6-29-79
Vol. 44—No. 127
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Federal Register

Book 1 of 2 Books
Friday, June 29, 1979

Highlights

37900, 37901 **National School Lunch and Child Nutrition** USDA/FNS establishes criminal penalties for misusing funds, assets, or property; effective 6-29-79 (2 documents)

37896-37899 **School Food Programs** USDA/FNS announces eligibility of mentally or physically handicapped persons; effective 6-29-79 (4 documents)

38154 **Indian Education** HEW/OE proposes to revise program regulations; comments by 8-28-79 (Part V of this issue)

38142 **Law-Related Education Program** HEW/OE publishes program regulations for governing grants and contract awards; comments by 8-28-79 (Part IV of this issue)

38268 **Outer Continental Shelf** Interior/BLM implements changes in Mineral Leasing and Rights-of-Way Granting; effective 7-30-79 (Part IX of this issue)

38236 **Inmates** Justice/Prisons Bureau finalizes rules regarding control, custody, care, treatment, and instruction; effective 8-1-79 (Part VIII of this issue) (2 documents)

38416 **Bilingual Education** HEW/OE proposes to govern the award of grants; comments by 8-28-79 (Part XVII of this issue)

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Highlights

38184 **Assistance in Certain Disasters** HEW/OE proposes regulations in governing school assistance in areas affected by Federal Activity; comments by 8-28-79 (Part VI of this issue)

38400 **Agency Financial Assistance** HEW/OE proposes to incorporate changes, simplify and shorten existing regulations; comments by 9-27-79 (Part XVI of this issue)

38364 **Emergency School Aid** HEW/OE proposes to amend regulations; comments by 8-28-79 (Part XIV of this issue)

38386 **Community Education** HEW/OE proposes regulations for School and Comprehensive Education; comments by 8-28-79 (Part XV of this issue)

38318 **Training Programs** Interior/SMRE seeks comments concerning blasters, blasting crew members, and programs; comments by 8-28-79 (Part XI of this issue)

37940 **Uncontrolled Domestic Crude Oil** DOE/ERA eliminates penalty on allocation; effective 8-1-79

38342 **Civil Service Reform** MSPB informs Federal agencies and employees of procedures for processing appeals and cases, effective 6-30-79 (Part XIII of this issue)

38330 **Foods for Human Consumption** HEW/FDA reduces tolerances for polychlorinated biphenyl residues in several food classes; comments by 7-30-79; effective 8-28-79 (Part XII of this issue)

38048 **Sunshine Act Meetings**

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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 month.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 735

Public Access to Financial Disclosure Reports

AGENCY: Office of Personnel Management.

ACTION: Notice of legislative amendment affecting regulations on financial disclosure reporting.

SUMMARY: The Office of Personnel Management is publishing this notice to call attention to Pub. L. 96-19, signed into law by the President on June 13, 1979, which makes technical and conforming changes to the financial disclosure provisions in the Ethics in Government Act of 1978 (Pub. L. 95-521).

FOR FURTHER INFORMATION CONTACT: Gary Davis, Office of Government Ethics, (202) 632-7642.

SUPPLEMENTARY INFORMATION:

1. *Financial Disclosure Reports.*

Pursuant to Title II, Section 205(a) of the Ethics in Government Act of 1978 (the Act) (Pub. L. 95-521), each executive agency is required to make available to the public the financial disclosure reports which its officers and employees file under the Act together with a position description (if available) for such individual's government position. Section 205(b) provides that each agency shall, within fifteen days after any such report is received by the agency, permit inspection or furnish a copy to any person so requesting.

2. *Public Access to Financial Disclosure Reports.*

As amended, Section 205(b) of the Act sets forth certain requirements to be met by a person seeking access to a financial disclosure report.

(a) A financial disclosure report may not be made available to any person nor may a copy thereof be provided to any person except upon written application by such person stating:

(1) That person's name, occupation, and address;

(2) The name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(3) That such person is aware that it is unlawful to obtain or use a report—

(A) For any unlawful purpose;

(B) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) For determining or establishing the credit rating of any individual; or

(D) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

Any application for a report shall be available to the public during the period in which the requested report is available to the public.

(b) Requests for copies of financial disclosure reports of officers appointed by the President by and with the advice and consent of the Senate as well as nominees to such offices (other than members of the uniformed Services), key officials in the United States Postal Service, designated agency ethics officials and candidates for the Office of President and Vice President may be directed to the Director of the Office of Government Ethics. For other reports, requests should be directed to the agency in which the individual serves.

(c) To gain access to or to obtain a copy of a report filed with the Office of Government Ethics, an individual should appear in person at the Office of Government Ethics, 1900 E Street, NW., Room 5323, Washington, D.C. 20415, during the hours 8:30 AM to 4:30 PM and complete an application form. Requests by mail should contain the information described in subsection (a), above, together with the signature of the requester. Requests which do not contain the required information will be returned. Notice of the statutory prohibitions on use will be attached to copies of reports provided in response to a request otherwise properly filled out.

Copy charges of ten (10) cents per page may be imposed for requests involving copies of more than ten (10) reports.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-19819 Filed 6-28-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 214

Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: Section 3133(e) of the Civil Service Reform Act directs the Director of the Office of Personnel Management to establish, by rule, the minimum number of positions in the Senior Executive Service which are to be career reserved. The law further stipulates that the number shall not be less than the number of Senior Executive Service positions which, before October 13, 1979 were authorized to be filled only through competitive civil service examination. This regulation establishes the minimum number of career reserved positions within a new Part 214 of 5 CFR.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Jack Vincent, (202) 632-6820.

SUPPLEMENTARY INFORMATION: A new Part 214 is being added to Title 5, Code of Federal Regulations to set out the authority for agencies to place positions in the Senior Executive Service, to designate career reserved positions and for other purposes. All of the material for this new Part 214 is reserved for later publication except for § 214.403 of subpart D. This section is published herein for final rulemaking without a comment period because the only content is a number required by law and determined by a count of positions.

The rest of Part 214 will be published at a later date and open for public participation through a comment period and public notices.

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PART 214—SENIOR EXECUTIVE SERVICE

Subpart A—Principal Statutory Requirements [Reserved]

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214.101 Principal Statutory Requirements [Reserved]

Subpart B—General Provisions [Reserved]

214.201 Definitions [Reserved]
214.202 Authority to make determinations [Reserved]

Subpart C—Exclusions [Reserved]

214.301 Exclusions [Reserved]

Subpart D—Types of Positions

214.401 Types of Positions [Reserved]
214.402 Career reserved positions [Reserved]
214.403 Minimum number of career reserved positions

Authority: 5 U.S.C. 3133(e).

Accordingly § 214.403 is set forth as follows:

§ 214.403 Minimum number of career reserved positions.

The minimum number of positions in the Senior Executive Service Government-wide that must be career reserved is 3571 as determined by the Director of the Office of Personnel Management under section 3133(e) of 5 U.S.C.

Office of Personnel Management.
Beverly M. Jones,
Issuance Systems Manager.
[FR Doc. 79-20273 Filed 6-28-79; 8:45 am]
BILLING CODE 6325-01-M

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5 CFR Parts 713 and 720

Equal Opportunity; Affirmative Employment Programs

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: This is a technical change related to the reorganization of the Federal Government's internal equal employment opportunity effort and the transfer of functions to the Equal Employment Opportunity Commission pursuant to Reorganization Plan No. 1 of 1978. 5 CFR Part 713, § 713.236 is revoked, and § 713.401 is transferred without change to 5 CFR Part 720, Subpart J, and renumbered § 720.901.

EFFECTIVE DATE: June 29, 1979.

FOR FURTHER INFORMATION CONTACT: Nathaniel Deutsch, Office of Affirmative Employment Programs, U.S. Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415, (202) 632-6256.

SUPPLEMENTARY INFORMATION: Pursuant to Reorganization Plan No. 1 of 1978, effective January 1, 1979, all equal opportunity in Federal employment enforcement functions vested in the Civil Service Commission under Sections 717(b) and (c) of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16(b) and (c), were transferred to the Equal Employment Opportunity Commission (EEOC). On December 29, 1978, the EEOC adopted all of the Civil Service Commission's regulations at 5 CFR Part 713 pertaining to these functions and moved them to 29 CFR Part 1613, with the sole exception of §§ 713.236 and 713.401 (see 43 FR 60900).

The Office of Personnel Management is revoking § 713.236, "Relationship to other appeals," because that section has, in effect, been superseded by new procedures mandated by the Civil Service Reform Act of 1978, P.L. 95-454, for processing these so-called "mixed appeals." These new procedures are codified in interim regulations promulgated by the Merit Systems Protection Board, 5 CFR Part 1201, Subpart D, "Procedures for Cases Alleging Discrimination," § 1201.151 *et seq.* (see 44 FR 3947, January 19, 1979).

Section 713.401 is being transferred without change in order to incorporate it within 5 CFR Part 720, "Affirmative Employment Programs." 5 CFR Part 713, which contained the Civil Service Commission's regulations on "Equal Opportunity," will not be used for regulations of the Office of Personnel Management.

Accordingly, the Office of Personnel Management is amending 5 CFR Parts 713 and 720 as follows:

PART 713—EQUAL OPPORTUNITY

1. Part 713 is removed.

PART 720—AFFIRMATIVE EMPLOYMENT PROGRAMS

2. Subpart J (§ 720.901) is added to Part 720 to read as follows:

Subpart J—Equal Opportunity Without Regard to Politics, Marital Status, or Physical Handicap

§ 720.901 Equal opportunity without regard to politics, marital status, or physical handicap.

(a) *In appointments and position changes.* In determining the merit and fitness of a person for competitive appointment or appointment by noncompetitive action to a position in the competitive service, an appointing officer shall not discriminate on the basis of the person's political affiliations, except when required by statute, or marital status, nor shall he discriminate on the basis of a physical handicap with respect to any position the duties of which may be efficiently performed by a person with the physical handicap.

(b) *In adverse actions and termination of probationers.* An agency may not take an adverse action against an employee covered by Part 752 of this chapter, not effect the termination of a probationer under Part 315 of this chapter, (1) for political reasons, except when required by statute, (2) that is based on discrimination because of marital status, or (3) for physical handicap with respect to any position the duties of which may be efficiently performed by a person with the physical handicap.

[5 U.S.C. §§ 2301, 2302, 7202, 7203, 7204.]

Office of Personnel Management.
Beverly M. Jones,
Issuance System Manager.
[FR Doc. 79-20307 Filed 6-28-79; 8:45 am]
BILLING CODE 6325-01-M

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5 CFR Parts 831, 870, 871, 890, and 891

Retirement; Federal Employees Group Life Insurance; Federal Employees Health Benefits Program; Retired Federal Employees Health Benefits Program; Reconsideration Procedures

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with comments invited for consideration in final rulemaking.

SUMMARY: The interim rules provide (1) for continuity of Civil Service Commission (CSC) regulations, (2) uniform reconsideration procedures for the Civil Service Retirement, Federal Employees Group Life Insurance, Federal Employees Health Benefits, and Retired Federal Employees Health Benefits Programs, and (3) hearing procedures for annuity overpayment collections. The changes are required by the Civil Service Reform Act, Reorganization Plan 2 and the final order in the case of *Shannan* v. *U.S.C.S.C.*, 444 F. Supp. 354, (N.D. CA 1977).

DATES: Effective date: June 29, 1979 and thereafter for a period of 6 months—or until final regulations are issued—whichever comes first. Comment date: On or before August 28, 1979.

ADDRESS: Written comments should be directed to Craig B. Pettibone, Chief, Office of Policy Development and Technical Services, Retirement and Insurance, Office of Personnel Management, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Patricia Rochester, Paralegal Specialist, Office of Policy Development, Retirement and Insurance, Office of Personnel Management, Washington, D.C. 20415 (Telephone: 202–632–4634).

SUPPLEMENTARY INFORMATION: Retirement reconsideration decisions would be further appealable to the Merit Systems Protection Board (MSPB) in accord with 5 U.S.C. 8347(d), as amended by the Civil Service Reform Act, and in accord with procedures prescribed by MSPB. Life insurance and health benefits reconsideration decisions would not be further appealable to MSPB. The Civil Service Reform Act makes no provision for appeal of OPM life insurance or health benefits decisions to MSBP. To the extent these regulations conflict with or overlap provisions of 5 CFR Part 772, Part 772 is superseded.

Specifically, the changes include:

(1) Final OPM decisions in Civil Service Retirement cases made on or after publication of this notice in the Federal Register, will be appealable to MSPB, under procedures established by MSPB, as provided by the Civil Service Reform Act and Reorganization Plan No. 2. Therefore, old CSC regulations providing for appeal of retirement decisions to ARB are deleted.

(2) Final OPM decisions on questions of Federal Employees Group Life will not be appealable to MSPB. Therefore, existing CSC regulations for appeal of such decisions to ARB are deleted and no substitute provisions are provided. Neither the Civil Service Reform Act nor Reorganization Plan No. 2 require insurance coverage decisions by OPM to be appealable to MSPB. Because insurance coverge decisions by OPM require action by insurance carriers with whom OPM contracts, it would be inappropriate for OPM to provide for appeal of its insurance coverage decisions to the independent MSPB which is not a party to the contracts. OPM will also continue to review health benefits carrier decisions on benefits claims as CSC has done under 5 CFR 890.105. These decisions are also part of internal OPM contract administration and will not be appealable to MSPB.

(3) Provision for a representative of the Associate Director for Compensation of OPM to offer reconsideration of all initial retirement, life insurance, and health benefits decisions. Such reconsideration already exists for disability and overpayment cases. Such reconsideration process will (1) substitute for informal reconsideration of initial claims decisions previously processed by claims examiners as correspondence from annunitants, and (2) replace the retirement Bureau and ARB's policy of referring pending appeals to the Bureau for review and comment. The reconsideration process will permit the OPM to promptly adjust any errors, review intitial decisions, and give claimant a written explanation of OPM's final decision.

(4) Provision for the Associate Director for Compensation, OPM, to offer, following reconsideration decisions, the hearings which *Shannon* v. *U.S. Civil Service Commission*, 444 F. Supp. 354 (N.D. CA 1977) has established must be held by the agency administering the retirement law prior to making a final administrative decision in overpayment collection cases.

(5) Provision for the Associate Director for Compensation, OPM, to reopen reconsideration decisions under limited circumstances, such as (a) new evidence; (b) erroneous interpretation of law, regulation or policy; or (c) establishment of new or unreviewed policy.

(6) Publication of the overpayment portions of these regulations will place the Civil Service Retirement System in full compliance with *Shannon* v. *U.S. Civil Service Commission*, 444 F. Supp. 354 (N.D. CA 1977).

Pursuant to section 533(d)(3) of title 5, U.S.C., the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to provide continuity of operations and to give immediate and timely effect to the appropriate provisions of the Civil Service Reform Act of 1978.

Accordingly, 5 CFR chapter 1 is amended as follows:

1. The authority citation for Part 831 is set forth as follows:

Authority: 5 U.S.C. 8347, unless otherwise noted.

2. The table of contents at the beginning of part 831 is amended as follows:

PART 831—RETIREMENT

Subpart A—Administration and General Provisions

Sec.
831.101 Administration.
831.102 Basic records.
831.103 Evidence.
831.104 Applications.
831.105 Computation of interest.
831.106 Disclosure of information.
831.107 Computation of time.
831.108 Major reduction in force.
831.109 Initial decision and reconsideration.
831.110 Reopening or appeal.
* * * * *

Subpart L—Disability Retirement on Application of an Agency and Reconsideration of Disability Retirement Decisions

831.1201 Scope.
831.1202 General provisions.
831.1203 Agency action.
831.1204 Office of Personnel Management action.
831.1205 Reopening or appeal.
831.1206 Duty status.

Subpart M—Recovery of Annuity Overpayments

831.1301 Scope.
831.1302 Definitions.
831.1303 Processing.
831.1304 Hearings.
831.1305 Reopening or appeal.
831.1306 Recovery of overpayment.

Subpart N—Standards for Waiver of Overpayments

Sec.
831.1401 Conditions for waiver.
831.1402 Fault.
831.1403 Equity and good conscience.
831.1404 Financial hardship.
831.1405 Ordinary and necessary living expenses.
831.1406 Waiver precluded.
831.1407 Burdens of proof.
* * * * * *

Subpart P—Procedures for Overpayment Hearings

831.1601 Coverage.
831.1602 Failure to prosecute.
831.1603 Right to hearing.
831.1604 Hearing procedures.
831.1605 Final decision.

3. Section 831.107 is deleted and § 831.108 and § 831.109 are renumbered as § 831.107 and § 831.108 and new §§ 831.109 and 831.110 are added as follows:

§ 831.109 Initial decision and reconsideration.

(a) *Who may file.* Except as noted in paragraph (b) of this section any individual or agency whose rights or interests under the Civil Service Retirement System are affected by an initial decision of the Office of Personnel Management (OPM) may request OPM to review its initial decision.

(b) *Actions covered elsewhere.* (1) A request for reconsideration of termination of annuity payments under 5 U.S.C. 8311–22 must be made in accordance with the procedures set out in subpart K of this part.

(2) A request for reconsideration of a decision to collect an erroneous annuity overpayment shall be made in accordance with § 831.1303(b) of this part.

(3) A request for reconsideration of an initial decision on an application for disability retirement shall be made in accordance with the procedures set out in § 831.1204(c).

(c) *Initial decision.* A decision shall not be considered an initial decision unless rendered by the OPM in writing and unless such decision states the right to reconsideration. The OPM in its discretion, may issue a final decision under paragraph (f) of this section in lieu of an initial decision.

(d) *Reconsideration.* A request for reconsideration must be in writing, must include the individual's name, address, date of birth and claim number (if applicable), and must state the basis for the request.

(e) *Time limits on reconsideration.* (1) A request for reconsideration must be received by the OPM within 30 calendar days from the date of the original decision.

(2) A representative of the Associate Director for Compensation responsible for reconsiderations may extend the time limit for filing when the individual shows that (s)he was not notified of the time limit and was not otherwise aware of it, or that (s)he was prevented by circumstances beyond his/her control from making the request within the time limit.

(f) *Final decision.* After reconsideration, the Associate Director's representative shall issue a final decision which shall be in writing, shall fully set forth the findings and conclusions of the reconsideration, and shall contain notice of the right to request an appeal provided in § 831.110. Copies of the final decision shall be sent to the individual, to any competing claimants and, where applicable, to the agency.

(g) *Competing claimants.* (1) When a competing claimant files a request for reconsideration under this section, the other competing claimants shall be notified of the request and given an opportunity to submit written substantiation of their claim.

(2) When a determination in favor of one claimant would affect another claimant, the OPM shall not execute its decision until the time limit for requesting reconsideration has expired. If reconsideration has been requested, the OPM shall take no action after the reconsideration decision is rendered until the time limit to appeal has expired.

§ 831.110 Reopening or appeal.

(a) *Appeals to MSPB.* Except as noted in this subsection, any individual or agency whose rights or interests under the Civil Service Retirement System (Subchapter III of Chapter 83, United States Code) are affected by a final decision of the representative of the Associate Director for Compensation, Office of Personnel Management, may request the Merit Systems Protection Board to review such decision in accord with procedures prescribed by the Board. Decisions of the OPM and the Associate Director for Compensation made in accord with the procedures referenced in paragraph (b)(1) of this section are made under Subchapter II of Chapter 83, title 5, United States Code. Such decisions are not appealable to the Merit Systems Protection Board under 5 U.S.C. 8347(d).

(b) *Reopening.* Before appealing to the MSPB, an agency or an employee may, within 30 calendar days after receipt of the final reconsideration decision, request the Associate Director for Compensation to reopen any previous decision by his/her representative for reconsideration. If a party elects to request reopening rather than appealing to MSPB after receiving the reconsideration decision, the individual or agency will have the right to appeal to MSPB after the Associate Director issues his/her decision. The Associate Director may reopen the decision on his/her own motion or when the party requesting reopening submits written argument or evidence which tends to establish that:

(1) New and material evidence is available that was not readily available when the reconsideration decision was made;

(2) The reconsideration decision involves an erroneous interpretation of law or regulation, or a misapplication of established policy; or

(3) The reconsideration decision is of a precedential nature involving new or unreviewed policy considerations that may have effect beyond the case at hand.

(c) *Limitation.* The Associate Director may not reopen a case which has been appealed to the MSPB.

(d) *How to file.* A request to reopen a reconsideration decision must be in writing, must include the individual's name, address, date of birth and claim number and must state the basis for the request.

(e) *Associate Director for Compensation decision.* When the Associate Director has reopened a reconsideration decision, he shall review the record of the proceedings and all written representations. He shall issue a written decision and send copies thereof to the parties and to the employee's representative. The decision of the Associate Director shall be final.

* * * * *

Subpart L—Disability Retirement on Application of an Agency and Reconsideration of Disability Retirement Decisions

* * * * *

4. Paragraph (a) of § 831.1203 is revised as follows:

§ 831.1203 Agency action.

(a) *Examination.* When the agency has reason to believe an employee may be totally disabled within the meaning of paragraph (c)(1) of this section, and satisfactory medical evidence is not otherwise available, the agency may direct the employee to report for an examination. However, in the case of an employee with a suspected mental or emotional illness when the examination being considered is psychiatric, two or three agency officials (including a manager or supervisor, a personnel official, and a medical officer if available) must agree, in the light of all available facts of the case, that such an examination appears to be necessary. The employee is entitled to an advance written notice of the examination. The notice shall set forth the reasons for the examination and the general scope and character of the examination. An employee has the right to participate in the selection of another medical examiner if he objects to the first. When the refusal to submit to the examination appears to be the result of a mental, emotional, or nervous condition, and the employee does not want to participate in the selection of another medical examiner, the agency shall make a finding to this effect and continue to process the application for retirement on the basis of other available evidence.

* * * * *

5. Paragraph (c) of § 831.1204 is revised as follows:

§ 831.1204 Office of Personnel Management action.

* * * * *

(c) *Reconsideration decision.* (1) *Who may file.* Any individual or agency whose rights or interests are affected by an initial decision on an application for disability retirement may request the representative of the Associate Director for Compensation responsible for reconsideration to review the initial decision.

(2) *Requests for reconsideration.* A request for reconsideration must be in

writing, must include the individual's name, address, date of birth and claim number; and must state the basis for the request.

(3) *Time limits on reconsideration.* (i) A request for reconsideration must be received in the OPM within 30 calendar days after the receipt of the initial decision on the application.

(ii) The Associate Director's representative for reconsiderations may extend the time limit for filing when the individual shows that (s)he was not notified of the time limit and was not otherwise aware of it, or that (s)he was prevented by circumstances beyond his/her control from making the request within the time limit.

(4) *Final decision.* After reconsideration, the Associate Director's representative for reconsiderations shall issue a final written decision and a copy shall be given to the employee and the agency concerned. The decision shall fully set forth the findings and conclusions of the representative and shall inform the employee and agency of the right to request an appeal provided by § 831.1205.

6. Section 831.1205 is revised as follows:

§ 831.1205. Reopening or appeal.

(a) After receipt of the final reconsideration decision, an agency or an employee may appeal directly to the MSPB in accord with procedures prescribed by the Board or, within 30 calendar days after receipt of the reconsideration decision, a party may request the Associate Director for Compensation to reopen any previous decision by his/her representative for reconsideration. If a party elects to request reopening, rather than appealing to MSPB after receiving the reconsideration decision, the individual or agency will have the right to appeal to MSPB after the Associate Director issues his/her decision. The Associate Director may reopen the decision on his/her own motion or when the party requesting reopening submits written argument or evidence which tends to establish that:

(1) New and material evidence is available that was not readily available when the reconsideration decision was made;

(2) The reconsideration decision involves an erroneous interpretation of law or regulation, or a misapplication of established policy; or

(3) The reconsideration decision is of a precedential nature involving new or unreviewed policy considerations that may have effect beyond the case at hand.

(b) *Limitations.* The Associate Director may not reopen a case which has been appealed to the MSPB.

(c) *How to file.* A request to reopen a reconsideration decision must be in writing, must include the individual's name, address, date of birth and claim number and must state the basis for the request.

(d) *Associate Director for Compensation decision.* When the Associate Director has reopened a reconsideration decision, he shall review the record of the proceedings and all written presentations. He shall issue a written decision and send copies thereof to the parties and to the employee's representative. The decision of the Associate Director shall be final unless appealed to the MSPB in accord with procedures prescribed by MSPB.

