure.* These requirements call for organization-wide financial and compliance audits to ascertain whether financial operations are conducted properly; financial statements are presented fairly; recipients and subrecipients comply with the laws and regulations that affect the expenditures of Federal funds; recipients and subrecipients have established procedures to meet the objectives of federally assisted programs; and recipients and subrecipients are providing accurate

and reliable information concerning grant funds. States and school food authorities shall use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in 7 CFR Part 3015.

§ 210.23 Other responsibilities.

(a) *Free and reduced price lunches.* State agencies and school food authorities shall ensure that lunches are made available free or at a reduced price to all children who are determined by the school food authority to be eligible for such benefits. The determination of a child's eligibility for free or reduced price lunches is to be made in accordance with 7 CFR Part 245.

(b) *Civil rights.* State agencies and school food authorities shall comply with the Department's nondiscrimination regulations (7 CFR Part 15, 15a, and 15b) and FNS civil rights instructions to ensure that in the operation of the Program no child is discriminated against because of race, color, national origin, age, sex, or handicap.

(c) *Retention of records.* State agencies and school food authorities may retain necessary records in their original form or on microfilm. State agency records shall be retained for a period of 3 years after the date of submission of the final Financial Status Report for the fiscal year. School food authority records shall be retained for a period of 3 years after submission of the final Claim for Reimbursement for the fiscal year. In either case, if audit findings have not been resolved, the records shall be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

Subpart F—Additional Provisions

§ 210.24 Suspension, termination and grant closeout procedures.

Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FNS guidelines and instructions, FNS may suspend or terminate the Program in whole, or in part, or take any other action as may be available and appropriate. A State agency may also terminate the Program by mutual agreement with FNS. FNS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart N concerning grant suspension, termination and closeout procedures. Furthermore, the State agency shall apply these provisions to suspension or termination of the Program in School food authorities.

§ 210.25 Penalties.

Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part whether received directly or indirectly from the Department, shall: (a) If such funds, property are of a value of less than $100; or more, be fined no more than $10,000 or imprisoned not more than 5 years or both; or (b) if such finds, assets, or property ar of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals, or retains for personal use or gain, funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties.

§ 210.26 Educational prohibitions.

In carrying out the provisions of the Act, neither the Department nor the State agency shall impose any requirements with respect to teaching personnel, curriculum, instructions, methods of instruction, or materials of instruction in any school as a condition for participation in the Program.

§ 210.27 State Food Distribution Advisory Council.

(a) *Council composition.* Each State educational agency, in cooperation with the State distributing agency, shall establish a State Food Distribution (SFD) Advisory Council which is composed of at least five representatives, excluding ex officio representatives, of schools which participate in the Program in the State. The State should make every effort to appoint individuals who represent large urban public schools; small rural public schools; residential child care institutions; private schools; parent teacher organizations, students from junior or senior high schools; nutritionists; school administrators; and teachers. These representatives shall be appointed for not more than 3 years. To promote continuity, initial appointments shall be selected for 1, 2, and 3, year terms.

(b) *Council leadership.* The Chairman and Vice Chairman of the SFD Advisory Council shall be elected by members of the Council. The Chief State School Officer, or designee, shall be an ex officio member of the SFD Advisory Council acting in an advisory capacity and as a non-voting member. The Chief Officer of the State distributing agency which distributes USDA donated foods to schools within the State, or designee shall be an ex officio member of the SFD Advisory Council, also acting in advisory capacity and as a non-voting member. If the State educational agency and the State distributing agency are the same entity within the State, the ex officio member of the SFD Advisory Council shall be the Chief Food Distribution Officer of the State educational agency, or designee.

(c) *Council timeframe.* The Council shall meet at least once a year and shall report to the State educational agency and State distributing agency, if it is a different entity, no later than February 15 of each year, recommendations concerning the manner of selection and distribution of commodity assistance for the next school year. The State educational agency shall inform FNSRO of the Council's recommendations no later than March 15 of each year.

(d) *Council responsibilities.* Major responsibilities of the Council include providing the State educational and distributing agencies with information concerning the most desired foods and the least desired foods. This information shall be obtained in a survey of school food authorities within the State. The Council shall also advise the State educational and distributing agencies on the types and amounts of available donated food items to order, the preferred available package size, and donated foods school food authorities would like processed and desired end products. The Council may also advise the State educational and distributing agency on intra State distribution systems, delivery schedules, and State food distribution program operations. Recommendations for the Department regarding national purchasing practices, changes in donated foods specifications and packaging improvements may also be included in the report.

(e) *State responsibilities.* In reporting the Council's recommendations to FNSRO, the State eductional agency shall include the number of school food authorities providing the required information to the Council; the average daily number of lunches served by schools in the these school food authorities during April of the previous year; and the average daily number of lunches served by all school food authorities within the State during April of the previous year.

(f) *State recordkeeping.* The State educational agency shall maintain records concerning the survey of school food authorities including, at a

minimum, a description of survey methods and a copy of the format used to obtain food preferences; the name and address of each school food authority included in the survey; and a record of the data obtained from each school food authority.

(g) *Expenses.* The State educational agency may make payment for justified expenses incurred for or by the SFD Advisory Council from State Administrative Expense funds. In instances when State Administrative Expense funds are used, payments shall be made in accordance with Part 235 of this chapter. State agencies which are the same entity as the State distribution agency may also use food distribution assessment funds as provided for in § 250.6 (i) and (j) of this chapter. Members of the SFD Advisory Council shall serve without compensation. The State educational agency shall provide compensation for necessary travel and subsistence expenses incurred by Council members in the performance of Council duties. Parent and student participant members, in addition to necessary travel and subsistence expenses, shall be compensated for personal expenses related to participation on the Council, such as child care expenses and lost wages during scheduled Council meetings. The State educational agency shall establish a system whereby expenses are paid in advance for any member who indicates that they cannot financially afford to meet any of the allowed expenses. In instances where members can meet expenses, a reimbursement shall be provided in a timely manner.

§ 210.28 Regional office addresses.

(a) *General.* School food authorities desiring information concerning the Program should write to their State educational agency or to the appropriate Regional Office of FNS as indicated below:

(1) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 10 Causeway Street, Room 501, Boston, Massachusetts 02222–1065.

(2) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, NW., Atlanta, Georgia 30367.

(3) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 50 E. Washington Street, Chicago, Illinois 60602.

(4) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75242.

(5) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

(6) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, Mercer Corporate Park, Corporate Boulevard, CN 02150, Trenton, New Jersey 08650.

(7) In the State of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 2420 West 26th Avenue, Room 430 D, Denver, Colorado 80211.

§ 210.29 OMB control numbers.

The following control numbers have been assigned to the information collection requirements in 7 CFR Part 210 by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

7 CFR section where requirements are described	Current OMB control number
210.3(b)	0584–0327
210.5(d)	0584–0006
210.5(d)(1)	0584–0002
210.5(d)(2)	0584–0341
210.5(d)(3)	0584–0341
210.6(b)	0584–0006
210.8	0584–0006, 0584–0284
210.9	0584–0006, 0584–0026, 0584–0329
210.10(b)	0584–0006
210.10(i)(1)	0584–0006
210.14(c)	0584–0006
210.16	0584–0006
210.17	0584–0006
210.17(g)	0584–0075
210.18	0584–0006
210.19	0584–0006
210.22	0584–0006
210.23(c)	0584–0006
210.24	0584–0006
210.27	0584–0006

Appendix A—Alternate Foods for Meals; Enriched Macaroni Products With Fortified Protein

1. Schools may utilize the enriched macaroni products with fortified protein defined in paragraph 3 as a food item in meeting the meal requirements of this part under the following terms and conditions:

(a) One ounce of a dry enriched macaroni product with fortified protein may be used to meet not more than one-half of the meat or meat alternate requirements specified in § 210.10 when served in combination with 1 or more ounces of cooked meat, poultry, fish, or cheese. The size of servings of the cooked combination may be adjusted for various age groups.

(b) Only enriched macaroni products with fortified protein that bear a label containing substantially the following legend shall be so utilized: "One ounce dry weight of this product meets one-half of the meat or meat alternate requirements of lunch or supper of the USDA child nutrition programs when served in combination with 1 or more ounces of cooked meat, poultry, fish, or cheese. In those States where State or local law prohibits the wording specified, a legend acceptable to both the State or local authorities and FNS shall be substituted.

2. Only enriched macaroni products with fortified protein that have been accepted by FNS for use in the USDA Child Nutrition Programs may be labeled as provided in paragraph 1(b) of this appendix. Manufacturers seeking acceptance of their product shall furnish FNS a chemical analysis, protein efficiency ratio analysis, and such other pertinent data as may be requested by FNS. This information is to be forwarded to: Director, Nutrition and Technical Services Staff, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, VA 22302. All laboratory analyses are to be performed by independent or other laboratories acceptable to FNS. (FNS prefers an independent laboratory.) All laboratories shall retain the "raw" laboratory data for a period of 1 year. Such information shall be made available to FNS upon request.

3. The Product should not be designed in such a manner that would require it to be classified as a Dietary Supplement as described by the Food and Drug Administration (FDA) in 21 CFR 105. To be accepted by FNS, enriched macaroni products with fortified protein must conform to the following Standard of Identity, which is currently prescribed by FDA in its regulations. The pertinent section (21 CFR 139.117) is as follows:

Section 139.117 Enriched macaroni products with fortified protein.

(a)(1) Each of the foods for which a Standard of Identity is prescribed by this section is produced by drying formed units of dough made with one or more of the milled wheat ingredients designated in §§ 139.110(a) and 139.138(a), and other ingredients to enable the finished food to meet the protein requirements set out in paragraph (a)(2)(i) of this section. Edible protein sources, including food grade flours or meals made from nonwheat cereals or from oilseeds, may be used. Vitamin and mineral enrichment nutrients are added to bring the food into conformity with the requirements of paragraph (b) of this section. Safe and suitable ingredients, as provided for in paragraph (c) of this section, may be added.

The proportion of the milled wheat ingredient is large than the proportion of any other ingredient used.

(2) Each such finished food, when tested by the methods described in the cited sections of "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference (copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L Street, NW., Washington, DC 20428), meets the following specifications.

(i) The protein content (Nx6.25) is not less than 20 percent by weight (on a 13 percent moisture basis) as determined by the method in section 14.142. The protein quality is not less than 95 percent that of casein as determined on the cooked food by the method in sections 43.212 through 43.216 of the official methods.

(ii) The total solids content is not less than 87 percent by weight as determined by the method in section 14.133 of the official methods.

(b)(1) Each food covered by this section contains in each pound 5 milligrams of thiamin, 2.2 milligrams of riboflavin, 34 milligrams of niacin or niacinamide, and 16.5 milligrams of iron.

(2) Each pound of such food may also contain 625 milligrams of calcium.

(3) Iron and calcium may be added only in forms which are harmless and assimilable. The enrichment nutrients may be added in a harmless carrier used only in a quantity necessary to effect a uniform distribution of the nutrients in the finished food. The requirements of paragraphs (b)(1) and (2) of this section shall be deemed to have been met if reasonable overages, within the limits of good manufacturing practice, are present to assure that the prescribed levels of the vitamins and mineral(s) are maintained throughout the expected shelf life of the food under customary conditions of distributon.

(c) The safe and suitable ingredients referred to in paragraph (a) of this section are ingredients that serve a useful purpose, e.g., to fortify the protein or facilitate production of the food, but they do not not include color additives, artifical flavorings, artifical sweeteners, chemical preservatives, or starches. Ingredients deemed suitable for use by this paragraph are added in amounts that are not in excess of those reasonably required to achieve their intended purposes. Ingredients are deemed to be safe if they are not food additives within the meaning of section 201(s) of the Federal Food, Drug, and Cosmetic Act, or in case they are food additives if they are used in conformity with regulations established puruant to section 409 of the act.

(d)(1) The name of any food covered by this section is "Enriched Wheat _____ Macaroni Product—with Fortified Protein", the blank being filled in with appropriate word(s) such as "Soy" to show the source of any flours or meals used that were made from non-wheat cereals or from oilseeds. In lieu of the words "Macaroni Product" the words "Macaroni", "Spaghetti", or "Vermicelli", as appropriate, may be used if the units conform in shape and size to the requirements of §139.110 (b), (c), or (d).

(2) When any ingredient, not designated in the part of the name prescribed in paragraph (d)(1) of this section, is added in such proportion as to contribute 10 percent or more of the quantity of protein contained in the finished food, the name shall include the statement "Made with _____", the blank being filled in with the name of each such ingredient, e.g., "Made with nonfat milk".

(3) When, in conformity with paragraph (d) (1) or (2) of this section, two or more ingredients are listed in the name, their designations shall be arranged in descending order of predominance by weight.

(4) In the case of a food made to comply with another section of this part, but which also meets the compositional requirements of this section, it may alternatively bear the name set out in that other section.

(e) The common name of each of the ingredients used shall be declared on the label as required by the applicable section of Part 101 of this chapter. Further, the declaration of ingredients as set forth in this paragraph, shall appear in letters not less than one-half the size of that required by § 101.105 of this chapter for the declaration of net quantity of contents, and in no case less than one-sixteenth of an inch in height.

Cheese Alternate Products

1. Schools may utilize cheese alternate products described, in paragraph 3, as a food component meeting the meal requirements of § 210.10 of the National School Lunch Program regulations under the following terms and conditions:

(a) Cheese alternate products shall be prepared and served in combination with natural or processed cheese. The natural or processed cheese with which cheese alternate products are mixed must meet FDA Standards of Identity for cheese or processed cheese (21 CFR Part 133).

(b) Cheese alternate products shall be prepared in such a manner that the cheese alternate product and natural or processed cheese are combined in the cooking or heating process in the preparation of such cooked products as macaroni and cheese, grilled cheese sandwiches, cheeseburgers, enchiladas, pizzas, etc.

(c) The quantity, by weight, of cheese alternate product in the combination shall not exceed that of the natural or processed cheese.

(d) The combination of cheese alternate product and natural or processed cheese may meet all or part of the meat or meat alternate requirements specified in § 210.10.

(e) When cheese alternate products are served in a meal with other alternate foods that are authorized in this Appendix A, each individual alternate food shall be used as specifically directed.

(f) Only cheese alternate products that bear a label containing substantially the following legend shall be so utilized: "This product meets USDA–FNS specifications for cheese alternate products." In those States where State or local law prohibits the wording specified, a legend acceptable to both the State or local authorities and FNS shall be substituted. The term "cheese alternate products" shall denote a class of products and not a product name. The name and labeling of the product shall comply with applicable regulations prescribed by FDA, USDA, or other government agencies.

2. Only cheese alternate products that have been accepted by FNS for use in the USDA child nutrition programs may be labeled as provided in paragraph 1(f) above. Manufacturers seeking acceptance of their product shall furnish FNS a chemical analysis, protein efficiency ratio analysis, a statement verifying that the product maintains physical and functional properties specified in 3(b), and such other pertinent data as may be requested by FNS. This information shall be forwarded to: Director, Nutrition and Technical Services Staff, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, VA 22302. All laboratory analyses are to be performed by independent or other laboratories acceptable to FNS. All laboratories shall retain the "raw" laboratory data for a period of one year. Such information will be made available to FNS upon request.

3. To be accepted by FNS, products must have the following properties and meet the following nutritional specifications:

(a) *Ingredients.* All ingredients shall be of food grade products. Protein materials shall be derived from animal sources. Lipid materials may be derived from either plant or animal sources. Lipids shall contain not more than 50 percent of their fatty acids in a saturated form. Both protein and lipid materials shall be combined with water, fats, or oils, salts, carbohydrates, vitamins and mineral in proportions necessary to meet composition specifications. All ingredients shall be in conformity with the Federal Food, Drug and Cosmetic Act and regulations pursuant to that Act as applicable. All ingredients covered by USDA or FDA standards shall comply with requirements of those standards. The requirements as specified will be deemed to have been met if reasonable overages of the vitamins and minerals, within the limits of good manufacturing practice, are present to insure that the required levels are maintained throughout the expected shelf life under customary conditions of distribution and storage. An exception will be made for vitamins or minerals which occur naturally in an ingredient of the cheese alternate products at such concentration that the level specified will be substantially exceeded in the final product. Such excess will be permitted but no label claim of nutritional advantage can be made for overages for any nutrients. The product should not be formulated in such a manner that would require it to be classified as a Dietary Supplement, as described by FDA in 21 CFR 105.

(b) *Physical and functional properties*—(1) *Flavor.* Product shall be free of off-flavors characterized as onion, musty, grassyweedy, painty, rancid, fruity, etc.

(2) *Meltability.* Fifteen grams of product in shredded form on a slice of bread must melt to a smooth consistency and lose shred identity in a maximum of 3 minutes when placed in a conventional oven preheated and set at 500 degrees Fahrenheit.

(3) *Texture and consistency.* A plug drawn from product held at 40 degrees Fahrenheit shall be firm with slight elasticity when rolled between the fingers and free of weak or soft spots; it shall be smooth, but not dry, mealy, pasty, or smeary.

(4) *Slicing character.* Product, at 40 degrees Fahrenheit, will slice to a 3½" × 3½" 21 gram slice without breaking, crumbling, binding or sticking.

(5) *Grinding character.* Product, at 40 degrees Fahrenheit, will grind through a ⅛" extrusion die on a commercial food chopper without sticking or becoming gummy. Ground particles will form distinct pieces without sticking or clumping.

(c) *Nutritional specifications.* Cheese alternate products shall meet the compositional requirements set forth in the following table. All values are expressed on an "as-is" basis. The analytical methods employed should be those prescribed for cheese analysis in "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition, or by appropriate analytical procedures FNS considers reliable.

NUTRITIONAL SPECIFICATIONS FOR CHEESE ALTERNATE PRODUCTS

Nutrients	Units	Required levels	
		Units per 100 grams of product	Maximum
Moisture	Percent		47.0
Carbohydrate.	do		6.0
Ash	do		5.5
Protein [1]	do	23.0	
Fat	do	21.0	
Calcium	Milligram	650.0	
Phosphorus.	do	150.	
Iron	do	.5	
Magnesium.	do	26.	
Zinc	do	4.	
Vitamin	International Unit	1200.	
Thiamin	Milligram	.02	
Riboflavin	do	.60	
Niacin	do	.10	
Folic acid	do	.15	
Vitamin B_6.	do	.10	
Vitamin B_{12}.	Microgram	1.0	

[1] Nitrogen times 6.38.

(d) *Biological Value of Protein.* The Protein Efficiency Ratio (PER) of cheese alternate products shall not be less than 2.5 (casein=2.5). PER shall be determined by the method "Biological Evaluation of Protein Quality" in the reference cited in the preceding section.

4. The Department will issue guidance materials for the use of the State agencies and FNS Regional Offices on the use of cheese alternates in the child nutrition programs.

Vegetable Protein Products

1. Schools, institutions, and service institutions may use a vegetable product, defined in paragraph 2, as a food component meeting the meal requirements specified in §§ 210.10, 225.10 or 226.21 under the following terms and conditions:

(a) The vegetable protein product must be prepared in combination with raw or cooked meat, poultry or seafood and shall resemble as well as substitute, in part, for one of these major protein foods. Substitute refers to a vegetable protein product whose presence in another food results in the presence of a smaller amount of meat, poultry or seafood than is customarily expected or than appears to be present in that food. Examples of items in which a vegetable protein product may be used include, but are not limited to, beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

(b) Vegetable protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form in combination with meat, poultry or seafood. The moisture content of the fully hydrated vegetable protein product shall be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

(c) The quantity, by weight, of the fully hydrated vegetable protein product must not exceed 30 parts to 70 parts meat, poultry or seafood on an uncooked basis. The quantity by weight of the dry or partially hydrated vegetable protein product must not exceed a level equivalent to the amount (dry weight) used in the fully hydrated product at the 30 percent level of substitution. The dry or partially hydrated product's replacement of meat, poultry or seafood will be based on the level of substitution it would provide if it were fully hydrated.

(d) A vegetable protein product may be used to satisfy the meat/meat alternate requirement when combined with meat, poultry or seafood and when it meets the other requirements of this section.The combination of the vegetable protein product and meat, poultry or seafood may meet all or part of the meat/meat alternate requirement specified in §§ 210.10, 225.10 or 226.21.

(e) The contribution vegetable protein products make toward the meat/meat alternate requirement specified in §§ 210.10, 225.10, or 226.21 shall be determined on the basis of the preparation yield of the meat, poultry or seafood with which it is combined. When computing the preparation yield of a product containing meat, poultry or seafood and vegetable protein product, the vegetable protein product shall be evaluated as having the same preparation yield that is applied to the meat, poultry or seafood it replaces.

(f) When vegetable protein products are served in a meal with other alternate foods authorized in Appendix A, each individual alternate food shall be used as specifically directed.

2. A vegetable protein product to be used to resemble and substitute, in part, for meat, poultry or seafood, as specified in paragraph 1 must meet the following criteria:

(a) The vegetable protein product (substitute food) shall contain one or more vegetable protein products which are defined as foods which are processed so that some portion of the nonprotein constituents of the vegetable is removed. These vegetable protein products are safe and suitable edible products produced from vegetable (plant) sources including, but not limited to soybeans, peanuts, wheat, and corn.

(b) The types of vegetable protein products described in paragraph 2(a)(1) above shall include flour, concentrate, and isolate as defined below:

(1) When a product contains less than 65 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances it is a "flour," the blank is to be filled with the name of the source of the protein, e.g., "soy" or "peanuts."

(2) When a product contains 65 percent or more but less than 90 percent protein by weight calculated on a moisture-free basis excluding added flavors,colors, or other added substances, it is a "_____ protein concentrate," the blank to be filled with the name of the source of the protein, e.g., "soy" or "peanut."

(3) When a product contains 90 percent or more protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances, it is a "protein isolate" or "isolated _____ protein," the blank to be filled in with the name of the source of the protein, e.g., "soy" or "peanut."

(c) Compliance with the moisture and protein provisions of paragraph 2(b) (1), (2), and (3) above shall be determined by the appropriated methods described in "Official Methods of Analysis of the Association of Official Analytical Chemists" (latest edition).

(d) Vegetable protein product which are used to resemble and substitute, in part, for meat, poultry or seafood shall be labeled in conformance with applicable paragraphs of 102.76, tentative final regulations published by the Food and Drug Administration in the **Federal Register** of July 14, 1978 (43 FR 30472). Adopted for the purpose of this regulation are the following:

(1) The common or usual names for a vegetable protein product used to resemble and substitute, in part, for meat, poultry or seafood shall include the term "vegetable protein product" and may include the term "textured" or "texturized" and/or a term e.g., "granules," when such term is appropriate. The term "plant" may be used in the name in lieu of the term "vegetable."

(2) The vegetable protein products used as ingredients in the substitute food shall be listed by source (e.g., soy or peanut) and product type [i.e., flour, concentrate, isolate] in the ingredient statement of the label. Product type(s) listed shall comply with the appropriate definition(s) set forth paragraph 2(b) (1), (2) and (3), and may include a term which accurately describes the physical form of the product, e.g., "granules" when such term is appropriate.

(e) Vegetable protein products which are used to resemble and substitute, in part, for meat, poultry or seafood shall meet the following nutritional specifications adopted from § 102.76(f)(1)(ii)(*a*)(*b*) tentative final regulations, published by the Food and Drug Administration in the **Federal Register** of July 14, 1978 (43 FR 30472).

(1) The biological quality of the protein in the vegetable protein product shall be at least 80 percent that of casein, determined by

performing PER assay or unless FNS grants an exception by approving an alternate test.

(2) The vegetable protein product shall contain at least 18 percent by weight when hydrated or formulated to be used in combination with meat, poultry or seafood. ("When hydrated or formulated" refers to a dry vegetable protein product and the amount of water, fat, oil, colors, flavors or any other substances which have been added in order to make the resultant mixture resemble the meat, poultry or seafood).

(3) The vegetable protein product must contain the following levels of nutrients per gram of protein:

Nutrient	Amount
Vitamin A (IU)	13.
Thiamine (milligrams)	0.02
Riboflavin (milligrams)	.01
Niacin (milligrams)	.3
Pantothenic acid (milligrams)	.04
Vitamin B_6 (milligrams)	.02
Vitamin B_{12} (milcrograms)	.1
Iron (milligrams)	.15
Magnesium (milligrams)	1.5
Zinc (milligrams)	.5
Copper (micrograms)	24.
Potassium (milligrams)	17.

(4) Compliance with the nutrient provisions set forth in paragraph 2(e) (1), (2) and (3) above shall be determined by the appropriate methods described in "Official Methods of Analysis of the Association of Official Analytical Chemists" (latest edition).

(f) Vegetable protein products to be used in the Child Nutrition Program to resemble and substitute, in part, for meat, poultry or seafood that comply with the labeling and nutrition specifications set forth in paragraph 2(d) (1) and (2) and paragraph 2(e) (1), (2) and (3) shall bear a label containing the following statement: "This product meets USDA-FNS requirements for use in meeting a portion of the meat/meat alternate requirement of Child Nutrition Programs". This statement shall appear on the principal display panel area of the package.

(g) It is recommended that for vegetable protein products to be used to resemble and substitute, in part, for meat, poultry or seafood and labeled as specified in paragraph 2(f) above, manufacturers provide information on the percent protein contained in the dry vegetable protein product (on an as is basis).

(h) It is recommended that for a vegetable protein product mix, manufacturers provide information on (1) the amount by weight of dry vegetable protein product in the package, (2) hydration instructions, and (3) instructions on how to combine the mix with meat, poultry or seafood. A vegetable protein product mix is defined as a dry product containing vegetable protein products that comply with the labeling and nutritional specifications set forth in paragraphs 2(d) (1) and (2) and paragraphs 2(e) (1), (2), and (3) along with substantial levels (more than 5 percent) of seasonings, bread crumbs, flavorings, etc.