7. Section 831.1206 is revised as follows:

§ 831.1206 Duty status.

An agency shall retain an employee in an active duty status until it receives the initial decision of the Associate Director for Compensation on an agency application for disability retirement, except that the agency on the basis of medical evidence, may place an employee on leave with his/her consent, or without his/her consent when the circumstances are such that his/her retention in an active duty status may result in damage to Government property, or may be detrimental to the interests of the Government, or injurious to the employee, his/her fellow workers, or the general public. If the leave account of the employee is or becomes exhausted, any suspension or involuntary leave without pay shall be effected in accordance with applicable laws, Executive orders, and regulations.

8. Subpart M is revised as follows:

Subpart M—Recovery of Annuity Overpayments

§ 831.1301 Scope.

This subpart prescribes the procedures to be followed by the Office of Personnel Management when it attempts to recover annuity overpayments (hereinafter referred to simply as overpayments) made in the course of its administration of the Civil Service Retirement System.

§ 831.1302 Definitions.

(a) *Adjustment in the recovery schedule* is any change in the deduction scheduled from an annuitant's monthly check to recover an overpayment. The annuitant may negotiate with the Office of Personnel Management's Associate Director for Compensation on the amount of this deduction.

(b) *Compromise* is an adjustment of the total amount of the overpayment to be collected, based upon the considerations established by the Federal Claims Collection Standards. 4 CFR 103.1 *et seq.*

(c) *Reconsideration* is the process of reexamining the overpayment for—

(1) Proper utilization of applicable laws and regulations; and

(2) Correctness of the mathematical computation.

(d) *Waiver* is a decision not to recover an overpayment.

§ 831.1303 Processing.

(a) *Notice.* When an overpayment is discovered, the Associate Director for Compensation shall notify the annuitant, in writing, of—

(1) The reason(s) there appears to be an overpayment;

(2) The right to request reconsideration of the findings of overpayment;

(3) The right to request waiver or compromise and the standards for determining whether to waive or compromise;

(4) The right to request and appear at a *de novo* evidentiary hearing as described in § 831.1304 upon receiving a reconsideration decision, prior to the initiation of recoupment; and

(5) The time limit for submitting the request(s).

(b) *Requests for reconsideration.* (1) Reconsideration and consideration of waiver or compromise, may be processed separately.

(2) A request for reconsideration and/or waiver-compromise shall be submitted within 30 calendar days of the issuance of the notice referred to in § 831.1303(a). The Associate Director for Compensation's representative for reconsideration may extend the time limit for filing when the annuitant shows that (s)he was not notified of the time limit and was not otherwise aware of it, or that (s)he was prevented by circumstances beyond his/her control from making the request within the time limit.

(3) When a request for reconsideration and/or waiver-compromise covered by this subsection is properly filed before the death of the recipient of the overpayment is shall be processed to completion unless the relief sought is nullified by the overpayment recipient's death.

(4) Any annuitant requesting reconsideration and/or waiver-compromise shall be given a full opportunity to present any and all

pertinent written information and documentation supporting his/her position.

(c) *Reconsideration and/or waiver-compromise decision.* (1) Decisions shall be based upon all pertinent information supported by evidence of record.

(2) After consideration of all pertinent documented information, a written decision as to whether the overpayment occurred, and/or whether it will be waived or compromised shall be issued. The decision shall inform the annuitant of the right to request a hearing as provided by § 831.1304.

§ 831.1304 Hearings.

(a) *Right to a hearing.* (1) An annuitant is entitled to a hearing prior to the final decision on—

(i) Any waiver issue; and

(ii) Any other issue which raises a significant question as to the credibility or veracity of any individual or individuals involved in the particular case.

(2) The decision of whether a genuine issue exists under paragraph (a)(1)(ii) of this section shall rest with the Office of Personnel Management.

(b) *Time limit.* A request for a hearing shall be made in writing within 30 calendar days of the date of the reconsideration and/or waiver-compromise decision.

(c) *Hearing procedures.* Hearings under this subpart shall be conducted in accordance with the procedures set forth in Subpart P of Part 831 of these regulations, except that entitlement to a hearing shall governed by paragraph (a) of this section.

§ 831.1305 Reopening or Appeal.

(a) *Time limit.* Before appealing to the MSPB, an annuitant may, within 30 calendar days after receipt or the final hearing decision, request the Associate Director to reopen the decision made by his/her representative. If the annuitant elects to request reopening rather than appeal to MSPB after the hearing decision, (s)he will have the right to appeal to MSPB after the Associate Director issues his/her decision. The Associate Director may reopen the decision on his/her own motion or when the party requesting reopening submits written argument or evidence which tends to establish that:

(1) New and material evidence is available that was not readily available when the reconsideration decision was made;

(2) The reconsideration decision involves an erroneous interpretation of law or regulation, or a misapplication of established policy; or

(3) The reconsideration decision is of a precedential nature involving new or unreviewed policy considerations that may have effect beyond the case at hand.

(b) *Limitations.* The Associate Director may not reopen a case which has been appealed to the MSPB.

(c) *How to file.* A request to reopen a reconsideration decision must be in writing, must include the individual's name, address, date of birth and claim number and must state the basis for the request.

(d) *Associate Director for Compensation decision.* When the Associate Director has reopened a reconsideration decision, he shall review the record of the proceedings and all written representations. He shall issue a written decision and send copies thereof to the parties and to the employee's representative. This decision shall be final unless appealed to the MSPB in accord with procedures prescribed by MSPB.

§ 831.1306 Recovery of overpayment.

(a) *Method of recovery.* If possible, the OPM will collect overpayments in one lump sum. However recovery may be effected by withholding installments from the annuitant's monthly benefit.

(b) *Installment collection.* Where recovery must be made in monthly installments—

(1) Collection shall be completed within a reasonable period after discovery, considering the annuitant's expected period of entitlement, his/her age and physical condition;

(2) Where fraud or deliberate misrepresentation has been established a monthly maximum need not be applied;

(3) Interest charges may be applied where applicable by law.

(c) *Commencement of collection.* Recovery according to a monthly recovery schedule shall commence in the next monthly check vouchered for payment after—

(1) An annuitant who has been overpaid does not submit a request for reconsideration within the time limit specified in § 831.1303(b)(2) or for a hearing within the time limit specified in § 831.1304(b) or for reopening within the time limit specified in § 831.1305(a); or

(2) The Associate Director for Compensation issues a final decision that the annuitant was overpaid and that waiver should not be granted.

9. Subpart N is revised as follows:

Subpart N—Standards for Waiver of Overpayments

§ 831.1401 Conditions of waiver.

Recovery of an overpayment from the Civil Service Retirement and Disability Fund may be waived pursuant to § 8346(b), of title 5, United States Code when the annuitant (a) is without fault and (b) recovery would be against equity and good conscience. Where it has been determined that the recipient of an overpayment is ineligible for waiver, the individual is nevertheless entitled to an adjustment in the recovery schedule if (s)he shows that it would cause him/her financial hardship to make payment at the rate scheduled.

§ 831.1402 Fault.

A recipient of an overpayment is without fault if (s)he performed no act of commission or omission which resulted in the overpayment. The fact that the Office of Personnel Management may have been at fault in initiating an overpayment will not necessarily relieve the individual from liability.

(a) *Considerations.* Pertinent considerations in finding fault are—

(1) Whether payment resulted from the individual's incorrect but not necessarily fraudulent statment, which (s)he should have known to be incorrect;

(2) Whether payment resulted from the individual's failure to disclose material facts in his/her possession which (s)he should have known to be material; or

(3) Whether (s)he accepted a payment which (s)he knew or should have known to be erroneous.

(b) *Mitigation factors.* The individual's age, physical and mental condition or the nature of the information supplied to him/her by the Office of Personnel Management or a Federal agency may mitigate against finding fault if one or more contributed to his/her submission of an incorrect statement, a statement which did not disclose material facts in his/her possession, or his/her acceptance of an erroneous overpayment.

§ 831.1403 Equity and good conscience.

(a) *Defined.* Recovery is against equity and good conscience when—

(1) Recovery would cause financial hardship to the person from whom recovery is sought;

(2) The recipient of the overpayment can show (regardless of his or her financial circumstances) that because of a notice that such payment would be made or by reason of the incorrect payment either (s)he has relinquished a

valuable right or changed positions for the worse; or

(3) Recovery could be unconscionable under the circumstances.

§ 831.1404 Financial hardship.

Financial hardship may be deemed to exist (but should not be limited to) situations where the annuitant from whom collection is sought needs substantially all of his/her current income and liquid assets to meet current ordinary and necessary living expenses and liabilities.

(a) *Considerations.* Some pertinent considerations in determining whether recovery would cause financial hardship are as follows.

(1) The individual's financial ability to pay *at the time collection is scheduled to be made* should be emphasized.

(2) Income to other family members should be reported if such member's ordinary and necessary living expenses are included in expenses reported by the annuitant.

(3) Assets exempt from execution under state law should not be considered in determining an individual's ability to repay the indebtedness, rather, primary emphasis shall be placed upon the annuitant's liquid assets and current income in making such determinations.

§ 831.1405 Ordinary and necessary living expenses.

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, food, clothing, insurance (life, health and accident), taxes, installment payments, medical expenses, support expenses when the annuitant is legally responsible, and other miscellaneous expenses which the individual can establish as being ordinary and necessary.

§ 831.1406 Waiver precluded.

(a) *When not granted.* Waiver of an overpayment cannot be granted when—

(1) The overpayment was obtained by fraud; or

(2) The overpayment was made to an estate.

§ 831.1407 Burdens of proof.

(a) *Burden of OPM.* The Associate Director for Compensation must establish by the preponderance of the evidence that an overpayment occurred.

(b) *Burden of annuitant.* The recipient of an overpayment must establish by substantial evidence that (s)he is eligible for waiver or an adjustment.

10. Subpart P is added as follows:

Subpart P—Procedures for Overpayment Hearings

§ 831.1601 Coverage.

This subpart prescribes procedures for conducting hearings prior to a final decision by the Associate Director for Compensation in regard to overpayment reconsideration decisions under subpart M of this Part.

§ 831.1602 Failure to prosecute.

The representative of the Associate Director shall dismiss a request for hearing (hereinafter referred to simply as request) for failure to prosecute if the annuitant or his/her representative does not furnish required information and duly proceed with the advancement of his/her request. However, instead of dismissing for failure to prosecute, the Associate Director's representative may adjudicate the request if sufficient information for that purpose is available. The Associate Director's representative may reopen a hearing request under this section only on a showing by the appellant that circumstances beyond his/her control prevented him/her from prosecuting his/her request.

§ 831.1603 Right to a hearing.

Under the provisions of § 831.1304(a), an annuitant is entitled to an informal evidentiary hearing before a representative of the Associate Director for Compensation.

§ 831.1604 Hearing procedures.

(a) The annuitant is entitled to appear at the hearing personally or through or accompanied by a representative. If the annuitant appears through a representative, (s)he must provide the annuitant's signed authorization to act in his/her behalf.

(b) The representative of the Associate Director shall allow the annuitant the opportunity to introduce additional evidence, and to cross-examine witnesses.

(1) *Evidence.* The Associate Director's representative shall make available and discuss all relevant representations and evidence with the annuitant.

(2) *Witnesses.* The Associate Director's representative is not authorized to subpoena witnesses. Such witnesses as the annuitant or his/her representative requires for cross-examination purposes will be requested to appear, provided the annuitant submits a list of such witnesses with a summary of the points annuitant will seek to establish during the course of his/her cross-examination to the Associate Director's representative at least 30 days prior to the date of the hearing. The Associate Director's representative shall make a ruling on the need for such witnesses and request the appearance of all such persons employed by the Federal Government. In the event such witnesses are employed by a Federal agency other than the OPM, appropriate reimbursement will be made for the employee's appearance. If the witness' employing agency determines that it is not administratively practicable to comply with the request of the Associate Director's representative, it shall submit its written reasons for the declination. The Associate Director's representative shall then insert the explanation in the record, notify the annuitant that the witness(es) will not be provided and of the reason therefor and, when appropriate, inform the annuitant of the procedures under which a signed sworn statement or letter of interrogatory will be obtained from the witness(es). Federal employees shall be in an official duty status for all purposes in connection with their provision of sworn statements or their appearance as witnesses and shall be free from restraint, interference, coercion, discrimination, or reprisal in presenting their testimony.

(c) The hearing shall be recorded. A transcript will be produced from the recording unless the annuitant requests a stenographer at least 30 days before the date of the hearing. A copy of the transcript will be furnished to the annuitant or his/her representative.

(d) If possible, the hearing will be held in a Federal office building close to the annuitant's home. However, hearings may be scheduled so that several cases can be heard in one location. In such cases, the hearings will be scheduled in a location centrally located to all requesting parties.

(e) *Closing the record.* (1) The Associate Director's representative shall close the record in any case after the parties to the request have had a full opportunity to present any and all relevant and material evidence. When there is a hearing, the record shall be closed at the conclusion of the hearing except that the Associate Director's representative has discretion to permit the annuitant to submit written argument or briefs after the record is closed.

(2) When the record is closed there is no right to submit additional evidence into the record, except at the discretion of the Associate Director's representative.

(3) The Associate Director's representative shall recommend a

decision based upon the evidence of record.

§ 831.1605 Final decision.

(a) The OPM shall issue a written decision and send copies thereof to the annuitant and his/her representative. The decision on each request covered by this part shall contain an analysis of the evidence, findings, a statement of the reasons for the conclusions reached, and recommendations for any corrective action required.

(b) This decision is final and shall inform the annuitant of the right to appeal or to request reopening provided by § 831.1305.

* * * * *

11. The authority citation for part 870 is as follows:

Authority—5 U.S.C. 8716.

12. Subpart B of the table of contents at the beginning of part 870 is amended to read as follows:

PART 870—REGULAR LIFE INSURANCE

* * * * *

Subpart B—Coverage

Sec.
870.201 Coverage
870.202 Exclusions
870.203 Effective dates of insurance coverage
870.204 Cancellation of waiver of insurance coverage
870.205 Reconsideration
870.206 Reopening
* * * * *

13. Section 870.205 is revised as follows:

§ 870.205 Reconsideration.

(a) *Who may file.* An individual or annuitant may request the OPM to reconsider an agency decision or an initial decision of the OPM denying regular life insurance coverage.

(b) Agency decision. A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the written decision stating the right to reconsideration by the OPM. The time limit may be extended as provided in paragraph (e) of this section. The OPM may, in its discretion, issue a final decision under paragraph (f) of this section in lieu of a reconsideration decision.

(c) Initial decision. An OPM decision shall not be considered an initial decision as used in paragraph (a) of this section unless rendered by the OPM in writing and unless such decision states the right to reconsideration.

(d) *Reconsideration.* A request for reconsideration must be made in writing, must include the claimant's name, address, date of birth, claim number (if applicable), and reasons for the request.

(e) *Time limit.* A request for reconsideration of an initial OPM decision must be filed within 30 calendar days from the date of the initial decision. The OPM may extend the time limit for filing when the individual shows that (s)he was not notified of the time limit or that (s)he was prevented by circumstances beyond his/her control from making the request within the time limit.

(f) *Final decision.* After reconsideration, the OPM shall issue a final decision which shall be in writing, and shall fully set forth the findings and conclusions of the OPM.

14. Section 870.206 is added as follows:

§ 870.206 Reopening.

(a) *Time limit.* After receipt of the final reconsideration decision, an agency or an employee may, within 30 calendar days after receipt of the reconsideration decision, request the Associate Director for Compensation to reopen any previous decision by his/her representative for reconsideration. The Associate Director may reopen the decision on his/her own motion or when the party requesting reopening submits written argument or evidence which tends to establish that:

(1) New and material evidence is available that was not readily available when the reconsideration decision was made;

(2) The reconsideration decision involves an erroneous interpretation of law or regulation, or a misapplication of established policy; or

(3) The reconsideration decision is of a precedential nature involving new or unreviewed policy considerations that may have effect beyond the case at hand.

(b) *How to file.* A request to reopen a reconsideration decision must be in writing, must include the individual's name, address, date of birth and claim number and must state the basis for the request.

(c) *Associate Director for Compensation decision.* When the Associate Director has reopened a reconsideration decision, he shall review the record of the proceedings and all written representations. He shall issue a written decision and send copies thereof to the parties and to the employee's representative. The decision of the Associate Director shall be final.

* * * * *

15. The authority citation for part 871 is as follows:

Authority:—5 U.S.C. 8716. Interprets and Applies 5 U.S.C. 8714a.

16. Subpart B of The Table of contents at the beginning of part 871 is revised to read as follows:

PART 871—OPTIONAL LIFE INSURANCE

* * * * *

Subpart B—Coverage

Sec.
871.201 Eligibility
871.202 Election or declination
871.203 Effective date of insurance
871.204 Declination
871.205 Cancellation of declination
871.206 Reconsideration
871.207 Reopening
* * * * *

17. Section 871.206 is revised as follows:

§ 871.206 Reconsideration.

(a) *Who may file.* An individual or annuitant may request the OPM to reconsider an agency decision or an initial decision of the OPM denying optional life insurance coverage.

(b) *Agency decision.* A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the written decision stating the right to reconsideration by the OPM. The time limit may be extended as provided in paragraph (e) of this section. OPM may, in its discretion, issue a final decision under paragraph (f) of this section in lieu of a reconsideration decision.

(c) *Initial OPM decision.* An OPM decision shall not be considered an initial decision as used in § 871.206(a) above unless rendered by the OPM in writing and unless such decision states the right to reconsideration.

(d) *Reconsideration.* A request for reconsideration must be made in writing, must include the claimant's name, address, date of birth, claim number (if applicable), name of carrier and reasons for the request.

(e) *Time limit.* A request for reconsideration of an initial decision must be filed within 30 calendar days from the date of the initial decision. The OPM may extend the time limit for filing when the individual shows that (s)he was not notified of the time limit and was not otherwise aware of it, or that (s)he was prevented by circumstances beyond his/her control from making the request within the time limit.

(f) *Final decision.* After reconsideration, the OPM shall issue a

final decision which shall be in writing and shall fully set forth the findings and conclusions of the OPM.

18. Section 871.207 is added as follows:

§ 871.207 Reopening.

(a) *Time limit.* Within 30 calendar days after receipt of the final reconsideration decision an agency or an employee may request the Associate Director for Compensation to reopen any previous decision by his/her representative for reconsideration. The Associate Director may reopen the decision on his/her own motion or when the party requesting reopening submits written argument or evidence which tends to establish that:

(1) New and material evidence is available that was not readily available when the reconsideration decision was made:

(2) The reconsideration decision involves an erroneous interpretation of law or regulation, or a misapplication of established policy; or

(3) The reconsideration decision is of a precedential nature involving new or unreviewed policy considerations that may have effect beyond the case at hand.

(b) *How to file.* A request to reopen a reconsideration decision must be in writing, must include the individual's name, address, date of birth and claim number and must state the basis for the request.

(c) *Associate Director for Compensation decision.* When the Associate Director has reopened a reconsideration decision, (s)he shall review the record of the proceedings and all written representations. (S)he shall issue a written decision and send copies thereof to the parties and to the employee's representative. The decision of the Associate Director shall be final.

19. The authority citation for Part 890 is as follows:

Authority:—80 Stat. 607; 5 U.S.C. 8913:

20. The table of contents of Subpart A of Part 890 is revised to read as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Subpart A—Administration and General Provisions

Sec.
890.101 Definitions, time computations
890.102 Coverage
890.103 Corrections of errors
890.104 Initial decision and reconsideration
890.105 Reopening
890.106 Review of claim for payment or service
890.107 Delegation of authority for resolving certain contract disputes
890.108 Legal action
* * * * *

21. Section 890.103 is revised as follows:

§ 890.103 Correction of errors.

(a) The employing office can make prospective correction of administrative errors as to enrollment at any time.

(b) The OPM may order correction of an error, mistake, or omission upon a showing satisfactory to the OPM that it would be against equity and good conscience not to do so.

(c) The OPM may order the termination of an employee's or annuitant's enrollment in a group practice plan and permit his enrollment in another plan upon a showing satisfactory to the OPM that the furnishing of adequate medical care is jeopardized by a seriously impaired relationship between a patient and the plan's medical staff.

22. Redesignate § 890.104 as 890.108; redesignate §§ 890.105 and 890.106 as §§ 890.106 and 890.107; add new §§ 890.104 and 890.105 to read as follows:

§ 890.104 Initial decision and reconsideration.

(a) *Who may file.* An employee or annuitant may request the OPM to reconsider a decision of an employing office or an initial decision of the OPM refusing to permit registration for or change of enrollment or refusing to permit enrollment of an individual as a family member.

(b) *Agency decision.* A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the written decision stating the right to reconsideration by the OPM. The time limit may be extended as provided in paragraph (e) of this section. The OPM may, in its discretion, issue a final decision under paragraph (f) of this section in lieu of a reconsideration decision.

(c) *Initial decision.* A decision shall not be considered an initial decision as used in § 890.104(a) above unless rendered by the OPM in writing and unless such decision states the right to reconsideration.

(d) *Reconsideration.* A request for reconsideration must be made in writing, must include the claimant's name, address, date of birth, claim number (if appropriate), name of carrier and reasons for the request.

(e) *Time limit.* A request for reconsideration of an initial OPM decision must be filed within 30 calendar days from the date of the OPM's initial decision. The OPM may extend the time limit on filing when the individual shows that (s)he was not notified of the time limit and was not otherwise aware of it, or that (s)he was prevented by circumstances beyond his/her control from making the request within the time limit.

(f) *Final decision.* After reconsideration; the OPM shall issue a final decision which shall be in writing, and shall fully set forth the findings and conclusions of the OPM.

§ 890.105 Reopening.

(a) *Time limit.* An agency or an employee may, within 30 calendar days after receipt of the reconsideration decision, request the Associate Director for Compensation to reopen any previous decision by his/her representative for reconsideration. The Associate Director may reopen the decison on his/her own motion or when the party requesting reopening submits written argument or evidence which tends to establish that:

(1) New and material evidence is available that was not readily available when the reconsideration decision was made:

(2) The reconsideration decision involves an erroneous interpretation of law or regulation, or a misapplication of established policy; or

(3) The reconsideration decision is of a precedential nature involving new or unreviewed policy considerations that may have effect beyond the case at hand.

(b) *How to file.* A request to reopen a reconsideration decision must be in writing, must include the individual's name, address, date of birth and claim number and must state the basis for the request.

(c) *Associate Director for Compensation decison.* When the Associate Director has reopened a reconsideration decision, (s)he shall review the record or the proceedings and all written representations. (S)he shall issue a written decision and send copies thereof to the parties and to the employee's representative. The decision of the Associate Director shall be final.

23. The authority citation for Part 891 is as follows:

Authority: 80 Stat. 607; 5 U.S.C. 8913.

24. The table of contents for Subpart A of Part 891 is revised to read as follows:

PART 891—RETIRED FEDERAL EMPLOYEES HEALTH BENEFITS

Subpart A—Administration and General Provisions

Sec.

891.101 Relationship to Part 890 of this chapter
891.102 Definitions
891.103 Eligibility
891.104 Responsibilities of retirement offices
891.105 Correction of errors
891.106 Reconsideration
891.107 Reopening

* * * * *

25. Section 891.105 is revised as follows:

§ 891.105 Correction of Errors.

The OPM may order correction of administrative errors at any time upon a showing satisfactory to the OPM that it would be against equity and good conscience not to do so.

26. Sections 891.106 and 891.107 are added as follows:

§ 891.106 Reconsideration.

(a) *Who may file.* A retired employee may request the OPM to reconsider its initial decision that (s)he is not eligible to make an election or to receive a Government contribution under the part or that (s)he may not enroll another individual as a family member.

(b) *Initial decision.* An OPM decision shall not be considered an initial decision as used in paragraph (a) above unless rendered by the OPM in writing and unless such decision states the right to reconsideration.

(c) *Reconsideration.* A request for reconsideration must be made in writing, must include the claimant's name, address, date of birth, claim number (if appropriate), and reasons for the request.

(d) *Time limit.* A request for reconsideration of an initial OPM decision must be filed within 30 calendar days from the date of the OPM's initial decision. The OPM may extend the time limit on filing when the individual shows that (s)he was not notified of the time limit and was not otherwise aware of it, or that (s)he was prevented by circumstances beyond his/her control from making the request within the time limit.