3. Schools, institutions, and service institutions may use a commercially prepared meat, poultry or seafood product combined with vegetable protein products to meet all or part of the meat/meat alternate requirement specified in § 210.10, 225.10 or 226.21 if the product bears a label containing the statement: "This item contains vegetable protein product(s) which is authorized as an alternate food in the Child Nutrition Programs." (Outlined in paragraph 2 above). This would designate that the vegetable protein product used in the formulation of the meat, poultry or seafood item complies with the naming and nutritional specifications set forth in paragraph 2 above. The presence of this label does not insure the proper level of hydration, ratio of substitution nor the contribution that the product makes toward meal pattern requirements for the Child Nutrition Programs.

Appendix B—Categories of Foods of Minimal Nutritional Value

(a) *Foods of minimal nutritional value*—Foods of minimal nutritional value are:

(1) *Soda Water*—As defined by 21 CFR 165.175 Food and Drug Administration Regulations, except no product shall be excluded from this definition because it contains artificial sweeteners or discrete nutrients added to the food such as vitamins, mineral, and protein.

(2) *Water Ices*—As defined by 21 CFR 135.160 Food and Drug Administration Regulations except that water ices which contain fruit or fruit juices are not included in this definition.

(3) *Chewing Gum*—Flavored products from natural or synthetic gums and other ingredients which form an insoluble mass for chewing.

(4) *Certain Candies*—Processed foods made predominantly from sweeteners or artifical sweeteners with a variety of minor ingredients which characterize the following types:

(i) *Hard Candy*—A product made predominantly from sugar (sucrose) and corn syrup which may be flavored and colored, is characterized by a hard, brittle texture, and includes such items as sour balls, fruit balls, candy sticks, lollipops, starlight mints, after dinner mints, sugar wafers, rock candy, cinnamon candies, breath mints, jaw breakers and cough drops.

(ii) *Jellies and Gums*—A mixture of carbohydrates which are combined to form a stable gelatinous system of jelly-like character, and are generally flavored and colored, and include gum drops, jelly beans, jellied and fruit-flavored slices.

(iii) *Marshmallow Candies*—An aerated confection composed as sugar, corn syrup, invert sugar, 20 percent water and gelatin or egg white to which flavors and colors may be added.

(iv) *Fondant*—A product consisting of microscopic-sized sugar crystals which are separated by thin film of sugar and/or invert sugar in solution such as candy corn, soft mints.

(v) *Licorice*—A product made predominantly from sugar and corn syrup which is flavored with an extract made from the licorice root.

(vi) *Spun Candy*—A product that is made from sugar that has been boiled at high temperature and spun at a high speed in a special machine.

(vii) *Candy Coated Popcorn*—Popcorn which is coated with a mixture made predominantly from sugar and corn syrup.

(b) *Petitioning Procedures*—Reconsideration of the list of foods of minimal nutritional value identified in paragraph (a) of this section may be pursued as follows:

(1) Any person may submit a petition to FNS requesting that an individual food be exempted from a category of foods of minimal nutritional value listed in paragraph (a). In the case of artificially sweetened foods, the petition must include a statement of the percent of USRDA for the eight nutrients listed in § 210.11(a)(2) "Foods of minimal nutritional value," that the food provides per serving and the petitioner's source of this information. In the case of all other foods, the petition must include a statement of the percent of USRDA for the eight nutrients listed in § 210.11(a)(2) "Foods of minimal nutritional value," that the food provides per serving and per 100 calories and the petitioner's source of this information. The Department will determine whether or not the individual food is a food of minimal nutritional value as defined in § 210.11(a)(2) and will inform the petitioner in writing of such determination, and the public by notice in the **Federal Register** as indicated below under paragraph (b)(3) of this section. In determining whether an individual food is a food of minimal nutritional value, discrete nutrients added to the food will not be taken into account.

(2) Any person may submit a petition to FNS requesting that foods in a particular category of foods be classified as foods of minimal nutritional value as defined in § 210.11(a)(2). The petition must identify and define the food category in easily understood language, list examples of the food contained in the category and include a list of ingredients which the foods in that category usually contain. If, upon review of the petition, the Department determines that the foods in that category should not be classified as foods of minimal nutritional value, the petitioners will be so notified in writing. If, upon review of the petition, the Department determines that there is a substantial likelihood that the foods in that category should be classified as foods of minimal nutritional value as defined in § 210.11(a)(2), the Department shall at that time inform the petitioner. In addition, the Department shall publish a proposed rule restricting the sale of foods in that category, setting forth the reasons for this action, and soliciting public comments. On the basis of comments received within 60 days of publication of the proposed rule and other available information, the Department will determine whether the nutrient composition of the foods indicates that the category should be classified as a category of foods of minimal nutritional value. The petitioner shall be notified in writing and the public shall be notified of the Department's final determination upon publication in the **Federal Register** as indicated under paragraph (b)(3) of this section.

(3) By May 1 and November 1 of each year, the Department will amend Appendix B to

exclude those individual foods identified under paragraph (b)(1) of this section, and to include those categories of foods identified under paragraph (b)(2) of this section, *provided*, that there are necessary changes. The schedule for amending Appendix B is as follows:

Actions for publication	Publication	
	May	November
Deadline for receipt of petitions by USDA.	Nov. 15	May 15.
USDA to notify petitioners of results of Departmental review and publish proposed rule (if applicable).	Feb. 1	Aug. 1.
60 Day comment period	Feb. 1 through Apr. 1.	Aug. 1 through Oct. 1.
Public notice of amendment of appendix B by.	May 1	Nov. 1.

(4) Written petitions should be sent to the Chief, Technical Assistance Branch, Nutrition and Technical Services Division, FNS, USDA, Alexandria, Virginia 22302, on or before November 15 or May 15 of each year. Petitions must include all information specified in paragraph (b) of this Appendix and § 220.12(b) (1) or (2) as appropriate.

Appendix C—Child Nutrition Labeling Program

1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service in conjunction with the Food Safety and Inspection Service (FSIS), and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture, and National Marine Fisheries Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. This program essentially involves the review of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. CN labeled products must be produced in accordance with all requirements set forth in this rule.

2. Products eligible for CN labels are as follows:

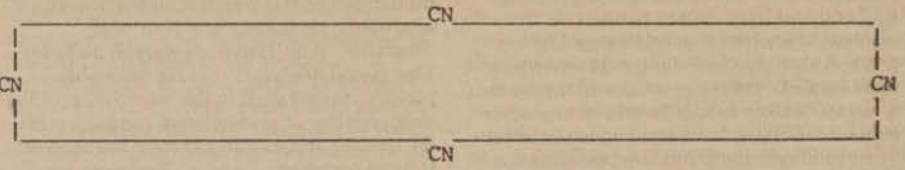
(a) Commercially prepared food products that contribute significantly to the meat/meat alternate component of meal pattern requirements of 7 CFR 210.10, 225.21, and 226.20 and are served in the main dish.

(b) Juice drinks and juice drink products that contain a minimum of 50 percent full-strength juice by volume.

3. For the purpose of this appendix the following definitions apply:

(a) "CN label" is a food product label that contains a CN label statement and CN logo as defined in paragraph 3 (b) and (c) below.

(b) The "CN logo" (as shown below) is a distinct border which is used around the edges of a "CN label statement" as defined in paragraph 3(c).



(c) The "CN label statement" includes the following:

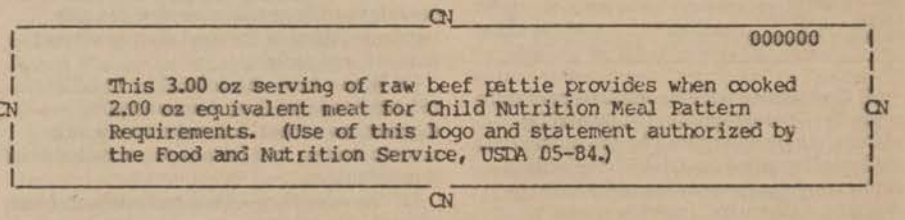
(1) The product identification number (assigned by FNS),

(2) The statement of the product's contribution toward meal pattern requirements of 7 CFR 210.10, 220.8, 225.21, and 226.20. The statement shall identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, bread/bread alternate, and/or vegetable/fruit component of the meal pattern requirements. For juice drinks and juice drink products the statement shall identify their contribution toward the vegetable/fruit component of the meal pattern requirements,

(3) Statement specifying that the use of the CN logo and CN statement was authorized by FNS, and

(4) The approval date.

For example:



(d) "Federal inspection" means inspection of food products by FSIS, AMS or USDC.

4. Food processors or manufacturers may use the CN label statement and CN logo as defined in paragraph 3 (b) and (c) under the following terms and conditions:

(a) The CN label must be reviewed and approved at the national level by FNS and appropriate USDA or USDC Federal agency responsible for the inspection of the product.

(b) The CN labeled product must be produced under Federal inspection by USDA or USDC. The Federal inspection must be performed in accordance with an approved partial or total quality control program or standards established by the appropriate Federal inspection service.

(c) The CN label statement must be printed as an integral part of the product label along with the product name, ingredient listing, the inspection shield or mark for the appropriate inspection program, the establishment number where appropriate, and the manufacturer's or distributor's name and address. The inspection marking for CN labeled non-meat, non-poultry, and non-seafood products with the exception of juice drinks and juice drink products is established as follows:

INSPECTED BY THE U.S. DEPT. OF AGRICULTURE IN ACCORDANCE WITH FNS REQUIREMENTS

(d) Yields for determining the product's contribution toward meal pattern requirements must be calculated using the *Food Buying Guide for Child Nutrition Programs* (Program AID Number 1331).

5. In the event a company uses the CN logo and CN label statement inappropriately, the company will be directed to discontinue the use of the logo and statement and the matter will be referred to the appropriate agency for action to be taken against the company.

6. Products that bear a CN label statement as set forth in paragraph 3(c) carry a warranty. This means that if a food service authority participating in the Child Nutrition Programs purchases a CN labeled product and uses it in accordance with the manufacturer's directions, the school or institution will not have an audit claim filed against it for the CN labeled product for noncompliance with the meal pattern requirements of 7 CFR 210.10, 220.8, 225.21, and 226.20. If a State or Federal auditor finds that a product that is CN labeled does not actually meet the meal pattern requirements claimed on the label, the auditor will report

this finding to FNS. FNS will prepare a report of the findings and send it to the appropriate divisions of FSIS and AMS of the USDA, National Marine Fisheries Services of the USDC, Food and Drug Administration, or the Department of Justice for action against the company. Any or all of the following courses of action may be taken:

(a) The company's CN label may be revoked for a specific period of time;

(b) The appropriate agency may pursue a misbranding or mislabeling action against the company producing the product;

(c) The company's name will be circulated to regional FNS offices;

(d) FNS will require the food service program involved to notify the State agency of the labeling violation.

7. FNS is authorized to issue operational policies, procedures, and instructions for the CN Labeling Program. To apply for a CN label and to obtain additional information on CN label application procedures write to: CN Labels, U.S. Department of Agriculture, Food and Nutrition Service, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia 22302.

(Catalog of Federal Domestic Assistance No. 10.555.)

Dated: September 24, 1986.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 86-22046 Filed 9-29-86; 8:45 am]

BILLING CODE 3410-30-M

Federal Register

Tuesday
September 30, 1986

Part VIII

Environmental Protection Agency

40 CFR Part 60

Proposed Waiver From New Source Performance Standards; Innovative Technology Waiver for One Light-Duty Truck Surface Coating Operation; Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2980-9]

Proposed Waiver From New Source Performance Standards; Innovative Technology Waiver for One Light-Duty Truck Surface Coating Operation

AGENCY: Environmntal Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) proposes to grant, subject to the concurrence by the Governor of the State of Michigan, an innovative technology waiver, pursuant to section 111(j) of the Clean Air Act, as amended (the Act), 42 U.S.C. 7411(j), for the topcoat operation at the Chrysler Corporation's Warren, Michigan, truck plant. This waiver provides an opportunity to demonstrate the capability of a solvent-borne basecoat/clearcoat (BC/CC) topcoat system to achieve equivalent or greater volatile organic compound (VOC) emission reductions than required by the existing standard of performance for topcoat operations at automobile and light-duty truck assembly plants at lower costs.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on the proposed innovative technology waiver.

DATES: *Comments.* Comments must be received on or before November 14, 1986.

Public Hearing. A public hearing (or hearings) will be held if requested. Persons wishing to request a public hearing must contact EPA by October 14, 1986. If hearings are requested, announcements of the dates and places will appear in separate **Federal Register** notices.

ADDRESSES: *Comments.* Under section 307(d)(2) of the Clean Air Act, 42 U.S.C. 7607(d)(2), the Administrator is required to establish two identical rulemaking dockets for each rule that would apply only within the boundaries of one State. One copy of the docket is located in Washington, DC, and a second copy is located at the EPA Region V Office. Therefore, copies of all comments on this waiver action should be submitted to the Washington, DC docket *and* to the Regional Office docket.

One copy of each comment should be sent to: Central Docket Section (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A second copy of each comment should be sent to Environmental Protection Agency, Region V, Attention: Mr. Gary Gulezian, Docket Number A–86–01, 230 South Dearborn Street, Chicago, Illinois 60604.

Public Hearing. Persons wishing to request a public hearing should notify Ms. Ann Eleanor, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

FOR FURTHER INFORMATION CONTACT: Mr. Sims Roy or Mr. Gilbert Wood, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

SUPPLEMENTARY INFORMATION:

Background

Current Regulations

On October 5, 1979, pursuant to section 111 of the Clean Air Act, standards of performance were proposed to limit emissions of VOC's from new, modified, and reconstructed automobile and light-duty truck surface coating operations (44 FR 57792). Final standards were published in the **Federal Register** on December 24, 1980 (45 FR 85410).

Standards of performance under section 111 are established at levels that reflect best demonstrated technology (BDT). For automobile and light-duty truck topcoat operations, BDT was determined to be the use of low VOC content waterborne coatings applied with the best demonstrated air atomized spray techniques. The standard of 1.47 kilogram VOC per liter (kg/l) of applied coating solids for topcoat operations was based on the use of this coating system. The standard does not, however, require use of waterborne coatings. Any coating system capable of reducing VOC emissions to 1.47 kg/l of applied coating solids may be used. Other methods which could be used independently or in various combinations to achieve the topcoat standard are low VOC content solvent-borne coatings, add-on control devices (e.g., incinerators and carbon adsorbers), and more efficient coating application techniques.

Trends in Automobile Topcoats

Since the standard was proposed in 1979, the objective of the domestic autombile industry has been to develop and use low VOC content solvent-borne topcoat with improved transfer efficiency rather than waterborne coatings. Low VOC content topcoats are available for production line use. These coatings have been demonstrated to be of acceptable quality and appearance and, when applied with more efficient application equipment (better transfer efficiency) and/or bake oven emission control systems (incinerators), will meet the standard.

Since 1979, however, there has been an increase in the effort by the automobile manufacturers to develop BC/CC topcoats for automobiles and light-duty trucks. The BC/CC topcoats consist of a relatively thin layer of highly pigmented basecoat followed by a thicker layer of clearcoat. The BC/CC coatings have a more appealing appearance, because of their higher gloss, than non-BC/CC topcoat systems and also offer improved chemical resistance and gloss retention. Vehicles coated with high solvent BC/CC topcoats are now being imported to the U.S. in significant quantities by both European and Japanese manufacturers. Because of the general appeal and acceptance by U.S. consumers of vehicles coated with the BC/CC topcoats, U.S. automobile and light-duty truck manufacturers state they must duplicate the performance of this type of topcoat to be competitive.

The BC/CC coatings that are being used in foreign plants contain relatively large quantities of VOC. If U.S. manufacturers used similar coatings, the only possible method of meeting the existing standard of performance for autombile and light-duty truck topcoat operations would be to operate add-on controls on the spray booths. Although U.S. automobile manufacturers and coating suppliers have made progress in developing lower VOC content BC/CC systems, BC/CC systems with VOC content low enough to comply without such add-on control are not yet commercially available for all topcoat operations. The automobile manufacturers and equipment vendors are continuing to develop more efficient application methods for these coatings. Ultimately, this intensive industry development program could permit all automobile companies to meet the topcoat standard without having to use add-on controls on the spray booths.

Requirements of Section 111(j)

Section 111(j) of the Clean Act sets forth provisions for the issuance of waivers for the development of innovative technology. In the 1977 Amendments to the Clean Air Act, Congress added this provision to encourage the use of innovative "technological systems of continuous emission reduction" for the control of air

polutants. Their intent in doing so was to provide a statutory incentive for the improvement of emission control technology and for reducing the costs, environmental impacts, and energy usage of such technology.

Under section 111(j) of the Clean Air Act, upon request by the owner or operator of a new source and with the consent of the Governor of the State in which the source is located, the Administrator is authorized to grant a waiver from the requirements of section 111 for a limited time period provided certain statutory prerequisites are satisfied. The Administrator must determine that:

a. The proposed innovative system has not been adequately demonstrated;

b. The proposed innovative system will operate effectively and there is substantial likelihood that the system will achieve greater continuous emission reduction than otherwise required or achieve an equivalent emission reduction at lower cost in terms of energy, economic, or nonair quality environmental impact;

c. The owner or operator of the proposed system has demonstrated to the Administrator's satisfaction that the system will not cause or contribute an unreasonable risk to public health, welfare, or safety; and

d. The proposed waiver for the specific innovative technological system is not in excess of the number of waivers necessary to ascertain whether or not such system will achieve the conditions set forth in "b" and "c" immediately above.

Additionally, section 111(j)(1)(B) of the Clean Air Act requires an innovative technology waiver to be granted on such terms and conditions during the waiver period as the Administrator determines necessary:

a. To ensure emissions from the source will not prevent attainment and maintenance of any national ambient air quality standards, and

b. To ensure proper functioning of the innovative technological system.

Current Waivers

On February 4, 1983, EPA granted innovative technology waivers under section 111(j) of the Clean Air Act to three General Motors Corporation (GM) plants, one Honda of America Manufacturing, Inc. (Honda) plant, and one Nissan Motor Manufacturing Corporation U.S.A. (Nissan) plant. (See **Federal Register**, Vol. 48, No. 5, Friday, February 4, 1983, pp. 5452 through 5456.) On September 9, 1985, EPA granted innovative technology waivers to three Ford Motor Company (Ford) plants and one Chrysler plant. (See **Federal Register**, Vol. 50, No. 174, Monday, September 9, 1985, pp. 36830 through 36836.) Allowable VOC emissions from the portion of topcoat operations that use BC/CC coatings granted under these waivers are summarized in Table 1. Non-BC/CC topcoats, under these waivers, are still required to meet the standard at all times.

TABLE 1.—VOC EMISSION LEVELS GRANTED UNDER CURRENT WAIVERS FOR BC/CC COATINGS

Company	Plant	kg/l of applied coating solids
GM	Wentzville	1.9
	Detroit	1.9
	Orion Township	1.9
Nissan	Smyrna	2.3
Honda	Marysville	3.1
Ford	Hapeville	2.6
	St. Paul	2.0
	Hazelwood	2.5
Chrysler	Sterling Heights	1.7

Waiver Request

On June 27, 1985, Chrysler submitted a request for an innovative technology waiver under section 111(j) of the Clean Air Act for a new topcoat operation at their light-duty truck plant in Warren, Michigan, until December 31, 1987. The plant was scheduled to begin using its new topcoat operation in March 1986. Chrysler states that they need to use BC/CC topcoats on most, if not all, of the trucks produced at this plant so that they can compete with both foreign and domestic truck manufacturers. The latter is increasingly relying on BC/CC topcoats.

Chrysler indicated that the lowest VOC content BC/CC coating that would be demonstrated and available for production line use at plant startup is a topcoat system that is composed of a 40 volume percent solids basecoat and a 46 volume percent solids clearcoat (i.e., a 40/46 BC/CC coating). At startup, this coating and the application system to be used will not meet the topcoat standard of performance. However, Chrysler is currently evaluating a 40/54 BC/CC coating. The 40/54 BC/CC coating could meet the topcoat standard of performance with oven incineration and an average coating transfer efficiency of 53 percent for BC and 76.4 percent for CC. Chrysler expects this coating to be ready for production application prior to the 1988 car model year.

Technology Not Demonstrated

The lowest VOC content BC/CC coating expected to be available and demonstrated for the Chrysler plant at startup will average 40 volume percent solids for the basecoat and 46 volume percent solids for the clearcoat (i.e., 40/46 BC/CC coating). The BC will be applied with manual and automatic air atomized spray. The CC will be applied with a combination of electrostatic bells and manual electrostatic sprays. The average transfer efficiency will be 45 percent for the BC and 76.4 percent for the CC. The exhaust gas streams from all the topcoat ovens will be incinerated. The company indicates that the oven incinerators would reduce overall topcoat VOC emissions by about 18 percent. Under these conditions, BC/CC topcoat emissions would be 1.7 kg/l (14.6 lbs/gallon) of applied coating solids. This emission level is higher than the 1.47 kg/l of applied coating solids allowed by the standard of performance for topcoat operations.

A higher solids BC/CC coating is being developed and tested. This coating, a 40/54 BC/CC coating, could meet the topcoat standard of performance when used in conjunction with higher BC transfer efficiencies (53 percent), which Chrysler plans to accomplish through use of hand-held electrostatic guns, automatic electrostatic application, and full (maximum) purge capture.

Development of this BC/CC coating to the point where it is compatible with higher transfer efficiency coating equipment and ready for use on assembly lines is a time-consuming process. Compliance with the topcoat standard of performance is dependent not only upon continued development of this coating, but also upon the use of more efficient coating application techniques. Development and demonstration of these techniques are an integral part of the coatings development program for each automobile manufacturer. Differences in the overall coatings and application program among manufacturers may enable one manufacturer to meet the standard with a coating, whereas another manufacturer may not be able to meet the standard with the same coating.

In addition to the need to assure that the coatings can be applied under assembly-line conditions while achieving acceptable appearance and quality, there is also the need to assure durability of the coating. This requires long-term exposure testing.

Until the 40/54 BC/CC coating and improved application system are fully developed, compliance with the topcoat standard of performance can only be achieved by limiting production of vehicles with BC/CC coatings or by using add-on controls on spray booths. Both of these alternatives impose

economic costs that are greater than those associated with a BC/CC system that is operating effectively.

In summary, BC/CC topcoat systems that will meet the topcoat standard of performance are not adequately demonstrated within the meaning of section 111(a)(1). Furthermore, the BC/CC topcoat system that is currently available for this plant would not allow compliance with the topcoat standard of performance without requiring either a reduction in the number of vehicles coated with BC/CC or the use of add-on control devices on spray booths. A BC/CC system that is operating effectively will achieve equivalent emission reduction to these two options and at a lower cost.

BC/CC Systems Will Operate Effectively and Achieve the Standard at Lower Costs

There is sufficient evidence to indicate that the companies that develop and market automobile coatings and coatings application equipment will develop BC/CC coating systems that will meet both the topcoat standard of performance and the automobile manufacturer's production and coating quality requirements within the time frame provided in this waiver. This conclusion is based on the fact that the companies that develop and market automobile coatings have a history of succeeding within their projected time frames for developing low VOC content coatings.

When demonstrated, the 40/54 BC/CC coating and improved basecoat transfer efficiency will meet the topcoat standard of performance without spray booth controls; therefore, the energy and economic impacts would be much less than for the use of 40/60 BC/CC coating and spray booth controls.

Number of Waivers Needed to Demonstrate Technology

Based on a review of the technical factors involved in demonstrating that lower solvent BC/CC systems are an adequately demonstrated technology, the Agency concludes that the number of waivers which have been requested, including the one currently being requested, are necessary and appropriate. Generally, much of the BC/CC technology is transferable among automobile manufacturing companies, since coating manufacturers do not limit their sales to only one firm or plant. However, individual automobile manufacturing companies have historically relied on their own testing procedures and acceptance criteria for establishing coating durability and quality. Such independent testing is an inherent part of the structure of the automobile industry and plays an important role in advancing the quality of automobile coatings.

Moreover, the demonstration of BC/CC techology involves advancement in application equipment, as well as the coatings, and the two must be compatible. The advancement and demonstration of this technology must take into account a number of variables including different plant designs and approaches to paint processing; variability among coating supplied by several suppliers; plant-to-plant differences in the operation of paint line equipment (e.g., oven temperature, spray booth flow rate, and humidity control systems); the use of robot systems; and high voltage electrostatic equipment supplied by several vendors. Further, variations between topcoat operations at plants owned by the same automobile manufacturer affect the ability to use a particular BB/CC coating in meeting the NSPS. These variations include production rate, spray gun layout, spray booth design, training of personnel, and the number of personnel involved. In effect, these variables present a matrix of combinations that must be evaluated before the lower solvent BC/CC systems are fully demonstrated. Considering the complexity and technical challenge which this presents, the Agency concludes that this waiver is warranted.

BC/CC Will Not Cause or Contribute to Unreasonable Risk to Public Health, Welfare, or Safety

The ambient air quality impacts of allowing additional VOC emissions during the waiver period would not contribute to an unreasonable risk to public health, welfare, or safety. The waiver would allow a rate of approximately 169 additional tons of VOC per year to be emitted from topcoat operations while it is in effect if the manufacturer were to use BC/CC coatings 100 percent of the time. As the waiver would be in effect for less than 6 months, there would be less than approximately 85 additional tons of VOC emitted.

The proposed waiver contains a general provision to clarify that the granting of this waiver does not exempt the automobile manufacturer from any requirements that the State may impose in order to maintain reasonable further progress, to achieve an approved demonstration of attainment, or to attain and maintain the national ambient air quality standard for ozone. The proposed waiver would not affect the attainment date for the national ambient air quality standard for ozone because it would expire on December 31, 1986.

The plant is located in a nonattainment area for ozone. The construction and operating permits for this plant will have to be revised. The permits must ensure that reasonable further progress (RFP) toward attainment will be maintained. The waivers that have previously been granted presumed that the offsets required by the States were sufficient to demonstrate RFP. Because of the short duration of this particular waiver, the Agency believes that the offsets required by the State are sufficient to not interfere with attainment and maintenance. The statewide compliance requirement of section 173 of the Clean Air Act also must be met. Compliance with the lowest achievable emission rate requirement (LAER) of section 173 of the Act is also necessary. The proposed innovative technology appears to meet the intent of the LAER requirement since it offers the potential of providing greater emission reductions at lower costs. Therefore, the short term of this waiver is considered an acceptable length of time to allow this source to defer the application of LAER.