(e) *Final decision.* After reconsideration, the OPM shall issue a final decision which shall be in writing and shall fully set forth the findings and conclusions of the OPM.

§ 891.107 Reopening.

(a) *Time limit.* An agency or an employee may within 30 calendar days after receipt of the reconsideration decision request the Associate Director for Compensation to reopen any previous decision by his/her representative for reconsideration. The Associate Director may reopen the decision on his/her own motion or when the party requesting reopening submits written argument or evidence which tends to establish that:

(1) New and material evidence is available that was not readily available when the reconsideration decision was made;

(2) The reconsideration decision involves an erroneous interpretation of law or regulation, or

(3) The reconsideration decision is of a precedential nature involving new or unreviewed policy considerations that may have effect beyond the case at hand.

(b) *How to file.* A request to reopen a reconsideration decision must be in writing, must include the individual's name, address, date of birth and claim number and must state the basis for the request.

(c) *Associate Director for Compensation decision.* When the Associate Director has reopened a reconsideration decision, (s)he shall review the record of the proceedings and all written representations. (S)he shall issue a written decision and send copies thereof to the parties and to the employee's representative. The decision of the Associate Director shall be final.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-20179 Filed 6-28-79; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

[Amdt. 32]

National School Lunch Program; Final Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final Rule.

SUMMARY: This rule implements nondiscretionary portions of Section 10 of Pub. L. 95-627 by incorporating into the definition of "child" the clarification that mentally or physically handicapped persons enrolled in schools participating in the National School Lunch Program are eligible for program benefits and by establishing criminal penalties for the misuse of funds, assets, or property that are the subject of a grant or other form of assistance under the National School Lunch Act or the Child Nutrition Act of 1966. It also updates the addresses of the FNS Regional Offices.

EFFECTIVE DATE: June 29, 1979.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, School Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-8130.

SUPPLEMENTARY INFORMATION: Section 10 of Pub. L. 95-627 amends the National School Lunch Act and the Child Nutrition Act of 1966 to include in the definition of "child", persons, regardless of age, who are mentally or physically handicapped, as defined by the State, and who are enrolled in a school program for the mentally or physically handicapped in a nonresidential public or nonprofit private school of high school grade or under which participates in the school nutrition programs.

Present regulations define "child" in public or nonprofit private schools other than residential child care institutions by grade level, not by age. Therefore, the Department does not anticipate that this regulatory change will result in a substantial increase in eligible children because mentally or physically handicapped persons in schools which participate in the school nutrition programs are presently eligible. However, the rule now states specifically that physically or mentally handicapped persons are eligible to receive program benefits. The rule provides that the State educational agency is to determine what constitutes a mental or physical handicap.

Section 10 of Pub. L. 95-627 also prescribes criminal penalties for the misuse of funds, assets, or property in connection with federal child feeding programs. Under this provision anyone, whether administering the programs or receiving their benefits, who knowingly misuses funds, assets, or property is subject to federal penalties. This rule adds the fraud penalty language to Part 210.

Changes in location of three Regional Offices require that the program information section of this part be updated.

The Department is issuing this rule as a final rule in order to implement the statutory mandate of Pub. L. 95-627.

Because section 10 of Pub. L. 95–627 was effective October 1, 1978, the Department considers itself under obligation to implement this rule immediately without the benefit of public comment. Further, because the dictates of Pub. L. 95–627 with regard to these requirements are mandatory, the Department is not at liberty to vary the requirements should public comments indicate disapproval of the rule.

Accordingly, Part 210 is amended as follows:

1. § 210.2 (c–1) is amended to redefine "child" as follows:

§ 210.2 Definitions.

* * * * *

(c–1) "Child" means either (1) in schools as defined in § 210.2(o)(1), 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 or (2) in schools as defined in § 210.2(o)(2) and (3), a person under 21 chronological years of age.

* * * * *

2. New paragraphs (c) and (d) are added to § 210.7 to read as follows:

§ 210.7 Use of funds.

* * * *

(c) 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—(1) if such funds, assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than 5 years or both; or (2) if such funds, assets, or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than one year or both.

(d) Whoever receives, conceals, or retains to his 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 provided in paragraph (c) of this section.

3. Paragraphs a, f, and g of § 210.20 are amended to read as follows:

§ 210.20 Program information.

* * * * *

(a) In the States of Connecticut, Maine, Massachusets, New Hampshire, Rhode Island, and Vermont: New England Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, MA 01803.

* * * * *

(f) In the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 1 Vahlsing Center, Robbinsville, NJ 08691.

(g) In the States 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 430D, Denver, CO 80211.

4. Further, paragraph (e) of § 210.20 is amended to add after "Oregon" the following: the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands.

(Catalog of Federal Domestic Assistance No. 10.555.)

(Sec. 10(a), Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); Sec. 10(d)(1), Pub. L. 95–627, 92 Stat. 3624 (42 U.S.C. 1757); Sec. 14, Pub. L. 95–627, 92 Stat. 3625–3626.)

Note.—This regulation has been found "not significant" for the purposes of Executive Order 12044 and Secretary's Memorandum 1955. A copy of the Impact Statement may be viewed at the office of the party identified in the "address" portion of the preamble during regular business hours (8:30 a.m. to 5:00 p.m.)

Dated: June 26, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-20180 Filed 6-28-79; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Part 215

[Amdt. 18]

Special Milk Program for Children; Final Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final Rule.

SUMMARY: This rule implements nondiscretionary portions of Section 10 of Pub. L. 95–627 by incorporating into the definition of "children" the clarification that mentally or physically handicapped persons enrolled in schools participating in the Special Milk Program are eligible for program benefits and by establishing criminal penalties for the misuse of funds, assets, or property that are the subject of a grant or other form of assistance under the National School Lunch Act or the Child Nutrition Act of 1966. It also updates the addresses of the FNS Regional Offices.

EFFECTIVE DATE: June 29, 1979.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, School Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447–8130.

SUPPLEMENTARY INFORMATION: Section 10 of Pub. L. 95–627 amends the National School Lunch Act and the Child Nutrition Act of 1966 to include in the definition of "children", persons, regardless of age, who are mentally or physically handicapped, as defined by the State, and who are enrolled in a school program for the mentally or physically handicapped in a nonresidential public or nonprofit private school of high school grade or under which participates in the school nutrition programs.

Present regulations define "children" in public or nonprofit private schools other than residential child care institutions by grade level, not by age. The Department does not anticipate that this regulatory change will result in a substantial increase in eligible children because mentally or physically handicapped persons in schools that participate in the school nutrition programs are presently eligible. However, the rule now states specifically that physically or mentally handicapped persons are eligible to receive program benefits. The rule provides that the State educational agency is to determine what constitutes a mental or physical handicap.

Section 10 of Pub. L. 95–627 also prescribes criminal penalties for the misuse of funds, assets, or property in connection with federal child feeding programs. Under this provision anyone, whether administering the programs or receiving their benefits, who knowingly misuses funds or property is subject to federal penalties. This rule adds the fraud penalty language to Part 215.

Changes in location of three Regional Offices require that the program information section of this part be updated. The Department is issuing the fraud penalties and definition of "child" portions of this rule as a final rule in order to implement the statutory mandate of Pub. L. 95–627. Because Section 10 of Pub. L. 95–627 was effective October 1, 1978, the Department considers itself under obligation to implement immediately this rule without the benefit of public comment. Further, because the dictates of Pub. L. 95–627 with regard to these requirements are mandatory, the

Department is not at liberty to vary the requirements should public comments indicate disapproval of this rule.

Accordingly, Part 215 is amended as follows:

1. § 215.2(e–1) is amended to redefine "children" as follows:

§ 215.2 Definitions.

* * * * *

(e–1) "Children" means persons under 19 chronological years of age in child-care institutions as defined in § 215.2(e); or persons under 21 chronological years of age attending schools as defined in § 215.2(v)(2) and (3) of this part; or students, 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, of high school grade or under as determined by the State educational agency in schools as defined in § 215.2(v)(1) of this part.

* * * * *

2. The existing paragraph of § 215.6 is designated as paragraph (a) and new paragraphs (b) and (c) are added to read as follows:

§ 215.6 Use of funds.

* * * * *

(b) 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—(1) if such funds, assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than 5 years or both; or (2) if such funds, assets, or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than one year or both.

(c) Whoever receives, conceals, or retains to his 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 provided in paragraph (b) of this section.

3. Paragraphs (a), (b), and (g) of § 215.16 are amended to read as follows:

§ 215.16 Program information.

* * * * *

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: New England Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, MA 01803.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 1 Vahlsing Center, Robbinsville, NJ 08691.

* * * * *

(g) In the States 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, CO 80211.

4. Further, paragraph (e) of § 215.16 is amended to change the zip code to 75242. Paragraph (f) is amended to add after "the Trust Territory of the Pacific Islands" the following: The Commonwealth of the Northern Mariana Islands.

(Catalog of Federal Domestic Assistance No. 10.556.)

(Sec. 10(a), Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760; Sec. 10(d)(3), Pub. L. 95–627, 92 Stat. 3624 (42 U.S.C. 1757); Sec. 14, Pub. L. 95–627, 92 Stat. 3625–3626.)

Note.—This regulation has been found "not significant" for the purposes of Executive Order 12044 and Secretary's Memorandum 1955. A copy of the Impact Statement may be viewed at the office of the party identified in the "address" portion of the preamble during regular business hours (8:30 a.m. to 5:00 p.m.)

Dated: June 26, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79–20155 Filed 6–28–79; 8:45 am]

BILLING CODE 3410–30–M

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7 CFR Part 220

[Amdt. 28]

School Breakfast Program; Final Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final Rule.

SUMMARY: This rule implements nondiscretionary portions of Section 10 of Pub. L. 95–627 by incorporating into the definition of "child" the clarification that mentally or physically handicapped persons enrolled in schools participating in the School Breakfast Program are eligible for program benefits and by establishing criminal penalties for the misuse of funds, assets, or property that are the subject of a grant or other form of assistance under the National School Lunch Act or the Child Nutrition Act of 1966. This rule also expands the definition of breakfast and updates the addresses of the FNS Regional Offices.

EFFECTIVE DATE: June 29, 1979.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, School Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447–8130.

SUPPLEMENTARY INFORMATION: Section 10 of Pub. L. 95–627 amends the National School Lunch Act and the Child Nutrition Act of 1966 to include in the definition of "child," persons, regardless of age, who are mentally or physically handicapped, as defined by the State, and who are enrolled in a school program for the mentally or physically handicapped in a nonresidential public or nonprofit private school of high school grade or under which participates in the school nutrition programs.

Present regulations define "child" in public or nonprofit private schools other than residential child care institutions by grade level, not by age. The Department does not anticipate that this regulatory change will result in a substantial increase in eligible children because mentally or physically handicapped persons in schools which participate in the school nutrition programs are presently eligible. However, the rule now states specifically that phyically or mentally handicapped persons are eligible to receive program benefits. The rule provides that the State educational agency is to determine what constitutes a mental or physical handicap.

Present regulations define "breakfast" to be a meal which meets the nutritional requirements set out in this Part and which is served to a child at the beginning of the child's day at school. This amendment specifies that the meal must be served in the morning hours, but allows schools more flexibility in scheduling the meal by allowing breakfast to be served at or close to the beginning of the child's day at school.

In requiring schools to serve breakfast at the beginning of the child's day at school, the Department wanted to insure that schools would not serve breakfast too close to lunch. Breakfast served too late in the day would contribute to school lunch plate waste. In addition, since breakfast is traditionally eaten at the beginning of the day, children would learn long lasting habits of good nutrition and establish an eating pattern which they would be most likely to follow as adults. However, the Department did not intend to discourage schools from participation in the School Breakfast Program.

In determining their hour of breakfast service, schools should continue to

attempt to provide breakfast as close to the beginning of the child's day at school as administratively feasible. However, schools may allow breakfast to be served later in the morning, as long as they determine, in their best judgment, that the later hour is not close enough to the lunch period to contribute to plate waste.

Section 10 of Pub. L. 95–627 also prescribes criminal penalties for the misuse of funds, assets, or property in connection with federal child feeding programs. Under this provision anyone, whether administering the programs or receiving their benefits, who knowingly misuses funds, assets, or property is subject to federal penalties. This rule adds the fraud penalty language to Part 220. In addition, it deletes and reserves paragraph (a) of § 220.18. The language of that subsection is unique to Part 220 and repeats the intent of Part 220.20(b).

Changes in location of three Regional Offices require that the program information section of this part be updated.

The Department is issuing the fraud penalties and definition of "child" portions of this rule as a final rule in order to implement the statutory mandate of Pub. L. 95–627. Because Section 10 of Pub. L. 95–627 was effective October 1, 1978, the Department considers itself under obligation to implement immediately this rule without the benefit of public comment. Further, because the dictates of Pub. L. 95–627 with regard to these requirements are mandatory, the Department is not at liberty to vary the requirements should public comments indicate disapproval of the rule.

The Department is issuing the definition of "breakfast" portion of this rule as a final rule to remove an unintentional impediment to the growth of the School Breakfast Program.

Accordingly, Part 220 is amended as follows:

1. § 220.2(b) is amended to redefine "breakfast" and § 220.2(c) is amended to redefine "child" as follows:

§ 220.2 Definition.

* * * * *

(b) "Breakfast" means a meal which meets the nutritional requirements set out in § 220.8 and which is served to a child in the morning hours. The meal shall be served at or close to the beginning of the child's day at school.

(c) "child" means either (1) in schools as defined in § 220.2(u)(1), 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 or (2) in schools as defined in § 220.2(u)(2) and (3), a person under 21 chronological years of age.

* * * * *

2. The words "by State agencies" are stricken from the heading of § 220.6, the existing paragraph is designated as paragraph (a), and new paragraphs (b) and (c) are added to read as follows:

§ 220.6 Use of funds.

* * * * *

(b) 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—

(1) if such funds, assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than 5 years or both; or

(2) if such funds, assets, or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than one year or both.

(c) Whoever receives, conceals, or retains to his 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 provided in paragraph (b) of this section.

§ 220.18 [Amended]

3. § 220.18(a) is deleted and reserved.

4. Paragraphs (a), (f), and (g) of § 220.21 are amended to read as follows:

§ 220.21 Program information.

* * * * *

(a) In the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 1 Vahlsing Center, Robbinsville, NJ 08691.

* * * * *

(f) In the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: New England Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, MA 01803.

(g) In the States 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, CO 80211.

5. Further, paragraph (e) of § 220.21 is amended to add after "Oregon" the following: the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands.

(Catalog of Federal Domestic Assistance No. 10.553.)

(Sec. 10(a) Pub. L. 95–627, 92 Stat. 3623(42 U.S.C. 1760); Sec. 10(d)(3), Pub. L. 95–627, 92 Stat. 3624(42 U.S.C. 1757); Sec. 14, Public Law 95–627, 92 Stat. 3625–3626).

Note.—This regulation has been found "not significant" for the purposes of Executive Order 12044 and Secretary's Memorandum 1955. A copy of the Impact Statement may be viewed at the office of the party identified in the "address" portion of the preamble during regular business hours (8:30 a.m. to 5:00 p.m.)

Dated: June 26, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-20152 Filed 6-28-79; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Part 230

[Amdt. 2]

Food Service Equipment Assistance Program; Final Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final Rule.

SUMMARY: This rule implements nondiscretionary portions of Section 10 of Pub. L. 95–627 by incorporating into the definition of "child" the clarification that mentally or physically handicapped persons enrolled in schools participating in the National School Lunch and School Breakfast programs are eligible for program benefits and by establishing criminal penalties for the misuse of funds, assets, or property that are the subject of a grant or other form of assistance under the National School Lunch Act or the Child Nutrition Act of 1966. It also updates the addresses of the FNS Regional Offices.

EFFECTIVE DATE: June 29, 1979.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, School Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447–8130.

SUPPLEMENTARY INFORMATION: Section 10 of Pub. L. 95–627 amends the National School Lunch Act and the Child Nutrition Act of 1966 to include in the definition of "child", persons, regardless of age, who are mentally or physically handicapped and who are enrolled in a school program for the mentally or

physically handicapped in a nonresidential public or nonprofit private school of high school grade or under which participates in the school nutrition programs.

Present regulations define "child" in public or nonprofit private schools other than residential child care institutions by grade level, not by age. The Department does not anticipate that this regulatory change will result in a substantial increase in eligible children because mentally or physically handicapped persons in schools which participate in the school nutrition programs are presently eligible. However, the rule now states specifically that physically or mentally handicapped persons are eligible to receive program benefits. The rule provides that the State educational agency is to determine what constitutes a mental or physical handicap.

Section 10 of Pub. L. 95–627 also prescribes criminal penalties for the misuse of funds, assets, or property in connection with federal child feeding programs. Under this provision anyone, whether administering the programs or receiving their benefits, who knowingly misuses funds or property is subject to federal penalties. This rule adds the fraud penalty language to Part 230.

Changes in location of three Regional Offices require that the program information section of this part be updated.

The Department is issuing this rule as a final rule in order to implement the statutory mandate of Pub. L. 95–627. Because Section 10 of Pub. L. 95–627 was effective October 1, 1978, the Department considers itself under obligation to implement immediately this rule without the benefit of public comment. Further, because the dictates of Pub. L. 95–627 with regard to these requirements are mandatory, the Department is not at liberty to vary the requirements should public comments indicate disapproval of the rule.

Accordingly, Part 230 is amended as follows:

1. § 230.2(d) is amended to redefine "child" as follows:

§ 230.2 Definitions.

* * * * *

(d) "Child" means either (1) in schools as defined in § 230.2(aa)(1), 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 or (2) in schools as defined in § 230.2(aa) (2) and (3), a person under 21 chronological years of age.

* * * * *

2. The existing paragraph of § 230.8 is designated as paragraph (a) and new paragraphs (b) and (c) are added to read as follows:

§ 230.8 Use of funds.

* * * * *

(b) 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—

(1) if such funds, assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than 5 years or both; or

(2) if such funds, assets, or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than one year or both.

(c) Whoever receives, conceals, or retains to his 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 provided in paragraph (b) of this section.

3. Paragraphs (a), (b), and (g) of § 230.19 are amended to read as follows:

§ 230.19 Program information.

* * * * *

(a) In the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 1 Vahlsing Center, Robbinsville, NJ 08691.

(b) In the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: New England Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, MA 01803.

* * * * *

(g) In the States 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, CO 80211.

4. Further, paragraph (f) of § 230.19 is amended to add after "the Trust Territory of the Pacific Islands" the following: the Commonwealth of the Northern Mariana Islands.

(Catalog of Federal Domestic Assistance No. 10.554.)

Note.—This regulation has been found "not significant" for the purposes of Executive Order 12044 and Secretary's Memorandum 1955. A copy of the Impact Statement may be viewed at the office of the party identified in the "address" portion of the preamble during regular business hours (8:30 a.m. to 5:00 p.m.)

(Sec. 10(a), Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); Sec. 10(d)(1), Pub. L. 95–627, 92 Stat. 3625, 3626 (42 U.S.C. 1757); Sec. 14, Pub. L. 95–627, 92 Stat. 3625–3626)

Dated: June 26, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-20154 Filed 6-28-79; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Part 235

[Amendment 1]

State Administrative Expense Funds

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final Rule.

SUMMARY: This rule implements nondiscretionary portions of Section 10 of Public Law 95–627 by establishing criminal penalties for the misuse of funds, assets, or property that are the subject of a grant or other form of assistance under the National School Lunch Act or the Child Nutrition Act of 1966.

EFFECTIVE DATE: June 29, 1979.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, School Programs Division, Food and Nutrition Service, USDA, Washington, D.C. 20250 (202) 447–8130.

SUPPLEMENTARY INFORMATION: Section 10(a) of Public Law 95–627 prescribes criminal penalties for the misuse of funds, assets, or property in connection with federal child feeding programs. Under this provision anyone, whether administering the programs or receiving their benefits, who knowingly misuses funds, assets, or property in connection with federal child feeding programs is subject to federal penalties. This rule adds the fraud penalty language to Part 235.

The Department is issuing this rule as a final rule in order to implement the statutory mandate of Public Law 95–627. Because Section 10 of Pub. L. 95–627 was effective October 1, 1978, the Department considers itself under obligation to implement immediately this rule without the benefit of public comment. Further, because the dictates of Pub. L. 95–627 with regard to fraud

penalties are mandatory, the Department is not at liberty to vary the penalties should public comments indicate disapproval of the rule.

Accordingly, Part 235 is amended as follows:

The words "by State agencies" are stricken from the heading of § 235.6 and new paragraphs (h) and (i) are added to read as follows:

§ 235.6 Use of funds.

* * * * *

(h) 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—

(1) If such funds, assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years or both; or

(2) If such funds, assets, or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than one year or both.

(i) Whoever receives, conceals, or retains to his 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 provided in paragraph (h) of this section.

Note.—This regulation has been found "not significant" for the purposes of Executive Order 12044 and Secretary's Memorandum 1955. A copy of the Impact Statement may be viewed at the office of the party identified in the "address" portion of the preamble during regular business hours (8:30 a.m. to 5:00 p.m.).

(Sec. 10(a), Public Law 95-627, 92 Stat. 3623 (42 U.S.C. 1760); Sec. 14, Public Law 95-627, 92 Stat. 3625-3626)

Dated: June 26, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-20151 Filed 6-28-79 8:45 am]

BILLING CODE 3410-30-M

7 CFR Part 245

[Amendment 14]

Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements nondiscretionary portions of Section 10 of Public Law 95-627 establishing criminal penalties for the misuse of funds, assets, or property that are the subject of a grant or other form of assistance under the National School Lunch Act or the Child Nutrition Act of 1966.

EFFECTIVE DATE: June 29, 1979.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, School Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8130.

SUPPLEMENTARY INFORMATION: Section 10(a) of Public Law 95-627 prescribes criminal penalties for the misuse of funds, assets, or property in connection with federal child feeding programs. Under this provision anyone, whether administering the programs or receiving their benefits, who knowingly misuses funds, assets, or property in connection with federal child feeding programs is subject to federal penalties. In particular, applicants for free meals and milk and reduced price meals must be aware that their applications are made in connection with the receipt of federal funds. This rule adds the fraud penalty language to Part 245.

The Department is issuing this rule as a final rule in order to implement the statutory mandate of Public Law 95-627. Because Section 10 of Public Law 95-627 was effective October 1, 1978, the Department considers itself under obligation to implement immediately this rule without benefit of public comment. Further, because the dictates of the law with regard to fraud penalties are mandatory, the Department is not at liberty to vary the penalties should public comments indicate disapproval of the rule.

Accordingly, Part 245 is amended as follows:

A new section, 245.12, is added to read as follows:

§ 245.12 Fraud penalties.

(a) 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—

(1) If such funds, assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years of both; or

(2) If such funds, assets, or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than one year or both.

(b) Whoever receives, conceals, or retains to his 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 provided in paragraph (a) of this section.

Note.—This regulation has been found "not significant" for the purposes of Executive Order 12044 and Secretary's Memorandum 1955. A copy of the Impact Statement may be viewed at the office of the party identified in the "address" portion of the preamble during regular business hours (8:30 a.m. to 5:00 p.m.)

(Sec. 10(a), Public Law 95-627, 92 Stat. 3623 (42 U.S.C. 1760) Sec. 14, Public Law 95-627, 92 Stat. 3625-3626)

Dated: June 26, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-20153 Filed 6-28-79; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 205]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period July 1-7, 1979. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202-447-5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on June 26, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons continues very strong.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.505 Lemon Regulation 205.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period July 1, 1979, through July 7, 1979, is established at 300,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

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

Dated: June 28, 1979.

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

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7 CFR Part 946

Irish Potatoes Grown in Washington; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation requires fresh market shipments of potatoes grown in Washington to be inspected and meet minimum grade, size, maturity and pack requirements. The regulation will promote orderly marketing of such potatoes and keep less desirable quality and sizes from being shipped to consumers.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Donald S. Kuryloski, Acting Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 447–6393.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 123 and Order No. 946, both as amended, regulate the handling of Irish potatoes grown in the State of Washington. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The State of Washington Potato Committee, established under the order, is responsible for its local administration.

This regulation is based upon the recommendations made by the committee at its public meeting in Moses Lake, Washington, on March 22, 1979.