Use of the low VOC content BC/CC coating systems will not result in an increase in water or solid waste pollution compared to the current coating systems now in use at existing plants, nor will new pollutants be released to the environment.

Conclusion

Based on the above considerations, the Administrator proposes to grant, subject to the concurrence of the Governor of Michigan, an innovative technology waiver as specified in this proposal to Chrysler for their Warren, Michigan, light-duty truck assembly plant based upon findings that such a waiver complies with the provisions of section 111(j) of the Act.

Proposed Waiver

The waiver is proposed to be granted under the following general conditions. The starting BC/CC system would be the lowest emitting BC/CC system adequately demonstrated for the plant. The proposed waiver is based on the plant using the coating applications systems with the highest transfer efficiencies that are currently available and practical at the subject plant.

The waiver would cover only the BC/CC topcoat portion of the topcoat operations. If non-BC/CC solid color or metallic topcoats are used, that portion of the topcoat operation must meet the topcoat standard of performance at all times. A report of progress on the development of the BC/CC coatings and

application systems must be made to EPA within 60 days of issuance of the waiver. The topcoat standard of performance must be achieved as soon as possible.

As noted earlier, Chrysler's requested that their waiver be granted until December 31, 1987. Chrysler requested date is based upon introducing a compliance BC/CC at the start of the 1988 model year rather than introducing a compliance BC/CC in the middle of the 1987 model year. The other automobile manufacturers for whom waivers have already been issued have indicated that they can implement a compliance BC/CC system by December 31, 1986, even though the changeover might occur in the middle of the 1987 model year. These previously issued waivers, including the one for Chrysler's Sterling Heights plant, expire on December 31, 1986. Further, Chrysler has been very active in the development of complying BC/CC systems. Given the similarity between the Sterling Heights' proposed BC/CC system and the Warren truck plant's proposed BC/CC system, there is no apparent technological reason as to why this waiver should not expire on the same date. Therefore, the proposed waiver for Chrysler's Warren plant would expire on December 31, 1986.

Chrysler is required, consistent with Parts C and D of the Clean Air Act, to obtain permits to operate from the State. These permits would ensure that the waiver will not prevent attainment and maintenance of any national ambient air quality standard. The proposed waiver is based on the proper operation of the BC/CC systems.

By virtue of section 111(j)(1)(B) of the Clean Air Act, 42 U.S.C. 7411(j)(1)(B), the terms and conditions of the section 111(j) waiver would be a federally promulgated standard of performance legally applicable during the waiver period. Violations of the terms and conditions of the section 111(j) waiver would subject the owners and operators of the plant granted a waiver to Federal enforcement under section 113 (b) and (c) of the Act, 42 U.S.C. 7413 (b) and (c), and under section 120 of the Act, 42 U.S.C. 7420, as well as possible citizen enforcement under section 304 of the Act, 42 U.S.C. 7604.

State Concurrence

Pursuant to section 111(j)(1)(A) of the Act, 42 U.S.C. 7411(j)(1)(A), if after review and consideration of comments submitted in response to this rulemaking, the Administrator decides to issue a waiver of the Federal New Source Performance Standard to Chrysler's Warren, Michigan, plant, the Administrator shall request the concurrence of the Governor of the State of Michigan. Receipt of such concurrence is a prerequisite for a waiver under section 111(j) of the Act.

Docket

The docket for the proposed waiver is an organized and complete file of all the information considered in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated waivers and EPA's responses to significant comments, the contents of the docket will serve as the record in case of judicial review except for interagency review materials [section 307(d)(7)(A)].

Miscellaneous

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires EPA to submit to the Office of Management and Budget (OMB) certain public reporting/recordkeeping requirements before proposal. This rulemaking does not involve a "collection of information" as defined in the Paperwork Reduction Act. Therefore, the provisions of the Paperwork Reduction Act applicable to collection of information do not apply to this rulemaking.

The Administrator certifies that a regulatory flexibility analysis under 5 U.S.C. 601 et seq. is not required for this rulemaking because the rulemaking would not have a significant impact on a substantial number of small entities. The rulemaking would not impose any new requirements; and, therefore, no additional costs would be imposed. It is, therefore, classified as nonmajor under Executive Order 12291.

List of Subjects in 40 CFR Part 60

Air pollution control, Automobile and light-duty truck manufacturing industry (SIC 3711), Intergovernmental relations, Reporting and recordkeeping.

Dated: September 24, 1986.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is proposed to be amended as follows:

1. The authority citation for Part 60 is revised as set forth below and the authority citations following all the sections in part 60 are removed.

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Section 60.398 is amended by adding a new paragraph (j) to read as follows:

§ 60.398 Innovative technology waivers.

* * * * *

(j) Chrysler Corporation, Warren, Michigan, light-duty truck assembly plant.

(1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Chrysler Corporation's light-duty truck assembly plant located in Warren, Michigan, shall comply with the following conditions:

(i) The Chrysler Corporation shall obtain the necessary permits as required by Parts C and D of the Clean Air Act, as amended August 1977, to operate the Warren assembly plant.

(ii) Commencing on September 30, 1986, and continuing to December 31, 1986, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified in 40 CFR 60.392(c) is demonstrated to the Administrator's satisfaction, whichever is sooner, the Chrysler Corporation shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the Warren, Michigan, assembly plant, to either:

(A) 1.7 kilograms of VOC per liter of applied coating solids from BC/CC topcoats, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (j)(1)(ii) and continuing thereafter, emissions of VOC's from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified in 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coatings when necessary to demonstrate compliance with the emission limits specified under § 60.398(j)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604, postmarked before 60 days after the promulgation of this waiver. A copy of this report shall be sent to Director, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD–13, Research Triangle Park,

North Carolina, 27711. The technology development report shall summarize the BC/CC coating and application system development work including the results of exposure and endurance tests of the various coatings being evaluated. The report shall include an update schedule of attainment of 40 CFR 60.392(c), based on the most current information.

(2) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for the Chrysler Corporation to operate a topcoat operation in violation of the requirements established in this waiver. Violation of the terms and conditons of this waiver shall subject the Chrysler Corporation to enforcement under sections 113 (b) and (c) of the Act [42 U.S.C. 7412 (b) and (c)] and under section 120 of the Act (42 U.S.C. 7420), as well as possible citizen enforcement under section 304 of the Act (42 U.S.C. 7604).

(3) This waiver shall not be construed to constrain the State of Michigan from imposing upon the Chrysler Corporation any emission reduction requirement at Chrysler's Warren light-duty truck assembly plant necessary for the maintenance of reasonable further progress or the attainment of the national ambient air quality standard for ozone or the maintenance of the national ambient air quality standard for ozone. Furthermore, this waiver shall not be construed as granting any exemptions from the applicability, enforcement, or other provisions of any other standards that apply or may apply to topcoat operations or any other operations at this light-duty truck assembly plant.

[FR Doc. 86-22031 Filed 9-29-86; 8:45 am]
BILLING CODE 6560-50-M

Federal Register

Tuesday
September 30, 1986

Part IX

Environmental Protection Agency

40 CFR Part 61

National Emissions Standards for Hazardous Air Pollutants: Vinyl Chloride; Equipment Leaks of Volatile Hazardous Air Pollutants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3044-5]

National Emission Standards for Hazardous Air Pollutants: Vinyl Chloride; Equipment Leaks of Volatile Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA proposed administrative and clarifying revisions to the national emission standard for vinyl chloride (VC) on January 9, 1985, (50 FR 1182). Certain revisions to the standard are being promulgated in Subpart F through this action and, to a minor extent, in Subpart V of 40 CFR Part 61. Finally, through this action the Agency is denying the petition of the Natural Resources Defense Council (NRDC) and the Environmental Defense Fund (EDF) which sought reconsideration of the EPA's withdrawal of the amendments to the VC standard which were proposed in 1977.

EFFECTIVE DATE: September 30, 1986. Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by filing of a petition for review in the United States Court of Appeals for the District of Columbia circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject for today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Incorporation by Reference

The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the **Federal Register** as of September 30, 1986.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Vinyl Chloride Standard: Responses to Comments on January 1985 Proposed Revisions," EPA-450/3-86-004. The BID contains: (1) A summary of all public comments on the proposed revisions and the Administrator's response to the comments, and (2) a summary of the changes made to the revised standard since proposal.

Dockets. A docket, number A-81-21, containing information considered by EPA in developing of the promulgated revisions to the standard for VC, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information concerning the enforcement aspects of the promulgated revisions, contact Mr. Richard Biondi, Compliance Monitoring Branch, Stationary Source Compliance Division, (EN-341), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20469, telephone number (202) 382-2826. For further information concerning the background technical information supporting the promulgated revisions, contact Mr. Robert E. Rosensteel, Chemicals and Petroleum Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5671. For other information on the regulation of VC and the promulgated revisions, contact Mr. Fred Dimmick, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

SUPPLEMENTARY INFORMATION:

Summary of Revisions to the Standard

The VC standard was promulgated on October 21, 1976 (41 FR 46560) and applies to plants producing ethylene dichloride (EDC) via oxychlorination, plant producing VC, and plants producing polyvinyl chloride (PVC) or other polymers containing VC. These plants are subject to a combination of performance, equipment and work practice requirements at numerous points in the manufacturing processes. Based on its review of the technological basis and administrative aspects of the original standard, EPA proposed several administrative and clarifying revisions to the standard on January 9, 1985 (50 FR 1182). The comments received and actions taken on these proposed revisions are discussed below.

Requirements for Leak Detection and Repair Programs

As proposed in January 1985, VC is being added to the list of substances covered by 40 CFR Part 61 Subpart V, which contains regulations for leaks from certain equipment in volatile hazardous air pollutant (VHAP) service. Previously, plant owners subject to the VC standard were required to prepare leak detection and repair plans for each VC and PVC manufacturing facility and to submit these plans to EPA for review. An analysis of the plans submitted revealed that these plans varied widely from plant to plant. Further, some plans were considered to be inadequate and ineffective approaches to the control of VC leaks.

The incorporation of Subpart V by the standard for VC emissions establishes standardized procedures for identifying leaks of VC and for taking steps to minimize emissions and repair leaks. Further, the incorporation of Subpart V will also accomplish a standardization of the definition of what constitutes a leak for routine leak detection. However, to avoid unnecessary changes to existing plans which are effective in detecting and repairing VC leaks, the standard contains provisions whereby any facility may demonstrate through annual (or more frequent, if requested by the Administrator) performance tests that the percentage of leaking valves remains at 2 percent as an alternative to following the Subpart V procedures. An owner may continue to follow the existing leak detection and elimination program for that facility for the purpose of achieving the 2 percent performance limit. However, existing plans are no longer required, nor do they necessarily meet the promulgated requirements.

Compliance Test Procedure and Specific Opening Loss Limit for PVC Reactors Used as Strippers

The **Federal Register** notice that promulgated the current VC standard stated that VC escaping from PVC resin that has been stripped in the reactor is not intended to be included as part of the VC emissions measured under the reactor opening loss requirements. For nonbulk PVC reactors which are used as strippers, however, no method was specified to determine what part of the VC in the vapor space of the reactor had escaped after the stripping was completed. Consequently, a method was proposed for determining the reactor opening loss that accounts for stripping in the PVC reactor for use by all nonbulk resin producers. After considering the comments on this proposed revision, EPA decided to promulgate the revision.

Another proposed change in the standard affecting PVC reactors used as strippers applied to the production of bulk PVC resins. Two separate vessels are used in bulk resin production, a "prepolymerization" vessel and a "post-polymerization" vessel. Under the standard promulgated in 1976, both of these vessels were subject to the reactor

opening loss requirements. However, an analysis of the operation of prepolymerization vessels revealed that these reactors are opened less frequently than other types of reactors, and that the determination of gross product (required for the calculation of reactor opening loss) is impractical. In January 1985, EPA proposed to apply the equipment opening loss requirements, rather than the reactor opening loss requirements, to these PVC reactors. The equipment opening loss requirements are more appropriate for the operating characteristics of the prepolymerization reactor vessels and do not change the overall VC emission control stringency applicable prepolymerization reactors. After considering the comments on this proposed revision, EPA decided to promulgate the revision.

Clarification of Definitions and Standards

Based on the EPA's experience with administering the VC standard, several provisions of the standard are being revised to reduce any ambiguity in their implementation. For example, specific definitions of "leak," "exhaust gas," and "relief valve discharge" are being added to clarify the applicability of the provisions of the standard to each of these types of emissions. Similarly, to eliminate misunderstandings about the application of the standard to purification equipment following EDC and VC formation, the definitions of "EDC purification" and "VC purification" are being revised to more clearly indicate which equipment is subject to the standard.

Another revision being incorporated into the standard makes it clear that the 10 ppmv standard is a 3-hour average emission limit, rather than an instantaneous limit. The performance test provision in § 61.67(g)(1) has also been clarified to specify that test results should reflect as close to a 3-hour average as practicable. Further, the 10 ppmv standard regulation is being revised to specify that all exhaust gas streams are covered by this requirement, including control device bypass streams. In order to implement this clarification, provisions are also being incorporated into the standard for calculating the VC content in bypassed emissions. A final revision to the 10 ppmv requirement is intended to prohibit plants from diluting a VC exhaust gas stream with other exhaust gases in order to meet the 10 ppmv limit. Under the revised standard, combining an exhaust stream containing more than 10 ppmv VC with another gas stream is only allowed when the combined stream is ducted to a control device.

The inprocess wastewater requirements for gasholder seals are also being revised to exclude the exposed water seal of gasholders. Experience with the VC standard indicates that water contained in the exposed water seal of a gasholder may exceed the 10 ppmv limit during normal operation and that compliance with the atmospheric exposure limit is not practicable for this source. The inprocess wastewater stripping requirements, however, will continue to apply to wastewater after removal from the gasholder seal.

Other Administrative Revisions

Other administrative revisions to the standard include: (1) The elimination of the 30-day limit for existing sources to submit requests for the use of equivalent control measures; (2) a change from semiannual to quarterly reporting of VC emissions from resin stripping, reactor openings, and exhaust gases; and (3) allowance of reporting of periods of excess emissions instead of all emission measurements.

Summary of Impacts to the Standard

Revisions to the standard represent administrative and clarifying changes; no major revisions were proposed. Therefore, the environmental, energy and economic impacts of the original standard remain generally unchanged. A summary of the impacts of the original standard can be found in the preamble to the proposed standard revisions (50 FR 1182).

Public Participation

Prior to proposal of revisions to the standard, interested parties were advised by public notice in the **Federal Register** (49 FR 26807, June 29, 1984) of a meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) to discuss the revisions to the VC standard recommended for proposal. This meeting was held on August 30, 1984. The meeting was open to the public and each attendee was given an opportunity to comment on the revised standard recommended for proposal.

The revised standard was proposed in the **Federal Register** on January 9, 1985. The public comment period was from January 9, 1985 to March 25, 1985. A total of 16 comment letters were received. Industry representatives submitted most of the comment letters. Also commenting were representatives of the U.S. Congress, a State Legislature, a State air pollution agency and an environmental group. The comments have been considered carefully and, where determined to be appropriate by EPA, changes have been made to the proposed revisions to the standard.

Significant Comments Since Proposal

Most of the comment letters contained multiple comments. In general, the comments supported the proposed administrative and clarifying revisions. A detailed discussion of the comments and responses can be found in the BID for the promulgated standard, which is referenced in the ADDRESSES section of this preamble. The comments and responses in the BID serve as the basis for the changes that have been made to the revised standard between proposal and promulgation.

Almost all commenters addressed the proposed revisions to the relief valve discharge standard. Although many of the commenters agreed with the action to reformat the standard, several commenters objected to various aspects of the discharge limits. Based on consideration of these comments, EPA decided not to promulgate the proposed revision to the relief valve discharge standard. The comments on this and other proposed revisions are addressed in detail in the BID for the promulgated standard and in summary in the next section of this preamble.

One commenter requested reconsideration of the withdrawal of the amendments to the VC standard which were proposed in 1977. This petition for reconsideration was based on objections to the Agency's use of data on costs and economic impacts in the decision to withdraw the proposed amendments, and to the Agency's determination of the technological basis of the standard. The commenters stated that the EPA's actions in withdrawing the proposed amendments were inconsistent with the requirements of section 112 of the Clean Air Act. As discussed further in this preamble, the Agency is denying the petition for reconsideration.

Proposed Revisions to Relief Valve Discharge Standard

The EPA has decided not to promulgate revisions to the relief valve discharge standard proposed in the January 9, 1985, **Federal Register** notice. The revisions would have established a different type of numerical limit for relief valve discharges. The decision to retain the original relief valve discharge standard was made after considering the revisions in light of public comments and other findings. Although many public comments favored the proposed revisions, others opposed the change. In

particular, several commenters expressed concern that preventable relief valve discharges would be allowed under the revised standard and that the performance allowed under the revised standard could be inconsistent with that allowed under the original standard. Other comments expressed concern that the revised standard included no mechanism for regulating very large relief valve discharges. The basis for the statement that a large Agency resource commitment is required for enforcing the relief valve discharge standard was also questioned.

As a result of these comments, EPA reviewed the basis for the recommendations that led to the decision to propose to reformat the standard. First, as discussed in the **Federal Register** notice proposing revisions to the relief valve discharge standard (50 FR 1187), the review of the standard conducted between 1980 and 1982 found that the existing standard resulted in a significant commitment of Agency resources to the review and evaluation of discharges of VC from relief valves. Because the existing standard allows only "emergency" discharges of VC from relief valves (i.e., the relief valve discharge could not be avoided by taking preventative measures), every discharge must be evaluated individually to determine whether the owner or operator of the facility has implemented the measures necessary to prevent that relief valve discharge. During the 4 to 5 years since the review study was conducted, the enforcement of the relief valve discharge standard has been made more efficient. This is due in large part to experience established in enforcing the standard. As a result, EPA enforcement personnel consider implementation of this standard to be much less resource and labor intensive.

A second conclusion from the 1980 to 1982 study was that industry did not have a clear understanding of what the relief valve discharge standard required and what measures they needed to implement in order to comply with the standard. During the 4 to 5 years since the review study, a number of enforcement actions have been taken against individual plants for violations of the standards. Those actions have culminated in consent decrees which incorporate requirements for remedial actions to prevent further relief valve discharges. The provisions of these consent decrees have not only reduced the number of relief valve discharges at specific plants, but they have also served as guidelines in determining the types of measures appropriate for minimizing the discharges. Because of these two developments, EPA concluded that the original findings of the review study are no longer valid and should not be the basis of a revision to the format of the relief valve discharge standard.

The decision to retain the existing relief valve discharge standard as a part of the standard for VC emissions is further supported by two additional advantages that the existing standard has over the proposed revisions. First, the existing standard provides that all preventable relief valve discharges are subject to enforcement action. Under the proposed revisions, which would have allowed a small number of discharges per year whether preventable or not, it is possible that a plant could experience preventable discharges and still be in compliance with the standard. As pointed out in public comments, it is theoretically possible that discharges resulting from gross negligence could go unpenalized under the revisions to the standard. The EPA did not intend this effect in the proposed revisions. The retention of the existing relief valve discharge standard allows EPA to continue the current enforcement approach.

Second, the existing relief valve discharge standard provides a better mechanism for regulating large relief valve discharges. The proposed revision would have allowed a certain number of relief valve discharges per year, without regard to the size or duration of the discharge. Consequently, as long as the number of releases were within the numerical limits of the proposed revisions to the standard, there were no mechanisms in the standard to enforce control of the amount of VC discharged to the atmosphere. Under the existing relief valve discharge standard, however, the duration and size of the discharge are factors in determining the severity of a violation of the standard. As a result, a plant owner or operator has a greater incentive under the current standard for taking action to reduce the quantity of a discharge.

In summary, EPA is not promulgating the revisions to the relief valve discharge standard which were proposed in the January 9, 1985, **Federal Register** notice. This decision was reached after consideration of public comments received on the proposal, and after a review of the basis for the decision to reformat the standard. Because this review revealed that the burden on Agency resources has diminished as experience with the implementation of the standard increased, and that understanding of the provisions of the existing standard on the part of industry should be clearer, the necessity for revising the format of the relief valve discharge standard is no longer apparent. The existing standard also has the advantages of penalizing all preventable relief valve discharges, providing better regulation of large volume relief valve discharges, and promoting continuity in the ongoing enforcement of the standard.

In some instances, it may be possible for a plant operator to contain a relief valve discharge and to vent it to a control device. Where this can be done without exceeding the exhaust gas emission limit of 10 ppmv, EPA concluded that this approach should be encouraged and, therefore, the discharge should be exempt from the relief valve discharge standard. Venting the discharge through a control device can result in a 99.9 percent reduction in the VC content of the relief valve discharge without interfering with the control of VC emissions in exhaust gases which are also vented through the control device. Although compliance with the 10 ppmv standard would exempt the discharge from the relief valve discharge standard, exceeding the 10 ppmv standard would be considered both a violation of the 10 ppmv standard and of the relief valve discharge standard.

Denial of Petition For Reconsideration

The NRDC and EDF petitioned EPA to reconsider the decision to withdraw the 1977 proposed revisions to the VC standard. The criteria for granting such a petition are: (1) The petition must be based on information that was not and could not reasonably have been presented during the original rulemaking; and (2) the petition must provide substantial support for the argument that the challenged action should be changed. *See* Denial of Petition to Revise NSPS for Stationary Gas Turbines, 45 FR 81653 (December 1, 1980). As described below, this petition fails to meet either criterion, and it is therefore, denied.

Consideration of Petition

The NRDC/EDF petition for reconsideration of the withdrawal was based on four main premises. First NRDC/EDF objected to the EPA's announcement of the withdrawal of the proposed amendments as a final action, without being preceded by a notice which proposed the withdrawal and allowed for public comment on the action. Second, NRDC/EDF objected to the influence of cost considerations in the decision to withdraw the proposed amendment, stating that the balancing of costs and benefits in the setting of the VC standard is contrary to the

requirements of Section 112 of the Clean Air Act. Third, NRDC/EDF took issue with what it took to be the EPA's assumption that Section 112 of the Clean Air Act establishes a requirement that a level of control must have been "consistently achieved" in the past in order to form the basis of the standard. Finally, NRDC/EDF stated that the EPA's decisions on specific portions of the proposed amendments were in conflict with the evidence on those issues.

In the first objection, NRDC/EDF state that the proposed amendments to the 1977 VC standard should not be withdrawn because no notice of such withdrawal had been published and there had been no opportunity for public comment on the withdrawal. During the 8 years which have elapsed since the proposal of those amendments, there has been ample opportunity afforded for public comment and input on the amendments and their withdrawal. The amendments, their protential consequences, and the decisions that the Agency might take with regard to them were all before the public. Specifically, NRDC and EDF received draft documents relating to the rulemaking distributed prior to the NAPCTAC meeting. Finally, NRDC did not give any supporting rationale for believing that further opportunity for comment would yield any relevant new information or arguments. Therefore, EPA does not believe that additional time or provision for receiving further public comments could have been either necessary or helpful for the resolution of the issues involving the proposed amendments to the VC standard.

The second issue raised by NRDC/EDF involves the inclusion of cost consideration in the EPA's rulemaking deliberations under Section 112. The NRDC/EDF maintains that the language of Section 112 which requires the standard to be set at a level which provides an "ample margin of safety" to the public precludes consideration of the costs of control. In the EPA's judgment, the VC standard protects the public health with an ample margin of safety within the meaning of Section 112, and EPA may consider cost and feasiblity in setting the standard. The EPA views were explained in the 1975–76 VC rulemaking. The NRDC/EDF provided no new information on this issue.

The NRDC/EDF's third objection was the EPA was incorrect in stating that a level of control must be "consistently achieved" in order to form the basis of the standard. Specifically, NRDC/EDF pointed to the language in the **Federal Register** notice that "10 ppmv represents the lowest level of control which has been consistently achieved" as indicating that EPA was applying such requirement in evaluating alternative exhaust gas requirements. However, the basis for EPA's selection of 10 ppmv as the VC standard for exhaust gas emissions is that this level of control is the lowest achievable emission limit attainable on a never-to-be-exceeded basis. Although 5 ppmv may be achieved by some systems over a limited time period, the existing data indicate the this level of control cannot be maintained over a long-term, never-to-be-exceeded basis, as required by the standards. In addition to being achievable on a consistent, long-term basis, the 10 ppmv standard was also determined by EPA to provide the public with the ample margin of safety required by section 112. Therefore, EPA beleives that the standard satisfies the requirements of section 112.

The final points raised by NRDC/EDF in support of the petition for reconsideration addressed three specific provisions of the proposed amendments which were withdrawn. The NRDC/EDF stated that the withdrawal of these provisions was in conflict with the evidence before the Agency. The first specific portion of the standard addressed in the petition is the withdrawal of the proposed 5 ppmv emission limit for exhaust gas emission in favor of the existing 10 ppmv emission limit. The NRDC/EDF stated that the evidence in the record supports a finding that the 5 ppmv limit is achievable by new sources, and by existing sources within 3 years of promulgation. The petition also pointed to the more stringent emission limit not be foregone.

The EPA decided to maintain the 10 ppmv emission limit for exhaust gas emission for three primary reasons. First, as stated above, the 10 ppmv emission limit has been determined to be consistently achievable by industry, whereas the 5 ppmv emission limit cannot be consistently achieved. Second, even though the limit on maximum emissions of VC is set at 10 ppmv, the average and most short-term emissions will be considerably lower than this level. Third, lowering the emission limit on maximum emission rates to 5 ppmv would not significantly reduce the average emissions, and therefore, adopting the lower standard was determined by the Agency not to have a significant impact on emissions of VC or, accordingly, on public health risks. The petition for reconsideration presented no new evidence relevant to the Agency's decision to withdraw the proposed 5 ppmv emission limit.

The second decision addressed by the petition for reconsideration as conflicting with the considered evidence is the withdrawal of the 5 ppmv emission limit for oxychlorination vents. The petition points to a statement in the 1977 proposal that this emission limit could be attained based on the use of oxygen as a feed material rather than air, and maintains that no discussion or evidence were presented which would justify withdrawal of this proposal.