The recommendations of the committee reflect its appraisal of the composition of the 1979 crop of Washington potatoes and the marketing prospects for this season. Shipments are expected to begin in early July. These grade, size, cleanliness, maturity and pack requirements are necessary to prevent potatoes of lesser maturities, low quality, or undesirable sizes from being distributed in fresh market channels. They will also provide consumers with good quality potatoes consistent with the overall quality of the crop.

This season potatoes of the Norgold variety are allowed to be either 5 ounces in minimum weight or meet the previouis minimum size of 2¼ inches. The committee believes that these minimum sizes will help insure the quality of the Norgold pack, particularly the smaller sizes remaining after the 50-pound cartons are packed.

All other long varieties must be at least 2⅛ inches minimum diameter or 5 ounces minimum weight during the period from July 1, 1979, through September 30, 1979, when most of the Norgolds are marketed. The committee believes this minimum diameter size, which is ⅛ inch larger than through September last year, should provide a more desirable potato pack to consumers. After September 30, 1979, all other long varieties are required to be at least 2 inches in diameter or 4 ounces in weight, the same as last year.

To prevent Norgold variety potatoes of less than 2¼ inches in diameter from being commingled and marketed fresh with other long varieties, all shipment of such commingled long varieties must meet the minimum size requirements of the Norgold variety. This should help insure a high quality pack.

The committee recommended retaining the additional 10 percent tolerance for damage due to internal defects for potatoes packed in 50-pound cartons. This problem usually occurs in the larger size potatoes—the predominant ones packed in cartons. Without this tolerance these larger potatoes would have to be shipped in bags which provide less protection to the potatoes and less ease of handling.

Exceptions are provided to certain of these requirements to recognize special situations in which such requirements are inappropriate or unreasonable.

Shipments are allowed to certain special purpose outlets without regard to minimum grade, size, cleanliness, maturity and pack requirements provided that safeguards are used to prevent such potatoes from reaching unauthorized outlets. Seed is exempt because requirements for this outlet differ greatly from those for fresh market. Shipments for use as livestock feed are likewise exempt. Potatoes grown in the production area may be shipped without regard to the aforesaid requirements to specified locations in Morrow and Umatilla Counties, Oregon, District No. 5, and Spokane County in District No. 1 for grading and storing. Since no purpose is served by regulating potatoes used for charity purposes, such shipments are exempt. Exemption of potatoes for most processing uses is mandatory under the legislative authority for this part. Therefore, shipments to processing outlets are exempt.

This season the minimum quantity exemption is increased to 20 hundredweight from 5 hundredweight. This should relieve the burden on handling noncommercial quantities of potatoes.

Requirements for export shipments differ from those for domestic markets. Quality requirements may differ in foreign markets and smaller sizes are more acceptable. Because of this, export shipments are exempt. In commercial prepeeling, operators remove the surface defects from potatoes which would be undesirable for the tablestock market, and smaller sizes are acceptable. For these reasons potatoes for prepeeling are exempt.

Findings. After consideration of all relevant matters, including the proposal in the notice, it is found that the following handling regulation will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of this regulation until 30 days after its publication in the Federal Register (5 U.S.C. 553) in that (1) shipments of potatoes grown in the production area

will soon begin, (2) to maximize benefits to producers, this regulation should apply to as many shipments as possible during the marketing season, (3) notice was given in the April 20, 1979, Federal Register (44 FR 23533) allowing interested persons until June 15, 1979, in which to file written comments, and none was filed, and (4) compliance with this regulation, which is similar to regulations issued during previous seasons, requires no special preparation by handlers subject to it which cannot be completed by the July 1, 1979 regulation effective date.

The regulation is as follows:

§ 946.333 [Removed]

1. *Termination of regulations:* Handling regulation § 946.333, effective July 24, 1978, through July 31, 1979 (43 FR 31122) shall be terminated upon the effective date of this section.

2. Section 946.334 is added to read as set forth below.

§ 946.334 Handling regulation.

During the period July 1, 1979, through July 31, 1980, no person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c), and (g) of this section or unless such potatoes are handled in accordance with paragraphs (d) and (e) or (f) of this section.

(a) *Minimum quality requirements.* (1) *Grade:*

All varieties—U.S. No. 2, or better grade.

(2) *Size*—(i) *Round varieties*—1⅞ inches (47.6 mm) minimum diameter.

(ii) *Long varieties*—Norgold variety grown in Districts 1 through 4 must be 2¼ inches (57.2 mm) minimum diameter or 5 ounces minimum weight. Other long varieties must be 2⅛ inches (54.0 mm) minimum diameter or 5 ounces minimum weight during July 1 through September 30 each year, and 2 inches (50.8 mm) or 4 ounces during the remainder of each season. Shipments of commingled long varieties containing Norgolds shall meet the Norgold size requirements.

(3) *Cleanliness:* All varieties and grades—as required in the United States Standards for Grades of Potatoes. For example: U.S. No. 2—"not seriously damaged by dirt," and U.S. No. 1—"fairly clean."

(b) *Minimum maturity requirements.*—(1) *Round and White Rose varieties:* Not more than "moderately skinned."

(2) *Other long varieties (including but not limited to Russet Burbank and Norgold):* Not more than "slightly skinned."

(c) *Pack.* Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better, except that potatoes which fail to meet the U.S. No. 1 grade only because of internal defects may be shipped provided the lot contains not more than 10 percent damage by any internal defect or combination of internal defects but not more than 5 percent serious damage by any internal defect or combination of internal defects.

(d) *Special purpose shipments.* The minimum grade, size, cleanliness, maturity, and pack requirements set forth in paragraphs (a), (b), and (c) of this section shall not be applicable to shipments of potatoes for any of the following purposes:

(1) Livestock feed;

(2) Charity;

(3) Seed;

(4) Prepeeling;

(5) Canning, freezing, and "other processing" as hereinafter defined; or

(6) Grading or storing at any specific location in Morrow and Umatilla Counties in the State of Oregon; in District 5, or in Spokane County in District 1;

(7) Export, except to Alaska or Hawaii.

Shipments of potatoes for the purposes specified in subparagraphs (1) through (7) of this paragraph shall be exempt from inspection requirements specified in paragraph (g) of this section except shipments pursuant to subparagraph (6) of this paragraph shall comply with inspection requirements of (e)(2) of this section. Shipments specified in subparagraphs (1), (2), (3), and (5) of this paragraph shall be exempt from assessment requirements specified in § 946.41.

(e) *Safeguards.* (1) Handlers desiring to make shipments of potatoes for prepeeling shall:

(i) Notify the committee of intent to ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipments;

(ii) Prepare on forms furnished by the committee a special purpose shipment report on each such shipment. The handler shall forward copies of each such special purpose shipment report to the committee office and to the receiver with instructions to the receiver that he sign and return a copy to the committee office. Failure of the handler or receiver to report such shipments by promptly signing and returning the applicable special purpose shipment report to the committee office shall be cause for cancellation of such handler's certificate applicable to such special purpose shipments and/or the receiver's eligibility to receive further shipments pursuant to such certificate. Upon cancellation of such certificate, the handler may appeal to the committee for reconsideration; such appeal shall be in writing;

(iii) Before diverting any such special purpose shipment from the receiver of record as previously furnished to the committee by the handler such handler shall submit to the committee a revised special purpose shipment report.

(2) Handlers desiring to make shipments for grading or storing at any specified location in Morrow and Umatilla Counties in the State of Oregon, in District No. 5, or in Spokane County in District No. 1 shall:

(i) Notify the committee of intent to so ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipment. Upon receiving such application, the committee shall supply to the handler the appropriate certificate after it has determined that adequate facilities exist to accommodate such shipments and that such potatoes will be used only for authorized purposes;

(ii) If reshipment is for any purpose other than as specified in paragraph (d) of this section, each handler desiring to make reshipment of potatoes which have been graded or stored shall, prior to reshipment, cause each such shipment to be inspected by an authorized representative of the Federal-State Inspection Service. Such shipments must comply with the minimum grade, size, cleanliness, maturity, and pack requirements specified in paragraphs (a), (b), and (c) of this section;

(iii) If reshipment is for any of the purposes specified in paragraph (d) of this section, each handler making reshipment of potatoes which have been graded or stored shall do so in accordance with the applicable safeguard requirements specified in paragraph (e) of this section.

(3) Each handler making shipments of potatoes for canning, freezing, or "other processing" pursuant to paragraph (d) of this section shall:

(i) First apply to the committee for and obtain a Certificate of Privilege to make shipments for processing;

(ii) Make shipments only to those firms whose names appear on the committee's list of canners, freezers, or other processors of potato products maintained by the committee, or to persons not on the list provided the handler furnishes the committee, prior to such shipment, evidence that the receiver may reasonably be expected to

use the potatoes only for canning, freezing, or other processing;

(iii) Upon request by the committee, furnish reports of each shipment pursuant to the applicable Certificate of Privilege;

(iv) Mail to the office of the committee a copy of the bill of lading for each Certificate of Privilege shipment promptly after the date of shipment;

(v) Bill each shipment directly to the applicable processor.

(4) Each receiver of potatoes for processing pursuant to paragraph (d) of this section shall:

(i) Complete and return an application form for consideration of approval as a canner, freezer, or other processor of potato products;

(ii) Certify to the committee and to the Secretary that potatoes received from the production area for processing will be used for such purpose and will not be placed in fresh market channels;

(iii) Report on shipments received as the committee may require and the Secretary approve.

(5) Each handler desiring to make shipments of potatoes for export shall;

(i) Notify the committee of intent to so ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipment. Such information shall include the quantity of potatoes to be shipped and the name and address of the exporter;

(ii) After the certificate is approved and the shipment is made, furnish the committee with a copy of the on-board bill of lading applicable to such shipment;

(iii) Before diverting any such special purpose shipment from the receiver of record as previously furnished to the committee by the handler such handler shall submit to the committee a revised special purpose shipment report.

(f) *Minimum quality exemption.* Each handler may ship up to, but not to exceed 20 hundredweight of potatoes to any person without regard to the inspection and assessment requirements of this part, but this exemption shall not apply to any shipment over 20 hundredweight of potatoes.

(g) *Inspection.* Except when relieved by paragraphs (d) or (f) of this section, no person may handle any potatoes unless an appropriate inspection certificate covering them has been issued by an authorized representative of the Federal-State Inspection Service and the certificate is valid at the time of shipment.

(h) *Definitions.* The terms "U.S. No. 1," "U.S. No. 2," "not seriously damaged by dirt," "fairly clean," "slightly skinned" and "moderately skinned" shall have the same meaning as when used in the United States Standards for Grades of Potatoes (7 CFR 2851.1540–2851.1566), including the tolerances set forth in it. The term "prepeeling" means the commercial preparation in the prepeeling plant of clean, sound, fresh tubers by washing, peeling or otherwise removing the outer skin, trimming, sorting and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 2852.2422 United States Standards for Grades of Peeled Potatoes (7 CFR 2852.2421–2852.2433). The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch and flour. It includes the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, or dicing, or applying material to prevent oxidation does not constitute "other processing." Other terms used in this section have the same meaning as when used in the marketing agreement, as amended, and this part.

(i) *Applicability to imports.* Pursuant to section 8e of the act and § 980.1 "Import regulations" (7 CFR 980.1), Irish potatoes of the red skinned round type imported during the months of July and August in the effective period of this section shall meet the minimum grade, size, quality and maturity requirements for round varieties specified in paragraphs (a) and (b) of this section.

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

Note.—This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

Dated: June 27, 1979, to become effective July 1, 1979.

D. S. Kuryloski,

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

[FR Doc. 79-20318 Filed 6-28-79; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part, 1822, 1910, 1942, and 1951

[FmHA Instruction 1951-B]

Loan Payments; Collections; Revision-Redesignation

AGENCY: Farmers Home Administration, USDA.

ACTION: Final Rule.

SUMMARY: The Farmers Home Administration revises and redesignates its regulations to authorize District Directors to accept loan payments; to renumber the regulation in accordance with its new numbering system; to make appropriate cross-reference changes, and to provide for a new receipt form for cash payments. This change helps to implement the Agency policy of making and servicing group-type loans through District Offices. This action is taken as a result of an administrative restructuring of its regulations and organizational structure.

EFFECTIVE DATE: June 29, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. LaVerne Isenberg, Phone: 202–447–2852.

SUPPLEMENTARY INFORMATION: Part 1862, Chapter XVIII, Title 7 in the Code of Federal Regulations is deleted, and a new Subpart B of Part 1951, Chapter XVIII, Title 7 in the Code of Federal Regulations is added. The new Subpart authorizes District Directors to accept loan payments. These amendments also conform the regulations to the new FmHA numbering system and make appropriate cross-reference changes.

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. These actions, however, are not published for proposed rulemaking as they are an amendment to FmHA internal operating procedures and operations. Therefore, public participation is unnecessary and impracticable. This determination has been made by LaVerne A. Isenberg. Accordingly, miscellaneous amendments are made to Chapter XVIII as follows:

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

§ 1822.15 [Amended]

1. In § 1822.15(b)(4), line 14, change "Part 1862" to "Part 1951, Subpart B."

Subpart D—Rural Rental Housing Loan Policies, Procedures, and Authorizations

Exhibit J [Amended]

2. In Exhibit J, paragraph IX, line 3, change "Part 1862" to "Part 1951, Subpart B."

Subpart H—Rural Housing Conditional Commitments

§ 1822.307 [Amended]

3. In § 1822.307(b), line 4, change "Part 1862" to "Part 1951, Subpart B."

SUBCHAPTER H—PROGRAM REGULATIONS

PART 1910—GENERAL

Subpart B—Credit Reports

§ 1910.62 [Amended]

4. In § 1910.62(d), line 38, change "FmHA Instruction 451.2" (available in any FmHA office) to "Part 1951, Subpart B."

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

§ 1942.7 [Amended]

5. In § 1942.7(d), line 7, change "451.2" to "Part 1951, Subpart B."

PART 1955—PROPERTY MANAGEMENT

Subpart C—Disposal of Acquired Property

§ 1955.111 [Amended]

6. In § 1955.111(a), lines 13 and 14, change "Part 1862 of this chapter (FmHA Instruction 451.2)" to "Part 1951, Subpart B."

PART 1951—SERVICING AND COLLECTIONS

7. A new Part 1951, Subpart B is added and reads as follows:

Subpart B—Collections

Sec.
1951.51 Purpose.
1951.52–1951.53 [Reserved]
1951.54 Authority.
1951.55 Receipts.
1951.56–1951.100 [Reserved]

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, sec. 10 Pub. L. 93–357, 88 Stat. 392, delegation of authority by the Sec. of Agri., 7 CFR 2.23, delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70, delegations of authority by Dir., OEO 29 FR 14764, 33 FR 9850.

PART 1951—SERVICING AND COLLECTIONS

Subpart B—Collections

§ 1951.51 Purpose.

(a) Checks, money orders, and similar items to be remitted as payments on accounts of the Farmers Home Administration should be made payable to the Farmers Home Administration, except that offers in compromise of judgment accounts authorized in Part 1864 of this chapter will be made payable to the Treasurer of the United States. All collection items in any form other than coin and currency will be accepted subject to collection, that is, subject to the items being paid. Post-dated checks will not be accepted for payment on indebtedness due the Farmers Home Administration. When such items are received, they will be returned immediately to the remitter.

(b) Collections items containing restrictive endorsements or notations which will not permit such items to be processed and applied to accounts in accordance with this chapter will be returned to the remitters by the Farmers Home Administration official receiving such items with a request that such notations be withdrawn. However, items containing restrictive endorsements or notations not affecting the handling thereof (for example: "Payment in full," when the amount thereof does in fact pay the account in full) will be accepted and processed.

(c) In order to expedite the application of collections to pay loan accounts, borrowers should be advised to make payments by cash, postal money orders, certified checks, cashier's checks, bank drafts, or bank money orders.

§§ 1951.52–1951.53 [Reserved]

§ 1951.54 Authority.

Farmers Home Administration employees in approved positions are hereby authorized to receive, receipt for, exchange for money orders or bank drafts, and transmit collections.

§ 1951.55 Receipts.

Form FmHA 451–1, "Acknowledgment of Cash Payment," will be used in receipting for cash payments. No other form of receipt will be used for this purpose. This form may also be used when a borrower requests a receipt for another form of payment.

§§ 1951.56–1951.100 [Reserved]

Note.—This regulation has not been determined significant under the USDA criteria implementing Executive Order 12044.

Note.—This document has been reviewed in accordance with FmHA Instruction 1901–C, "Environmental Impact Statements." 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 Environment Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10 Pub. L. 93–357, 88 Stat. 392; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

Dated: May 18, 1979.

James E. Lee,
Acting Administrator, Farmers Home Administration.

[FR Doc. 79-20157 Filed 6-28-79; 8:45 am]
BILLING CODE 3410-07-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 303

Organizational Structure of Economic Development Districts; Correction

AGENCY: Economic Development Administration.

ACTION: Interim rule.

SUMMARY: Regulations regarding the structure of economic development districts were published as an interim rule on June 6, 1979. In that publication, there was an incorrect internal reference in one of the paragraphs. This interim rule corrects that reference.

DATES: Effective date: June 29, 1979.

ADDRESSES: Send comments to: Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Victor A. Hausner, Deputy Assistant Secretary for Policy and Planning, U.S. Department of Commerce, Room 6807, Washington, D.C. 20230, (202) 377–3121.

SUPPLEMENTARY INFORMATION: The Economic Development Administration (EDA) published an interim rule (June 6, 1979, 44 FR 32359 *et seq.*) revising its requirements concerning the structure of the organizations of economic development districts. On page 32361 of that publication, § 303.4(c)(1) referred to the "* * * authorities and responsibilities for carrying out economic development functions as set forth in § 303.4(a) * * *"

This paragraph should have referred to the new § 303.4a, which that rule

added. This document corrects that citation.

Accordingly, 13 CFR 303.4(c)(1) is revised as follows:

PART 303—ECONOMIC DEVELOPMENT DISTRICTS

By revising § 303.4(c) to read as follows:

§ 303.4 District organization.

* * * * * *

(c) *Organizational structure*—(1) *Basic Organizational Requirements.* Each district organization must meet EDA requirements concerning its membership composition as set forth in § 303.4(d), its authorities and responsibilities for carrying out economic development functions as set forth in § 303.4a and the maintenance of adequate staff support to perform its economic development functions as set forth in § 303.4(e) in one of the two ways cited below.

* * * * *

(Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4 (September 30, 1975), as amended (40 FR 56702, as amended).)

Dated: June 25, 1979.

Robert T. Hall,

Assistant Secretary for Economic Development.

[FR Doc. 79-20134 Filed 6-28-79; 8:45 am]

BILLING CODE 3510-24-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 208 and 237

Insurance Annuities; Current Connection with the Railroad Industry

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board is amending § 208.5 of Part 208 of its regulations to change the presumptive rule for determining regular employment that would break a current connection with the railroad industry. This is necessary because of legislation that changed the reporting of social security earnings to an annual basis.

EFFECTIVE DATE: June 29, 1979.

FOR FURTHER INFORMATION CONTACT: R. F. Butler, Secretary, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, 312-751-4920.

SUPPLEMENTARY INFORMATION: In accordance with the Board's report issued under Executive Order 12044, the Chief Executive Officer of the Railroad Retirement Board has determined that § 208.5 of the regulations, as amended, does not constitute a significant regulation.

PART 208—ELIGIBILITY FOR AN ANNUITY

20 CFR 208.5 is revised to read as follow:

§ 208.5 Current connection with the railroad industry.

(a) *When an employee has a current connection.* An employee has a current connection with the railroad industry when:

(1) He performed services creditable under the Railroad Retirement Act in at least 12 of the 30 consecutive calendar months immediately preceding whichever of the following is earlier:

(i) The month in which an annuity begins to accrue to him under Part 214 of this chapter, or

(ii) The month in which he dies.

(2) He does not qualify under paragraph (a)(1) of this section but he did perform service creditable under the Railroad Retirement Act in at least 12 calendar months in a period of 30 consecutive calendar months and he did not work in any regular nonrailroad employment in the interval between the months in which the 30-month period ends and whichever of the following first occurs:

(i) The month in which an annuity begins to accrue to him under Part 214 of this chapter, or

(ii) The month in which he dies.

(b) *When an employee has a current connection only for purposes of a railroad retirement survivor annuity.* An employee who does not have a current connection with the railroad industry under paragraph (a) of this section nevertheless has a current connection only for purposes of an annuity under Part 237 of this chapter if he:

(1) Would not be fully or currently insured under Title II of the Social Security Act if his service after December 31, 1936, credited under the Railroad Retirement Act were included in the term "employment" as defined in Title II of the Social Security Act, or

(2) Has no quarters of coverage under Title II of the Social Security Act.

(c) *Definition of regular nonrailroad employment.* For the purposes of this section, the term "regular nonrailroad employment" means full or part-time regular employment for which remuneration is earned. An employee is presumed to be in regular nonrailroad employment under the conditions described in paragraph (d) of this section. The term "regular nonrailroad employment" does not include:

(1) Self-employment,

(2) Temporary work that is provided as a means of relief by a Federal, a state, or a local Government unit,

(3) Service, whether rendered inside or outside the United States, for an employer under the Railroad Retirement Act, regardless of whether the employer conducts the principal part of its business in the United States,

(4) Involuntary military service that is not creditable under Part 209 of this chapter,

(5) Employment with the following agencies of the United States Government:

(i) Department of Transportation,

(ii) Interstate Commerce Commission,

(iii) National Mediation Board,

(iv) Railroad Retirement Board.

(d) *When an employee is presumed to be in regular nonrailroad employment.* The conditions under which an employee is presumed to be in regular nonrailroad employment depend upon when the 30-month period ends to establish the interval described in paragraph (a)(2) of this section.

(1) When the 30-month period ends in the same calendar year or in the next preceding calendar year as the month the annuity begins to accrue or the month of death whichever applies, an employee is presumed to be in regular nonrailroad employment if:

(i) He worked in each calendar month in the interval, or

(ii) He worked and earned at least $200 in wages in any three calendar months wholly within the interval.

(2) When the 30-month period ends earlier than as described in paragraph (d)(1) of this section, an employee is presumed to be in regular nonrailroad employment if:

(i) He worked in any two consecutive calendar years wholly or partially within the interval, and

(ii) Earned at least $1,000 in wages in any one calendar year wholly or partially within the interval even if this calendar year is not one of the two consecutive calendar years.

(e) *Current connection determinations*—(1) *Current determinations.* A determination as to whether or not an employee has a current connection with the railroad industry made on or after May 31, 1979, must be made under the provisions of this section.

(2) *Prior determinations.* If the claim of an employee was previously denied in whole or in part because he did not have a current connection with the railroad industry under this section as in effect prior to May 31, 1979, the decision denying the claim in whole or in part

may be reopened for that employee and reconsidered under the provisions of this section. Any annuity or increase in an annuity for which the employee may be found entitled as a result of the reopening cannot be retroactive more than 12 months before the date of reopening.

(3) *No redetermination required.* If an employee has a current connection when his annuity begins to accrue, that current connection, whether determined under this section or under the provisions of this section as in effect prior to May 31, 1979, is effective for the purpose of:

(i) Any annuity under this Part for which the employee may later qualify, and

(ii) Any insurance annuity or lump-sum under Part 237 of this chapter.

PART 237—INSURANCE ANNUITIES AND LUMP SUMS FOR SURVIVORS

§ 237.102 [Amended]

Part 237 is amended by the deletion of 237.102(c).

Dated: June 22, 1979.

By Authority of the Board.

R. F. Butler,

Secretary of the Board.

[FR Doc. 79-20264 Filed 6-28-79; 8:45 am]

BILLING CODE 7905-01-M

INTERNATIONAL COMMUNICATION AGENCY

22 CFR Part 515

International Visitor Grantees: Designated City Supplement Payments

AGENCY: International Communication Agency.

ACTION: Interim Rule.

SUMMARY: The International Communication Agency recently conducted a study which concluded per diem rates for the International Visitor Program were generally adequate; however, the per diem rates for Washington, D.C. and New York City were too low in relation to minimal visitor costs. In view of the fact each international visitor must come to Washington, D.C. and must spend some time in New York City, a special designated city per diem has been proposed. The Agency is presently in the process of drafting an amendment to its regulations governing the International Visitor Program to include a designated city supplement to be used by the international visitor to defray expenses incurred in designated high cost cities such as Washington, D.C. and New York City. Until this proposed amendment is finalized, the Agency requires interim authority to reimburse the international visitors who will be in the designated high cost cities between July 1 and September 30, 1979.