In the **Federal Register** (50 FR 1185), evidence was presented by the Agency supporting the conclusion that more stringent control of emissions from oxychlorination vents was unnecessary. First, no new technological controls have been developed which are applicable to these vents. Second, the costs of incinerating oxychlorination vent streams were reevaluated and determined, as before, to be unreasonable compared to the small reduction in VC emissions. And finally, with the possible exception of one plant, no new EDC/VC plants with oxychlorination reactors are expected to be constructed, and any that may be constructed will be adequately regulated by the requirements of new source review regulations. No new information was presented in the petition for reconsideration relevant to the decision to retain the existing oxychlorination vent standard.

The third decision which was addressed in the petition for reconsideration as conflicting with the considered evidence is the withdrawal of the proposal to lower the residual VC limit for new dispersion resins from 2,000 ppmv to 500 ppmv, and the limit for other new resins from 400 ppmv to 100 ppmv. The petition states that existing facilities are currently meeting the lower limits, and that both new and existing facilities could be brought into compliance with the more stringent limits by using the equipment and procedures currently used by the leading facilities.

The EPA withdrew the proposed more stringent stripping level requirements for two main reasons. The first is that the nature of PVC production makes it difficult to distinguish "new" from "old" resins. Resin compositions are adjusted routinely, and completely "new" resins are rarely, if ever, made. Second, EPA concluded that there is no improved technology which would provide the basis for more stringent stripping requirements for all resins. The technologies which are effective for specific resins may not be effective for

other resins. The consequence of establishing a more stringent standard would be that certain hard-to-strip resins could no longer be produced. In the EPA's opinion, such a result would be an unwarranted economic impact which is unnecessary to provide an ample margin of safety for public health. No new relevant information was presented in the petition for reconsideration.

Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [section 307(d)(7)(A)].

The effective date of these revisions is September 30, 1986. Section 112 of the Clean Air Act provides that national emission standards for hazardous air pollutants become effective upon promulgation and apply to all existing and new sources.

As prescribed by section 112, promulgation of this standard was preceded by the Administrator's listing of VC under section 112 of the Act on December 24, 1975 (40 FR 59477). In accordance with section 117 of the Act, publication of these promulgated revisions was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

Information collection requirements associated with this revised regulation (those included in 40 CFR Part 61, Subpart A and Subpart F) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 0186. The revised standard is estimated to result in a paperwork burden of about 36 person-years which is roughly the same as the original standard.

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that the revised regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The revised regulation is not major because: (1) Nationwide annual compliance costs, including capital charges resulting from the standard total less than $100 million; (2) the standard does not cause a major increase in prices or production costs; and (3) the standards do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets. The EPA has submitted this rulemaking to OMB under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this revised standard imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisons of 5 U.S.C. 605(b), I hereby certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61.

Air pollution control, Asbestos, Benzene, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Dated: September 24, 1986.

Lee M. Thomas,

Administrator.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

For the reasons set forth in the preamble, 40 CFR Part 61 is amended as follows:

1. The authority citation for Part 61 contunues to read as follows:

Authority: Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

2. Section 61.61 is amended by revising paragraphs (j), (l), (o) and (p) and by adding paragraphs (v), (w), (x), (y), and (z) to read as follows:

§ § 61.61 Definitions.

* * * * *

(j) "Inprocess wastewater" means any water which, during manufacturing or processing, comes into direct contact with vinyl chloride or polyvinyl chloride or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product containing vinyl chloride or polyvinyl chloride but which has not been discharged to a wastewater treatment process or discharged untreated as wastewater. Gasholder seal water is not inprocess wastewater until it is removed from the gasholder

* * * * *

(l) "In vinyl chloride service" means that a piece of equipment either contains or contacts a liquid that is a least 10 percent vinyl chloride by weight or a gas that is at least 10 percent by volume vinyl chloride as determined according to the provisions of § 61.67(h). The provisions of § 61.67(h) also specify how to determine that a piece of equipment is not in vinyl chloride service. For the purposes of this subpart, this definition must be used in place of the definition of "in VHAP service" in Subpart V of this part.

* * * * *

(o) "Ethylene dichloride purification" includes any part of the process of ethylene dichloride production which follows ethylene dichloride formation, excluding product storage following the final finishing column.

(p) "Vinyl chloride purification" incudes any part of the process of vinyl chloride production which follows vinyl chloride formation.

* * * * *

(v) "Relief valve" means each pressure relief device including pressure relief valves, rupture disks and other pressure relief systems used to protect process components from overpressure conditions. "Relief valve" does not include polymerization shortstop systems, referigerated water systems or control valves or other devices used to control flow to an incinerator or other air pollution control device.

(w) "Leak" means any of several events that indicate interruption of confinement of vinyl chloride within process equipment. Leaks include events regulated under Subpart V of this part such as: (1) An instrument reading of 10,000 ppm or greater measure according to Method 21 (see Appendix A of 40 CFR Part 60); (2) indications of liquid dripping; (3) a sensor detection of failure of a seal system, failure of a barrier fluid system, or both; and (4) detectable emissions as indicated by an instrument reading of greater than 500 ppm above background for equipment designated for no detectable emissions measured according to Test Method 21 (see Appendix A of 40 CFR Part 60). Leaks also include events regulated under § 61.65(b)(8)(i) for detection of ambient concentrations in excess of background

concentration. A relief valve discharge is not a leak.

(x) "Exhaust gas" means any offgas (the constituents of which may consist of any fluids, either as a liquid and/or gas) discharged directly or ultimately to the atmosphere that was initially contained in or was in direct contact with the equipment for which exhaust gas limits are prescribed in § 61.62 (a) and (b); § 61.63(a); § 61.64 (a)(1), (a)(2), (b), (c), and (d); § 61.65(b) (1)(ii), (b)(2), (b)(5), (b)(6)(ii) and (b)(9)(ii).

(y) "Relief valve discharge" means any nonleak discharge through a relief valve. "Relief valve discharge" does not include discharges ducted to a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed 10 ppm (average for 3-hour period), or equivalent as provided in § 61.66.

(z) "3-hour period" means any three consecutive 1-hour periods (each hour commencing on the hour).

3. Section 61.62 is amended by revising paragraphs (a) and (b) to read as follows:

§ 61.62 Emission standard for ethylene dichloride plants.

(a) *Ethylene dichloride purification.* The concentration of vinyl chloride in each exhaust gas stream from any equipment used in ethylene dichloride purification is not to exceed 10 ppm (average for 3-hour period), except as provided in § 61.65(a). This requirement does not preclude combining of exhaust gas streams provided the combined steam is ducted through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed 10 ppm, or equivalent as provided in § 61.66. This requirement does not apply to equipment that has been opened, is out of operation, and met the requirement in § 61.65(b)(6)(i) before being opened.

(b) *Oxychlorination reactor.* Except as provided in § 61.65(a), emissions of vinyl chloride to the atmosphere from each oxychlorination reactor are not to exceed 0.2 g/kg (0.0002 lb/lb) (average for 3-hour period) of the 100 percent ethylene dichloride product from the oxychlorination process.

4. Section 61.63 is revised to read as follows:

§ 61.63 Emission standard for vinyl chloride plants.

An owner or operator of a vinyl chloride plant shall comply with the requirements of this section and § 61.65.

(a) Vinyl chloride formation and purification: The concentration of vinyl chloride in each exhaust gas stream from any equipment used in vinyl chloride formation and/or purification is not to exceed 10 ppm (average for 3-hour period), except as provided in § 61.65(a). This requirement does not preclude combining of exhaust gas streams provided the combined steam is ducted through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed 10 ppm, or equivalent as provided in § 61.66. This requirement does not apply to equipment that has been opened, is out of operation, and met the requirement in § 61.65(b)(6)(i) before being opened.

5. Section 61.64 is amended by revising paragraphs (a), (b), (c) and (d) to read as follows:

§ 61.64 Emission standard for polyvinyl chloride plants.

* * * * *

(a) *Reactor.* The following requirements apply to reactors:

(1) The concentration of vinyl chloride in each exhaust gas stream from each reactor is not to exceed 10 ppm (average for 3-hour period), except as provided in paragraph (a)(2) of this section and § 61.65(a).

(2) The reactor opening loss from each reactor is not to exceed 0.02 g vinyl chloride/kg (0.00002 lb vinyl chloride/lb) of polyvinyl chloride product, except as provided in paragraphs (f)(1) and (f)(2) of this section, with the product determined on a dry solids basis. This requirement does not apply to prepolymerization reactors in the bulk process. This requirement does apply to postpolymerization reactors in the bulk process, where the product means the gross product of prepolymerization and postpolymerization.

(3) Manual vent valve discharge. Except for an emergency manual vent valve discharge, there is to be no discharge to the atmosphere from any manual vent valve on a polyvinyl chloride reactor in vinyl chloride service. An emergency manual vent valve discharge means a discharge to the atmosphere which could not have been avoided by taking measures to prevent the discharge. Within 10 days of any discharge to the atmosphere from any manual vent valve, the owner or operator of the source from which the discharge occurs shall submit to the Administrator a report in writing containing information on the source, nature and cause of the discharge, the date and time of the discharge, the approximate total vinyl chloride loss during the discharge, the method used for determining the vinyl chloride loss (the calculation of the vinyl chloride loss), the action that was taken to prevent the discharge, and measures adopted to prevent future discharges.

(b) *Stripper.* The concentration of vinly chloride in each exhaust gas stream from each stripper is not to exceed 10 ppm (average for 3-hour period), except as provided in § 61.65(a). This requirement does not apply to equipment that has been opened, is out of operation, and met the requirement § 61.65(b)(6)(i) before being opened.

(c) *Mixing, weighing, and holding containers.* The concentration of vinyl chloride in each exhaust gas stream from each mixing, weighing, or holding container in vinyl chloride service which precedes the stripper (or the reactor if the plant has no stripper) in the plant process flow is not to exceed 10 ppm (average for 3-hour period), except as provided in § 61.65(a). This requirement does not apply to equipment that has been opened, is out of operation, and met the requirement in § 61.65(b)(6)(i) before being opened.

(d) *Monomer recovery system.* The concentration of vinyl chloride in each exhaust gas stream from each monomer recovery system is not to exceed 10 ppm (average for 3-hour period), except as provided in § 61.65(a). This requirement does not apply to equipment that has been opened, is out of operation, and met the requirement in § 61.65(b)(6)(i) before being opened.

* * * * *

6. By revising paragraph (e) introductory text, and adding paragraphs (e)(3) and (f) to § 61.64 to read as follows:

§ 61.64 Emission standard for polyvinyl chloride plants.

* * * * *

(e) *Sources following the stripper(s).* The following requirements apply to emissions of vinyl chloride to the atmosphere from the combination of all sources following the stripper(s) [or the reactor(s) if the plant has no stripper(s)] in the plant process flow including but not limited to, centrifuges, concentrators, blend tanks, filters, dryers, conveyor air discharges, baggers, storage containers, and inprocess wastewater, except as provided in paragraph (f) of this section:

(1) * * *

(2) * * *

(3) The provisions of this paragraph apply at all times including when off-specification or other types of resins are made.

(f) Reactor used as stripper. When a nonbulk resin reactor is used as a stripper this paragraph may be applied in lieu of § 61.64 (a)(2) and (e)(1):

(1) The weighted average emissions of vinyl chloride from reactor opening loss and all sources following the reactor used as a stripper from all grades of polyvinyl chloride resin stripped in the reactor on each calendar day may not exceed:

(i) 2.02 g/kg (0.00202 lb/lb) of polyvinyl chloride product for dispersion polyvinyl chloride resins, excluding latex resins, with the product determined on a dry solids basis.

(ii) 0.42 g/kg (0.00042 lb/lb) of polyvinyl chloride product for all other polyvinyl chloride resins, including latex resins, with the product determined on a dry solids basis.

7. Section 61.65 is amended by revising paragraphs (a), (b)(1)(ii) and (b)(2) to read as follows:

§ 61.65 Emission standard for ethylene dichloride, vinyl chloride, and polyvinyl chloride plants.

(a) *Relief valve discharge.* Except for an emergency relief discharge, there is to be no discharge to the atmosphere from any relief valve on any equipment in vinyl chloride service. An emergency relief discharge means a discharge which could not have been avoided by taking measures to prevent the discharge. Within 10 days of any relief valve discharge, the owner or operator of the source from which the relief valve discharge occurs shall submit to the Administrator a report in writing containing information on the source, nature and cause of the discharge, the date and time of the discharge, the approximate total vinyl chloride loss during the discharge, the method used for determining the vinyl chloride loss (the calculation of the vinyl chloride loss), the action that was taken to prevent the discharge, and measures adopted to prevent future discharges.

(b) * * *

(1) * * *

(i) * * *

(ii) Any vinyl chloride removed from a loading or unloading line in accordance with paragraph (b)(1)(i) of this section is to be ducted through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed 10 ppm (average for 3-hour period), or equivalent as provided in § 61.66.

(2) *Slip gauges.* During loading or unloading operations, the vinyl chloride emissions from each slip gauge in vinyl chloride service are to be minimized by ducting any vinyl chloride discharged from the slip gauge through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed 10 ppm (average for 3-hour period), or equivalent as provided in § 61.66.

* * * * *

8. By revising paragraphs (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), (b)(9)(ii), and (c) to § 61.65 as follows:

§ 61.65 Emission standard for ethylene dichloride, vinyl chloride and polyvinyl chloride plants.

An owner or operator of an ethylene dichloride, vinyl chloride, and/or polyvinyl chloride plant shall comply with the requirements of this section.

(a) * * *

(b) * * *

(1) * * *

(2) * * *

(3) Leakage from pump, compressor, and agitator seals:

(i) *Rotating pumps.* Vinyl chloride emissions from seals on all rotating pumps in vinyl chloride service are to be minimized by installing sealless pumps, pumps with double mechanical seals or equivalent as provided in § 61.66. If double mechanical seals are used, vinyl chloride emissions from the seals are to be minimized by maintaining the pressure between the two seals so that any leak that occurs is into the pump; by ducting any vinyl chloride between the two seals through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed 10 ppm; or equivalent as provided in § 61.66. Compliance with the provisions of 40 CFR Part 61 Subpart V demonstrates compliance with the provisions of this paragraph.

(ii) *Reciprocating pumps.* Vinyl chloride emissions from seals on all reciprocating pumps in vinyl chloride service are to be minimized by installing double outboard seals, or equivalent as provided in §61.66. If double outboard seals are used, vinyl chloride emissions from the seals are to be minimized by maintaining the pressure between the two seals so that any leak that occurs is into the pump; by ducting any vinyl chloride between the two seals through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed 10 ppm; or equivalent as provided in §61.66. Compliance with the provisions of 40 CFR Part 61 Subpart V demonstrates compliance with the provisions of this paragraph.

(iii) *Rotating compressor.* Vinyl chloride emissions from seals on all rotating compressors in vinyl chloride service are to be minimized by installing compressors with double mechanical seals, or equivalent as provided in §61.66. If double mechanical seals are used, vinyl chloride emissions from the seals are to be minimized by maintaining the pressure between the two seals so that any leak that occurs is into the compressor; by ducting any vinyl chloride between the two seals through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed 10 ppm; or equivalent as provided in §61.66. Compliance with the provisions of 40 CFR Part 61 Subpart V demonstrates compliance with the provisions of this paragraph.

(iv) *Reciprocating compressors.* Vinyl chloride emissions from seals on all reciprocating compressors in vinyl chloride service are to be minimized by installing double outboard seals, or equivalent as provided in § 61.66. If double outboard seals are used, vinyl chloride emissions from the seals are to be minimized by maintaining the pressure between the two seals so that any leak that occurs is into the compressor; by ducting any vinyl chloride between the two seals through a control system from which concentration of vinyl chloride in the exhaust gases does not exceed 10 ppm; or equivalent as provided in § 61.66. Compliance with the provisions of 40 CFR Part 61 Subpart V demonstrates compliance with the provisions of this paragraph.

(v) *Agitator.* Vinyl chloride emissions from seals on all agitators in vinyl chloride service are to be minimized by installing agitators with double mechanical seals, or equivalent as provided in § 61.66. If double mechanical seals are used, vinyl chloride emissions from the seals are to be minimized by maintaining the pressure between the two seals so that any leak that occurs is into the agitated vessel; by ducting any vinyl chloride between the two seals through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed 10 ppm; or equivalent as provided in § 61.66.

(4) *Leaks from relief valves.* Vinyl chloride emissions due to leaks from each relief valve on equipment in vinyl chloride service shall comply with § 61.242-4 of Subpart V of this part.

(5) *Manual venting of gases.* Except as provided in § 61.64(a)(3), all gases which are manually vented from equipment in vinly chloride service are to be ducted through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed 10 ppm (average for 3-hour period); or equivalent as provided in § 61.66.

(6) *Opening of equipment.* Vinyl chloride emissions from opening of equipment (including prepolymerization reactors used in the manufacture of bulk

resins and loading or unloading lines that are not opened to the atmosphere after each loading or unloading operation) are to be minimized as follows:

(i) Before opening any equipment for any reason, the quantity of vinyl chloride which is contained therein is to be reduced to an amount which occupies a volume of no more than 2.0 percent of the equipment's containment volume or 0.0950 cubic meters (25 gallons), whichever is larger, at standard temperature and pressure.

(ii) Any vinyl chloride removed from the equipment in accordance with paragraph (b)(6)(i) of this section is to be ducted through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed 10 ppm (average for 3-hour period); or equivalent as provided in § 61.66.

(7) *Samples.* Unused portions of samples containing at least 10 percent by weight vinyl chloride are to be returned to the process or destroyed in a control device from which concentration of vinyl chloride in the exhaust gas does not exceed 10 ppm (average for 3-hour period) or equivalent as provided in § 61.66. Sampling techniques are to be such that sample containers in vinyl chloride service are purged into a closed process system. Compliance with the provisions of 40 CFR Part 61 Subpart V demonstrates compliance with the provisions of this paragraph.

(8) *Leak detection and elimination.* Vinyl chloride emissions due to leaks from equipment in vinyl chloride service are to be minimized as follows:

(i) A reliable and accurate vinyl chloride monitoring system shall be operated for detection of major leaks and identification of the general area of the plant where a leak is located. A vinyl chloride monitoring system means a device which obtains air samples from one or more points on a continuous sequential basis and analyzes the samples with gas chromatography or, if the owner or operator assumes that all hydrocarbons measured are vinyl chloride, with infrared spectrophotometry, flame ion detection, or an equivalent or alternative method. The vinyl chloride monitoring system shall be operated according to a program developed by the plant owner or operator. The owner or operator shall submit a description of the program to the Administrator within 45 days of the effective date of these regulations, unless a waiver of compliance is granted under § 61.11, or the program has been approved and the Administrator does not request a review of the program. Approval of a program will be granted by the Administrator provided he finds:

(A) The location and number of points to be monitored and the frequency of monitoring provided for in the program are acceptable when they are compared with the number of pieces of equipment in vinyl chloride service and size and physical layout of the plant.

(B) It contains a definition of leak which is acceptable when compared with the background concentrations of vinyl chloride in the areas of the plant to be monitored by the vinyl chloride monitoring system. Measurements of background concentrations of vinyl chloride in the areas of the plant to be monitored by the vinyl chloride monitoring system are to be included with the description of the program. The definition of leak for a given plant may vary among the different areas within the plant and is also to change over time as background concentrations in the plant are reduced.

(C) It contains an acceptable plan of action to be taken when a leak is detected.

(D) It provides for an acceptable calibration and maintenance schedule for the vinyl chloride monitoring system and portable hydrocarbon detector. For the vinyl chloride monitoring system, a daily span check is to be conducted with a concentration of vinyl chloride equal to the concentration defined as a leak according to paragraph (b)(8)(i)(B) of this section. The calibration is to be done with either:

(*1*) A calibration gas mixture prepared from the gases specified in sections 5.2.1. and 5.2.2. of Test Method 106 and in accordance with section 7.1 of Test Method 106, or

(*2*) A calibration gas cylinder standard containing the appropriate concentration of vinyl chloride. The gas composition of the calibration gas cylinder standard is to have been certified by the manufacturer. The manufacturer must have recommended a maximum shelf life for each cylinder so that the concentration does not change greater than ±5 percent from the certified value. The date of gas cylinder preparation, certified vinyl chloride concentration, and recommended maximum self life must have been affixed to the cylinder before shipment from the manufacturer to the buyer. If a gas chromatograph is used as the vinyl chloride monitoring system, these gas mixtures may be directly used to prepare a chromatograph calibration curve as described in section 7.3 of Test Method 106. The requirements in section 5.2.3.1. and 5.2.3.2. of Test Method 106 for certification of cylinder standards and for establishment and verification of calibration standards are to be followed.

(ii) For each process unit subject to this subpart, a formal leak detection and repair program shall be implemented consistent with Subpart V of this part, except as provided in paragraph (b)(8)(iii) of this section. This program is to be implemented within 90 days of the effective date of these regulations, unless a waiver of compliance is granted under §61.11. Except as provided in paragraph (b)(8)(ii)(E) of this section, an owner or operator shall be exempt from § 61.242–1(d), § 61.242–7 (a), (b), and (c), § 61.246, and § 61.247 of Subpart V of this part for any process unit in which the percentage of leaking valves is demonstrated to be less than 2.0 percent, as determined in accordance with the following:

(A) A performance test as specified in paragraph (b)(8)(ii)(B) of this section shall be conducted initially within 90 days of the effective date of these regulations, annually, and at times requested by the Administrator.

(B) For each performance test, a minimum of 200 or 90 percent, whichever is less, of the total valves in VOC service (as defined in § 60.481 of Subpart VV of Part 60) within the process unit shall be randomly selected and monitored within 1 week by the methods specified in § 61.245(b) of this part. If an instrument reading of 10,000 ppm or greater is measured, a leak is detected. The leak percentage shall be determined by dividing the number of valves in VOC service for which leaks are detected by the number of tested valves in VOC service.

(C) If a leak is detected, it shall be repaired in accordance with § 61.242–7 (d) and (e) of Subpart V of this part.

(D) The results of the performance test shall be submitted in writing to the Administrator in the first quarterly report following the performance test as part of the reporting requirements of § 61.70.

(E) Any process unit in which the percentage of leaking valves is found to be greater than 2.0 percent according to the performance test prescribed in paragraph (b)(8)(ii)(B) of this section must comply with all provisions of Subpart V of this part within 90 days.

(iii) Open-ended valves or lines located on multiple service process lines which operate in vinyl chloride service less than 10 percent of the time are exempt from the requirements of § 61.242–6 of Subpart V, provided the open-ended valves or lines are addressed in the monitoring system required by paragraph (b)(8)(i) of this section. The Administrator may apply

this exemption to other existing open-ended valves or lines that are demonstrated to require significant retrofit cost to comply with the requirements of § 61.242–6 of Subpart V.

* * * * *

(9) * * *

(ii) Any vinyl chloride removed from the inprocess wastewater in accordance with paragraph (b)(9)(i) of this section is to be ducted through a control system from which the concentration of vinyl chloride in the exhaust gases does not exceed 10 ppm (average for 3-hour period); or equivalent as provided in § 61.66.

* * * * *

(c) The requirements in paragraphs (b)(1), (b)(2), (b)(5), (b)(6), (b)(7) and (b)(8) of this section are to be incorporated into a standard operating procedure, and made available upon request for inspection by the Administrator. The standard operating procedure is to include provisions for measuring the vinyl chloride in equipment 4.75 m^3 (1,250 gal) in volume for which an emission limit is prescribed in § 61.65(b)(6)(i) after opening the equipment and using Test Method 106, a portable hydrocarbon detector, or an alternative method. The method of measurement is to meet the requirements in § 61.67(g)(5)(i)(A) or (g)(5)(i)(B).

9. Section 61.66 is revised to read as follows:

§ 61.66 Equivalent equipment and procedures.

Upon written application from an owner or operator, the Administrator may approve use of equipment or procedures which have been demonstrated to his satisfaction to be equivalent in terms of reducing vinyl chloride emissions to the atmosphere to those prescribed for compliance with a specific paragraph of this subpart.

10. By revising paragraphs (f), (g)(1)(i), (g)(2), (g)(3) introductory text, (g)(3)(i), (g)(3)(iii), (g)(5) introductory text, and by (g)(5)(ii) adding paragraphs (g)(6) and (h) in § 61.67 as follows:

§ 61.67 Emission tests.

* * * * *

(f) The owner or operator shall retain at the plant and make available, upon request, for inspection by the Administrator, for a minimum of 3 years, records of emission test results and other data needed to determine emissions.

(g) * * *

(1) * * *

(i) For each run, one sample is to be collected. The sampling site is to be at least two stack or duct diameters downstream and one half diameter upstream from any flow disturbance such as a bend, expansion, contraction, or visible flame. For a rectangular cross section an equivalent diameter is to be determined from the following equation:

$$\text{equivalent diameter} = \frac{2\,(\text{length})\,(\text{width})}{\text{length} + \text{width}}$$

The sampling point in the duct is to be at the centroid of the cross section. The sample is to be extracted at a rate proportional to the gas velocity at the sampling point. The sample is to contain a minimum volume of 50 liters corrected to standard conditions and is to be taken over a period as close to 1 hour as practicable.

* * * * *

(2) Test Method 107 or Method 601 (incorporated by reference as specified in § 61.18) is to be used to determine the concentration of vinyl chloride in each inprocess wastewater stream for which an emission limit is prescribed in § 61.65(b)(9)(i).

(3) When a stripping operation is used to attain the emission limits in § 61.64 (e) and (f), emissions are to be determined using Test Method 107 as follows:

(i) The number of strippers (or reactors used as strippers) and samples and the types and grades of resin to be sampled are to be determined by the Administrator for each individual plant at the time of the test based on the plant's operation.

(ii) * * *

(iii) The corresponding quantity of material processed by each stripper (or reactor used as a stripper) is to be determined on a dry solids basis and by a method submitted to and approved by the Administrator.

(iv) * * *

(4) * * *

(5) The reactor opening loss for which an emission limit is prescribed in § 61.64(a)(2) is to be determined. The number of reactors for which the determination is to be made is to be specified by the Administrator for each individual plant at the time of the determination based on the plant's operation.

(i) * * *

(ii) A calculation based on the number of evacuations, the vacuum involved, and the volume of gas in the reactor is hereby approved by the Administrator as an alternative method for determining reactor opening loss for postpolymerization reactors in the manufacture of bulk resins. Calculation methods based on techniques other than repeated evacuation of the reactor may be approved by the Administrator for determining reactor opening loss for postpolymerization reactors in the manufacture of bulk resins.

(6) For a reactor that is used as a stripper, the emissions of vinyl chloride from reactor opening loss and all sources following the reactor used as a stripper for which an emission limit is prescribed in § 61.64(f) are to be determined. The number of reactors for which the determination is to be made is to be specified by the Administrator for each individual plant at the time of the determination based on the plant's operation.

(i) For each batch stripped in the reactor, the following measurements are to be made:

(A) The concentration (ppm) of vinyl chloride in resin after stripping, measured according to paragraph (g)(3) of this section;

(B) The reactor vacuum (mm Hg) at end of strip from plant instrument; and

(C) The reactor temperature (°C) at end of strip from plant instrument.

(ii) For each batch stripped in the reactor, the following information is to be determined:

(A) The vapor pressure (mm Hg) of water in the reactor at end of strip from the following table:

Reactor vapor temperature (°C)	H_2O vapor pressure (mm Hg)	Reactor temperature (°C)	H_2O vapor pressure (mm Hg)	Reactor temperature (°C)	H_2O pressure (mm Hg)
40	55.3	62	163.8	84	416.8
41	58.3	63	171.4	85	433.6
42	61.5	64	179.3	86	450.9
43	64.8	65	187.5	87	468.7
44	68.3	66	196.1	88	487.1
45	71.9	67	205.0	89	506.1
46	75.6	68	214.2	90	525.8
47	79.6	69	223.7	91	546.0
48	83.7	70	233.7	92	567.0
49	88.0	71	243.9	93	588.6
50	92.5	72	254.6	94	610.9
51	97.2	73	265.7	95	633.9
52	102.1	74	277.2	96	657.6
53	107.2	75	289.1	97	682.1
54	112.5	76	301.4	98	707.3
55	118.0	77	314.1	99	733.2
56	123.8	78	327.3	100	760.0
57	129.8	79	341.0		
58	136.1	80	355.1		
59	142.6	81	369.7		
60	149.4	82	384.9		
61	156.4	83	400.6		

(B) The partial pressure (mm Hg) of vinyl chloride in reactor at end of strip from the following equation:

$$PPVC = 760 - RV - VPW$$

where:

PPVC = partial pressure of vinyl chloride, in mm Hg

760 = atmospheric pressure at 0 °C, in mm Hg

RV = absolute value of reactor vacuum, in mm Hg

VPW = vapor pressure of water, in mm Hg

(C) The reactor vapor space volume (m^3) at end of strip from the following equation:

$$RVSV = RC - WV - \frac{PVCW}{1{,}400}$$

where:

RVSV = reactor vapor space volume, in m^3
RC = reactor capacity, in m^3
WV = volume of water in reactor from recipe, in m^3
PVCW = dry weight of polyvinyl chloride in reactor from recipe, in kg
1,400 = typical density of polyvinyl chloride, in kg/m^3

(iii) For each batch stripped in the reactor, the combined reactor opening loss and emissions from all sources following the reactor used as a stripper is to be determined using the following equation:

$$C = (PPMVC)(10^{-6}) + \frac{(PPVC)(RVSV)(1.002)}{(PVCW)(273 + RT)}$$

where:

C = g vinyl chloride/kg polyvinyl chloride product
PPMVC = concentration of vinyl chloride in resin after stripping, in ppm
10^{-6} = conversion factor for ppm
PPVC = partial pressure of vinyl chloride determined according to paragraph (g)(6)(ii)(B) of this section, in mm Hg
RVSV = reactor vapor space volume determined according to paragraph (g)(6)(ii)(C) of this section, in m^3
1.002 = ideal gas constant in $g - {}^{\circ}K/mm\ Hg - m^3$ for vinyl chloride
PVCW = dry weight of polyvinyl chloride in reactor from recipe, in kg
273 = conversion factor for °C to °K
RT = reactor temperature, in °C

(h)(1) Each piece of equipment within a process unit that can reasonably contain equipment in vinyl chloride service is presumed to be in vinyl chloride service unless an owner or operator demonstrates that the piece of equipment is not in vinyl chloride service. For a piece of equipment to be considered not in vinyl chloride service, it must be determined that the percent vinyl chloride content can be reasonably expected not to exceed 10 percent by weight for liquid streams or contained liquid volumes and 10 percent by volume for gas streams or contained gas volumes, which also includes gas volumes above liquid streams or contained liquid volumes. For purposes of determining the percent vinyl chloride content of the process fluid that is contained in or contacts equipment, procedures that conform to the methods described in ASTM Method D–2267 (incorporated by reference as specified in § 61.18) shall be used.

(2)(i) An owner or operator may use engineering judgment rather than the procedures in paragraph (h)(1) of this section to demonstrate that the percent vinyl chloride content does not exceed 10 percent by weight for liquid streams and 10 percent by volume for gas streams, provided that the engineering judgment demonstrates that the vinyl chloride content clearly does not exceed 10 percent. When an owner or operator and the Administrator do not agree on whether a piece of equipment is not in vinyl chloride service, however, the procedures in paragraph (h)(1) of this section shall be used to resolve the disagreement.

(ii) If an owner or operator determines that a piece of equipment is in vinyl chloride service, the determination can be revised only after following the procedures in paragraph (h)(1) of this section.

(3) Samples used in determining the percent vinyl chloride content shall be representative of the process fluid that is contained in or contacts the equipment.

11. By adding paragraphs (d), (e) and (f) to § 61.68 as follows:

§ 61.68 Emission monitoring.

* * * * *

(d) When exhaust gas(es), having emission limits that are subject to the requirement of paragraph (a) of this section, are emitted to the atmosphere without passing through the control system and required vinyl chloride monitoring system, the vinyl chloride content of the emission shall be calculated (in units of each applicable emission limit) by best practical engineering judgment based on the discharge duration and known VC concentrations in the affected equipment as determined in accordance with § 61.67(h) or other acceptable method.

(e) For each 3-hour period, the vinyl chloride content of emissions subject to the requirements of paragraphs (a) and (d) of this section shall be averaged (weighted according to the proportion of time that emissions were continuously monitored and that emissions bypassed the continuous monitor) for purposes of reporting excess emissions under § 61.70(c)(1).

(f) For each vinyl chloride emission to the atmosphere determined in accordance with paragraph (e) of this section to be in excess of the applicable emission limits, the owner or operator shall record the identity of the source(s), the date, time, and duration of the excess emission, the cause of the excess emission, and the approximate total vinyl chloride loss during the excess emission, and the method used for determining the vinyl chloride loss. This information shall be retained and made available for inspection by the Administrator as required by § 61.71(a).

12. In § 61.70 by revising the section title from "Semiannual report" to "Reporting", and by revising paragraphs (a), (c)(1), (c)(2) introductory text, (c)(2)(iii), (c)(2)(iv), (c)(2)(v), (c)(2)(vi) introductory text, and (e)(3) and also by adding (c)(4) to read as follows:

§ 61.70 Reporting.

(a)(1) The owner or operator of any source to which this subpart applies shall submit to the Administrator on March 15, June 15, September 15, and December 15 of each year a report in writing containing the information required by this section. The first report is to be submitted following the first full 3-month reporting period after the initial report is submitted.

(2) In the case of an existing source, the approved reporting schedule shall be used. In addition, quarterly reports shall be submitted exactly 3 months following the current reporting dates.

* * * * *

(c) * * *

(1) The owner or operator shall include in the report a record of the vinyl chloride content of emissions for each 3-hour period during which average emissions are in excess of the emission limits in § 61.62 (a) or (b), § 61.63(a), or § 61.64 (a)(1), (b), (c), or (d), or during which average emissions are in excess of the emission limits specified for any control system to which reactor emissions are required to be ducted in § 61.64(a)(2) or to which fugitive emissions are required to be ducted in § 61.65(b)(i)(ii), (b)(2), (b)(5), (b)(6)(ii), or (b)(9)(ii). The number of 3-hour periods for which average emissions were determined during the reporting period shall be reported. If emissions in excess of the emission limits are not detected, the report shall contain a statement that no excess emissions have been detected. The emissions are to be determined in accordance with § 61.68(e).

(2) In polyvinyl chloride plants for which a stripping operation is used to attain the emission level prescribed in § 61.64(e), the owner or operator shall

include in the report a record of the vinyl chloride content in the polyvinyl chloride resin.

(i) * * *

(ii) * * *

(iii) The vinyl chloride content in each sample is to be determined by Test Method 107 as prescribed in § 61.67(g)(3).

(iv) [Reserved]

(v) The report to the Administrator by the owner or operator is to include a record of any 24-hour average resin vinyl chloride concentration, as determined in this paragraph, in excess of the limits prescribed in § 61.64(e). The vinyl chloride content found in each sample required by paragraphs (c)(2)(i) and (c)(2)(ii) of this section shall be averaged separately for each type of resin, over each calendar day and weighted according to the quantity of each grade of resin processed by the stripper(s) that calendar day, according to the following equation:

$$A_T = \frac{\sum_{i=1}^{n} P_{Gi} M_{Gi}}{Q_T} = \frac{P_{G1} M_{G1} + P_{G2} M_{G2} + \ldots P_{Gn} M_{Gn}}{Q_T}$$

where:

A = 24-hour average concentration of type T resin in ppm (dry weight basis)

Q = Total production of type T resin over the 24-hour period, in kg.

T = Type of resin.

M = Concentration of vinyl chloride in one sample of grade Gi resin in ppm.

P = Production of grade Gi resin represented by the sample, in kg.

Gi = Grade of resin: e.g., G1, G2, G3.

n = Total number of grades of resin produced during the 24-hour period.

The number of 24-hour average concentrations for each resin type determined during the reporting period shall be reported. If no 24-hour average resin vinyl chloride concentrations in excess of the limits prescribed in § 61.64(e) are measured, the report shall state that no excess resin vinyl chloride concentrations were measured.

(vi) The owner or operator shall retain at the source and make available for inspection by the Administrator for a minimum of 3 years records of all data needed to furnish the information required by paragraph (c)(2)(v) of this section. The records are to contain the following information:

(A) * * *

(B) * * *

(3) The owner or operator shall include in the report a record of any emissions from each reactor opening in excess of the emission limits prescribed in § 61.64(a)(2). Emissions are to be determined in accordance with § 61.67(g)(5), except that emissions for each reactor are to be determined. The number of reactor openings during the reporting period shall be reported. If emissions in excess of the emission limits are not detected, the report shall include a statement that excess emissions have not been detected.

(4) In polyvinyl chloride plants for which stripping in the reactor is used to attain the emission level prescribed in § 61.64(f), the owner or operator shall include in the report a record of the vinyl chloride emissions from reactor opening loss and all sources following the reactor used as a stripper.

(i) One representative sample of polyvinyl chloride resin is to be taken from each batch of each grade of resin immediately following the completion of the stripping operation, and identified by resin type and grade and the date and time the batch is completed. The corresponding quantity of material processed in each stripper batch is to be recorded and identified by resin type and grade and the date and time the batch is completed.

(ii) The vinyl chloride content in each sample is to be determined by Test Method 107 as prescribed in § 61.67(g)(3).

(iii) The combined emissions from reactor opening loss and all sources following the reactor used as a stripper are to be determined for each batch stripped in a reactor according to the procedure prescribed in § 61.67(g)(6).

(iv) The report to the Administrator by the owner or operator is to include a record of any 24-hour average combined reactor opening loss and emissions from all sources following the reactor used as a stripper as determined in this paragraph, in excess of the limits prescribed in § 61.64(f). The combined reactor opening loss and emissions from all sources following the reactor used as a stripper associated with each batch are to be averaged separately for each type of resin, over each calendar day and weighted according to the quantity of each grade of resin stripped in reactors that calendar day as follows:

For each type of resin (suspension, dispersion, latex, bulk, other), the following calculation is to be performed:

$$A_T = \frac{\sum_{i=1}^{n} P_{Gi} C_{Gi}}{Q_T} = \frac{P_{G1} C_{G1} + P_{G2} C_{G2} + \ldots + P_{Gn} C_{Gn}}{Q_T}$$

where:

A = 24-hour average combined reactor opening loss and emissions from all sources following the reactor used as a stripper, in g vinyl chloride/kg product (dry weight basis).

Q = Total production of resin in batches for which stripping is completed during the 24-hour period, in kg.

T = Type of resin.

C = Average combined reactor opening loss and emissions from all sources following the reactor used as a stripper of all batches of grade G_i resin for which stripping is completed during the 24-hour period, in g vinyl chloride/kg product (dry weight basis) (determined according to procedure prescribed in § 61.67(g)(6)).

P = Production of grade G_i resin in the batches for which C is determined, in kg.

G_i = Grade of resin e.g., G_1, G_2, and G_3.

n = Total number of grades of resin in batches for which stripping is completed during the 24-hour period.

The number of 24-hour average emissions determined during the reporting period shall be reported. If no 24-hour average combined reactor opening loss and emissions from all sources following the reactor used a stripper in excess of the limits prescribed in § 61.64(f) are determined, the report shall state that no excess vinyl chloride emissions were determined.

11. By revising paragraph (a) introductory text of § 61.71 as follows:

§ 61.71 Recordkeeping.

(a) The owner or operator of any source to which this subpart applies shall retain the following information at the source and make it available for inspection to the Administrator for a minimum of 3 years:

* * * * *

14. By revising paragraph (a)(4) and adding paragraph (b)(1) to § 61.18 as follows:

§ 61.18 Incorporation by Reference.

* * * * *

(a) * * *

(4) ASTM D2267–68 (reapproved 1978) Aromatics in Light Naphthas and

Aviation Gasoline by Gas Chromatography, IBR approved June 6, 1984, for § 61.245(d)(1) and IBR approved September 30, 1986 for § 61.67(h)(1).

* * * * *

(b) The following material is available from the U.S. EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268.

(1) Method 601, Test Method for Purgeable Halocarbons, July 1982, IBR approved September 30, 1986 for § 61.67(g)(2).

15. By revising the definition "volatile hazardous air pollutants" in § 61.241 of Subpart V to read as follows:

§ 61.241 Definitions.

* * * * *

"Volatile hazardous air pollutant" or "VHAP" means a substance regulated under this part for which a standard for equipment leaks of the substance has been proposed and promulgated. Benzene is a VHAP. Vinyl chloride is a VHAP.

16. By revising the definition of "connector" in § 61.241 of Subpart V as follows:

§ 61.241 Definitions.

* * * * *

"Connector" means flanged, screwed, welded, or other joined fittings used to connect two pipe lines or a pipe line and a piece of equipment. For the purpose of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

* * * * *

[FR Doc. 86-22032 Filed 9-29-86; 8:45 am]

BILLING CODE 6560-50-M

federal register

Tuesday
September 30, 1986

Part X

Department of Education

Publication of Sample Cases and Expected Parental Contributions for the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs; Notice

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Publication of Sample Cases and Expected Parental Contributions for the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of publication of sample cases and expected parental contributions for the approval of need analysis systems and notice of closing date for transmittal of information.

SUMMARY: If legislation is enacted that allows the Secretary to continue to approve need analysis systems for the campus-based programs for the 1987–88 award year under the procedures in effect for approving such systems for the 1986–87 award year, the Secretary will use the sample cases and expected family contribution tables contained in this notice in approving such systems for those programs for the 1987–88 award year. The campus-based programs are the National Direct Student Loan, College Work-Study and Supplemental Educational Opportunity Grant Programs. Moreover, only the systems that are approved according to this procedure will be given authority to incorporate the edits, as defined in § 668.52 of the Student Assistance General Provisions regulations, 34 CFR 668.52, that will be used for award year 1987–88 to select applications for verification under the procedures set forth in Subpart E of the Student Assistance General Provisions regulations, "Verification of Student Aid Application Information," 34 CFR 668.51 through 668.61.

Institutions of higher education must use these approved systems of need analysis in determining the financial need of dependent and independent students under the respective campus-based programs.

FOR FURTHER INFORMATION CONTACT: Margaret O. Henry or Anna S. Borlaug, telephone (202) 245–9720.

SUPPLEMENTARY INFORMATION:

Program Information: If legislation is enacted that allows the Secretary to continue to approve need analysis systems for the campus-based programs for the 1987–88 award year under the procedures in effect for approving such systems for the 1987–88 award year, the Secretary will use the sample cases and expected family contribution tables contained in this notice in approving such systems for those programs for the 1987–88 award year.

If the majority of students served by a system are undergraduate students, an individual or organization must submit to the Secretary expected parental contributions for dependent undergraduate students which increase incrementally as the parents' financial strength increases, are equal for families of equal financial strength, and are within $50 of the expected parental contributions in 75 percent of the sample cases supplied by the Secretary in Table 1.

If the majority of students served by a system are graduate and professional students, an individual or organization must submit to the Secretary expected parental contributions for dependent graduate and professional students which increase incrementally as the parents' financial strength increases, are equal for families of equal financial strength, and are within $50 of the expected parental contributions in 75 percent of the sample cases supplied by the Secretary in Table 2.

An individual or organization that wishes to have its system of need analysis approved for dependent students must also submit its system of need analysis for independent students.

If the Secretary approves an individual's or organization's system for dependent undergraduate students, the Secretary will also approve that individual's or organization's system for dependent graduate and professional students, and independent undergraduate, and graduate and professional students. If the Secretary approves an individual's or organization's system for dependent graduate and professional students, the Secretary will also approve that individual's or organization's system for dependent undergraduate students, and independent undergraduate, and graduate and professional students.

The expected parental contributions in this notice are based on the following assumptions: a 3.5 percent inflation rate for 1986; families of varying sizes with two parents and either one dependent undergraduate student (Table 1), or one dependent graduate or professional student (Table 2); the adjusted gross income of that student's older parent who is the family's sole wage earner and is 45; an asset protection allowance of $33,300; an 8 percent allowance for State and other taxes; and the use of 1986 U.S. income tax schedules for a joint return with standard deductions. The expected parental contributions in this notice do not take into account—

Business or farm assets;
Nontaxable income;
Other unusual expenses; and
Elementary and secondary tuition expenses.

The Secretary will use the sample cases and expected parental contributions contained in this notice to approve need analysis systems for dependent undergraduate, and graduate and professional students under the campus-based programs. The approved systems will be used for making awards to students under the campus-based programs for award year 1987–88.

Closing Date for Transmittal of Information: An individual or organization wishing to have a system of need analysis approved must submit to the Secretary on or before October 30, 1986: (1) A complete description of its system of need analysis for dependent and independent students; (2) its student application form(s) for undergraduate, and graduate and professional students; (3) either the expected parental contributions for undergraduate students produced by an individual's or organization's system using the sample cases provided in Table 1 which are based on dependent undergraduate students, or the expected parental contributions for graduate and professional students produced by an individual's or organization's system using the sample cases provided in Table 2 which are based on dependent graduate and professional students; and (4) a complete calculation of how each expected parental contribution was derived, including enough information to allow the Secretary to duplicate these calculations and results.

The Secretary will not accept this information in the form of computer programs, software, or mechanical devices. The Secretary will not accept this information after the closing date and will return information received after the closing date to the sender.

Documents Delivered by Mail: Descriptions of systems, application form(s), expected parental contributions, and calculations that are sent by mail must be postmarked on or before October 30, 1986 and addressed to Anna Borlaug, Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, SW., (ROB–3, Room 4018), Washington, DC 20202.

An individual or organization must show proof of mailing these documents. Proof of mailing consiste of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (2) a legibly dated U.S. Postal Service postmark; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If these documents are sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An individual or organization should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an individual or organization should check with its local post office. An individual or organization is encouraged to use certified or at least first-class mail.

Documents Delivered by Hand: Descriptions of systems, application form(s), expected parental contributions, and calculations that are hand-delivered must be taken on or before October 30, 1986 to Anna Borlaug, Department of Education, Office of Student Financial Assistance, 7th and D Streets, SW., (ROB-3, Room 4018), Washington, DC 20202. The Campus and State Grant Branch will accept these hand-delivered documents between 8:00 a.m. and 4:30 p.m. daily (Washington, DC time) except Saturdays, Sundays and Federal holidays.

These documents will not be accepted after 4:30 p.m., October 30, 1986.

TABLE 1. (Undergraduate) Sample Cases and Expected Parental Contributions for the NDSL, CWS and SEOG Programs

[Award year 1987-88]

Net assets:	$30,000				$40,000				$50,000				$60,000			
Family size:	3	4	5	6	3	4	5	6	3	4	5	6	3	4	5	6
Adjusted gross income:																
$12,000	0	0	0	0	0	0	0	0	250	0	0	0	520	10	0	0
16,000	400	0	0	0	610	110	0	0	880	370	0	0	1,140	630	160	0
20,000	1,010	500	30	0	1,220	720	240	0	1,480	980	510	0	1,760	1,250	770	240
24,000	1,610	1,110	630	100	1,830	1,310	840	320	2,130	1,580	1,110	580	2,480	1,870	1,370	850
28,000	2,270	1,690	1,220	700	2,520	1,920	1,430	910	2,910	2,230	1,700	1,170	3,310	2,580	2,000	1,440
32,000	3,040	2,350	1,800	1,260	3,330	2,600	2,020	1,460	3,810	3,000	2,360	1,740	4,330	3,420	2,710	2,040

TABLE 2. (GRADUATE AND PROFESSIONAL) SAMPLE CASES AND EXPECTED PARENTAL CONTRIBUTIONS FOR THE NDSL, CWS AND SEOG PROGRAMS

[Award year 1987-88]

Net assets:	$30,000				$40,000				$50,000				$60,000			
Family size:	3	4	5	6	3	4	5	6	3	4	5	6	3	4	5	6
Adjusted gross income:																
$12,000	0	0	0	0	0	0	0	0	110	0	0	0	230	0	0	0
16,000	180	0	0	0	280	50	0	0	400	170	0	0	520	290	70	0
20,000	460	230	10	0	550	330	110	0	670	450	230	0	810	570	350	110
24,000	730	500	290	50	850	600	380	150	1,020	720	500	270	1,250	870	620	390
28,000	1,110	770	550	320	1,280	900	650	410	1,550	1,090	780	530	1,850	1,310	940	650
32,000	1,650	1,160	830	570	1,860	1,330	960	670	2,270	1,610	1,170	800	2,740	1,930	1,400	970

(20 U.S.C. 1089—Note)

(Catalog of Federal Domestic Assistance No. 84.038, National Direct Student Loan Program; 84.033, College Work-Study Program; and 84.007, Supplemental Educational Opportunity Grant Program)

Dated: September 24, 1986.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 86-22083 Filed 9-29-86; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

Tuesday
September 30, 1986

Part XI

Department of Education

Pell Grant Program; Publication of the 1986-87 Award Year Zero Student Aid Index (SAI); Notice

DEPARTMENT OF EDUCATION

Pell Grant Program

AGENCY: Department of Education.

ACTION: Publication of the 1986–87 Award Year Zero Student Aid Index (SAI) Charts.

SUMMARY: The Secretary publishes the Zero Student Aid Index (SAI) Charts for institutions to use when verifying application information under the Pell Grant Program. The use of the Zero SAI Charts is authorized by § 668.59(a)(2) of the Student Assistance General Provisions regulations, 34 CFR 668.59(a)(2).

SUPPLEMENTARY INFORMATION: The Pell Grant Program provides grant assistance to financially needy students to help them pay their cost of postsecondary education. In order to receive a Pell Grant, a student must submit an application to the Secretary which contains financial and other information that permits the Secretary to determine the student's expected family contribution, i.e., an amount that the student and his or her family may be reasonably expected to contribute toward the student's education. The expected family contribution is called the Student Aid Index or SAI in the Pell Grant Program.

The Secretary notifies the student of his or her SAI on a document called a Student Aid Report (SAR). On the SAR, the Secretary also includes the financial and other information reported by the applicant that the Secretary used to calculate the student's SAI.

In order to assure that applicants for Pell Grants provide accurate information on their applications, the Secretary requires these applicants to verify and update that information and has published regulations governing this verification process in Subpart E of the Student Assistance General Provisions regulations, 34 CFR Part 668, Subpart E. Generally, under these procedures, if an applicant is required to change any of his or her application information, the applicant must make the changes on the SAR that he or she received and must resubmit that changed SAR to the Secretary. However, there are certain situations where the changed application information would not change the student's SAI, and, in those situations, the Secretary does not require the applicant to resubmit his or her application.

Under § 668.59(a)(2) of the Student Assistance General Provisions regulations, 34 CFR 668.59(a)(2), the Secretary does not require an applicant to resubmit his or her changed SAR to the Secretary if the applicant has a zero SAI and the institution that the applicant is attending can determine that the applicant's SAI remains at zero using the verified information and the Zero SAI Charts.

The Zero SAI Charts are a simplified version of the formula the Secretary uses in calculating an applicant's SAI. The charts may, therefore, only be used for an applicant whose dependency status remains unchanged after verification and whose income and assets, including parental income and assets for dependent students, do not exceed the following:

For dependent students:

1. Income of more than $3,400 for a single dependent student;
2. Income of more than $5,100 for a married dependent student;
3. No savings or net assets for a dependent student and spouse;
4. Net home asset of parents of more than $25,000;
5. Net farm and business assets of parents of more than $50,000; and
6. Net parental assets, other than home and farm and business assets, of more than $25,000.

For independent students with dependents:

1. Net home assets of more than $25,000;
2. Net farm and business assets of more than $50,000; and
3. Net value of assets, other than home and farm and business assets, of more than $25,000.

For independent students without dependents: No savings or net assets.