DATES: July 1 through September 30, 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Pauline Hopper, Chief Community Relations Branch (ECA/IV), International Visitors Division, Associate Directorate for Educational and Cultural Affairs, International Communication Agency, Washington, D.C. 20547, (AC 202-724-9986).

SUPPLEMENTARY INFORMATION: The International Communication Agency assumed jurisdiction over the International Visitor Program from the Department of State effective April 1, 1978, by Executive Order 12048 of March 27, 1978, implementing Reorganization Plan No. 2 of 1977. The International Visitor Program works to strengthen and improve mutual understanding through direct people-to-people contacts between current and emergent leaders of foreign nations and people of the United States. The participants are established or potential foreign leaders in government, politics, journalism, education, science, labor relations and other key fields. They are selected by the International Communication Agency and the United States Embassies overseas to visit the U.S., generally for thirty days, to get an in-depth exposure to this country, its people and culture and to meet and confer with their colleagues here. The interim rule will permit reimbursement to the international visitor to defray expenses in the designated high cost cities.

PART 515—PAYMENTS TO AND ON BEHALF OF PARTICIPANTS IN THE INTERNATIONAL EDUCATIONAL AND CULTURAL EXCHANGE PROGRAM

22 CFR Part 515 is amended by adding a new paragraph (h) to § 515.3 to read as follows:

§ 515.3 Grants to foreign participants to observe, consult, demonstrate special skills, or engage in specialized programs.

* * * * *

(h) *Designated City Supplement (Interim Rule).* Supplement to defray expenses in designated high cost cities such as Washington, D.C. and New York City for period July 1 through September 30, 1979.

(75 Stat. 529; 22 U.S.C. 2454 (e)(1), as amended by sec. 204(a) of Pub. L. 95-426, 92 Stat. 973.)

Dated: June 27, 1979.

John E. Reinhardt, Director,

International Communication Agency.

[FR Doc. 79-20073 Filed 6-28-79; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 256

Fraser River Convention Sockeye and Pink Salmon Fishery

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Emergency Regulations.

SUMMARY: These regulations implement a treaty Indian fishery for sockeye and pink salmon in off-reservation nonexclusive treaty fishing areas located in waters coming under the United States Convention with Canada for the protection, preservation, and extension of the sockeye and pink salmon fishery of the Fraser River System. These rules implement domestic law of the United States in a manner consistent with the United States' obligations to Canada under the Convention. Non-Indian fisheries in these waters are governed by the regulations of the International Pacific Salmon Fisheries Commission. These rules are promulgated by the Department of the Interior to apply only to Indians exercising fishing rights secured to them by treaties of the United States.

EFFECTIVE DATE: 0001 a.m. on June 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Fred Olney, Fishery Biologist, Olympia Area Office, U.S. Fish and Wildlife Service, 2625 Parkmont Lane, Bldg. A, Olympia, Washington 98502, 206/753-9578.

Jim Jannetta, Attorney, Office of the Solicitor, Division of Indian Affairs, Department of the Interior, Washington, D.C. 20240, 202/343-6967.

SUPPLEMENTARY INFORMATION: The Department of the Interior is responsible for the supervision and management of Indian Affairs under 43 U.S.C. 1457, 25 U.S.C. 2 and 9, and the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), including the protection and implementation of off-reservation fishing rights secured by the Treaty of Point Elliot, 12 Stat. 927 (1859); Treaty with the Makah, 12 Stat. 939 (1859); and Treaty of Point No Point, 12 Stat. 933

(1859) as affirmed in *U.S. v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), *aff'd* 520 F. 2d 676 (C.A. 9, 1975), *cert. den.* 423 U.S. 1086 (1976). Such treaty Indian fisheries include a sockeye and pink salmon fishery at off-reservation nonexclusive treaty fishing locations in waters coming under the United States Convention with Canada respecting the sockeye and pink salmon fisheries of the Fraser River System.

The International Pacific Salmon Fisheries Commission has forwarded to the Governments of Canada and the United States, for the approval required by the Convention, the regulations applicable in Convention waters during the 1979 fishing season. On May 30, 1979, the United States, acting through the Department of State, approved the regulations except as to treaty Indians fishing in accordance with regulations promulgated by this Department providing for the exercise of fishing rights secured by the United States treaties. The International Pacific Salmon Fisheries Commission assumes control on June 24, 1979, and the fishing season in Convention waters begins on July 15, 1979. These regulations are necessary to implement the off-reservation nonexclusive fishing rights of certain Northwest Washington Indian tribes in that fishery and to meet the United States' obligations to Canada under the Fraser River Convention. For these reasons the Secretary of the Interior hereby and for good cause finds that the formal advance notice, public comment procedures, and delayed effectiveness procedures of 5 U.S.C. 553 are impracticable and contrary to the public interest. These regulations are therefore effective immediately.

The United States action and these regulations are comparable to the regulatory system which the United States implemented in 1977 and 1978 to meet its obligations both to Canada and to U.S. treaty Indians. This year, as in 1977 and 1978, the affected treaty tribes will regulate their fisheries concurrently and in a manner consistent with the regulations of this Department.

An environmental assessment has been completed and it has been concluded that the implementation of a treaty Indian fishery by these regulations is not a major federal action which would significantly affect the environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969.

Note.—The Department of the Interior has also determined that this document is not a significant rule and does not require regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The primary author of this document is Susan Hvalsoe, Special Assistant to the Assistant Secretary for Indian Affairs, Department of the Interior, Washington, D.C. 20240 (202/343-6031). Comments from treaty Indian tribes and other persons are invited at the address indicated above and will be considered in respect to amendments to this subpart.

Dated: June 27, 1979.

Cecil D. Andrus,

Secretary.

PART 256—OFF-RESERVATION TREATY FISHING

Chapter I of Title 25 CFR is amended by revoking Subpart B as published in 1978, and inserting the following new Subpart B to Part 256.

Subpart B—Fraser River Convention Sockeye and Pink Salmon Fishery

Sec.

256.11 Purpose of this subpart: Compliance.
256.12 Definition of terms.
256.13 Other laws and regulations.
256.14 Identification.
256.15 Fishing assistance.
256.16 Reporting requirements.
256.17 Fishing seasons.
256.18 Emergency orders.
256.19 Treaty tribe fishing regulations.
256.20 Unlawful possession.
256.21 Forcible assault on enforcement officer.

Authority: 25 U.S.C. 2, 9; 5 U.S.C. 301; 43 U.S.C. 1451 *et. seq.*; 25 CFR Part 256.

Subpart B—Fraser River Convention Sockeye and Pink Salmon Fishery

§ 256.11 Purpose of this supart: Compliance.

(a) This subpart governs fishing for sockeye and pink salmon by any treaty Indian who is fishing at his tribe's treaty fishing places in U.S. Convention waters during the time the Commission exercises control over the Fraser River Convention sockeye and pink salmon fishery.

(b) Any treaty Indian shall comply with this subpart when fishing for sockeye and pink salmon at his tribe's treaty fishing places in U.S. Convention waters during the time the Commission exercises control over the Fraser River Convention sockeye and pink salmon fishery. Fishing by any person which is not in accordance with these regulations is governed by 50 CFR Part 371 and violations thereof are subject to the penalties of the Act.

§ 256.12 Definition of terms.

(a) Act means: the Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776–776f.

(b) Authorized assistant means: Any Indian person described in Section 256.15 and thereby authorized to assist the treaty Indian.

(c) Commission means: The International Pacific Salmon Fisheries Commission provided for by Article II of the Convention.

(d) Convention means: The convention between the United States and Canada for the protection, preservation, and extension of the sockeye and pink salmon fisheries of the Fraser River system, signed at Washington on the 26th day of May 1930, as amended by the protocol to include pink salmon, signed at Ottawa on the 28th day of December 1956.

(e) Convention waters mean: Those waters described in Article I of the Convention.

(f) Enforcement Officer means: (1) Any enforcement agent of the National Marine Fisheries Service;

(2) Any commissioned, warrant, or petty officer of the Coast Guard;

(3) Any Coast Guard personnel accompanying and acting under the direction of any persons described in subparagraph (2) of this paragraph (f);

(4) Any tribal enforcement officer authorized to enforce treaty tribal regulations described under § 256.19.

(5) Any other person authorized by the Regional Director, Northwest Region, National Marine Fisheries Service, to enforce the provisions of the Convention, the Commission's regulations, the Act, or 50 CFR Part 371.

(6) Any other person authorized by the Secretary of the Interior to enforce the provisions of 25 CFR Part 256 Subpart A or B.

(g) Fish, fishing means: The fishing for, catching, or taking, or the attempted fishing for, catching, or taking, of any sockeye or pink salmon in Convention waters.

(h) Fishing gear means: Any net, trap, hook, or other device, appurtenance or equipment, of whatever kind or description, used or capable of being used for the capturing of sockeye or pink salmon.

(i) Lawful gear means: Any gill net, purse seine, reef net, troll line, beach seine, or stake net, as defined under tribal law or in Washington Administrative Code Chapter 220-16 and 220-47-301 through 304.

(j) Person includes: Individuals, partnerships, associations, and corporations.

(k) Pink salmon means: That species of salmon known by the scientific name *Oncorhynchus gorbuscha*.

(l) Sockeye salmon means: That species of salmon known by the scientific name *Oncorhynchus nerka.*

(m) State areas means: Fishing areas defined as Puget Sound Salmon Management and Catch Reporting Areas in Washington Adminstrative Code Chapter 220–22.

(n) Stretch measure means: The distance between the inside of one knot to the outside of the opposite (vertical) knot in one mesh. Measurement shall be taken when the mesh is stretched vertically while wet, by using a tension of ten (10) pounds on any three (3) consecutive meshes, then measuring the middle mesh of the three while under tension.

(o) Treaty Indian means: Any member of a treaty Indian tribe which has treaty fishing places in U.S. Convention waters.

(p) Treaty Indian identification means: Identification issued by the Bureau of Indian Affairs or a treaty Indian tribe identifying the holder as a member of the issuing tribe. The identification card shall include the name and address of the tribal member, the member's enrollment number (if any), date of birth, and the member's photograph.

(q) Treaty Indian tribe means: Any tribe which has been found by the United States District Court for the Western District of Washington to be entitled to exercise treaty-secured fishing rights in U.S. Convention waters. Currently these tribes are the Makah Tribe, Lower Elwha Band Clallam Tribe, Port Gamble Band Clallam Tribe, Suquamish Tribe, Lummi Tribe, Nooksack Tribe, the Swinomish Indian Tribal Community, and Tulalip Tribe.

(r) Treaty fishing places (of an Indian tribe) means: Any location which shall have been previously determined by the United States District Court for the Western District of Washington in *U.S. v. Washington* to be a place at which that treaty tribe may take fish under rights secured by a treaty of the United States with such tribe or its predecessor in interest.

(s) Washington Administrative Code means: Only those chapters and sections of the Washington Administrative Code that were in effect as of June 24, 1979.

(t) Vessel means: Every type or description of water craft or other contrivance used, or capable of being used, as a means of transportation in water.

§ 256.13 Other laws and regulations

Nothing in this subpart shall be construed to relieve a treaty Indian or his authorized assistant from any applicable requirement lawfully imposed by a tribe, the United States, or the State of Washington. Nor shall anything herein authorize any treaty Indian or his authorized assistant to act contrary to any restriction or requirement of applicable tribal laws.

§ 256.14 Identification

(a) Any treaty Indian fishing under the authority of this subpart shall have in his possession at all such times treaty Indian identification required by 25 CFR 256.3 and by applicable tribal law.

(b) Any person assisting a treaty Indian under the authority of § 256.15 shall have in his possession at all such times an identification card issued by the Bureau of Indian Affairs or by a treaty Indian tribe, identifying the holder as an Indian qualified to assist a treaty Indian. The identification card shall include the name of the issuing tribe, the name, address, tribal affiliation, date of birth, and photograph of the assistant, and the name and enrollment number (if any) of the treaty Indian the assistant is qualified to assist.

(c) Indentification described in paragraphs (a) or (b) of this section shall be shown on demand to an enforcement officer by the treaty Indian or authorized assistant.

(d) Any treaty Indian fishing under this subpart shall comply with the treaty Indian vessel and gear identification requirements of Decision No. 1 and subsequent Orders of the U.S. District Court for the Western District of Washington in *U.S.* v. *Washington,* as implemented in Washington Administrative Code 220–47–121.

§ 256.15 Fishing assistance.

Notwithstanding 25 CFR 256.5, any treaty Indian fishing under this subpart may be assisted, if authorized by the treaty Indian's tribe, by the treaty Indian's spouse (if Indian), forebears (if Indian), children, grandchildren and siblings authorized by the United States District Court for the Western District of Washington in *U.S.* v. *Washington.* Persons so authorized shall be considered treaty Indians for the purposes of this subpart.

§ 256.16 Reporting requirements.

(a) Any person receiving or purchasing fish caught by any treaty Indian fishing under this subpart shall comply with Decision No. 1 and subsequent Orders of the U.S. District Court for the Western District of Washington in *U.S.* v. *Washington* as implemented by the treaty tribes and in Washington Administrative Code Chapter 220–69.

(b) Any treaty Indian who sells fish caught under the authority of this subpart directly to a consumer, restaurant, boathouse, or any other retail outlet shall comply with Washington Administrative Code Chapter 220–69.

(c) No person receiving or purchasing sockeye and pink salmon caught in U.S. Convention waters during the time the Commission exercises control over fishing for sockeye and pink salmon shall fail to permit enforcement officers to inspect records or reports required by WAC 220–69 or to inspect fish landing, holding or storage areas under the control of this person.

§ 256.17 Fishing seasons.

(a) No treaty Indian shall fish for sockeye or pink salmon with troll gear in High Seas Convention waters between June 15, 1979 and September 6, 1979, both dates inclusive, except from June 15 to June 24; June 29 to July 8; July 13 to July 22; July 27 to August 5; August 10 to August 19; and August 24 to September 2, all dates inclusive.

(b) No treaty Indian shall fish for sockeye or pink salmon with nets in U.S. Convention waters from June 24, 1979 to July 14, 1979, both dates inclusive.

(c) No treaty Indian shall fish for sockeye or pink salmon in U.S. Convention waters in State Areas 4B and that part of State Area 5 which extends westerly of a line drawn from Pillar Point on the Olympic Peninsula to Sheringham Point on Vancouver Island, except with lawful gear from:

(1) July 15, 1979 to August 4, 1979, both dates inclusive, from 7:00 p.m. on Sunday evening to 9:30 a.m. on Saturday morning.

(2) August 5, 1979 to August 18, 1979, both dates inclusive, from 7:00 p.m. on Sunday evening to 9:30 a.m. on Thursday morning.

(3) August 19, 1979 to September 8, 1979, both dates inclusive, from 6:00 p.m. on Sunday evening to 9:00 a.m. on Saturday morning.

(4) September 9, 1979 to September 22, 1979, both dates inclusive, from 6:00 p.m on Sunday evening to 9:00 a.m. on Thursday morning.

(d) No treaty Indian shall fish for sockeye or pink salmon in U.S. Convention waters in that part of State Area 5 which extends easterly of a line drawn from Pillar Point on the Olympic Peninsula to Sheringham Point on Vancouver Island, and State Areas 6C, 6, 6A, 7, and 7A, with purse seines except from:

(1) July 15, 1979 to July 21, 1979, both dates inclusive, from 5:00 a.m. on Monday morning to 9:30 p.m. on Wednesday evening.

(2) July 22, 1979 to July 28, 1979, both dates inclusive, from 5:00 a.m. on Sunday morning to 9:30 p.m. on Tuesday evening.

(3) July 29, 1979 to August 4, 1979, both dates inclusive, from 5:00 a.m. on Monday morning to 9:30 p.m. on Wednesday evening.

(4) August 5, 1979 to August 11, 1979, both dates inclusive, from 5:00 a.m. on Sunday morning to 9:30 p.m. on Monday evening.

(5) August 12, 1979 to August 18, 1979, both dates inclusive, from 5:00 a.m. on Monday morning to 9:30 p.m. on Wednesday evening.

(6) August 19, 1979 to August 25, 1979, both dates inclusive, from 5:00 a.m. on Monday morning to 9:00 p.m. on Thursday evening.

(7) August 26, 1979 to September 8, 1979, both dates inclusive, from 5:00 a.m. on Sunday morning to 9:00 p.m. on Thursday evening.

(8) September 9, 1979 to September 22, 1979, both dates inclusive, from 5:00 a.m. on Sunday morning to 9:00 p.m. on Tuesday evening.

(e) No treaty Indian shall fish for sockeye or pink salmon in U.S. Convention waters in that part of State Area 5 which extends easterly of a line drawn from Pillar Point on the Olympic Peninsula to Sheringham Point on Vancouver Island, and State Areas 6C, 6, 6A, 7, and 7A, with gill nets except from:

(1) July 15, 1979 to July 21, 1979, both dates inclusive, from 7:00 p.m. on Sunday evening to 9:30 a.m. on Thursday morning.

(2) July 22, 1979 to July 28, 1979, both dates inclusive, from 7:00 p.m. on Sunday evening to 9:30 a.m. on Thursday morning.

(3) July 29, 1979 to August 4, 1979, both dates inclusive, from 7:00 p.m. on Sunday evening to 9:30 a.m. on Thursday morning.

(4) August 5, 1979 to August 11, 1979, both dates inclusive, from 7:00 p.m. on Sunday evening to 9:30 a.m. on Wednesday morning.

(5) August 12, 1979 to August 18, 1979, both dates inclusive, from 7:00 p.m. on Sunday evening to 9:30 a.m. on Thursday morning.

(6) August 19, 1979 to September 8, 1979, both dates inclusive, from 6:00 p.m. on Sunday evening to 9:00 a.m. on Friday morning.

(7) September 9, 1979 to September 22, 1979, both dates inclusive, from 6:00 p.m. on Sunday evening to 9:00 a.m. on Wednesday morning.

(f) Notwithstanding the foregoing provisions, no treaty Indian shall fish for sockeye or pink salmon in U.S. Convention waters lying westerly and northerly of a straight line drawn from Iwerson's Dock on Point Roberts to Georgina Point Light at Active Pass, from August 26, 1979 to September 1, 1979, and from September 23, 1979 to October 6, 1979, all dates inclusive.

(g) Notwithstanding the foregoing provisions, no treaty Indian shall fish for sockeye or pink salmon in U.S. Convention waters lying westerly of a line projected true south from the Department of Fisheries marker on East Point Roberts to the intersection with the International Boundary, from September 2, 1979 to September 22, 1979, both dates inclusive.

(h) The foregoing regulations shall not apply to the following United States Convention waters:

(1) The waters of Area 7B lying easterly and inside of a line projected from Gooseberry Point on the Mainland due south to its intersection with Lummi Island (the Initiative 77 line), and then along the eastern shoreline of Lummi Island to Carter Point, then to the most northerly tip of Vendovi Island, then to Clark Point on Guemes Island, then to March Point on Fidalgo Island.

(2) State Areas 6B and 7C.

(3) Preserves previously established by the Director of Fisheries of the State of Washington for the protection and preservation of other species of food fish.

§ 256.18 Emergency orders.

(a) These regulations are subject to frequent change by emergency order, particularly with respect to permissible fishing times. Notice of the basis of the emergency and anticipated change will be transmitted immediately to the Northwest Indian Fisheries Commission for the treaty tribes, in order that the treaty tribes may amend tribal fishing regulations in response to the emergency.

(b) Notice of a change in these regulations and tribal regulations referred to in § 256.19 will be provided through the Northwest Indian Fisheries Commission and is available by calling the Northwest Indian Fisheries Hot-Line (1-800-562-6142). Emergency orders will be published in the Federal Register as quickly as possible.

(c) Emergency orders are effective at the time notice is provided to the Northwest Indian Fisheries Commission or as otherwise stated in the order, whichever time is later.

§ 256.19 Treaty tribe fishing regulations.

To the extent that they are consistent with this subpart, treaty tribe fishing regulations governing treaty Indian sockeye and pink salmon fishing in U.S. Convention waters during the time the Commission exercises control, which are approved under 25 CFR 256.2(b), and emergency orders under such treaty tribe fishing regulations, are incorporated herein and are effective for all purposes as part of this subpart.

§ 256.20 Unlawful possession.

No treaty Indian shall possess sockeye or pink salmon on board a fishing vessel which is engaged in a fishery for other species in U.S. Convention waters during the times Convention waters are closed to sockeye and pink salmon fishing by the regulations in this subpart.

§ 256.21 Forcible assault on enforcement officer.

No person fishing under this subpart shall assault, resist, oppose, impede, intimidate, or interfere with an enforcement officer engaged in enforcing this subpart.

[FR Doc. 79-20353 Filed 6-28-79; 8:45 am]
BILLING CODE 4310-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

29 CFR Parts 94, 95, 96, 97, 97a, 97b, 98, and 99

Comprehensive Employment and Training Act; Reference to New Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule (Reference to new regulations).

SUMMARY: This document adds a paragraph to each part of the predecessor CETA regulations appearing at 29 CFR Parts 94-99, and each subpart which covers a distinct program. The new paragraph references the new regulations implementing the reauthorized CETA which are being codified at 20 CFR Parts 675 *et seq.*

EFFECTIVE DATE: July 30, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Anderson, Administrator, Office of Comprehensive Employment Development, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213, telephone (202) 376-6254.

SUPPLEMENTARY INFORMATION: The Comprehensive Employment and Training Act was first enacted in 1973.

Pursuant to the authority granted in the statute, regulations were published at 29 CFR Parts 94–99. In October 1978 CETA was amended and its authorization extended. New regulations were published in the Federal Register (44 FR 19990 *et seq.*, April 3, 1979, to be codified at 20 CFR Parts 675 *et seq.).* These new regulations supplanted the former regulations at 29 CFR Parts 95, 96, and 99 and superseded the regulations at 29 CFR Parts 94 and 98 to the extent that they governed programs under titles II, VI, and VII of the Comprehensive Employment and Training Act of 1973 or were in conflict with the general provisions of the new regulations as set forth in 44 FR 19990 *et seq.*, April 3, 1979. Likewise, the regulations in Parts 97, 97a and 97b were superseded only to the extent that they were in conflict with the new statutory provisions or the general provisions of the new regulations.

Thus, parts 94, 97, 97a, 97b, and 98 were still in effect with respect to certain programs funded under titles of the former Act, and similar programs funded under transitional provisions in the reauthorized CETA, to the extent that they were not in conflict with the provisions of the reauthorized CETA or the requirements of the new regulations. At the present time, therefore, we propose to retain Parts 94, 97, 97a, 97b, and 98 in Title 29 of the Code of Federal Regulations until regulations to implement the new statutory provisions have been codified in Title 20 of the Code of Federal Regulations. We also propose to retain Parts 95, 96, and 99 in the interest of convenience in administration during the phasing out of the programs under the prior Act. Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

Accordingly, Title 29 of the Code of Federal Regulations is amended by adding a new paragraph (c) to § 94.1, a new paragraph (e) to § 95.1, a new paragraph (e) to § 96.1, a new paragraph (e) to § 97.1, a new paragraph (c) to § 97.102, a new paragraph (c) to § 97.202, a new paragraph (d) to § 97.302, a new paragraph (c) to § 97.501, a new paragraph (e) to § 97.601, a new paragraph (e) to § 97.701, a new paragraph (f) to § 97.900, a new paragraph (e) to § 97.1000, a new paragraph (d) to § 97.1100, a new paragraph (d) to § 97.1200, a new paragraph (e) to § 97a.1, a new paragraph (c) to § 97b.1, a new paragraph (d) to § 98.1, and a new paragraph (i) to § 99.1 as follows:

The regulations in this part govern programs funded under the Comprehensive Employment and Training Act of 1973 prior to amendment and reauthorization in 1978 (Pub. L. 95–524, 92 Stat. 1909), and are thus in many particulars superseded by regulations implementing the reauthorized Comprehensive Employment and Training Act, Pub. Law 95–524, 92 Stat. 1909, which are being codified at 20 CFR Parts 675 *et seq.* Any questions regarding the applicability of any particular regulation in Title 29 should be addressed to the Regional Administrator for the Employment and Training Administration.

Signed at Washington, D.C., this 26th day of June 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 79-20278 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552

[AR 405–15]

Regulations Affecting Military Reservations; Real Estate Claims Founded Upon Contract

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This amendment revises the policies and responsibilities concerning real estate claims founded upon contract. The regulation was rewritten to update the content and to make the text of the regulation easier to read and understand. The proposed rule was published in the Federal Register issue of February 6, 1979 (44 FR 7183) for comment. No comments were received; however, minor editorial corrections have been made in the content.

EFFECTIVE DATE: July 2, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. William P. Bannister (202) 693–6175 or write HQDA (DAEN–REM–C) WASH, DC 20314.

Note.—The Corps of Engineers has determined that the document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Date: June 1, 1979.

Thorwald R. Peterson,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

Accordingly, 32 CFR is amended by revising § 552.16 to read as follows:

§ 552.16 Real estate claims founded upon contract.

(a) *Purpose.* This regulation provides guidance in investigating and processing contractual claims involving real estate which are to be settled and adjusted by the General Accounting Office (GAO) according to the authority in paragraph (c) of this section. It is applicable to the active Army, Army National Guard, and the US Army Reserve.

(b) *Applicability.* This regulation applies to the following classes of contractual claims.

(1) Rent and payments for janitor, custodial, utility, and other similar contractual services.

(2) Damages founded upon express or implied contract.

(3) Permanent or recurring damages to real property situated in the United States or its territories, resulting in the Government taking of an interest in real estate for which compensation must be made according to the Fifth Amendment to the Constitution.

(c) *Statutory provision (except as otherwise provided by law).* All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the GAO (31 U.S. Code 71). The GAO discharges its settlement and adjusting responsibilities—

(1) Through the audit of transactions after payment.

(2) By adjudication before payment is made or denied.

(d) *Claims not payable.* The classes of claims that are not payable according to the authority in paragraph (c) of this section are—

(1) Damages to real property sounding in tort and not constituting a taking.

(2) Damages arising in foreign countries which could not be settled under Chapter 10, AR 27–20, if otherwise applicable, because they—

(i) Result from combat activities.

(ii) Are waived or assumed by a foreign government.

(iii) Are brought by a foreign national excluded in paragraph 10–8b(1), AR 27–20.

(3) Claims which must be settled by some other procedure according to statute, determination of GAO, or

provision in the contract on which the claim is founded.

(e) *Claims payable under contract.* When claims are founded on express or legally implied provisions of an existing written contract, and if liability and the amount thereof are certain and agreed between the parties, they should be paid according to the contract or supplemental agreement thereto. Rental claims based on still-continuing Government use and occupancy not under lease may be avoided by negotiation of a lease effective from the date Government occupancy begins.

(f) *Claims cognizable under other regulations.*

(1) The procedure believed to be in the best interest of the Government should be followed if a claim under this regulation is also cognizable under—

(i) Chapter 3, AR 27–20 as a claim for damages incident to noncombat activities of the Army.

(ii) Chapter 10, AR 27–20 as a foreign claim.

(2) If a real estate claim under this regulation includes an incidental claim for damages to personal property not founded on contract, the entire claim may be—

(i) Processed under this regulation.

(ii) Processed separately under other regulations, believed to be in the best interest of the Government.

(g) *Claims to be submitted.* Section 5 of title 4, GAO Manual for Guidance of Federal Agencies (cited as 4 GAO 5.1) lists the following categories of claims of a contractual nature to be submitted for settlement (letters of transmittal will indicate the applicable category):

(1) Claims involving doubtful questions of law or fact. This will include any claims based upon a taking and contractual claims which could be settled administratively except for the doubt.

(2) Claims required by statute, regulation, or decision of the Comptroller General to be submitted.

(3) Reclaims of items for which payment under contract has been administratively denied, unless it is determined administratively that the action taken was clearly in error and properly can be corrected by the agency which denied the claim.

(4) Claims barred by statute of limitation. These claims may be forwarded without investigation, except when needed to establish time of accrual.

(h) *Time for filing claims.* Claims cognizable by GAO are barred if not received in that office within 6 years after the date of accrual. A claim which may be barred in the near future should be transmitted directly, preferably within 4 years of the date of accrual, to GAO for filing, with a request that it be returned for further processing.

(i) *Procedures.* (1) Claims for investigation and report will be forwarded to the office of the Division of District Engineer having real estate responsibility over the area in which the involved real property is located. In the absence of such an office, the claims will be forwarded to the command responsible for the lease or other contract on which the claim is founded.

(2) The responsible office—

(i) Will appoint a claims officer to conduct the investigation and prepare the report as outlined in AR 27–20.

(ii) When appropriate, may request a command more conveniently located to appoint the claims officer.

(iii) Will have a staff attorney or staff judge advocate review the completed report.

(iv) Will approve or disapprove the report.

(v) Will forward the report (in three copies) through channels to the Chief of Engineers (HQDA DAEN–REM) WASH DC 20314).

(3) The report will include—

(i) The original signed claim, preferably but not necessarily on Standard Form 95 (Claim for Damage or Injury). It will be itemized when applicable, and for a sum certain.

(ii) Any supporting evidence the claimant desires to submit.

(iii) A certified voucher, stating the citation of funds to be charged if the responsible office submitting the claim recommends payment in whole or in part.

(4) The letter of transmittal will include—

(i) A brief statement of the essential facts giving rise to the claim.

(ii) The category in paragraph (g) under which the claim is forwarded for settlement by GAO under 31 U.S. Code 71.

(iii) A recommendation for allowance or disallowance with justification.

(iv) Fiscal information required by paragraph 11–51, AR 37–103, including a citation of funds to be charged if payment is made.

(v) A statement that the claim has not been and will not be paid except according to certification in the name of the Comptroller General.

(31 U.S.C. 71)

[FR Doc. 79–20163 Filed 6–28–79; 8:45 am]

BILLING CODE 3710–08–M

OFFICE OF MANAGEMENT AND BUDGET

34 CFR Part 1

OMB and Federal Management Circulars

AGENCY: Office of Management and Budget.

ACTION: Notice of basic functions and listing of current circulars.

SUMMARY: The Office of Management and Budget has certain functions delegated by the President. These are listed along with certain policy guidelines issued to Federal agencies by OMB.

This document lists the circulars currently in effect as a service to the public.

EFFECTIVE DATE: July 1, 1979.

ADDRESS: Copies of individual circulars may be obtained from: Office of Administration, Publications Unit, Room G–236, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David R. Leuthold, Phone (202) 395–7250.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget was established in the Executive Office of the President pursuant to Reorganization Plan 2 of 1970, effective July 1, 1970.

By Executive Order 11541 of July 1, 1970, all functions transferred to the President of the United States by part I of Reorganization Plan 2 of 1970 were delegated to the Director of the Office of Management and Budget. Such functions are to be carried out by the Director under the direction of the President. Reorganization Plan No. 1 of 1977 and Executive orders issued pursuant to that plan amended further the functions of the Office. The Office's functions include the following:

To assist the President in his program to develop and maintain effective government by reviewing the organizational structure and management procedures of the executive branch to ensure that they are capable of producing the intended results;

To assist in developing efficient coordinating mechanisms to implement Government activities and to expand interagency cooperation;

To assist the President in the preparation of the budget and the formulation of the fiscal program of the Government;

To supervise and control the administration of the budget;

To assist the President by clearing and coordinating departmental advice on proposed legislation and by making recommendations as to Presidential action on legislative enactments, in accordance with past practice;

To assist in the development of regulatory reform proposals and in programs for paperwork reduction, especially reporting burdens of the public;

To assist in the consideration and clearance and, where necessary, in the preparation of proposed Executive orders and proclamations;

To plan and develop information systems to provide the President with program performance data;

To plan, conduct, and promote evaluation efforts to assist the President in the assessment of program objectives, performance, and efficiency;

To keep the President informed of the progress of activities by agencies of the Government with respect to work proposed, work actually initiated, and work completed, together with the relative timing of work between the several agencies of the Government all to the end that the work programs of the several agencies of the executive branch of the Government may be coordinated and that the moneys appropriated by the Congress may be expended in the most economical manner with the least possible overlapping and duplication of effort.

The Office of Federal Procurement Policy Act (88 Stat. 796; 41 U.S.C. 401) established the Office of Federal Procurement Policy (OFPP) within the Office of Management and Budget to improve the economy, efficiency, and effectiveness of the procurement processes by providing overall direction of procurement policies, regulations, procedures, and forms. The establishment of the OFPP implemented the first recommendation made by the Commission on Government Procurement (COGP) in its report to Congress in December 1972. The OFPP authority applies to procurement by executive agencies and recipients of Federal grants or assistance of: property, other than real property in being; services, including research and development; and construction, alteration, repair, or maintenance of real property.

David R. Leuthold,

Budget and Management Officer.

34 CFR Chapter I is amended by adding Part 1 to read as follows:

PART 1—OMB AND FEDERAL MANAGEMENT CIRCULARS

Sec.

1.1 Policy guidelines.
1.3 Availability of circulars.
1.5 List of current circulars.

Authority: EO 11541, 35 FR 10737, 3 CFR, 1966–1970 Comp., p. 939.

§ 1.1 Policy guidelines.

In carrying out its responsibilities, the Office of Management and Budget issues policy guidelines to Federal agencies to promote efficiency and uniformity in Government activities. These guidelines are normally in the form of circulars.

§ 1.3 Availability of circulars.

We believe, for public awareness purposes, that publishing the following list of current circulars is worthwhile. Copies of individual circulars may be obtained by writing to the Office of Administration, Publications Unit, Room G–236, New Executive Office Building, Washington, D.C. 20503, or by calling 202–395–4660.

§ 1.5 List of current circulars.

(a) This index arranges the current OMB Circulars and Federal Management Circulars under OMB jurisdiction by key words in the titles of the directives and by a limited number of broader captions. Those Circular Nos. preceded with 73–, 74–, and 75– designate FMC's.

(b) This list includes all circulars in effect as of July 1, 1979.

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[FR Doc. 79-20162 Filed 6-28-79; 8:45 am]

BILLING CODE 3110-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 9

Non-Federal Oil and Gas Rights; Comprehensive Regulations; Correction

AGENCY: National Park Service, Department of the Interior.

ACTION: Corrections to final rule.

SUMMARY: This rule makes corrections to the National Park Service final regulations concerning non-Federal oil and gas rights. This regulation was published in the Federal Register as FR Doc. 78-34412, at 43 FR 57822, Dec. 8, 1978.

FOR FURTHER INFORMATION CONTACT: Larry A. May, (303) 234-6070; or, Stanley R. Clark, (202) 343-3919.

SUPPLEMENTARY INFORMATION: By this action corrections are made in Federal Register Docmument 78-34412 appearing at pages 57822-57832 in the Federal Register of December 8, 1978. A substantial proportion of the corrections made are necessary to conform the reference in the regulations to the new subdivisions of Part 9 of Title 36 CFR. Certain of the corrections are to rectify typographical or format errors. Finally, numbers 2, 13, and 15 are technical rewordings or additions designed to clarify the intent of the regulations. Number 2 rewords the first sentence of § 9.30(a) to make it consistent with the definition of "operations" at § 9.31(c). By number 13, paragraphs (1)-(3) of § 9.38(b) are rearranged to reflect the intended relationship among these requirements. Finally, number 15 adds a phrase to § 9.48(e) to clarify that this provision regarding the abandonment of wells is not to apply in a situation where a well has not been drilled.

Dated: June 26, 1979.

Ira J. Hutchison,

Deputy Director, National Park Service.

In order to eliminate errors in and clarify the intent of the regulations in Subpart B of 36 CFR, Part 9 as promulgated in FR Doc. 78-34412 appearing in the Federal Register of December 8, 1978 at pages 57882-57832, the following corrections are made:

1. In the third column of page 57825, delete the following: "Subpart C—Oil & Gas Leasing, 9.60 through 9.99 (Reserved), Subpart D—Minerals Other than Oil and Gas Leasing Containing, 9.100 through 9.139 (Reserved)"

2. On page 57826, reword the first sentence of § 9.30(a) as follows: "These regulations control all activities within any unit of the National Park System in the exercise of rights to oil and gas not owned by the United States where access is on, across or through federally owned or controlled lands or waters."

3. On page 57826, in the first line of § 9.31, delete "Part" and insert in its place "Subpart".

4. On page 57826, in the eighth line of § 9.31(c), delete "Part" and insert in its place "Subpart".

5. On page 57827, in § 9.33(b)(1), delete "(" preceding "within" and insert "(" in the second line between "of" and "effective".

6. On page 57827, in the first line of § 9.33(b)(3) and in the third line of § 9.33(c), delete the first "§".

7. On page 57827, in the tenth line of § 9.33(c), insert "," following the word "suspension".

8. On page 57828, in the last line of § 9.36(a)(11), delete "Part" and insert in its place "Subpart".

9. On page 57828, in the last line of § 9.36(a)(17), following ";" insert "and".

10. On page 57828, in the last line of § 9.36(a)(18), delete "; and" and insert ".".

11. On page 57828, in the fifth line of § 9.36(c), delete the first "§".

12. On page 57829, in the last line of § 9.37(b)(6), delete the first "§".

13. On page 57829, rearrange § 9.38(b) to read as follows: "(b) The Regional Director may approve new operations on a temporary basis only when:

(1) The Regional Director finds that the operations will not cause significant environmental damage or result in significant new or additional surface disturbance to the unit; and either

(2) The operator can demonstrate a compelling reason for the failure to have had timely approval of a proposed plan of operations; or

(3) The operator can demonstrate that failure to grant such approval will result in an unreasonable economic burden or injury to the operator."

14. On page 57830, in § 9.41(e) at line 8, delete "protected" and substitute "protection".

15. On page 57831, in the seventh line of § 9.48(e), insert ", where a well has been drilled," between "and" and "the".

16. On page 57831, in the first and second lines of § 9.48(f), correct the spelling of the word "determining".

17. On page 57831, at § 9.49, in line four of paragraph (a) and line one of paragraph (f), delete "Part" and insert in its place "Subpart".

18. On page 57832, in § 9.51(c) at line three, delete "Part" and insert in its place "Subpart".

19. On page 57832, in the third and tenth lines of § 9.52(c), delete "Part" and insert in its place "Subpart".

20. On page 57832, near the end of the second column, reword the title of Subpart D as follows: "Subpart D—Leasing of Minerals Other than Oil and Gas, §§ 9.100 through 9.139 (Reserved).

[FR Doc. 79-20320 Filed 6-28-79; 8:45 am]
BILLING CODE 4310-70-M

POSTAL SERVICE

39 CFR Part 111

Express Mail Metro Service—Additional Metropolitan Areas

AGENCY: Postal Service.

ACTION: Notice of additional expansion of temporary implementation for Express Mail Metro Service.

SUMMARY: Supplementing prior notices in the Federal Register on April 19, 1979 (44 FR 23396), June 8, 1979 (44 FR 33068), June 15, 1979 (44 FR 34497), and June 22, 1979 (44 FR 36434), the Postal Service hereby gives notice that temporary implementation of Express Mail Metro Service will be expanded to include the metropolitan areas of Boston, Massachusetts and Newark, New Jersey.

Notice 77, *Express Mail Metro Service Directory,* for the selected metropolitan areas may be obtained at participating post offices.

EFFECTIVE DATE: July 9, 1979 and until such time as the Postal Rate Commission submits a recommended decision to the Governors of the Postal Service and appropriate action is taken.

(39 U.S.C. 401, 403, 404, 3621, 3623, 3641)

Fred Eggleston,

Acting Assistant General Counsel.

[FR Doc. 79-20186 Filed 6-28-79; 8:45 am]
BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[FRL-1234-5]

National Primary and Secondary Ambient Air Quality Standard for Lead; Correction

AGENCY: Environmental Protection Agency.

ACTION: Correction to final rule.

SUMMARY: This document corrects FR Doc. 78-28050 regarding the national primary and secondary ambient air quality standard for lead, which appeared at page 46246 in the Federal Register of Thursday, October 5, 1978.

FOR FURTHER INFORMATION CONTACT: Mr. Larry J. Purdue, Department E (MD-77), Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, (919) 541-2665, (FTS: 629-2665).

Appendix G to 40 CFR Part 50 is corrected as follows:

1. On page 46260, step 7.1 is corrected by changing reference 17 to reference 16.

2. On page 46260, step 7.2.1.1 is corrected to read as follows:

7.2.1.1 Cut a ¾" x 8" strip from the exposed filter using a template and a pizza cutter as described in Figures 1 and 2. Other cutting procedures may be used.

Lead in ambient particulate matter collected on glass fiber filters has been shown to be uniformly distributed across the filter.[1,3,11] Another study [12] has shown that when sampling near a roadway, strip position contributes significantly to the overall variability associated with lead analyses. Therefore, when sampling near a roadway, additional strips should be analyzed to minimize this variability.

3. On page 46260, steps 10.1 and 10.2 are corrected by deleting 10.2 and changing 10.1 to read as follows:

10.1 Measured air volume. Calculate the measured air volume at Standard Temperature and Pressure as described in Reference 10.

4. On pages 46260 and 46261, step 10.3 is corrected by changing 10.3 to 10.2 and correcting lines 9 and 10 to read as follows:

12 strips = Total usable filter area 8" × 9"
filter = Total area of one strip ¾ × 8"

5. On page 46261 the References are corrected by deleting reference 16 and changing reference 17 to reference 16.

Dated: May 18, 1979.

H. M. Bills.

Acting Assistant Administrator for Research and Development.

[FR Doc. 79-20369 Filed 6-28-79; 8:45 am]
BILLING CODE 6560-01-M

40 CFR Parts 51, 53, and 58

[FRL 1235-3]

Ambient Air Monitoring Reference and Equivalent Methods for Lead

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency amends existing ambient air monitoring regulations to allow the designation of equivalent methods for measuring atmospheric lead concentrations. The intended effect is to provide alternatives to the reference method for measuring atmosphere lead concentrations.

EFFECTIVE DATE: July 30, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Larry J. Purdue, Telephone (919) 541-2665 (FTS: 629-2665).

ADDRESS: Department E (MD-77), Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION: On October 5, 1978, EPA promulgated national primary and secondary ambient air quality standards for lead (Federal Register, October 5, 1978, page 46246). These new lead standards require that lead be measured as elemental lead, either by the reference method described in Appendix G of 40 CFR Part 50 of this chapter or by an "equivalent method."

In that same issue of the Federal Register (43 FR 46272), EPA proposed to amend existing ambient air monitoring regulations pertaining to reference and equivalent methods (primarily contained in 40 CFR Part 53). The proposed amendments were intended to provide the necessary and appropriate changes to 40 CFR Parts 51 and 53 to allow the designation of equivalent methods for measuring atmospheric lead concentrations. Interested persons were

invited to comment on any aspect of the proposed amendments.

Public Comments

EPA received comments from three respondents on the proposed amendments. The comments were generally supportive but suggested several specific technical changes in some of the specifications. One general comment suggested that the test specifications might be too rigid to allow designation of any candidate equivalent methods. EPA based the proposed test specifications on analyses of test data from the reference method as well as from several candidate equivalent methods. Hence, EPA believes the specifications are appropriately set and that no changes to them are necessary.

Another comment suggested deletion of the requirements that the test site be in a "predominantly urban area" and that it be justified. These suggestions were rejected because one of the principal objectives of the consistent relationship test is to include possible interferents in the test samples, which requires that the test site or sites be in predominantly urban areas. An associated comment recognized that particle size may have an effect on the reference method and suggested a site restriction based on particle size effects. EPA believes the requirement that the site be near a heavily traveled roadway adequately avoids possible effects from large particle sizes, is more explicit, and is consistent with the SIP siting requirements. However, in response to another comment that the test site may need to be closer than 5 meters from the edge of the roadway, EPA has deleted the specific distance requirements (as well as the height above ground level requirements) as unnecessarily specific and instead is requiring that the site simply be "near" enough to a roadway to obtain lead concentrations in the required range of 0.5 to 4 $\mu g/m^3$.

Two respondents suggested that the relative locations of the reference and candidate samplers be more explicitly specified to insure that they both receive identical samples. EPA agrees and has revised paragraph 53.30 (d)(3) to require that the two samplers be located at the same distance from the source and the same distance above ground, as suggested. EPA rejected another comment to extend the upper range limit from 4 to 7.5 $\mu g/m^3$ on the grounds that the lower range limit better represents the concentrations likely to be found in the ambient air. A final comment pointed out that the test site requirements precluded tests near many point sources. This comment was also rejected because its is EPA's specfic intent to avoid testing near certain industrial point sources because of possible effects of large particle size on the reference method and the lack of a requirement for point source monitoring.

Other Changes

One of the amendments proposed a revision to section 40 CFR 51.17a to allow methods for lead previously in use to continue in use until February 18, 1980. However, subsequent to publication of the proposed amendments, section 51.17a has been revoked and replaced by similar requirements in Appendix C of a new Part 58 (Federal Register, May 10, 1979, page 27584). Hence, this amendment now appears as an addition to paragraph 2.2 of Appendix C of the new Part 58. Also, due to unforeseen delay in promulgating these amendments, the original deadline date has become inadequate and is being extended to one year following the effective date of these amendments.

Finally, EPA recognized that compositing of lead samples prior to analysis to obtain a quarterly average, as allowed by 40 CFR 51.17b(h) (43 FR 46269), could cause inaccurate results if the compositing procedure is poor. Since the reference method for lead (43 FR 46258–46263) does not provide for compositing, EPA views any such procedure for compositing as a user modification for which approval under 40 CFR Part 58, Appendix C, section 2.7 is required. Accordingly, § 51.17b(h) is being revised to clarify that compositing procedures must be approved under Appendix C of Part 58.

Accordingly, with these changes, the proposed amendments are adopted as set forth below.

(Secs. 110, 301(a), Clean Air Act as amended (42 U.S.C. 7410, 7601))

Dated: June 19, 1979.

Douglas M. Costle,

Administrator.

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

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. In § 51.17b, paragraph (h) is revised to read as follows:

§ 51.17b Air quality surveillance: Lead.

* * * * *

(h) In lieu of analyzing individual samples, lead concentration measurements may be obtained by analysis of sample composites collected over a calendar month or quarter, provided that the compositing procedure has been approved in accordance with section 2.8 of Appendix C to Part 58 of this chapter—*Modifications of Methods by Users.* (Guidance or assistance in requesting approval under that section can be obtained from the address given in section 2.7 of Appendix C to Part 58 of this chapter.)

* * * * *

PART 53—AMBIENT AIR MONITORING REFERENCE AND EQUIVALENT METHODS

2. In § 53.30 the last sentence of paragraph (a) is deleted and new subparagraphs (1) and (2) are added; and paragraphs (b), (c), (d), and (e) are revised to read as follows:

§ 53.30 General provisions.

(a) * * *

(1) A consistent relationship is shown for SO_2, CO, O_3, and NO_2 methods when the differences between: (i) Measurements made by a candidate manual method or by a test analyzer representative of a candidate automated method, and (ii) measurements made simultaneously by a reference method are less than or equal to the value specified in the last column of table C–1.

(2) A consistent relationship is shown for lead methods when the differences between: (i) Measurements made by a candidate method, and (ii) measurements made simultaneously by the reference method are less than or equal to the value specified in table C–3.

(b) *Selection of test sites.*—(1) *All methods.* Each test site shall be in a predominately urban area which can be shown to have at least moderate concentrations of various pollutants. The site shall be clearly identified and shall be justified as an appropriate test site with suitable supporting evidence such as maps, population density data, vehicular traffic data, emission inventories, pollutant measurements from previous years, concurrent pollutant measurements, and wind or weather data. If desired, a request for approval of the test site or sites may be submitted prior to conducting the tests. The Administrator may in his discretion select a different site (or sites) for any additional tests he decides to conduct.

(2) *Methods for gaseous pollutants.* All test measurements are to be made at the same test site. If necessary, the concentration of pollutant in the sampled ambient air may be augmented with artificially generated pollutant to facilitate measurements in the specified

ranges. (See paragraph (d)(2) of this section.)

(3) *Methods for lead.* Test measurements may be made at any number of test sites. Augmentation of pollutant concentrations is not permitted, hence an appropriate test site or sites must be selected to provide lead concentrations in the specified range. Test sites for lead measurements must be located near a heavily traveled roadway.