Zero SAI—Chart A.—Use this chart if applicant is eligible for full employment expense offset

An applicant's SAI is zero if the correct household size is:	The verified EFI is LESS than
2	7,901
3	9,301
4	11,401
5	13,301
6	14,801
7	16,401
8	18,001
9	19,601
10	21,201
11	22,801
12	24,401
13	26,001

Zero SAI—Chart B.—Use this chart if applicant is not eligible for full employment expense offset

An applicant's SAI is zero if the correct household size is:	The verified EFI is LESS than
1	5,101
2	6,401
3	7,801
4	9,901
5	11,801
6	13,301
8	16,501
9	18,101
10	19,701
11	21,301
12	22,901
13	24,501

EFI means effective family income and equals the annual adjusted family income of the student, spouse and parents for a dependent student, or student and spouse for an independent student, minus any Federal income tax paid on that income.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce R. Coates, Program Specialist, Policy Section, Pell Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, Office of Postsecondary Education, 400 Maryland Avenue, SW., ROB–3, Room 4318, Washington DC 20202, Telephone: (202) 472–4300.

(20 U.S.C. 1094)

Dated: September 24, 1986.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance No. 84.063 Pell Grant Program)

[FR Doc. 86–22084 Filed 9–29–86; 8:45 am]

BILLING CODE 4000–01–M

Federal Register

Tuesday
September 30, 1986

Part XII

Department of Agriculture

Farmers Home Administration

7 CFR Parts 1901, 1940 and 1980
Nonprofit National Finance Corporations; Loan and Grant Program; Interim Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1901, 1940 and 1980

Nonprofit National Finance Corporations, Loan and Grant Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration adds a regulation which provides for a Nonprofit National Corporation Loan and Grant Program. This action is needed to implement the provisions of section 1323 of the Food Security Act of 1985, Pub. L. 99–198. The intended effect of this action is to provide a guaranteed loan and grant program for the making of guaranteed loans and grants to nonprofit corporations who will in turn provide financial and technical assistance to rural businesses to improve business, industry and employment opportunities in rural areas.

DATES: Interim rule effective on September 30, 1986. Written comments are to be received on or before October 30, 1986.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, South Agriculture Building, Room 6346, 14th and Independence Avenues, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the address given above.

FOR FURTHER INFORMATION CONTACT: Dwight A. Carmon, Loan Specialist, Business and Industry Division, USDA, FmHA, 14th and Independence Avenue, SW., Washington, DC 20250—Telephone: (202) 475–3811.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "non-major" since the annual effect on the economy is less than $100 million and there will be no significant increase in costs or prices for consumers, individual industry, organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FmHA is implementing this interim rule immediately with a 30 day comment period. 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 in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rule making because in order to effectively carry out the mandate of the law, which expires on September 30, 1986, it is necessary that regulations be implemented promptly.

CFDA: There is no Catalog of Federal Domestic Assistance Number for this program.

The project activities covered by this regulation are subject to the requirements for intergovernmental consultation as stated in 7 CFR Part 3015 Subpart V. "Intergovernmental Review of Department of Agriculture Programs and Activities.

This document has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has 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, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion of Interim Rule

Since there are a considerable number of effects resulting from this action only those that have affected the public will be discussed in this section. Internal activities and administrative functions of the Agency will not be discussed.

Section 1980.601 Introduction.

This section describes the purpose of the program which provides guaranteed loan and grant funds from the Farmers Home Administration (FmHA) to nonprofit national rural development and finance corporations (borrower) who will in turn reloan the loan funds and provide technical assistance with grant funds to rural businesses (projects) to improve business, industry and employment opportunities in rural areas. It also identifies the Administrator as the focal point and the contact person for processing and servicing activities.

Section 1980.602(a)(13) Rural area.

This paragraph defines rural area as any territory of a State outside of cities having a population of greater than twenty thousand population.

Section 1980.603 Citizenship of applicants.

This section requires that at least 51 percent of the outstanding interest in any borrower or project be owned by citizens of the United States.

Section 1980.604 Full faith and credit.

This section pledges the full faith and credit of the United States for loans guaranteed under this subpart. The guarantee is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time it became such lender or which lender participates in or condones. Any losses resulting from negligent servicing by the lender will not be guaranteed.

Section 1980.605 Case and identification (ID) numbers.

This section describes the methodology for assigning borrower and lender ID numbers.

Section 1980.611 Loan and grant purposes.

This section provides that FmHA guaranteed loan funds will not be used to finance more than 75 percent of the total project cost of any borrower-financed project. Borrower-financed projects must be for the establishment or expansion of a business and must create new employment opportunities. The section also provides guidelines on specific eligible uses of FmHA related guaranteed loan and grant funds. The borrower is to certify that the FmHA related funds under its control are to be used only for eligible purposes as defined by the guidelines in this section.

Section 1980.612 Ineligible assistance purposes.

Specific ineligible uses of loan and grant purposes are defined in this section.

Section 1980.613 Prohibitions on assistance under the program.

This section limits the amount of FmHA related guaranteed loan funds used by the borrower for relending to $500,000 per project.

Section 1980.614 Fees and charges by lender and others.

This section provides guidelines for what are considered acceptable fees to be charged by the lender and borrower in regard to their financial and technical assistance under the administration and execution of this program.

Section 1980.619 Eligible lenders.

This section prescribes the eligibility criteria for lenders under the provisions

of this program and restricts lenders from participation in the program if there is an appearance of a conflict of interest between the lender and the borrower. It also restricts borrowers from any activity where the appearance of a conflict of interest may be present in transactions between the borrower and borrower-assisted projects. Conditions under which there can be a substitution of lenders are defined.

Section 1980.623 Interest rates.

This section identifies the interest rates that can be charged by the lender to the borrower and between the borrower and borrower-financed projects.

Section 1980.624 Terms of loan repayment.

This section provides for the structure of loan repayment terms between the lender and the borrower. It limits the maximum repayment term to 10 years. It prohibits the guarantee of any loan in which the promissory note provides for the payment of interest on interest.

Section 1980.625 Availability of credit from other sources.

This section provides that inability to obtain credit from other sources is not a requirement for guaranteed assistance under this subpart.

Section 1980.630 Termination of FmHA's responsibilities and obligations.

This section provides that FmHA will exempt the borrower from the requirements of the regulation on federal funds when the borrower has provided assistance to the projects in an amount equal to the financial assistance the borrower has received from FmHA.

Section 1980.631 Intergovernmental review.

This section provides that the borrower-financed projects are subject to the requirements for intergovernmental review when FmHA funds are used.

Section 1980.632 Environmental review.

This section provides that the environmental review requirements of FmHA Instruction 1940–G are applicable when FmHA funds are involved.

Section 1980.633 Flood or mudslide hazard area precautions.

This section provides that the borrower will require flood or mudslide insurance on any project it finances with FmHA related funds if the project is in a flood or mudslide area.

Section 1980.634 Equal opportunity and nondiscrimination requirements.

This section requires the lender and FmHA to comply with the applicable provisions of the Equal Credit Opportunity Act for activities under this subpart.

Section 1980.642 Borrower requirements.

This section requires the borrower to provide the lender and FmHA such evidence as they may require to demonstrate the feasibility of the borrower's program to meet the objectives of this program. Minimum areas of consideration are identified which must be discussed in the borrower's plan.

Section 1980.643 Collateral, personal and corporate guarantee and other requirements.

This section requires the lender to obtain collateral in sufficient amounts and quality to assure the protection of the interests of the lender and the government in the event of the borrower's default on the guaranteed loan. Types of acceptable collateral are discussed.

Section 1980.644 Use of grant funding for technical assistance.

This section prescribes the circumstances under which an FmHA grant will be made to the borrower. It provides that grants will only be made to provide technical assistance to complement FmHA guaranteed loan funds. A grant agreement is required for any grant made to the borrower.

Section 1980.645 Grant approval and fund obligation.

This section provides that grant requests be submitted directly to the FmHA National Office. The Administrator or his/her designee has the authority to approve grant requests. A decision not to approve a grant will be given to the borrower along with the reason(s) for such disapproval. Approval of a grant request will need the borrower's acceptance in writing.

Section 1980.646 Disbursement of grant funds.

Grant funds cannot be held by the grantee in interest bearing accounts or used for purposes other than stated in the grant request. Grant funds will be disbursed to the borrower in amounts proportionate to the amount of work and/or service actually provided to the borrower-financed project.

Section 1980.647 Grant monitoring.

Grantees must maintain financial management systems and retain financial records in accordance with standards prescribed in OMB Circular 102, Attachments P, G and C, or OMB Circular, A–110, Attachments F and C, as appropriate in accordance with the terms and conditions of the grant. Grantees must maintain records of how the grant funds were used. Grantees will be required to provide Standard Form 269, "Financial Status Report," and a project performance activity report on a quarterly basis to FmHA. Audits of grant funds will be made in accordance with the provisions of this subpart.

Section 1980.651 Filing and processing applications for loans and grants.

Guaranteed loan and grant applications will be filed with the FmHA National Office, Director, Business and Industry Division, Washington, DC. FmHA will meet with the lender and borrower to assist in the preparation of the application. Specific information and FmHA forms to be used in the application are identified in this section of the regulations.

Section 1980.653 Review of requirements.

The lender and borrower are to review the conditions for approval of the guaranteed loan request. Acceptance or rejection of FmHA's conditions for approval will be signified by the borrower's and lender's signature on the Commitment for Guarantee or a letter outlining alternative conditions. If the lender decides not to accept the guarananteed loan it will notify FmHA in writing to that effect.

Section 1980.654 Conditions precedent to issuance of the Loan Guarantee.

A transfer of lenders may be approved by the Administrator if all other conditions remain constant. No transfer of borrowers will be approved. Changes in the terms of the Commitment for Guarantee must be approved by the Administrator prior to issuance of the Loan Guarantee. The lender will certify that there have been no material adverse changes in the borrower since issuance of the Commitment for Guarantee as well as other activities outlined in this section. The lender is to execute Form FmHA 1980–63, "Nonprofit Lender's Agreement" prior to issuance of the Loan Guarantee by FmHA. The lender will pay a one time guarantee fee of one percent (1%) of the principal loan amount at the time the Loan Guarantee is issued.

Section 1980.655 Disbursement of FmHA guaranteed loan funds.

FmHA guaranteed loan funds will be disbursed to the borrower in amounts equal to the proportionate amount of work completed on the borrower-assisted project. A written certification from the borrower stating that acquisition of property, plant and equipment have been paid for will be required for receipt of the FmHA guaranteed loan funds.

Section 1980.669 Loan servicing.

The lender is responsible for loan servicing and for notifying FmHA of any violations in the lender's Loan Agreement.

Section 1980.670 Defaults by borrower.

Defaults by the borrower will be handled in accordance with the provisions of the Nonprofit Lender's Agreement.

Section 1980.671 Liquidation.

Liquidation of the borrower will be conducted in accordance with the provisions of the Nonprofit Lender's Agreement. The lender will be paid a final loss at the time it acquires title to all collateral for the loan or the lender may request that FmHA pay a final loss at the time of ultimate disposition of the collateral. Payment of the final loss at the time of ultimate disposition of the collateral can only be made if FmHA elects to allow the lender that option.

Section 1980.672 Protective advances.

Protective advances will only be made in accordance with the provisions of paragraphs XI of the Nonprofit Lender's Agreement.

List of Subjects

7 CFR Part 1901

Agriculture, Authority delegations.

7 CFR Part 1940

Endangered and threatened wildlife, Environmental protection, Floodplains, National wild and scenic river system, Natural resources, Recreation, Water supply.

7 CFR Part 1980

Loan program—nonprofit corporations, Grant programs—nonprofit corporations.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1901—PROGRAM-RELATED INSTRUCTIONS

The authority citation for Part 1901 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Loan and Grant Approval Authorities

1. Section 1901.2 *Policy* is revised to read as follows:

§ 1901.2 Policy.

The loan and grant approval authorities will be given to the County Supervisor and District Director to the maximum extent possible, consistent with program requirements and available resources. Appropriate reviews, concurrence, and authorization, as required by FmHA regulations, must be obtained for all loans and/or grants in excess of the amounts indicated in Exhibits A, B, C, D, E and F.

2. Section 1901.5 *Other program consideration* is revised to read as follows:

§ 1901.5 Other program considerations.

See Exhibits A, B, C, D, E and F for dollar amounts. See apropriate program Instructions for other considerations.

PART 1940-G—GENERAL

The authority citation for Part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Environmental Program

3. In § 1940.310(c), the paragraph heading is revised to read as follows:

§ 1940.310 Categorical exclusions from National Environmental Policy Act (NEPA) reviews.

* * * * *

(c) *Community and business programs and nonprofit national corporations program.*

* * * * *

4. In § 1940.311, introductory paragraph (b) is revised to read as follows:

§ 1940.311 Environmental assessments for Class I actions.

* * * * *

(b) *Community and business programs and nonprofit national corporation program.* Class I assessments will be prepared for the following categories:

* * * * *

5. In § 1940.312, paragraph (b) is revised to read as follows:

§ 1940.312 Environmental assessments for Class II actions.

* * * * *

(b) *Community and business programs and nonprofit national corporations program.* Class II actions will be taken for any request for financial assistance which either does not meet the criteria for a categorical exclusion as stated in § 1940.310, a class I action as stated in § 1940.311, or does not involve a livestock-holding facility or feed lot meeting the criteria for a Class I action as defined in § 1940.311 (c)(8).

* * * * *

PART 1980—GENERAL

The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

6. Subpart G is added to read as follows:

Subpart G—Nonprofit National Corporations Loan and Grant Program

Sec.

1980.601 Introduction.
1980.602 Definitions and abbreviations.
1980.603 Citizenship requirements.
1980.604 Full faith and credit.
1980.605 Case and identification (ID) numbers.
1980.606—1980.610 [Reserved]
1980.611 Loan and grant purposes.
1980.612 Ineligible assistance purposes.
1980.613 Prohibitions on assistance under the program.
1980.614 Fees and charges by lender and others.
1980.615—1980.618 [Reserved]
1980.619 Eligible lenders.
1980.620—1980.622 [Reserved]
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Subpart C—Nonprofit National Corporations Loan and Grant Program

§ 1980.601 Introduction.

(a) This subpart contains regulations for loans guaranteed and grants made by the Farmers Home Administration (FmHA) to nonprofit corporations (borrower), and applies to lenders, borrowers, and other parties involved in making, guaranteeing, servicing, or liquidating such loans. The provisions of this subpart supersede conflicting provisions of any other subpart.

(b) The purpose of the program is to improve business, industry and employment in rural areas through the stimulation of private investments and foundation contributions. This purpose is achieved through grants and guarantees of loans made by public or private organizations (including loans made by financial institutions such as insurance companies) to borrowers through national nonprofit corporations that establish or work with similar and affiliated statewide rural development and finance programs for the purpose of providing loans, guarantees, and other technical and financial assistance to profit or nonprofit local businesses (projects) to improve business, industry and employment opportunities in a rural area. The financial and/or technical assistance resulting from the FmHA-related assistance is intended to improve business, industry and employment opportunities (retention of jobs or creation of jobs) as well as provide a diversification of the economy in rural areas. Furthermore, the guranteed loan and grant funds generated by this program are intended to stimulate innovative business and entrepreneurial practices and are to improve the economic climate for the rural population. The program is meant to provide opportunities for employment of displaced farm families and to supplement farm family income wherever possible. It is anticipated that businesses assisted through this program will to the maximum extent practicable use farm labor and products as well as provide services to the farm community.

(c) The loan and grant program is administered by the Administrator. The Director, Business and Industry Division, is the focal point for the program and the contact person for processing and servicing activities.

(d) Appendix A to this subpart contains the administrative provisions which provide FmHA personnel with directions on how to process and administer this loan and grant program. This information is not considered as material the public needs to know in order to obtain the benefit of program assistance. Appendix A is not published in the **Federal Register** nor is it contained in the Code of Federal Regulations (CFR).

§ 1980.602 Definitions and abbreviations.

(a) *General definitions.* The following general definitions are applicable to the terms used in this subpart.

(1) *Borrower.* (Primary recipient) (A nonprofit national corporation (NNC)) The entity receiving FmHA guaranteed loan funds from a lender for relending through its statewide affiliates to projects (ultimate recipients) for the purpose of improving business, industry and employment opportunities in a rural area. The borrower must:

(i) Be a national nonprofit corporation authorized to do business in at least three States including lending.

(ii) Demonstrate to FmHA's satisfaction that it has liquid financial resources available for lending and technical assistance to projects in an amount equal to not less than ten percent (10%) of the financial assistance provided to the borrower by FmHA in the form of grant and/or guaranteed loan assistance.

(iii) Have written approval to administer a revolving loan program as provided for in this subpart by the Governor of each State in which the borrower intends to operate.

(iv) Must be fully bonded against losses occuring from theft, fraud, nonperformance, etc.

(2) *Commitment for Guarantee (Form FmHA 1980–61).* FmHA's advice to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in "Commitment for Guarantee" (Form FmHA 1980–61).

(3) *Grantee.* The entity to which FmHA directly provides guaranteed loan related grant funds under the provisions of this subpart. The Grantee must be a Nonprofit National Corporation.

(4) *Guranteed loan.* A loan made and serviced by a lender for which FmHA has entered into a Form(s) FmHA 1980–63, "Nonprofit Lender's Agreement," and for which FmHA has issued a Form(s) FmHA 1980–62, "Loan Guarantee."

(5) *Interim financing.* Interim financing is any financial assistance provided to the project through the borrower or its affiliated statewide nonprofit rural development and finance corporations for the purpose of establishing, expanding, refinancing or other improvements of the project on a temporary basis for the same purpose(s) for which the FmHA-related financial assistance is provided. Such financial assistance must not have been provided to the project by the borrower prior to the date of acceptance of the Commitment for Guarantee issued by FmHA. Takeout of interim financing with FmHA-related funds is not considered refinancing.

(6) *Lender.* The lender is a public agency or private organization (including financial institutions such as insurance companies) making and servicing the loan which is guaranteed under the provisions of this subpart and the party requesting the guarantee.

(7) *Nonprofit Lender's Agreement (Form FmHA 1980–63).* The signed agreement between FmHA and the lender setting forth the lender's loan responsibilities when the Loan Guarantee is issued.

(8) *Loan Guarantee (Form FmHA 1980–62).* The signed commitment issued by FmHA setting forth the terms and conditions of the guarantee.

(9) *Market value.* The amount for which property would sell for its highest and best use at voluntary sale.

(10) *Note.* An evidence of the debt. In those instances where FmHA guarantees a bond issue, "note" shall also be construed to include "Bond" or other evidence of indebtedness where appropriate.

(11) *Principals of borrower.* Include members, officers, directors, entities and others directly involved in the operation and management of a nonprofit corporation.

(12) *Project.* (Ultimate recipient) The entity receiving financial and/or technical assistance from the borrower through the borrower's affiliated

statewide rural development and finance program structure(s). The project is the ultimate recipient of the FmHA-related financial assistance provided through the borrower for the purpose of diversifying and strengthening rural economies to accomplish one or more of the purposes described in § 1980.611 of this subpart.

(13) *Rural area.* Includes all territory of a State that is not within the outer boundary of any city having a population of twenty thousand or more as determined by the Secretary of Agriculture according to the latest decennial census of the United States.

(14) *State.* Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Marina Islands.

(15) *Statewide affiliate.* A statewide affiliate is an entity legally eligible to lend money and provide related assistance in the State(s) in which it will operate and is related to the borrower (primary recipient of FmHA funds) by an operating agreement to provide assistance to projects (ultimate recipients). The statewide affiliate must have the written endorsement of the Governor of the State in which it will operate in order to receive and administer FmHA funds provided under this subpart.

(16) *Technical assistance or service.* Technical assistance or service is a function performed for the benefit of the borrower-financed project (ultimate recipient) and is a problem solving activity such as market research, product and/or service improvement etc., as opposed to the acquisition of physical assets or debt payment or providing working capital. Such a function must be required to ensure the successful operation of the project.

(17) *Working capital.* The excess of current assets over current liabilities. It identifies the relatively liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

(b) *Abbreviations.* The following abbreviations are applicable.

(1) *B&I*—Business and Industry

(2) *EPA*—Environmental Protection Agency

(3) *FmHA*—Farmers Home Administration

(4) *OGC*—Office of the General Counsel

(5) *USDA*—United States Department of Agriculture

(6) *NNC*—Nonprofit National Corporation(s)

§ 1980.603 Citizenship requirements.

(a) *Borrowers.* At least 51 percent of the outstanding interest in any borrower must have membership or be owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

(b) *Projects.* At least 51 percent of the outstanding interest in any project must have membership or be owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

§ 1980.604 Full faith and credit.

The Loan Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time it becomes such lender or which lender participates in or condones. A note which provides for payment of interest on interest is void. The Loan Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Form FmHA 1980–61. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

§ 1980.605 Case and identification (ID) numbers.

(a) *Case number.* The case number will be the borrower's Internal Revenue Service (IRS) tax number. The borrower's IRS tax number preceded by State and County Code Numbers will constitute the entire case number to be used on all FmHA forms. The Administrator will provide the lender with these numbers.

(b) *ID number of lender.* The lender's IRS tax number will be used as its ID number in correspondence and FmHA forms relating to the guarantee.

§§ 1980.606–1980.610 [Reserved]

§ 1980.611 Loan and grant purposes.

(a) FmHA guaranteed loan funds will not be used to finance more than 75 percent of the total cost of a borrower-financed project. An FmHA grant may not be used to pay project costs. In no event will be loan funds exceed $500,000 to any one borrower-financed project (ultimate recipient). Other loans, grants and/or borrower or project contributions must be used to make up the difference between the total project cost and the assistance provided by FmHA. The borrower must certify to the lender and FmHA that any assistance to borrower-financed projects, involving FmHA-related funds, complies with the criteria in this section and § 1980.612 of this subpart and the borrower and borrower-financed projects must meet the applicable intergovernmental consultations and environmental requirements of §§ 1980.631 and 1980.632 of this subpart.

(b) Borrower-financed projects (ultimate recipients) must be for the establishment of new businesses and/or the expansion of existing businesses, create employment opportunities and/or save existing jobs. Additionally, the projects must:

(1) Meet the objective and purpose of the program as described in § 1980.601(b) of this subpart, and

(2) Must have other public and/or private investment funds, and

(3) To the maximum extent possible use local labor and resources (agricultural if possible), and

(4) To the maximum extent possible be innovative in providing services and/or products for the public, and

(5) Whenever possible involve the maximum use of agricultural or agricultural-related products and services.

(c) FmHA guaranteed loans must be used by the borrower to provide financial assistance to its projects. FmHA grant funds must be used by the borrower to provide technical assistance to projects. Financial and technical assistance from the borrower to the projects through its statewide affiliate(s) must be for improving, developing, or financing business, industry, and employment in rural areas, and may include but not be limited to:

(1) Business and industrial acquisitions, construction, conversion, enlargement, repair, modernization, or development cost.

(2) Purchasing and development of land, easements, rights-of-way, building, facilities, leases, or materials.

(3) Purchasing of equipment, leasehold improvements, machinery or supplies.

(4) Pollution control and abatement including those in connection with farming and ranching operations.

(5) Transportation services incidental to industrial development.

(6) Startup operating costs and working capital.

(7) Sites for housing development provided the community demonstrates a need for additional housing to prevent a loss of jobs in the area, or to house families moving to the area as a result of new employment opportunities.

(8) Assistance, other than for working capital or debt refinancing, for meat processing facilities and integrated meat and poultry operations. Assistance may not be for agricultural production as defined in § 1980.612(d) of this subpart; however, projects which are in the business of processing, marketing, or packaging of agricultural products, as well as agricultural production, may be eligible for assistance for that portion of the business other than agricultural production provided the agricultural production aspect is separate from the rest of the business; i.e., the production aspects are handled through separate legal business entities or through maintenance of the accounting system in such manner as to clearly identify the use of and future accounting of the assistance proceeds and operation of the business.

(9) Interest (including interest on interim financing) during the period before the first principal payment becomes due or the facility becomes income producing, whichever occurs first.

(10) Feasibility studies.

(11) Reasonable fees and charges only as specifically listed in this subparagraph. Authorized fees include loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual State or accreditation associations, such as Engineers, Architects, Lawyers, Accountants, and Appraisers. The amount of fee will be what is reasonable and customary in the community or region where the project is located. For example, Architects and Engineers customarily charge fees based on a percentage of estimated project costs. Lawyers, Accountants, and Appraisers customarily charge for services on an hourly basis. Any fees for professional or expert services are to be fully documented and justified. The above approval fees and charges may be funded out of assistance proceeds.

(12) Aquaculture including conservation, development, and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned or regulated stock of fish.

§ 1980.612 Ineligible assistance purposes.

Loans and/or grants may *not* be made or guaranteed by FmHA if the funds are used by the borrower:

(a) For payment of the borrower's own adminstrative costs or expenses except for the actual costs of providing a specific technical service to borrower-financed projects. Technical assistance is a function performed for the benefit of the borrower-financed project and is generally a problem solving activity such as market research, product and/or service improvement, etc., as opposed to the acquisition of physical assets or debt payment. The borrower can only be reimbursed for such a function from FmHA grant funds when it can be demonstrated that such a function is required to ensure the successful operation of the project.

(b) To pay off project creditors in excess of the market value of the collateral.

(c) For distribution or payment to the owner, partners, shareholders, or beneficiaries of the project or members of their families when such persons will retain any portion of their equity in the project.

(d) For agricultural production by borrower-financed projects which mean the cultivation, production (growing), and harvesting either directly or through integrated operations of agricultural products (crops, animals, birds and marine life either for fiber or food for human consumption and disposal (marketing), the raising, breeding, hatching, including the control and management of farm and domestic animals). Exceptions to this definition are:

(1) Aquaculture as identified under eligible purposes.

(2) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, the growing of vegetables from seed to the transplant stage.

(3) Project foestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(4) Financial or technical assistance to projects for livestock and poultry processing as identified under eligible purposes.

(5) The growing of mushrooms or hydroponics.

(e) For the transfer of ownership of a project unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(f) For financing project community antenna television services or facilities.

(g) Charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(h) For assistance to government employees, military personnel, or principals or employees of the borrower who are directors, officers or have major ownership (20 percent or more) in the business.

(i) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(j) For any illegal project activity.

(k) For hotels, motels, tourist homes or convention centers.

(l) For any tourist, recreation or amusement facility.

(m) For relending in a city with a population in excess of twenty thousand as determined by the latest decennial census.