(c) *Test atmosphere.* Ambient air sampled at an appropriate test site shall be used for these tests. Simultaneous concentration measurements shall be made in each of the concentration ranges specified in table C–1 or table C–3.

(d) *Sample collection.*—(1) *All methods.* All test concentration measurements or samples shall be taken in such a way that both the candidate method and the reference method receive air samples that are homogenous or as nearly identical as practical.

(2) *Methods for gaseous pollutants.* Ambient air shall be sampled from a common intake and distribution manifold designed to deliver homogenous air samples to both methods. Precautions shall be taken in thd design and construction of this manifold to minimize the removal of particulates and trace gases, and to insure that identical samples reach to two methods. If necessary, the concentration of pollutant in the sampled ambient air may be augmented with artificially generated pollutant. However, at all times the air sample measured by the candidate and reference methods under test shall consist of not less than 80 percent ambient air by volume. Schematic drawings, physical illustrations, descriptions, and complete details of the manifold system and the augmentation system (if used) shall be submitted.

(3) *Methods for lead.* The intake points of the candidate and reference samplers for lead shall be located at the same height, at the same distance from the source, and between 3 and 5 meters apart.

(4) *Methods employing a common sampling procedure.* Candidate methods which employ a sampler and sample collection procedure which are identical to the sampler and sample collection procedure specified in the reference method may be tested by analyzing common samples in accordance with the candidate and reference analysis procedures. The common samples are to be collected according to the sample collection procedure specified by the reference method, and must be divided such that identical portions are analyzed by the analysis procedures of the two methods.

(e) *Submission of test data and other information.* All recorder charts, calibration data, records, test results, procedural descriptions and details, and other documentation obtained from (or pertinent to) these tests shall be identified, dated, signed by the analyst performing the test, and submitted.

3. In § 53.31, paragraphs (a), (c), and (d)(1) are revised to read as follows:

§ 53.31 Test conditions.

(a) *All methods.* All test measurements made or test samples collected by means of a sample manifold as specified in § 53.30(d)(2) shall be at a room temperature between 20° and 30° C, and at a line voltage between 105 and 125 volts. All methods shall be calibrated as specified in paragraph (c) of this section prior to initiation of the tests.

(b) * * *

(c) *Calibration.* The reference method shall be calibrated according to the appropriate appendix to part 50 of this chapter (if it is a manual method) or according to the applicable operation manual(s) (if it is an automated method). A candidate manual method (or portion thereof) shall be calibrated if such calibration is a part of the method. * * *

(d) *Range.* (1) Except as provided in paragraph (d)(2) of this section, each method shall be operated in the range specified for the reference method in the appropriate appendix to part 50 (for manual reference methods), or specified in table B–1 of this part (for automated reference methods).

4. In § 53.32, the title of the section is revised to read as follows:

§ 53.32 Test procedures for gaseous pollutants.

* * * * *

5. Section 53.33 is added to read as follows:

§ 53.33 Test procedure for lead methods.

(a) *Sample collection.* Collect simultaneous 24-hour samples (filters) of lead at the test site or sites with both the reference and candidate methods until at least 10 filter pairs have been obtained. If the conditions of § 53.30(d)(4) apply, collect at least 10 common samples (filters) in accordance with § 53.30(d)(4) and divide each to form the filter pairs.

(b) *Audit samples.* Three audit samples must be obtained from the Director, Environmental Monitoring and Support Laboratory, Department E, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711. The audit samples are ¾ × 8-inch glass fiber strips containing known amounts of lead at the following nominal levels: 100 μg/strip; 300 μg/strip; 750 μg/strip. The true amount of lead in total μg/strip will be provided with each audit sample.

(c) *Filter analysis.* (1) For both the reference method and the audit samples, analyze each filter extract 3 times in accordance with the reference method analytical procedure. The analysis of replicates should not be performed sequentially (i.e., and single sample should not be analyzed three times in sequence). Calculate the indicated lead concentratons for the reference method samples in $\mu g/m^3$ for each analysis of each filter. Calculate the indicated total lead amount for the audit samples in μg/strip for each analysis of each strip. Label these test results as R_{1A}, R_{1B}, R_{1C}, R_{2A}, R_{2B}, . . ., Q_{1A}, Q_{1B}, $_{1C}$, ..., where R denotes results from the reference method samples; Q denotes results from the audit samples; 1, 2, 3 indicates filter number and A, B, C indicates the first, second, and third analysis of each filter, respectively.

(2) For the candidate method samples, analyze each sample filter or filter extract three times and calculate, in accordance with the candidate method, the indicated lead concentration in $\mu g/m^3$ for each analysis of each filter. Lable these test results as C_{1A}, C_{1B}, C_{2C}, . . ., where C denotes results from the candidate method. (For candidate methods which provide a direct measurement of lead concentrates without a separable procedure, $C_{1A}=C_{1B}=C_{1C}$, $C_{2A}=C_{2B}=C_{2C}$, etc.)

(d) For the reference method, calculate the average lead concentration for each filter by averaging the concentrations calculated from the three analyses:

$$R_{i\ ave} = \frac{R_{iA} + R_{iB} + R_{iC}}{3},$$

where i is the filter number.

(e) Disregard all filter pairs for which the lead concentration as determined in the previous paragraph (d) by the average of the three reference method determinations, falls outside the range of 0.5 to 4.0 $\mu g/m^3$. All remaining filter pairs must be subjected to both of the following tests for precision and consistent relationship. At least five filter pairs must be within the 0.5 to 4.0 $\mu g/m^3$ range for the tests to be valid.

(f) *Test for precision.* (1) Calculate the precision (P) of the analysis (in percent) for each filter and for each method, as the maximum minus the minimum

divided by the average of the three concentration values, as follows:

$$P_{Ri} = \frac{R_i \text{ max} - R_i \text{ min}}{R_i \text{ ave}} \times 100\%, \text{ or}$$

$$P_{Ci} = \frac{C_i \text{ max} - C_i \text{ min}}{C_i \text{ ave}} \times 100\%,$$

where i indicates the filter number.

(2) If any reference method precision value (P_{Ri}) exceeds 15 percent, the precision of the reference method analytical procedure is out of control. Corrective action must be taken to determine the source(s) of imprecision and the reference method determinations must be repeated according to paragraph (c) of this section, or the entire test procedure (starting with paragraph (a)) must be repeated.

(3) If any candidate method precision value (P_{Ci}) exceeds 15 percent, the candidate method fails the precision test.

(4) The candidate method passes this test if all precision values (i.e., all P_{Ri}'s and all P_{Ci}'s) are less than 15 percent.

(g) *Test for accuracy.* (1) For the audit samples calculate the average lead concentration for each strip by averaging the concentrations calculated from the three analyses:

$$Q_i \text{ ave} = \frac{Q_{iA} + Q_{iB} + Q_{iC}}{3},$$

where i is audit sample number.

Proposed Rules

Calculate the percent difference (D_q) between the indicated lead concentration for each audit sample and the true lead concentration (T_q) as follows:

$$D_{qi} = \frac{Q_i \text{ ave} - T_{qi}}{T_{qi}} \times 100$$

(2) If any difference value (D_{qi}) exceeds ±5 percent the accuracy of the reference method analytical procedure is out of control. Corrective action must be taken to determine the source of the error(s) (e.g., calibration standard discrepancies, extraction problems, etc.) and the reference method and audit sample determinations must be repeated according to paragraph (c) of this section or the entire test precedure (starting with paragraph (a)) must be repeated.

(h) *Test for consistent relationship.* (1) For each filter pair, calculate all nine possible percent differences (D) between the reference and candidate methods, using all nine possible combinations of the three determinations (A, B, and C) for each method, as:

$$D_{in} = \frac{C_{ij} - R_{ik}}{R_{ik}} \times 100\%, \text{ where}$$

i is the filter number, and n

numbers from 1 to 9 for the nine possible difference combinations for the three determinations for each method (j= A, B, C, candidate; k= A, B, C, reference).

(2) If none of the percent differences (D) exceeds ±20 percent, the candidate method passes the test.

(3) If one or more differences (D) exceeds ±20 percent, the candidate method fails the test for consistent relationship.

(i) The candidate method must pass both the precision test and the consistent relationship test to qualify for designation as an equivalent method.

Table C-3—Test Specifications for Lead Methods

Concentration range, μg/m³	0.5 to 4.0
Minimum number of 24-hr measurements	5
Maximum analytical precision, percent	15
Maximum analytical accuracy, percent	±5
Maximum difference, percent of reference method	±20

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

6. In Appendix C. paragraph 2.2 is amended by adding a new sentence pertinent to methods for lead, to read as follows:

Appendix C—Ambient Air Quality Monitoring Methodology

* * * * *

2.0 State and Local Air Monitoring Stations (SLAMS)

2.1 * * *

2.2 Any analyzer for SO_2, CO, or O_3, purchased before February 18, 1976, may be used in a SLAMS until February 18, 1980. Any analyzer for NO_2 purchased before January 3, 1978, may be used in a SLAMS until January 3, 1980. Any method for lead in use before June 6, 1979, may be used in a SLAMS until June 6, 1980.

[FR Doc. 79-20238 Filed 6-28-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 180

[FRL 1258-6; OPP 260033]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Editorial Amendments

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule makes nonsubstantive changes to certain pesticide regulations. These amendments to the regulations are made on the initiative of the Agency or at the request of interested parties. This rule editorially amends certain pesticide regulations.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Gross, Office of Toxic Substances (TS-757), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC 20460 (202/426-2432).

SUPPLEMENTARY INFORMATION: Periodically, minor changes, corrections, and additions are required to update, clarify, and correct the Agency's pesticide regulations in Title 40, Part 180. Accordingly, this regulation makes such changes.

Since these changes are nonsubstantive in nature and merely reflect the corrected and updated record, notice and public rulemaking procedures under the Administrative Procedure Act [5 U.S.C. 553(b)(B)] are not prerequisite to the promulgation of this regulation. Therefore, effective on the date of publication in the Federal Register, 40 CFR 180 is amended as set forth below.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: June 21, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

1. FR Doc. 76-19306 appearing at page 27355 in the issue of Friday, July 2, 1976, inadvertently omitted the tolerance of 0.2 part per million in or on potatoes in amending section 180.142 *2, 4-D; tolerances for residues.* The tolerance of 0.2 ppm is hereby reinstated at the end of paragraph (a) to read as follows:

§ 180.142 2, 4-D; tolerances for residues.

* * * * *

(a) * * *

0.2 part per million in or on potatoes.

* * * * *

2. In section 180.154, the chemical name of the pesticide is misspelled in the heading and text. The chemical name is therefore corrected as follows:

§ 180.154 0,0-Dimethyl S-[(4-oxo-1, 2, 3-benzotriazin-3(4H)-yl)methyl] phosphorodithioate; tolerances for residues.

Tolerances for residues of the insecticide *0,0*-dimethyl *S-[(4-oxo-1,2,3-benzotriazin-3(4H)-yl)methyl] phosphorodithioate* * * *

* * * * *

3. On page 437 of the 1978 Code of Federal Regulations (40 CFR 180), at the top right-hand column, the section number has been omitted from the heading, and the chemical name of the pesticide is incorrect in the heading and text. Therefore, the section is amended by inserting the section number 180.154a in the heading and by correcting the spelling of the chemical name in the heading and text, as follows:

§ 180.154a 0,0-Dimethyl S-[(4-oxo-1, 2, 3—benzotriazin-3(4H)-yl)methyl] phosphorodithioate residues and/or its metabolites in milk.

A tolerance of 0.04 part per million (negligible residue) is established for residues of *0,0*-dimethyl *S*-[(4-oxo-1, 2, 3-benzotriazin-3(4*H*)-yl) methyl] phosphorodithioate * * *.

4. In FR Doc. 79–8589 appearing at page 17159 in the issue of Wednesday, March 21, 1979, section 180.209 was amended by adding a tolerance for residues of terbacil in or on caneberries at 0.1 part per million (ppm). The amendment did not specify that the tolerance was to be added to paragraph (b). Therefore, the amendment is corrected to read as follows:

§ 180.209 Terbacil; tolerances for residues.

* * * * *

(b) * * *

Commodity:	*Parts per* million
* * * * *	
Caneberries (blackberries, boysenberries, dewberries, loganberries, raspberries, and youngberries)	0.1

* * * * *

§ 180.213a [Amended]

5. Section 180.213a *Simazine; tolerances for residues* is amended by changing the spelling of the chemical name in the third line of the introductory paragraph to read "(2-chloro-4,6-bis (ethylamino)-s-triazine)."

§180.225 [Amended]

6. Section 180.225 *Aluminum phosphide; tolerances for residues* is amended by deleting the paragraphs "0.1 part per million in or on * * * and "0.01 part per million in or on * * *" because they are redundant.

§180.326 [Amended]

7. Section 180.326 *Dialifor; tolerances for residues* is amended by changing the spelling of the chemical name in the third line of the introductory paragraph to read "(*S*-[2-chloro-1-naphthalimidoethyl) *0,0*-diethyl phosphorodithioate."

§180.329 [Amended]

8. Section 180.329 *Dypropetryn; tolerances for residues* is amended by changing the common name of the pesticide in the heading to read "Dipropetryn" and by changing the common name of the pesticide in the second line of the text to read "dipropetryn."

§180.377 [Amended]

9. Section 180.377 *Cyano (3-phenoxyphenyl) methyl-4-chloro-α-(methylethyl) benzeneacetate; tolerances for residues* is redesignated as section 180.379 and the spelling of the chemical name in the second line of the introductory text is changed to read "Cyano (3-phenoxyphenyl) methyl-4-chloro-α-(methylethyl) benzeneacetate."

§180.355 [Amended]

10. Section 180.355 *Bentazon; tolerances for residues* is amended by changing the spelling of the chemical name in the third line of paragraph (a) to read "(3-isopropyl-1*H*-2 ,1, 3-benzothiadiazin-4(3*H*)-one-2, 2-dioxide)."

11. In section 180.1001, paragraph (c) is amended by revising the item "Kaolinite-type clay * * *" to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * *		
Kaolinite-type clay		Solid diluent, carrier.
* * * * *		

12. Some of the pesticide chemicals in the alphabetical listing of pesticide chemicals in 40 CFR 180 are not in correct alphabetical order. Therefore, the alphabetical order of these pesticide chemicals is corrected to read as follows:

a. The two pesticide chemicals after the pesticide chemical Biphenyl are alphabetically relisted to read as follows:

Alphabetical Listing of Pesticide Chemicals

Name	Section No.
* * * * *	
1,1-Bis(p-chlorophenyl)-2,2,2-trichloroethanol	180.163
2,4-Bis(isopropylamino)-6-methylthio-S-triazine	180.222
* * * * *	

b. The five pesticide chemicals after the pesticide chemical Butralin are alphabetically relisted to read as follows:

Alphabetical Listing of Pesticide Chemicals

Name	Section No.
* * * * *	
Sec-butylamine	180.321
2-(Sec-butylamino)-4-ethylamino-6-methoxy-S-triazine	180.323
2-Tert-butylamino-4-ethylamino-6-methylthio-S-triazine	180.265
4-Tert-butyl-2-chlorophenyl methyl methylphosphoramidate	180.295
N-butyl-N-ethyl-α,α,α-trifluoro-2,6-dinitro-P-toluidine	180.208
* * * * *	

c. The 14 pesticide chemicals after the pesticide chemical Chlordimeform are alphabetically relisted to read as follows:

Alphabetical Listing of Pesticide Chemicals

Name	Section No.
* * * * *	
2-Chloroallyl diethyldithiocarbamate	180.247
2-Chloro-4,6-bis(isopropylamino)-S-triazine	180.243
2-Chloro-*N,N*-diallylacetamide	180.282
2-Chloro-1-(2,4-dichlorophenyl)vinyl diethyl phosphate	180.322
2-((4-Chloro-6-(ethylamino)-S-triazin-2-yl)amino)-2-methylpropionitrile	180.307
2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(3-methoxy-4-methyl ethyl acetamide	180.368
2-Chloro-*N*-isopropylacetanilide	180.211
Chloroneb	180.257
1-Chloro-2-nitropropane	180.286
P-Chlorophenoxyacetic acid	180.202
2-(4-Chlorophenoxy) propionic acid	180.325
P-Chlorophenyl-2,4,5-trichlorophenyl sulfide	180.256
Chloropropylate	180.218
2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl	180.252

d. The six pesticide chemicals after the pesticide chemical Dichlone are alphabetically relisted to read as follows:

Alphabetical Listing of Pesticide Chemicals

Name	Section No.
* * * * *	
S-2,3-Dichloroallyl diisopropylthiocarbamate	180.277
1,1-Dichloro-2,2-bis(P-ethylphenyl) ethane	180.139
2,4-Dichloro-6-0-chloroanilino-S-triazine	180.158
3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamine	180.317
2,6-Dichloro-4-nitroaniline	180.200
4-(2,4-dichlorophenoxy) butyric acid	180.331
* * * * *	

e. The seven pesticide chemicals after the pesticide chemical Dieldrin are alphabetically relisted to read as follows:

Alphabetical Listing of Pesticide Chemicals

Name	Section No.
* * * * *	
0,0-Diethyl 0-(2-Diethylamino-6-Methyl-4- Pyrimidinyl) Phosphorothioate and its oxygen analog	180.308
N^3,N^3-Diethyl-2,4-Dinitro-6-(Trifluoromethyl)-M-Phenylenediamine	180.327
0,0-Diethyl S-(2-(Ethylothio)Ethyl Phosphorodithioate	180.183
0,0-Diethyl 0-(2-Isopropyl-6-Methyl-4-Pyrimidinyl) Phosphorothioate	180.153
0,0-Diethyl 0-[P-(Methylsulfinyl)Phenyl] Phosphorothioate	180.234
0,0-Diethyl 0-2-Pyrazinyl Phosphorothioate and its oxygen analog	180.264
Difenzoquat	180.369
* * * * *	

f. The ten pesticide chemicals after the pesticide chemical dimethoate including its oxygen analog are alphabetically relisted to read as follows:

Alphabetical Listing of Pesticide Chemicals

Name	Section No.
* * * * *	
0,0-Dimethyl 0-P-(Dimethylsulfamoyl) Phenyl Phosphorothioate including its oxygen analog	180.233
3,5-Dimethyl-4-(Methylthio)Phenyl Methlcarbamate	180.320
0,0-Dimethyl S-(4-Oxo-1,2,3-Benzotriazin-3 (4H)-Yl-methyl) Phosphorodithioate	180.154
0,0-Dimethyl S-[(4-Oxo-1,2,3-Benzotriazin-3 (4H)-YL) Methyl] Phosphorodithioate and/or its Metabolites in milk	180.154a
Dimethyl Phosphate of 3-Hydroxy-N,N-Dimethyl-CIS-Crotonamide	180.299
Dimethyl Phospyate of 3-Hydroxy-N-Methyl-CIS-Crotonamide	180.296
Dimethyl Phosphate of α-Methylbenzyl 3-Hydroxy-CIS-Crotonate	180.280
0,S-Dimethyl Phosphoramidothioate	180.315
Dimethyl Tetrachloroterephthalate	180.185
Dimethyl (2,2,2-Trichloro-1-Hdroxyethyl)Phosphonate	180.198
* * * * *	

g. The 11 pesticide chemicals after the pesticide chemical Ethoprop are alphabetically relisted to read as follows:

Alphabetical Listing of Pesticide Chemicals

Name	Section No.
* * * * *	
Ethoxyquin	180.178
5-Ethoxy-3-Trichloromethyl-1,2,4-Thiadiazole	180.370
2-(Ethylamino)-4-(Isopropylamino)-6-(Methylthio)-S-(Triazine)	180.258
S-Ethyl Cyclohexylethylthiocarbamate	180.212
Ethyl 4,4μ-Dichlorobenzilate	180.109
S-Ethyl Diisobutylthiocarbamate	180.232
S-Ethyl Dipropylthiocarbamate	180.117
Ethylene Oxide	180.151
S-Ethyl Hexahydro-1H-Azepine-1-Carbothioate	180.228
Ethyl 3-Methyl-4-(Methylthio) Phenyl (1-Methylethyl) Phosphoramidate	180.349
0-Ethyl S-Phenyl Ethylphosphonodithioate	180.221
* * * * *	

h. The five pesticide chemicals after the pesticide Methoxychlor are alphabetically relisted to read as follows:

Alphabetical Listing of Pesticide Chemicals

Name	Section No.
* * * * *	
M-(1-Methylbutyl)Phenyl Methylcarbamate and M-(1-Ethylpropyl) Phenyl Methylcarbamate	180.255
2-Methyl-4-Chlorophenoxyacetic Acid	180.339
4-(2-Methyl-4-Chlorophenoxy) Butyric Acid	180.318
Methyl 3-((Dimethoxyphosphinyl)Oxy) Butenoate, Alpha and Beta Isomers	180.157
6-Methyl-1,3-Dithiolo (4,5-B) Quinoxalin-2-One	180.338
* * * * *	

12. The following pesticide chemicals and their corresponding section numbers are alphabetically inserted in the alphabetical listing of pesticide chemicals in 40 CFR 180:

Alphabetical Listing of Pesticide Chemicals

Name	Section No.
* * * * *	
6-Benzyladenine	180.376
* * * * *	
Cyano(3-Phenoxyphenyl)Methyl-4-Chloro-α-(Methylethyl) Benzenacetate	180.379
* * * * *	
N,N-Diethyl-2-(1-Naphthalenyloxy)Propionamide	180.328
* * * * *	
Diflubenzuron	180.377
* * * * *	
2,6-Dimethyl-4-Tridecylmorpholine	180.372
* * * * *	
2-Ethoxy-2,3-Dihydro-3,3-Dimethyl-5-Benzofuranyl Methanesulfonate	180.345
* * * * *	
0-Ethyl 0-[4-(Methylthio)Phenyl S-Propyl Phosphoro-dithioate	180.374
* * * * *	
Magnesium phosphide	180.375
* * * * *	
Permethrin	180.378
* * * * *	

13. The alphabetical listing of pesticide chemicals is amended by deleting "2-(A-Naphthoxy)-N,N-Diethylpropionamide" from the list of chemicals.

14. The following changes in the alphabetical listing of pesticide chemicals are made:

a. "Benzene Hexachloride (BHC)" is changed to read " BHC (Benxene Hexachloride)."

b. "N-(1-Ethylpropyl)3-3,4-Dimethyl-2,6-Dinitrobenzamine" is changed to read "N-(1-Ethylpropyl)-3,4-Dimethyl-2,6-Dinitrobenzamine."

c. "4-(Methylthio)-3,5-Xylyl Methylcarbamate" and "2-(A-Naphthoxy)-N,N-Diethylpropionamide" are deleted from the alphabetical listing of pesticide chemicals.

d. "Nxoctyl Bicycloheptenedicarboxmide" is changed to read "N-Octyl Bicycloheptenedicarboximide."

[FR Doc. 79-20095 Filed 6-28-79; 8:45 am]
BILLING CODE 6560-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 5A-1, 5A-2, 5A-6, 5A-7, 5A-16, 5A-19, 5A-60, 5A-72, 5A-73, 5A-74, and 5A-76

[FSS P 2800.8B CHGES 35-43 and APD 2800.3 CHGE 1]

Miscellaneous Amendments

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration Procurement Regulations, Chapter 5A, is amended to add, revise, and delete clauses, instructional material, forms, and exhibits. These actions reflect changes in policy and operational procedures. The purpose of these changes is to improve the procurement system.

EFFECTIVE DATE: June 29, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Philip G. Read, Director, Federal Procurement Regulations Directorate, Office of Acquisition Policy (703-557-8947).

PART 5A-1—GENERAL

The table of contents for Part 5A-1 is amended to delete § 5A-1.307-8 and Subpart 5A-1.70 (§§ 5A-1.7001 through 5A-1.7004, inclusive), and to revise the entry for § 5A-1.7301-2 as follows:

5A-1.307-8 [Deleted]

Subpart 5A-1. [Deleted]

5A-1.7001 through 5A-1.7004 [Deleted]
5A-1.7301-2 Consolidated purchases.

Subpart 5A-1.3—General Policies

§ 5A-1.307-7 [Amended]

1. Section 5A-1.307-7 is amended by deleting the words ", if time permits," from the last sentence.

§ 5A-1.307-8 [Deleted]

2. Section 5A-1.307-8 is deleted.

Subpart 5A-1.70—Consumer Product Information [Deleted]

Subpart 5A-1.70 (§§ 5A-1.7001 through 5A-1.7004) is deleted.