(n) For any otherwise eligible project that is in violation of either a Federal, State or local environmental protection law or regulation or an enforceable land use restriction unless the financial assistance required will result in curing or removing the violation.

§ 1980.613 Prohibitions on assistance under the program.

The following types of assistance will not be available to borrowers or projects under this program:

(a) The guarantee of lease payments.

(b) The guarantee or making of any loan(s) when the total combined outstanding amount of FmHA-related assistance requested by any one project is in excess of $500,000.

§ 1980.614 Fees and charges by lender and others.

(a) *Routine charges and fees.* The lender/borrower may establish the charges and fees for the loan, provided they are the same as those charged other borrowers/projects for similar types of transactions.

(b) *Late payment charges.* Late payment charges and any interest accruing to such charges will not be

covered by the Loan Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late payment charges may be made only if:

(1) *Routine.* They are routinely made by the lender/borrower in all types of loan transactions.

(2) *Payments received.* Payment has not been received within the customary timeframe allowed by the lender/borrower. The term "payment received" means that the payment in cash or by check, money order, or similar medium has been received by the lender/borrower at its main office, branch office, or other designated place of payment.

(3) *Calculating charges.* The lender/borrower agrees with the borrower/project in writing that the rate or method of calculating the late payment charges will not be changed to increase charges while the Loan Guarantee is in effect.

(c) *Documentation of fees and charges.* All fees and charges must be specifically documented and justified on Form FmHA 1980–60, "Application for Loan Guarantee," or on an addendum to the application at the time loan request is submitted for FmHA for processing. Allowable fees will be those reasonably and customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA review and approval.

(d) *Eligible packagers and payment of fees.* Packaging fees include services rendered by the lender or others in connection with preparation of the application and seeing the transaction through to final decision. These services may or may not be performed by an investment banker. If an investment banker provides needed assistance in addition to the packaging of the loan, additional charges may be added to the packaging fee. The maximum allowable packaging fees are 2 percent of the total principal amount. Packaging fees, investment banker fees, and any other fees and charges not specifically provided for in this section are permitted subject to FmHA review and written approval. Loan proceeds may be used to pay fees as specifically authorized under §1980.611(c)(11) of this subpart.

§§ 1980.615–1980.618 [Reserved]

§ 1980.619 Eligible lenders.

(a) *An eligible lender is* a public agency or private organization (including financial institutions such as insurance companies). The lender may use agents, correspondents, branches, financial experts, or other institutions or persons to provide expertise to assist in carrying out its responsibilities. FmHA will use the lender as the point of contact for the administration of the program.

(b) *Proof of eligibility.* Each lender will inform FmHA whether it qualifies for eligibility under this section and which agency or authority, if any, supervises such lender. The lender must provide FmHA such proof as FmHA requires that the lender is sufficiently capitalized to adequately make and service the loan and/or to see the loan through to ultimate liquidation of the collateral, if necessary.

(c) *Conflict of interest.* For possible lender-borrower (primary recipient) conflict of interest, see paragraph IV of Form FmHA 1980–63. All lenders/borrowers will, for each proposed loan, inform FmHA in writing and furnish such additional evidence as FmHA requests as to whether and the extent that the lender/borrower or its principal officers (including immediate family) hold any legal or financial interest in the other. In addition, the lender/borrower will furnish such evidence as FmHA requests as to whether the lender/borrower has any interest in financial transactions dealing with each other or any borrower-financed project. FmHA shall determine whether such ownership or financial transaction is sufficient to create a potential conflict of interest. In the event FmHA determines there is a conflict of interest, the FmHA assistance to the borrower will not be approved until such conflict is eliminated. If a conflict of interest is discovered after a "Commitment for Guarantee" has been issued but before the "Loan Guarantee" has been issued, the conflict of interest must be eliminated or the loan will not be guaranteed.

(d) *Substitution of lenders.* With written concurrence of FmHA, another eligible lender may be substituted for a lender who holds an outstanding Form FmHA 1980–61, provided the borrower, loan purposes, scope of project and loan terms remain unchanged. After issuance of the Loan Guarantee and with prior written approval of the FmHA National Office, a new eligible lender may be substituted for the original lender provided the new lender agrees to assume all original loan requirements including liabilities, servicing responsibilities, and acquiring legal title to the unguaranteed portion of the loan. Such approval will be granted by the National Office only when a lender discontinues lending operations or other extreme situations require a substitution of lender. If approved, the National Office will submit to the Finance Office Form FmHA 1980–42, "Notice of Substitution of Lender."

§§ 1980.620–1980.622 [Reserved]

§ 1980.623 Interest rates.

(a) *Guaranteed loans.* Rates will be negotiated between the lender and the borrower. They may be either fixed or variable as long as they are legal. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA review and approval.

(1) A variable interest rate must be a rate that is tied to a base rate published periodically in a financial publication specifically agreed to by the lender and borrower. It must rise and fall with the selected base rate, and changes can be made no more often than quarterly. There will be no floor or ceiling on variable interest rates except as specified in paragraph (a)(5)(i) of this section. The lender must incorporate within the variable rate promissory note at loan closing, the provision for adjustment of payment installments coincident with an interest rate adjustment. This will assure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan. Balloon payments are not permissible for any financial assistance provided to either a borrower or borrower-financed project made under this subpart.

(2) Any change in the interest rate between the date of issuance of the "Commitment for Guarantee" and before the issuance of the Loan Guarantee must be approved by the Administrator. Approval of such change will be shown on an amendment to Form FmHA 1980–61.

(3) The borrower and lender may collectively effect a permanent reduction in the interest rate of their FmHA guaranteed loan at any time during the life of the loan upon written agreement by these parties. FmHA must be notified by the lender, in writing, within 10 calendar days of the change. The FmHA file will reflect the documentation of the interest rate change decision.

(i) Fixed rates cannot be changed to variable rates to reduce the interest rate to the borrower unless the variable rate has a ceiling which is less than the original fixed rate.

(ii) Variable rates can be changed to reduced fixed rates. In a final loss settlement, when qualifying rate changes were made with the required written agreements and notification, the interest will be calculated for the periods the given rates were in effect.

except that interest claimed on a loan which originated at a variable rate can never exceed the amount which would have been eligible for claim had the variable interest remained in force. The lesser cost to the Government will always prevail. The lender must maintain records which adequately document the accrued interest claimed.

(iii) The lender is responsible for the legal documentation of interest changes by an allonge attached to the promissory note(s) or any other legally effective amendment of the rate(s); however, no new note may be issued.

(4) No increases in interest rates will be permitted under the FmHA loan guarantee except the normal fluctuations in approved variable interest rate loans.

§ 1980.624 Terms of loan repayment.

(a) Principal and interest on the loan will be due and payable as provided in the promissory note. The lender will structure repayments as established in the loan agreement between the lender and borrower. Ordinarily, such installments will be scheduled for payment as agreed upon by the lender and borrower but on terms that reasonably assure repayment of the loan. However, the first installment to include a repayment of principal may be scheduled for payment after the borrower has begun to generate income from projects financed with FmHA-related funds, but such installment will be due and payable within 3 years from the date of the promissory note and at least annually thereafter. Payments on interest will be due at least annually from the date of the note. Ordinarily, monthly payments will be expected.

(b) The maximum time allowable for final maturity for FmHA guaranteed loan will be limited to ten (10) years.

(c) FmHA will not guarantee any loan in which the promissory note or any other document provides for the payment of interest upon interest.

§ 1980.625 Availability of credit from other sources.

Inability to obtain credit elsewhere is not a requirement for guaranteed assistance under this Subpart.

§§ 1980.626–1980.629 [Reserved]

§ 1980.630 Projects not involving Federal assistance.

Once the borrower has provided assistance to projects from its revolving funds in an amount equal to the loan(s) guaranteed by FmHA, the requirements imposed on the borrower shall not be applicable to any new projects thereafter financed from the revolving fund. Such new projects shall not be considered as being derived from Federal funds. The requirements shall continue in relation to all other projects.

§ 1980.631 Intergovernmental review.

Nonprofit National Corporations Loan and Grant Program projects are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

(a) *General.* The initial approval of a grant and/or guaranteed loan will not be the subject of intergovernmental consultation.

(b) *Project.* For each project to be assisted with a loan or grant under this subpart and for which the State in which the project to be located has elected to review the project under their intergovernmental review process, the State Point of Contact must be notified. Notification, in the form of a project description, can be initiated by the borrower or the ultimate recipient. Any comments from the State must be included with the borrower's request to use the lender and FmHA loan and or grant funds for the specific project. Prior to FmHA's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each project. These requirements should be carried out in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940–J, available in any FmHA Office. In those instances where a State's comments cannot be accommodated, FmHA will provide the State with a timely explanation of the basis for its decision. FmHA will not implement its decision for 15 days after the State receives the explanation, unless unusual circumstances make the 15-day waiting period not feasible. The explanation will take the form of a written explanation and may be supplemented by telephone, meeting or other telecommunication.

§ 1980.632 Environmental requirements.

(a) *General applicability.* Unless specifically modified by this section, the requirements of Subpart G of Part 1940 of this chapter apply to this subpart. FmHA will give particular emphasis to ensuring compliance with the environmental policies contained in §§ 1940.303 and 1940.304 in Subpart G of Part 1940 of this chapter. Although the purpose of the loan and grant program established by this subpart is to improve business, industry and employment in rural areas, this purpose is to be achieved, to the extent practicable, without adversely affecting important environmental resources of rural areas such as important farmlands and forest lands, prime rangelands, wetlands and floodplains. Prospective lenders, borrowers and ultimate recipients of loans and grants, therefore, must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans, grants and projects that minimize the potential to adversely impact the environment.

(b) *Application for technical assistance grants.* The application for a technical assistance grant is generally excluded from FmHA's environmental review process by § 1980.310(e)(1) of Subpart G of Part 1940 of this chapter. However, as further specified in § 1940.330 of Subpart G of Part 1940, the grantee for such a technical assistance grant, in the process of providing technical assistance, must consider the potential environmental impacts of the recommendations provided to the ultimate recipient.

(c) *Application for loan guarantees.* As part of the application for a loan guarantee, the applicant must provide a completed Form FmHA 1940–20, "Request for Environmental Information," for each project specifically identified in its plan submitted with its loan guarantee application. FmHA will review the application(s) supporting materials and any required Forms FmHA 1940–20 and initiate a Class II environmental assessment for the application(s). This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because neither the completion of the environmental assessment nor the approval of the application is an FmHA commitment to the use of loan funds for a specific project and because such loan funds can eventually be used in several States, no public notification requirements for a Class II assessment will apply to the applications(s). The affected public has not been sufficiently identified at this stage of the FmHA review. Should an application be approved, each project to be assessed would undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this chapter prior to FmHA's consent to use loan funds for a project. (See paragraph (d) of this section.) FmHA will prepare an Environmental Impact Statement for any application for a loan guarantee determined to have a sufficient effect on the quality of the human environment.

(d) *Requests to make loans to projects.* As part of the borrower's request to the lender and FmHA for concurrence to make a loan to a project (see §§ 1980.611(a), 1980.645(d) and 1980.652(b) of this subpart), the borrower will include for the project a properly completed Form FmHA 1940–20 executed by the ultimate recipient. FmHA will review the Form FmHA 1940–20 and complete for the project the environmental review required by Subpart G of Part 1940 of this chapter. The results of this review will be used by FmHA in making its decision on the request. No commitment of the loan funds to the project may be made by the borrower until an affirmative decision is rendered by the lender and FmHA.

§ 1980.633 Flood or mudslide hazard area precautions.

The borrower is responsible for determining if a project is located in a special flood or mudslide hazard area anytime FmHA loan and/or grant funds are involved. If the borrower-financed project is in a flood or mudslide area, then flood or mudslide insurance must be provided.

§ 1980.634 Equal opportunity and nondiscrimination requirements.

In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, neither the lender/borrower nor FmHA will discriminate against any applicant on the basis of race, color, religion, national origin, age (provided that the applicant has the capacity to enter into a binding contract), sex or marital status with respect to any aspect of a credit transaction anytime FmHA loan or grant funds are involved. The regulations contained in Part 1901, Subpart E of this chapter applies to loans and grants made under this program.

§§ 1980.635–1980.641 [Reserved]

§ 1980.462 Borrower requirements.

The borrower must provide a written plan and other evidence the lender and FmHA require to demonstrate the feasibility of the borrower's program to meet the objectives of this program to the lender for evaluation. The lender will provide the plan and a written evaluation of the plan to FmHA Director, Business and Industry Division, Washington, D.C. 20250, with a statement as to whether the plan will likely achieve the objectives of the program. The plan must document, at a minimum:

(a) The borrower's ability to administer a national revolving rural development loan program in accordance with the provisions of this subpart. In order to adequately demonstrate the ability to administer the program, the borrower must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the borrower's organization or contract personnel hired for this purpose. If the personnel are contracted for, the contract between the borrower and the entity providing such service will be submitted for FmHA's review to determine that the terms of the contract and its duration are sufficient to adequately service the FmHA guaranteed loan and/or grant through to its ultimate conclusion. FmHA will review these statements and determine if the personnel are adequately qualified. If FmHA determines the personnel lack the necessary expertise to administer the program, the loan guarantee and/or grant request will not be approved.

(b) The borrower's ability to commit financial resources under the control of the borrower to the establishment of affiliated statewide rural development and finance programs. This should include a statement of the source of funding for the guaranteed loan as well as the source(s) of non-FmHA funds for administration of the borrower's operations and financial and technical assistance for projects.

(c) A proposal for adequately collateralizing the FmHA guaranteed loan. The proposal should specifically address those items of collateral outlined in § 1980.643 of this subpart.

(d) A detailed statement of the proposed use of FmHA grant funds. This should include an outline of what will constitute project eligibility for grant related financial and technical assistance as a complement to the FmHA guaranteed loan funds the borrower will make available to projects (see § 1980.644(d) of this subpart for other considerations which must be addressed).

(e) Must demonstrate a need for guaranteed loan and grant funds. As a minimum, the borrower should identify a sufficient number of proposed and known projects it has on hand to justify FmHA funding of its loan and grant request.

(f) Must identify what will constitute technical assistance to projects it assists.

(g) Include a list of proposed fees and other charges it will assess the projects it funds.

(h) Must demonstrate to FmHA satisfaction that the borrower has secured commitments of significant financial support from public agencies and private organizations for such affiliated statewide programs.

(i) Must demonstrate to FmHA satisfaction that the borrower is affiliated with or has a working relationship with statewide rural development and finance corporations (statewide affiliates) in three or more States.

(j) Must provide evidence to FmHA satisfaction that the borrower has a proven record of obtaining private and/or philanthropic funds for the operation of similar programs to the one contained in this subsection.

(k) The borrower's plan for relending the guaranteed loan funds. The plan must be of sufficient detail to provide FmHA with a complete understanding of what the borrower will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the borrower to the ultimate recipient. The eligibility criteria, the application process, method of disposition of the funds to the project, monitoring of the project's accomplishments and reporting requirements by the project's management are some of the items that must be addressed by the borrower's relending plan.

(l) A scope of work prepared by the borrower, which provides a detailed description of the technical assistance be the made available to the project, how the assistance will be made available, and how the borrower will monitor the impact of the assistance to the project.

§ 1980.643 Collateral, personal and corporate guarantee, and other requirements.

(a) *Collateral.* (1) The lender is responsible for seeing that proper and adequate collateral is obtained and maintained in existence and of record to protect the interest of the lender and FmHA.

(2) Collateral must be of such a nature that repayment of the loan is reasonably assured when considered with the integrity and ability of borrower management, soundness of the borrower, and applicant's prospective earnings. Collateral may include, but is not limited to, the following: land, buildings, machinery, equipment, furniture, fixtures, inventory, accounts receivable, cash or special cash collateral accounts, marketable securities, and cash surrender value of life insurance. Collateral may also include assignments of leases or leasehold interest, revenues, patents, and copyrights.

(3) All collateral must secure the entire loan. The lender will not take separate collateral to secure only that portion of the loan or loss not covered by the guarantee. The lender will not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan. However, compensating balances as used in the ordinary course of business may be used.

(4) Normally acceptable collateral for FmHA guaranteed loans for borrowers would consist of an assignment of notes and related security instruments securing the financial assistance from the borrower's statewide affiliates to borrower/financed projects as well as a security interest in cash held by the borrower and its affiliates stemming from FmHA-related funds and cash from the revolving loans to the borrower-financed projects and any other collateral as required by the lender.

(b) *Other requirements.* (1) The lender will ascertain that no claim or liens of laborers, material men, contractors, subcontractors, suppliers of machinery and equipment or other parties are against the collateral of the borrower, and that no suits are pending or threatened that would adversely affect the collateral of the borrower when the security instruments are filed.

(2) Hazard insurance with a standard mortgage clause naming the borrower as beneficiary will be required on every borrower-financed project in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the collateral. The borrower's interest in the insurance will be assigned to the lender.

(3) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the borrower-financed project and will be assigned or pledged to the borrower and subsequently to the lender. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(4) Workmen's compensation insurance on borrower-financed projects is required in accordance with State law.

(5) If other financing is involved with the FmHA-related assistance to the borrower or the borrower-financed project, then the FmHA assistance will be secured with a lien position superior to or on a parity basis with that of the other source of financing.

§ 1980.644 Use of grant funding for technical assistance.

(a) FmHA in support of an approved technical assistance program to be carried out by the borrower can provide funds to the borrower in the form of grants which will be used to provide the ultimate recipient with financial and/or technical assistance. Technical assistance is a problem solving activity such as market research, product and/or service improvement, etc., as opposed to the acquisition of physical assets or debt payment.

(b) FmHA will make grants to the borrower for technical assistance to complement guaranteed loan funds available to the ultimate recipient (project).

(c) Grants will be awarded only from appropriated funds specifically allocated for this program.

(d) Before technical assistance in the form of an FmHA grant will be considered, one or more of the following criteria must be present:

(1) A critical employment situation as measured by unemployment, underemployment, and low family income levels exists.

(2) There is local financial support for the project.

(3) Use of loan funds and funds from other sources alone will not make the project economically feasible.

(e) As part of the grant agreement (see Appendix B of this subpart), FmHA requires that the projects be administered in accordance with the Borrower Plan developed by the borrower and approved by FmHA (see § 1980.642 of this subpart). The Borrower Plan defines specific objectives and operating procedures, including standards and selection criteria for loans and grants. FmHA will monitor project activities for conformance to Borrower Plan and other conditions of the grant agreement.

§ 1980.645 Grant approval and fund obligation.

(a) The borrower will submit a request for an FmHA technical assistance grant directly to the Director, Business and Industry Division, in the National Office for development and processing using Part A of Form FmHA 1980–60. A copy will be provided to the guaranteed lender for information purposes only.

(b) The FmHA Administrator, or designee, has the authority to approve all new applications for technical assistance grants. Grant offers are made on specific terms which govern the approved grant project.

(c) The borrower will sign the Form FmHA 1940–1, "Request for Obligation of Funds," and the grant agreement and forward them to the Director, Business and Industry Division.

(d) A grant cannot be closed prior to issuance of a "Loan Guarantee" in connection with a loan to the borrower requesting the grant.

§ 1980.646 Disbursement of grant funds.

FmHA grant funds will be disbursed to the borrower upon completion of all or part of the borrower-assisted project technical assistance. Funds will be disbursed in amounts corresponding to the proportionate amount of work completed. A written certification from the borrower stating that all technical services have been completed will be required for receipt of the FmHA grant funds. The borrower will maintain records to substantiate its certification. Such records will be made available to FmHA upon request.

§ 1980.647 Grant monitoring.

(a) Grantees must maintain financial management systems and retain financial records in accordance with standards prescribed in OMB Circular 102, Attachments P, G and C, or OMB Circular, A–110, Attachments F and C, as appropriate, in accordance with terms and conditions of the grant.

(b) Grantee records must include an accurate accounting and must document how these funds are used.

(c) SF–269, "Financial Status Report," and a project performance activity report will be required of all grantees on a quarterly basis. SF–269 and a final project performance report will also be required. These final reports may serve as the last quarterly reports. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. All grantees should submit an original of each report and one copy to the guaranteed lender and the FmHA National Office, Director, Business and Industry Division, Washington, DC 20250. The project performance reports shall include but need not be limited to the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why established objectives were not met;

(3) Problems, delays, or adverse conditions which will materially affect attainment of planned project

objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated to resolve the situation;

(4) Objectives established for the next reporting period;

(5) Status of compliance with any special conditions on the use of grant funds.

(d) *Audit requirements.* (1) Audit requirements for grants will be made in accordance with Subpart G of Part 1942 of this chapter.

(2) Audits for grants made in accordance with State statutes or regulatory agencies will be acceptable provided they are prepared in sufficient detail to permit FmHA to determine that grant funds have been used in compliance with the proposal, any applicable laws and regulations, and the grant agreement. A copy of the audit shall be submitted to the FmHA, Director, Business and Industry Division, Washington, DC 20250, as soon as possible but in no case later than 90 days following the period covered by the grant.

(e) *Grant agreements.* The Grant Agreement is a part of this regulation. (See Appendix B of this Subpart.)

§§ 1980.648—1980.650 [Reserved]

§ 1980.651 Filing and processing applications for loans and/or grants.

(a) *Borrowers' and lenders' contact.* Borrowers and lenders desiring FmHA assistance as provided in this subpart may file applications with the FmHA National Office, Director, Business and Industry (B&I) Division, Washington, DC 20250. The Director, Business and Industry Division, will promptly arrange an early meeting with the borrower and lender representatives to discuss assembly, preparation, and processing of applications.

(b) *Filing applications.* [Borrowers or lenders] may file the complete application, in one package.

(c) *Loan priorities.* Priority consideration will be given to borrowers whose written plan, as required by § 1980.642, demonstrates that the borrower:

(1) Will provide financial and technical assistance to projects that will employ and benefit farm families and displaced farm families.

(2) Will involve financial and technical assistance from State(s) in providing assistance to the projects as provided by this program.

(3) Has a proven record of successfully assisting rural business and industry. Such proof will normally consist of:

(i) The number of past and present loans the borrower has made and serviced that are similar in nature to the purpose of this program.

(ii) The delinquency rate on the loans in the borrower's portfolio.

(iii) The background and expertise of the borrower's staff that will be making and servicing the portfolio.

(iv) The capitalization of the borrower for making such loans.

(d) *Application will consist of:* (1) Form FmHA 1980–60.

(2) Form FmHA 1940–20, when required by Subpart G of Part 1940 of this chapter.

(3) Cost estimates and forecasts of contingency funds to cover inflation or project changes.

(4) A pro forma balance sheet at startup and for at least 3 additional projected years, indicating the necessary startup capital, operating capital and short-term credit based on financial statements for the last 3 years, or more (if available); and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections.

(5) Proposed loan agreement. (Not required for a grant) (See paragraph VI of Form FmHA 1980–63.) Loan agreements between the borrower and lender will be required. The final executed loan agreement must include FmHA's requirements as set forth in the Form FmHA 1980–61 including the requirements for periodic financial statements and recordkeeping. There must be provisions for an annual audited financial statement of the borrower; it will be performed by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States. An acceptable audit will be performed in accordance with generally accepted auditing standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the borrower. FmHA does not require an unqualified audit opinion as a result of the audit. However, FmHA will not accept a limitation to the scope of the audit. Compilations or reviews do not satisfy the audit requirement. The loan agreement must also include but is not limited to the following:

(i) Limitation on purchase or sale of equipment and fixed assets.

(ii) Limitations on compensation of officers and members.

(iii) Repayment and amortization of the loan.

(iv) Prohibition against the borrower assuming the liabilities of other person(s) or entity.

(v) A requirement for the submission of quarterly reports to the lender and FmHA on the financial operations of the borrower. The records of the borrower will be made available to the lender and FmHA upon request.

(6) The information prepared by the borrower as required by § 1980.642 of this subpart.

(7) Any additional information required by FmHA.

(e) *Use of forms.* FmHA numbered forms will be used where shown. Otherwise, lenders should use their forms, real estate mortgages, security instruments and other agreements, provided such forms do not contain any provisions that are in conflict or are inconsistent with provisions of this subpart.

(f) *Timeframe for processing applications for loan guarantees.* All guaranteed loan applications must be approved or disapproved, and the lender notified in writing, not later than 60 days after receipt of a completed application.

(1) If an application is not complete, the lender will be notified, in writing, not later than 20 calendar days after receipt of the application by FmHA, of the reason(s) the application is incomplete.

(2) When an application is disapproved, the written notification to the lender will state the reason(s) for disapproval.

(3) When an application is disapproved and subsequent action, as the result of an appeal, reverses or revises the initial decision, FmHA will notify the lender of such action within 15 calendar days after the reversal/revision decision is made.

§ 1980.652 FmHA evaluation of application.

(a) Normally, the percentage of guarantee will be 80 percent or less, but never more than 90 percent.

(b) The FmHA Administrator or designee will evaluate the application and make a determination whether the borrower is eligible; the proposed loan/grant is for an eligible purpose; there is reasonable assurance of repayment ability, sufficient collateral, and sufficient equity; there is a need for an environmental impact statement or environmental mitigation; and the proposed loan/grant complies with all applicable statutes and regulations. If FmHA determines it is unable to guarantee the loan, the lender will be

informed in writing. If FmHA determines it is unable to provide a grant, the borrower will be informed in writing. Such notification will include the reasons for denial of the guarantee/grant. If FmHA is able to guarantee the loan or provide the grant, it will provide the lender and the borrower with Form FmHA 1980–61, listing all requirements for such guarantees/grants. FmHA will include in the requirements of the Commitment for Guarantee a full description of the approved use of guaranteed loan/grant funds as reflected in the Form FmHA 1980–60. As with the use of grant funds, FmHA will also require in Form FmHA 1980–61 that the borrower, prior to making a loan commitment to a project, receive the lender's and FmHA's concurrence in the proposed use of loan funds. (See § 1980.645(d) of this subpart regarding the process for obtaining concurrence.) The Administrator or designee is the only person authorized to execute Form FmHA 1980–61.

§ 1980.653 Review of requirements.

(a) Immediately after reviewing the conditions and requirements in Form FmHA 1980–61, the lender and borrower should complete and sign the "Acceptance or Rejection of Conditions," and return a copy to the FmHA Administrator. If certain conditions cannot be met, the lender and borrower may propose alternate conditions to FmHA.

(b) If the lender indicates in the "Acceptance or Rejection of Conditions" of Form FmHA 1980–61 that it desires to obtain a Loan Guarantee and subsequently decides at any time after receiving a conditional commitment that it no longer wants a Loan Guarantee, the lender will immediately advise the FmHA Administrator.

§ 1980.654 Conditions precedent to issuance of the Loan Guarantee.

Compliance with the following provisions are required prior to issuance of the Loan Guarantee.

(a) *Transfer of lenders.* The FmHA Administrator may approve a substitution of a new eligible lender in place of a former lender who holds an outstanding Commitment for Guarantee (where Loan Guarantee has not yet been issued) provided, there are *no changes* in the borrower's ownership or control, loan purposes, scope of project and loan conditions and loan agreement. To effect such a substitution, the former lender will provide FmHA with a letter stating the reasons it no longer desires to be a lender for the project. The substituted lender will execute a new Part "B" of Form FmHA 1980–60. If approved by the FmHA, the Administrator or designee will issue a letter or amendment to the original Form FmHA 1980–61 reflecting the new lender and the new lender will acknowledge acceptance of the letter or amendment in writing.

(b) *Substitution of borrowers.* FmHA will not issue a Loan Guarantee to the lender who is in receipt of a Form FmHA 1980–61 with an obligation in a previous fiscal year if the originally approved borrower (including changes in legal entity) members changed.

(c) *Change in terms and conditions in Form FmHA 1980–61.* It is the intent of FmHA that once the Form FmHA 1980–61 is issued and accepted by the lender, the Commitment not be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds or terms and conditions. Only minor changes will be considered, unless otherwise provided for in this subpart. All requests for changes will require National Office written approval.

(d) *Preguarantee review.* Coincident with, or immediately after loan closing, the lender will contact FmHA and provide those documents and certifications required in paragraphs (f) and (j) of this section. Only when the FmHA is satisfied that all conditions for the guarantee have been met will the Loan Guarantee be executed.

(e) *Loan closing.* When loan closing plans are established, the lender will notify FmHA.

(f) *Lender certification.* Form FmHA 1980–62 will not be isued until the lender certifies to FmHA that:

(1) No major changes have been made in the lender's loan conditions and requirements since the issuance of the Commitment for Guarantee except those approved in the interim by FmHA in writing.

(2) Truth in lending requirements have been met.

(3) All equal employment opportunity and nondiscrimination requirements have been or will be met at the appropriate time.

(4) The loan has been properly closed, and the required security instruments have been obtained, or will be obtained on any after acquired property that cannot be covered initially under State law.

(5) When required, the entire amount of loan for working capital has been disbursed except in cases where the Administrator has approved disbursement over an extended time.

(6) All other requirements of the Commitment for Guarantee have been met.

(7) Lien priorities are consistent with requirements of the Commitment for Guarantee.

(8) The loan proceeds have been disbursed for purposes and in amounts consistent with the Commitment for Guarantee and as specified on Form FmHA 1980–60. A copy of a detailed loan settlement statement of the lender will be attached to support this certification.

(9) There has been no material adverse change(s) in the borrower's financial condition nor any other adverse change in the borrower during the period of time from FmHA's issuance of the Commitment for Guarantee to issuance of the Loan Guarantee.

The lender's certification must address all adverse changes of the borrower and be supported by financial statements of the borrower not more than 60 days old of the time of certification. For purposes of this paragraph, the term "borrower" includes additionally any parent, affiliate, or subsidiary of the borrower.

(g) *Inspections.* (1) The lender will notify FmHA of any scheduled field inspections of the borrower's operation which may include projects after issuance of the Loan Guarantee. FmHA may attend such field inspections. Any inspections of review conducted by FmHA, including those with the lender, are for the benefit of FmHA only and not for other parties of interest. FmHA inspections do not relieve any parties of interest of their responsibilities to conduct necessary inspections, nor can these parties rely on FmHA's inspections in any manner whatsoever.

(2) A timetable for routine borrower and lender visitations by FmHA personnel is established before the Loan Guarantee is issued. As a guide, visits to newly established borrowers with the lender representative should be scheduled monthly. Visits to established, nonproblem borrowers must be made at least annually. Special attention problem borrowers should be visited as frequently as the need demands. If possible, these visitations should be coordinated with the lender's visits.

(h) *Execution of form.* The lender has executed and delivered to FmHA Form FmHA 1980–63, "Nonprofit Lender's Agreement."

(i) *Additional requirements.* See also appropriate sections of this subpart for additional requirements.

(j) *Nonprofit Lender's Agreement.* If FmHA finds that all requirements have been met, the lender and FmHA will execute Form FmHA 1980–63. The

original will be delivered to FmHA and a signed duplicate original retained by the lender. There will be a Form FmHA 1980–63 executed for all loans guaranteed by FmHA. The Nonprofit Lender's Agreement will be executed not later than the time the Loan Guarantee is signed and FmHA receives the guarantee fee.

(k) *Loan Guarantee.* Upon receipt of the Form FmHA 1980–63 and after all requirements have been met, FmHA will execute Form FmHA 1980–62. All original(s) will be provided to the lender and attached to the note(s). A conformed copy with copies of notes attached will be retained by FmHA.

(l) *Refusal to execute contract.* If FmHA determines that it cannot execute the Loan Guarantee or approve a grant because all requirements have not been met, it will promptly inform the lender or borrower, as appropriate, on Form FmHA 449–13, "Denial Letter," of the reasons, and give the lender or borrower a reasonable period within which satisfy FmHA objections. For the purpose of this subpart, the FmHA official making the adverse decision will insert the name of the appropriate form on the line used to describe the FmHA document requested by the party applying for the loan or grant. If the lender or borrower which has requested a loan or grant writes FmHA within the period allowed requesting additional time to satisfy the objections, FmHA may, in writing, allow such additional time as it considers necessary and reasonable under the circumstances. If the objections are satisfied within the time allowed, the guarantee or grant, as appropriate, will be issued (made).

(m) *Cancellation of obligations.* If the conditions for the loan/grant are rejected or cannot be met after completion of any appeal, FmHA may prepare and execute Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or obligation," in accordance with the forms manual insert.

(n) *Payment of guarantee fee.* The lender will prepare and deliver a Form FmHA 1980–19, "Guaranteed Loan Closing Report," for each loan to be guaranteed and deliver the guarantee fee to the FmHA representative who concurrently delivers the Loan Guarantee. The fee will be one percent (1%) of the principal loan amount multiplied by the percent of guarantee, paid one time only at time the Loan Guarantee is issued. The fee will be paid to FmHA by the lender and is non-refundable. The fee may be passed on to the borrower.

(o) *Authorized FmHA representatives to execute forms.* The Administrator or designee will execute the Nonprofit Lender's Agreement (Form FmHA 1980–63) and the Loan Guarantee.

(p) *Sale of Loan Guarantee prohibited.* The Loan Guarantee with the full faith and credit of the United States cannot be sold by the lender into the secondary market.

(q) *Transfer of guaranteed loan and/or grant prohibited.* The guaranteed loan and/or the grant to the borrower cannot be transferred to or assumed by another borrower.

§ 1980.655 Disbursement of FmHA guaranteed loan funds.

FmHA guaranteed loan funds will be disbursed to the borrower on completion of all or part of the borrower-assisted project. Funds will be disbursed in amounts corresponding to the proportionate amount of work completed. A written certification from the borrower stating that all acquisition of property, plant and equipment has been paid for will be required for receipt of the FmHA guaranteed loan funds.

§ 1980.656 Access to records of lenders.

Upon request by FmHA, the lender will permit representatives of FmHA (or other agencies of the U.S. Department of Agriculture authorized by that Department) to inspect and make copies of any of the records of the lender pertaining to FmHA guaranteed loans. Such inspection and copying may be made during regular office hours of the lender, or any other time the lender and FmHA find convenient.

§§ 1980.657–1980.668 [Reserved]

§ 1980.669 Loan servicing.

(a) The lender is responsible for loan servicing and for notifying the FmHA of any violations in the lender's Loan Agreement. (See Paragraph X of Form FmHA 1980–63.)

(b) The lender shall furnish FmHA a copy of borrower's financial statements together with lender's analysis of the statement and of the borrower's operations within 30 days of receipt of such statement for the following loans:

(1) All borrowers within the first year of loan closing.

(2) All problem and delinquent borrowers.

(3) Borrowers identified by FmHA in a written notice.

§ 1980.670 Defaults by borrower.

Refer to paragraph IX of Form FmHA 1980–63.

(a) In case of any monetary or material non-monetary default under the loan agreement, the lender is responsible for arranging a meeting with the Administrator, or designee, and borrower to resolve the problem. A memorandum of the meeting, individuals who attend, a summary of the problem and proposed solutions will be prepared by the FmHA representative and retained in the loan file. The Administrator will notify the lender and borrower of any decision reached by FmHA.

(b) In considering servicing options, some of which are identified in paragraph IX A of Form FmHA 1980–63, the prospects for providing a permanent cure without adversely affecting the risks of the FmHA and the lender must become the paramount objective. Temporary curative actions such as payment deferments, moratoriums on payments or collateral subordination, if approved, must strengthen the loan and be in the best interests of the lender and FmHA.

(c) Consultant services may be used to assist FmHA and the lender in determining which servicing action is appropriate.

(d) When the National Office determines it is necessary on individual cases, due to some special servicing requirements, it may, at its option, assume the servicing responsibility on individual cases.

§ 1980.671 Liquidation.

(a) *Reference.* Refer to paragraph X of Form FmHA 1980–63.

(b) *Settlement option.* If a lender acquires title to property either through voluntary conveyance or foreclosure proceeding, FmHA may elect to permit the lender the option to calculate the final loss settlement using the net proceeds received at the time of ultimate disposition of such property. The lender must submit its written request for this option to FmHA, and FmHA must agree, prior to the lender submitting any request for estimated loss payment.

§ 1980.672 Protective advances.

Refer to paragraph XII of Form FmHA 1980–63. A protective advance *must* be an indebtedness of the borrower and be secured.

§§ 1980.673–1980.674 [Reserved]

§ 1980.675 Bankruptcy.

(a) It is the lender's responsibility to protect the guaranteed loan debt and all the collateral securing it in bankruptcy proceedings. These responsibilities include but are not limited to the following:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and where necessary participate in meetings of the creditors and all court proceedings.

(3) The lender, whose collateral is subject to being used by the trustee in bankruptcy, will immediately seek adequate protection of the collateral.

(4) Where appropriate, the lender should seek involuntary conversion to a liquidating proceeding or seek dismissal of the proceedings.

(5) FmHA will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(b) In a Chapter 11 reorganization, if an independent appraisal is necessary in FmHA's opinion, FmHA and the lender will share such appraisal fee equally.

(c) Expenses on Chapter 11 reorganization cases are not to be deducted from the collateral proceeds. Reasonable and customary liquidation expenses may be deducted from the collateral proceeds in liquidation cases under Chapter 7 or Section 1123(b)(4) *liquidations* provided the lender presents a written justification for each expense and secures FmHA's written concurrence prior to incurring the expense and the lender conducts the liquidation.

(d) The Administrator or designee with the assistance of the Regional Attorney for the area in which the borrower is located will perform the required function necessary to protect the interests of the Government for the grant only. For the purpose of this paragraph the District of Columbia is considered to be located in Maryland.

§§ 1980.676–1980.679 [Reserved]

§ 1980.680 Appeals.

(a) *General.* Any adverse decision made by FmHA which affects the borrower or lender may be appealed upon written request of the aggrieved parties in accordance with this section. The borrower and lender may appeal an FmHA decision. They must jointly participate in the written request for appeal of the alleged adverse decision except, after the issuance of the loan guarantee(s) either party may be allowed to file an appeal without the other party's participation. A good faith effort by the appealing party must be made to secure the other party's cooperation unless the appeals official determines it is not practical or essential to have the other party's participation. In the case of an adverse decision by FmHA in regard to a grant case, the borrower (grantee) is the only party that can file an appeal.

(b) *Request for review.* Within 10 working days of the date of the notification of the decision, the appellant(s) may request an informal meeting with the decision maker to discuss the decision. Within 30 calendar days of the date of the notification of the adverse decision, the appellant(s) may request a formal meeting with the appropriate appeal officer or designee to discuss the decision. Prior to either the informal or formal appeal meeting, the appellant(s) will be given access, if requested, to the borrower's official FmHA file, including a reasonable opportunity to inspect and reproduce the file subject to any restrictions of the Freedom of Information Act. The appellant(s) will have the right to representation by an attorney or non-attorney during the inspection of the official file and at the informal and formal appeal meetings.

(c) *Meetings.* When a meeting is scheduled by FmHA, the aggrieved parties will provide FmHA with any additional written appeal material at least 5 working days before the scheduled meeting date in order for FmHA to have time to study the materials.

§§ 1980.681–1980.695 [Reserved]

§ 1980.696 Exception authority.

The Administrator may in individual cases grant an exception to any requirement or provision of this subpart which is not inconsistent with an applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The basis for this exception will be fully documented. The documentation will: demonstrate the adverse impact; identify the particular requirement involved; and show how the adverse impact will be eliminated.

§ 1980.697 FmHA forms and guides.

The following FmHA forms and guides, as applicable, are used in connection with processing loan guarantees and grants; they are incorporated into this subpart and made a part hereof:

(a) Appendix B, "Grant Agreement (Nonprofit National Corporations)."

(b) Appendix C, Form FmHA 1980–63, "Nonprofit Lender's Agreement."

§§ 1980.698–1980.699 [Reserved]

§ 1980.700 OMB Control Number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB Control Number 0575–0121.

Appendix A—Nonprofit National Corporations Loan and Grant Program Administrative Provisions

Nonprofit National Corporations Loan and Grant Program Administrative Provisions are available in any State or District FmHA Office and are not published in the **Federal Register.**

Appendix B—Grant Agreement (Nonprofit National Corporations)

THIS AGREEMENT dated ———, 19——, between ———

———————————————,

Herein called "Grantee," and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "Grantor," WITNESSETH:

Grantee has determined to undertake a technical assistance program as described in the Scope of Work dated: ——— (herein called program) at an estimated cost of $———, and has duly authorized the undertaking of such program;

The Grantor agrees to grant to Grantee a sum not to exceed $——— subject to the terms and conditions established by the Grantor. Provided, however, that any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

In consideration of said grant by Grantor to Grantee, to be made pursuant to FmHA Instruction 1980–G for the purpose as defined by applicable Farmers Home Administration regulations:

Grantee agrees that Grantee will—

1. Cause said program to be completed within the total sums available to it, including said grant, in accordance with the program plan and any necessary modifications thereof prepared by Grantee and approved by Grantor.

2. Permit periodic inspection of the program operations by a representative of Grantor.

3. Make the program available to all persons in Grantee's service area without regard to race, color, national origin, religion, sex, marital status, age, physical or mental handicap who have also received FmHA related assistance from the Grantee.

4. Not use grant funds to replace any financial support previously provided or assured from any other source. The Grantee agrees that the general level of expenditure by the Grantee for the benefit of program area and/or program covered by this agreement shall be maintained and not reduced as a result of the Federal share funds received under this grant.

5. No nonexpendable personal property will be acquired wholly or in part with grant funds.

6. Provide Financial Management Systems which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supporting activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all funds. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(d) Accounting records supported by source documentation.

7. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee governments which are pertinent to the specific grant program for the purpose of making audit, examination, excerpts and transcripts.

8. Provide information as requested by the Grantor to determine the need for and complete any necessary environmental assessments or Environmental Impact Statements.

9. Provide an audit report prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this agreement.

10. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a designated representetive of the Grantor.

11. Execute Form FmHA 400–1, "Equal Opportunity Agreement," Form FmHA 400–4, "Nondiscrimination Agreement," and any other agreements required by Grantor to implement the civil rights requirements. If any such form has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another form of the same type need not be executed in connection with this grant.

12. In contracts in excess of $2,000 and in other contracts in excess of $2,500 which involve the employment of mechanics or laborers, to include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

13. Include in all contracts in excess of $100,000 a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clear Air Act of 1970. Violations shall be reported to the Grantor and the Regional Office of the Environmental Protection Agency.

14. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and the demand of Grantor, will, to the extent legally permissible, repay to Grantor forthwith the original principal amount of the grant stated hereinabove, with interest at the rate of five percentum per annum from the date of the default. The provisions of this Grant Agreement may be enforced by Grantor at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

15. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

16. That all non-confidential information resulting from its activities shall be made available to the general public on an equal basis.

17. That the purpose and scope of work for which this grant is made shall not duplicate programs for which monies have been received, are committed, or are applied to from other sources, public or private.

18. That Grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: "The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

19. That the Grantee shall abide by the policies promulgated in OMB Circular A–102, Attachment O, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

20. Prior to committing grant funds to a program, Grantor's concurrence to do so in the manner prescribed in section 1980.645 of Subpart G of Part 1980 of this chapter.

21. To the following termination provisions:

(a) Termination for cause: The Grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. The Grantor agency shall promptly notify the Grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) Termination for convenience: The Grantor agency or Grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Grantor agency shall allow full credit to the Grantee for the Federal share of the noncancelable obligations, properly incurred by the Grantee prior to termination.

Grantor agrees that it will:

1. Assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the program and coordinating the plan with local official comprehensive plans and with any State or area plans for the area in which the program is located.

2. In its sole discretion, Grantor may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable considertion, upon such terms and conditions as Grantor may determine to be (a) advisable to further the purposes of the grant or to protect Grantor's financial interest therein, and (b) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Grantee on the date first above written has caused this agreement to be exceuted by its duly authorized ———— and attested and its corporate seal affixed by its duly authorized ————.

Grantee

———————————————

By ————————————————

———————————————

(Title)

Attest

(Seal)

By ————————————————

———————————————

(Title)

Grantor

UNITED STATES OF AMERICA

FARMERS HOME ADMINISTRATION

By ————————————————

———————————————

(Title)

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Appendix C

Position 5

USDA-FmHA
Form FmHA 1980-63
(9-86)

FORM APPROVED
OMB NO. 0575-0121

NONPROFIT LENDER'S AGREEMENT

Type of Loan: _____ FmHA Loan Ident. No. _____

_____ (Lender) of

_____ has made a loan(s) to

_____ (Borrower)

_____ in the principal

amount of $ _____ as evidenced by the note described as follows:

_____

_____

_____

_____

_____

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Loan Guarantee" (Form FmHA 1980-62) or has issued a "Commitment for Guarantee" (Form FmHA 1980-61) to enter into a Loan Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed _____ % of the amount of the principal advance and any interest thereon. The terms of the Loan Guarantee are controlling. As a condition for obtaining a guarantee of the loan, the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Guarantee will not exceed _____ percent of the principal and accrued interest on the above indebtedness.

II. Full Faith and Credit. The Loan Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed.

The Loan Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

III. The Lender agrees loan funds will be used for the purposes authorized in Subpart G of Title 7 CFR Part 1980 and in accordance with the terms of Form FmHA 1980-61.

IV. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the borrower. The Lender certifies that neither the Borrower nor its officers or directors, members, or other owners has a substantial financial interest in the Lender.

V. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower. Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Guarantee.

VI. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

VII. Lender certifies it has paid the required guarantee fee.

This report contains certain agreements to provide future reports and information which must be agreed to by the Lender in order to obtain the benefit of an FmHA loan guarantee. This statement is furnished pursuant to P.L. 96-511.

VIII. Servicing.

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured.

B. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest on the loan as they fall due. The loan may be reamortized or renewed by the Lender only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, the Borrower complies with all laws and ordinances applicable to the loan, the collateral and or operating of the business or industry.

6. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

7. Assuring that the Borrower obtains marketable title to the collateral.

8. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

9. Providing FmHA Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report."

10. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA office immediately responsible for the loan.

IX. Default.

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments.
2. An additional temporary loan by the Lender to bring the account current.
3. Reamortization of or rescheduling the payments on the loan.
4. Reorganization.
5. Liquidation.
6. Subsequent loan guarantees.
7. Changes in interest rates with FmHA's and Lender's approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

X. Liquidation. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advice FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal National Non-Profit Corporation loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On loan balances in excess of $200,000 the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the currrent market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation plan. FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. Liquidation: Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. When FmHA liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with applicable FmHA regulations.

2. When the Lender is conducting the liquidation it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA 449-30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449-30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

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G. Application of FmHA loss payment. The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449-30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. Foreclosure. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. Payment. Such loss will be paid by FmHA within 60 days after the review of the accounting of the collateral.

XI. Protective Advances.

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances which exceed a total cumulative advance of $500 to the same borrower. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XII. Additional Loans or Advances.

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XIII. Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XIV. Other Requirements.

This agreement is subject to all the requirements of the applicable Subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement.

XV. Execution of Agreements.

If this agreement is executed prior to the execution of the Loan Guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XVI. Notices.

All notices and actions will be initiated through FmHA for_____

(State) with mailing address at the date of this instrument _____

_____

Dated this _____ day of _____ , 19 __.

LENDER:

ATTEST: _____ (SEAL)

By _____

Title _____

UNITED STATES OF AMERICA
Farmers Home Administration

By _____

Title _____

Dated: September 10, 1986.

Eric P. Thor,

Acting Administrator, Farmers Home Administration.

[FR Doc. 86-22208 Filed 9-29-86; 8:45 am]

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H.J. Res. 692/Pub. L. 99-419

To designate the week of October 19, 1986, through October 26, 1986, "National Housing Week." (Sept. 25, 1986; 100 Stat. 954; 1 page) Price: $1.00

S. 720/Pub. L. 99-420

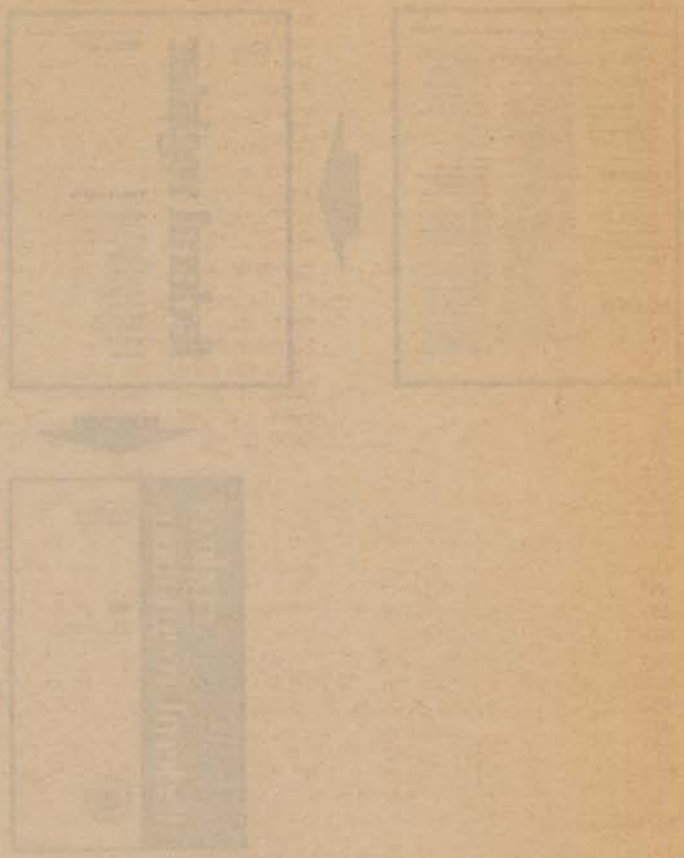
To establish a permanent boundary for the Acadia National Park in the State of Maine, and for other purposes. (Sept. 25, 1986; 100 Stat. 955; 6 pages) Price: $1.00

S.J. Res. 196/Pub. L. 99-421

Designating September 22, 1986, as "American Business Women's Day." (Sept. 25, 1986; 100 Stat. 961; 1 page) Price: $1.00

S.J. Res. 357/Pub. L. 99-422

To designate the week of September 15, 1986, through September 21, 1986, as "National Historically Black Colleges Week." (Sept. 25, 1986; 100 Stat. 962; 1 page) Price: $1.00



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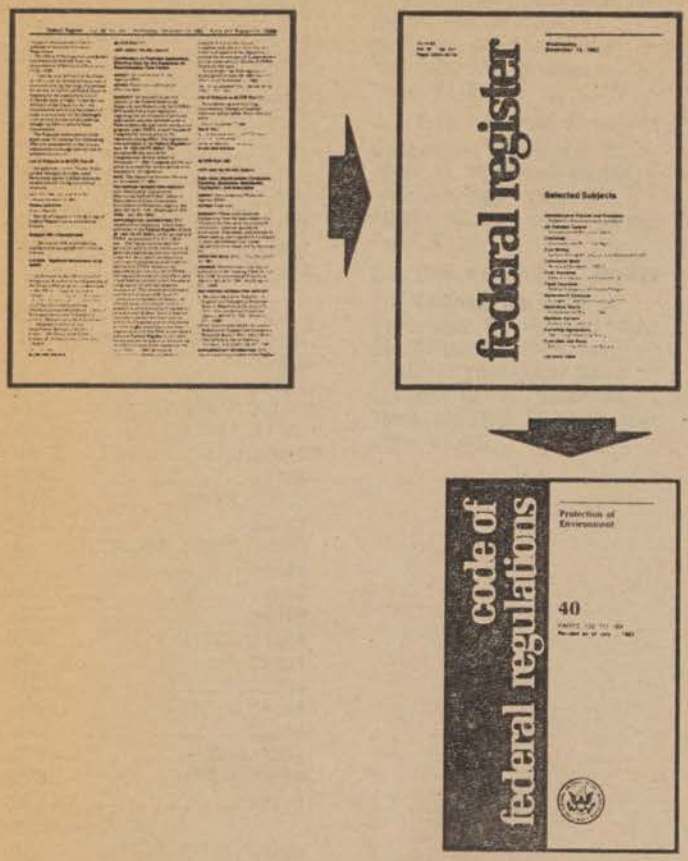

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