Subpart 5A-1.73—Preparation and Distribution of Contract Documents

1. Sections 5A-1.7301, 5A-1.7301-1, and 5A-1.7301-2 are revised as follows:

§ 5A-1.7301 Purchase order forms.

(a) GSA Form 300, Order for Supplies or Services, illustrated in § 5A-16.950-300, is a six-part form designed for use as a purchase order or as a delivery order. This form is prescribed for purchases payable by GSA under the National Electronic Accounting and Reporting (NEAR) System of funds control. The form will not be used for stock replenishment or direct delivery purchases payable from GSA revolving supply funds. GSA Form 3025 shall be used as the receiving report. Where origin inspection is required in connection with purchases made under the NEAR system, memorandum copy No. 6 of the GSA Form 300 will be used in the preparation of two copies for the appropriate quality control office for origin inspection purposes.

(b) GSA Form 2875, GSA Stock Item Direct Delivery Order, illustrated in § 5A-16.950-2875, is used for ordering stock items that are to be delivered by the vendor direct to the consignee. See the HB, Supply Operations, ch. 9 (FSS P 2900.3).

(c) GSA Form 3014, Order for Supplies or Services, illustrated in § 5A-16.950-3014, is a 10-part form designed for computer and manual preparation. It is used primarily for stock replenishment and nonstock direct delivery purchase orders.

§ 5A-1.7301-1 General.

The document numbering system prescribed below shall apply to all orders issued by FSS except for those issued by the Special Programs Division (FCGP) of the Office of Contracts. FCGP may use the incoming agency requisition number instead of the numbering system prescribed below.

§ 5A-1.7301-2 Consolidated purchases.

Where feasible, orders for related national stock numbers (NSN's) purchased at the same time and from the same contract source shall be combined by two methods:

(a) On a single suffix document number; e.g., 6PN-E-54390-1, only when the following elements of the requisitions are the same: Requisitioner; Julian date; consignee (final consignee when shipped through an export packing facility); fund code; project code; priority group; and billing office. Each line item should be priced separately.

(b) On a multiple suffix document number; e.g., 6PN-E-54391-1, 6PN-E-54391-2, and 6PN-E-54391-3, when incremental shipments are authorized by the agency or GSA, and the requisition elements and pricing are the same as in paragraph (a) of this section. Each document suffix indicates a separate delivery under order 54391.

2. Section 5A-1.7301-3 is amended by revising the introductory paragraph as follows:

§ 5A-1.7301-3 Purchase order numbering.

The purchase order number is a four-group hyphenated number (see below) for orders issued by procuring or inventory management activities. The heart of the numbering system is the five-digit case number and the suffix denoting the number of orders/deliveries issued against the case. If an order is to be paid from funds/appropriations accounted for under the National Electronic Accounting and Reporting (NEAR) System of funds control, this hyphenated purchase order number shall be placed in block 4, Reference Number, of GSA Form 300. The NEAR "Act" number cited on the requisition shall be placed in block 2, Order Number.

EXAMPLE:	PREFIX	TYPE OF ORDER	BASIC CASE NUMBER	SUFFIX
Box Number:	1 2 3	4	5 6 7 8 9	10 11
Procurement:	6 P N	E	A 5 4 3 9	2 B
Inventory Management:	K	W	K 0 0 0 1	1 A

* * * * *

PART 5A-2—PROCUREMENT BY FORMAL ADVERTISING

Subpart 5A-2.2—Solicitation of Bids

1. Section 5A-2.201-70 is amended by revising the introductory paragraph and paragraphs (a), (b), and (e) as follows:

§ 5A-2.201-70 Forms to be used.

When soliciting offers for supply and service contracts, the following forms shall be used (or incorporated by reference) in solicitations as indicated.

(a) Standard Form 33, March 1977, Solicitation, Offer, and Award. (See § 1-16.901-33 for illustration and paragraph (i) of this section for additional information.) Page 4 of SF 33 shall normally be used to begin the clauses applicable to the solicitation unless the "Linolex" process is used, in which case the following statement shall be typed on page 4 of SF 33. "See page (insert page no.) for the schedule of items." If the *"Linolex"* process is not used, the ruled columns may be disregarded and the solicitation clauses typed across the columnar lines in narrative style. SF 33 need not be processed as a 4 page folder in the reproduction process. The item listing normally shall follow the terms and conditions.

(b) Standard Form 33-A, January 1978, Solicitation Instructions and Conditions, shall be incorporated by reference in each solicitation of offers.

* * * * *

(e) GSA forms containing standardized supplemental provisions.

(1) GSA Form 1424, September 1978, GSA Supplemental Provisions, shall be incorporated by reference in each solicitation for offers, except solicitations for offers under the AID buying program, by using the following provision:

GSA Form 1424, September 1978, GSA Supplemental Provisions, receipt of which is acknowledged by the bidder, is hereby incorporated by reference. A copy of GSA Form 1424, if not enclosed, is available upon request.

(2) GSA Form 1246, September 1978, GSA Supplemental Provisions (AID Procurement), shall be incorporated by reference in each solicitation for offers under the AID buying program by using the following provisions:

GSA Form 1246, September 1978, GSA Supplemental Provision (AID Procurement), receipt of which is acknowledged by the bidder, is hereby incorporated by reference. A copy of GSA Form 1246, if not enclosed, is available upon request.

* * * * *

2. Section 5A–2.205–2 is amended by deleting paragraphs (e) and (f) and revising paragraphs (c) and (d) as follows:

§ 5A-2.205-2 Removal of names from bidders mailing lists.

* * * * *

(c) Only buying activities having national buying responsibility for the items involved, as outlined in Subpart 5A–76.4, shall direct removal of addressees from the computerized BML. Other buying activities shall route these lists and letters through the activity having national commodity responsibility for concurrence and forwarding to the Centralized Mailing Lists Services Branch (8BRC) for action.

(d) To remove firms from the BML:

(1) Encircle in black on a copy of the applicable bidders mailing list the firms to be removed; and

(2) Attach a covering letter listing the solicitation number to which the firm did not respond, the commodity, the issue and closing dates of the solicitation, and the class and mailing list code from GSA Form 1382, List of Commodities and Services, and forward the letter in accordance with paragraph (c) of this section to 8BRC for action. The letter should read substantially as follows:

Please delete the encircled firms which did not respond to Solicitation No. — for ——, issued ——, and opened ——, class ——, and MLC ——.

(e) [Deleted]

(f) [Deleted]

3. Section 5A–2.205–3 is revised as follows:

§ 5A-2.205-3 Reinstatement on bidders mailing lists.

(a) Debarred firms shall be reinstated on the bidders mailing list only upon completion of the debarment period and upon submission of a new bidders mailing list application on Standard Form 129, Bidder's Mailing List Application, and related GSA Form 3038, Bidder's Mailing List Application Code Sheet, or by submission of a bona fide bid.

(b) Other concerns which have been removed from bidders mailing lists may be reinstated by submitting either a new application on SF 129 and related GSA Form 3038, or a bona fide bid. The application forms shall be sent to any concern that submits a written request.

PART 5A-6—FOREIGN PURCHASES

Subpart 5A-6.1—Buy American Act—Supply and Service Contracts

§ 5A-6.104-50 [Amended]

1. In § 5A–6.104–50, paragraph (a) is amended by revising the introductory sentence to read: "(a) *Appropriation Act restrictions.* The currently effective Appropriation Act for GSA includes the following:"

2. In § 5A–6.104–50, paragraph (b) is amended by deleting "Defense Logistics Agency (DLA)" and substituting therefor "Defense Logistics Agency, Defense Logistics Services Center, Battle Creek, MI."

§ 5A-6.104-51 [Amended]

3. In § 5A–6.104–51, paragraph (a) is amended by revising the introductory sentence to read: "(a) Appropriation Act restrictions. The currently effective Appropriation Act for GSA includes the following:"

PART 5A-7—CLAUSES

The table of contents for Part 5A–7 is amended to revise the entries for §§ 5A–7.103–73 and 5A–7.103–75 as follows:

5A–7.103–73 Economic price adjustment.
5A–7.103–75 Improperly packaged and packed material.

Subpart 5A-7.1—Fixed-Price Supply Contracts

§ 5A-7.102-5 [Amended]

1. Paragraph (b) of the clause in § 5A–7.102–5 is amended by changing the first dollar amount shown in the third sentence to read "$11" (rate per man-hour for inspection at a GSA supply distribution facility).

2. Section 5A–7.102–11(a) is revised as follows:

§ 5A-7.102-11 Default.

(a) In addition to Article 11 of Standard Form 32, the following clause (included in GSA Form 1424) shall be included in Federal Supply Schedule and property rehabilitation contracts:

Default

(Orders under Federal Supply Schedule and Property Rehabilitation Contracts). In addition to Article 11 of Standard Form 32, the following shall apply to Federal Supply Schedule contracts and property rehabilitation contracts:

When the Contracting Officer has terminated the right of a Contractor to proceed with all further deliveries, thereafter Government agencies and activities required to use the contract as a mandatory source of supply may purchase in accordance with prescribed procedures the articles or services covered by the termination without furnishing the defaulting Contractor orders therefor, and any excess cost over the original contract price shall be charged to the defaulting Contractor and the Contractor's sureties (if any): Provided, that the default resulting in the termination was not excusable under subparagraph (c) of Article 11 of the General Provisions. This subparagraph shall also apply to each order accepted by the Contractor from an activity not required to use the contracts as a mandatory source of supply but permitted under the contract to place orders subject to acceptance by the Contractor.

Any ordering office may, with respect to any one or more purchase orders placed by it under the contract, exercise the same right of termination, acceptance of inferior articles or services, and assessment of excess costs as might the Contracting Officer, except that when failure to deliver articles or services is alleged by the Contractor to be excusable, the determination of whether the failure is excusable shall be made only by the Contracting Officer of the General Services Administration, to whom this allegation shall be referred by the ordering office and from whose determination appeal may be taken as provided in the clause of this contract entitled "Disputes."

(End of clause)

* * * * *

3. Section 5A–7.102–76 is revised as follows:

§ 5A-7.102-76 Preservation, packaging, and packing.

The following clause is included in GSA Form 1424 and will apply unless otherwise specified.

Preservation, Packaging, and Packing

Unless otherwise specified, all items shall be preserved, packaged, and packed in accordance with normal commercial practices, as defined in the applicable commodity specification. Packaging and packing shall comply with the requirements of the Uniform Freight classification and the National Motor Freight Classification (issue in effect at time of shipment).

Where special or unusual packing is specified in an order, but not specifically provided for by the contract, the packing details must be the subject of an agreement independently arrived at between the ordering agency and the Contractor.

(End of clause)

§ 5A-7.103-52 [Amended]

4. The title of the clause in § 5A-7.103-52 is changed to read "Contract Delivery Status Report".

5. Section 5A-7.103-73 is revised as follows:

§ 5A-7.103-73 Economic price adjustment.

(a) It is the policy of the General Services Administration to enter into contracts, whether negotiated or advertised, on a fixed-price basis whenever economical and practicable. It is recognized, however, that instances may arise in which this type of pricing, due to conditions affecting a particular commodity or industry, may not be practicable or in the best interest of the Government. For examples of conditions which may warrant the use of a price adjustment clause see §§ 1-2.104-3 and 1-3.404-3.

(b) Except for multiple award Federal Supply Schedule contracts (see paragraph (c) of this section), price adjustment clauses shall not be included in solicitations without prior Central Office approval. Each request for approval, together with a statement of the justifying circumstances and copy of the proposed clause, shall be submitted to the appropriate assistant commissioner.

(1) When a price adjustment clause is used, careful consideration must be given to the ultimate cost of the proposed purchase and to the availability of sufficient funds, above the quoted prices, to allow for subsequent increases.

(2) Solicitations containing price adjustment clauses must also state the basis on which offers will be evaluated. (See § 1-2.407-4.)

(c) The following clause shall be included in each multiple award Federal Supply Schedule solicitation. The contracting officer shall obtain the approval of the procuring director if a price index other than the Wholesale Price Index for Manufactured Goods (total—not seasonally adjusted) published by the Bureau of Labor Statistics, U.S. Department of Labor, is to be specified in the solicitation.

Economic Price Adjustment

(a) Price adjustments under this contract are authorized subject to the following conditions:

(1) A price reduction may be made at any time during the contract period as provided by the Price Reductions clause in this contract.

(2) If requested in writing by the Contractor, a one-time price increase may be made during the contract period (effective after the first 6 months but before the end of the 11th month of the applicable Federal Supply Schedule period): Provided, the following conditions are satisfied: (i) the Contractor's commercial catalog/pricelist which was used as the basis for contract pricing has been reissued with increased prices and (ii) the Producer Price Index—Total Manufactures, published by the U.S. Department of Labor, or other price index as specified in this contract, is 8 percent or higher at the time the Contractor requests the increase than it was 3 months prior to the beginning of the contract period. No price increase exceeding 20 percent of the existing contract unit price will be authorized.

(b) The Contractor shall submit with each request for a price increase: (1) A copy of the new commercial catalog/pricelist, (2) a statement of the percentage increase in the applicable price index, and (3) a new discount schedule and marketing data sheet which provides updated discount and marketing information concerning the Contractor's practices under the new commercial catalog/pricelist. (NOTE.—If no change has occurred since the time of the contract award, a Contractor's certificate to that effect may be substituted for the updated discount schedule and marketing data sheet.)

(c) After receipt of the Contractor's written request for a price adjustment and related data, the Contracting Officer shall (1) verify that the applicable price index has increased by 8 percent or more since the time specified above, (2) review the revised commercial catalog/pricelist and disallow any increased prices in excess of 20 percent, and (3) determine that the discounts to the Government under the new commercial catalog/pricelist will be as good or better than those under the existing contract in relationship with the Contractor's discounts to other customers. If the required conditions have been satisfied, the contract will be modified in accordance with paragraph (d) of this clause.

(d) The contract modification reflecting the price adjustment shall be effective 10 calendar days after receipt of notification from the Contracting Officer: Provided, that in no event shall this price adjustment be effective prior to the effective date of the commercial price increases. The increased contract prices shall apply to delivery orders issued to the Contractor after the effective date of the contract modification.

(e) The requirements of the Price Reductions clause in this contract are applicable to contract prices as adjusted by this provision.

(End of clause)

6. Section 5A-7.103-75 is revised as follows:

§ 5A-7.103-75 Improperly packaged and packed material.

The following clause (included in GSA Form 1424) shall be included in all contracts under which deliveries to GSA supply distribution facilities may result.

Improperly Packaged and Packed Material

If supplies shipped to a GSA supply distribution facility are not packaged and packed in accordance with the contract requirements, the Government shall have the right, without prior notice to the Contractor, notwithstanding Article 5 of Standard Form 32, to (a) reject the shipment; (b) perform the required repackaging/repacking by use of Government personnel and charge the Contractor therefor at a rate of $16 per man-hour for the first or fractional hour and $10 for any succeeding or fractional hour; or (c) have the repackaging/repacking performed by an independent contractor and charge the Contractor therefor at the above rates. In connection with any prompt payment discount offered, the time will be computed from the date of completion of the repackaging/repacking service.

(End of clause)

§ 5A-7.103-77 [Amended]

7. In § 5A-7.103-77, the first sentence is revised to read "The following clause shall be used in contracts subject to the policy stated in § 5A-72.304."

§ 5A-7.103-78 [Amended]

8. In § 5A-7.103-78, the first sentence is revised to read "The following clause shall be used in the contract when purchasing roasted whole bean coffee subject to the policy stated in § 5A-72.305."

§ 5A-7.103-98 [Amended]

9. In § 5A-7.103-98, the first sentence is revised to read "The following clause (included in GSA Form 1424) shall be included in all solicitations requiring shipments to GSA supply distribution facilities."

PART 5A-16—PROCUREMENT FORMS

The table of contents for Part 5A-16 is amended to delete §§ 5A-16.950-300-1, 5A-16.950-1754, 5A-16.950-1783, 5A-16.950-1955, 5A-16.950-2440, and 5A-16.950-2737; to add §§ 5A-16.950-3025 and 5A-16.950-3038; and to revise the entries for §§ 5A-16.950-300 and 5A-16.950-300-A as follows:

5A-16.950-300 GSA Form 300, Order for Supplies or Services.
5A-16.950-300-1 [Deleted]
5A-16.950-300-A GSA Form 300-A, Order for Supplies or Services (Continuation).
5A-16.950-1754 [Deleted]
5A-16.950-1783 [Deleted]
5A-16.950-1955 [Deleted]
5A-16.950-2440 [Deleted]
5A-16.950-2737 [Deleted]
5A-16.950-3025 GSA Form 3025, NEAR Receiving Report.
5A-16.950-3038 GSA Form 3038, Bidder's Mailing List Application Code Sheet.

Subpart 5A-16.9—Illustrations of Forms

1. Section 5A-16.950-103 is revised to illustrate the January 1978 edition of GSA Form 103, as follows:

§ 5A-16.950-103 GSA Form 103, Transmittal of Award of Contract.

Note.—The form illustrated in this § 5A-16.950-103 is filed with the original document and does not appear in this volume.

2. Section 5A-16.950-300 is revised to change the section title and to illustrate the July 1978 edition of GSA Form 300, as follows:

§ 5A-16.950-300 GSA Form 300, Order for Supplies or Services.

Note.—The form illustrated in this § 5A-16.950-300 is filed with the original document and does not appear in this volume.

§ 5A-16.950-300-1 [Deleted]

3. Section 5A-16.950-300-1 is deleted.

4. Section 5A-16.950-300-A is revised to change the section title and to illustrate the July 1978 edition of GSA Form 300-A, as follows:

§ 5A-16.950-300-A GSA Form 300-A, Order for Supplies or Services (Continuation).

Note.—The form illustrated in this § 5A-16.950-300-A is filed with the original document and does not appear in this volume.

5. Section 5A-16.950-1246 is revised to illustrate the September 1978 edition of GSA Form 1246, as follows:

§ 5A-16.950-1246 GSA Form 1246, GSA Supplemental Provisions (AID Procurement).

Note.—The form illustrated in this § 5A-16.950-1246 is filed with the original document and does not appear in this volume.

6. Section 5A-16.950-1424 is revised to illustrate the September 1978 edition of GSA Form 1424, as follows:

§ 5A-16.950-1424 GSA Form 1424, GSA Supplemental Provisions.

Note.—The form illustrated in this § 5A-16.950-1424 is filed with the original document and does not appear in this volume.

§ 5A-16.950-1754 [Deleted]

§ 5A-16.950-1783 [Deleted]

§ 5A-16.950-1955 [Deleted]

§ 5A-16.950-2440 [Deleted]

§ 5A-16.950-2737 [Deleted]

7. Sections 5A-16.950-1754, 5A-16.950-1783, 5A-16.950-1955, 5A-16.950-2440, and 5A-16.950-2737 are deleted.

8. Section 5A-16.950-3025 is added to illustrate GSA Form 3025, as follows:

§ 5A-16.950-3025 GSA Form 3025, NEAR-Receiving Report.

Note.—The form illustrated in this § 5A-16.950-3025 is filed with the original document and does not appear in this volume.

9. Section 5A-16.950-3038 is added to illustrate the July 1977 edition of GSA Form 3038, as follows:

§ 5A-16.950-3038 GSA Form 3038, Bidder's Mailing List Application Code Sheet.

Note.—The form illustrated in this § 5A-16.950-3038 is filed with the original document and does not appear in this volume.

10. Section 5A-16.951-254 is revised to illustrate the January 1978 edition of DD Form 254, as follows:

§ 5A-16.951-254 DD Form 254, Contract Security Classification Specification.

Note.—The form illustrated in this § 5A-16.951-254 is filed with the original document and does not appear in this volume.

PART 5A-19—TRANSPORTATION

The table of contents for Part 5A-19 is amended to delete:

§ 5A-19.108-50.
§ 5A-19.108-50 [Deleted]

Subpart 5A-19.1—General

§ 5A-19.108-50 [Deleted]

Section 5A-19.108-50 is deleted.

PART 5A-60—CONTRACT APPEALS

The table of contents for Part 5A-60 is amended by revising all entries for Subpart 5A-60.2 as follows:

Subpart 5A-60.2—Processing Federal Supply Service Contract Appeals

5A-60.201 Notice of appeal.
5A-60.205 Appeal files.
5A-60.205-1 Preparation of the appeal file.
5A-60.205-2 Transmittal of the appeal file.
5A-60.206 Contracting officer's memorandum of position.
5A-60.207 Procedure following decision of the GSA Board of Contract Appeals.

Subpart 5A-60.2 is revised as follows:

Subpart 5A-60.2—Processing Federal Supply Service Contract Appeals

§ 5A-60.201 Notice of appeal.

(a) Unresolved disputes arising under the Disputes clause of a contract must be decided initially by the contracting officer. An aggrieved contractor may appeal any final decision of the contracting officer.

(b) Notice of an appeal must be mailed or otherwise furnished by the contractor within 30 days from the date the decision of the contracting officer is received. Any request for an extension of the 30-day appeal period shall be denied.

(c) Notices of appeal shall be addressed to the Administrator of General Services, in care of the contracting officer, and mailed or otherwise delivered to the contracting officer who issued the final decision being appealed. Upon receipt of a notice of appeal, contracting officers shall proceed as follows:

(1) For FSS contracts other than Central Office contracts, the incoming notice of appeal shall be time-stamped to show the date of receipt and transmitted within 10 days to the Chief Administrative Judge, GSA Board of Contract Appeals (G), by transmittal letter (illustrated in § 5A-76.308) signed by the procuring director. A copy of each notice of appeal and transmittal letter shall be sent to the Contract Termination Division (FCAT).

(2) For FSS Central Office contracts, the incoming notice of appeal shall be time-stamped to show the date of receipt and transmitted by the procuring director to the Contract Termination Division (FCAT) in sufficient time so that FCAT can forward the notice of appeal to G within 10 days after it was received by the contracting officer.

(3) If the notice of appeal was mailed or otherwise submitted in an untimely manner, a separate letter shall be sent to the Assistant General Counsel, Claims and Litigation Division (LC), stating the name of the appellant, contract number, date of contracting officer's final decision, evidence of date the notice of appeal was mailed and if otherwise furnished, date of receipt of the notice of appeal, and a request that LC submit a motion to the Board asking that the appeal be dismissed on the basis of untimeliness. The letter to LC shall be signed by the procuring director and must include evidence of untimely receipt by attaching the certified mail receipt of the contracting officer's final decision and the envelope which contained the notice of appeal, or other evidence of late submission of the notice of appeal.

§ 5A-60.205 Appeal files.

(a) Appeal files shall be prepared in accordance with this section and par. 4 of the Board's preliminary procedures, § 5A-60.101, and forwarded with the concurrence of assigned counsel or Regional Counsel to the Assistant General Counsel, Claims and Litigation Division (LC), within 20 calendar days after receipt of the notice of appeal or advice that an appeal has been filed.

(b) Upon receipt of the notice of appeal, a record shall be established in

each procuring activity to ensure the timely preparation and submission of appeal cases. The record shall show, as a minimum, the name of the appellant, the date of the contracting officer's final decision, the date the appeal was filed, the contract number, the docket number, and the name of the contracting officer. FPK shall be responsible for maintaining a followup record for Central Office cases.

§ 5A-60.205-1 Preparation of the appeal file.

(a) *General.* Appeal files shall be prepared in quadruplicate. Each file shall be identified by the name of the appellant, the contract number, and the docket number. All copies of the appeal file must be identical both as to content and position of items. If more than one appeal is filed under the same contract, upon request to, and waiver by, the Board, the appeal file for the second and subsequent appeals need not duplicate the documents included in the first appeal file, but shall make reference to the appeal file which contained these documents, including the docket and item numbers, and shall include any documents pertinent to the later appeal but not previously furnished.

(b) *Content of appeal file.* (1) Each appeal file shall be assembled by using a two-piece red pressboard binder 11 by 8½ inches punched with a 3-inch capacity fastener (NSN 7510-00-582-4201). A gummed label (NSN 7510-00-264-5460) shall be used on top of the file to identify the case by contractor, contract number, and docket number.

(2) Individual appeal files shall not be more than 1 inch in thickness. If the file will be more than 1 inch in thickness, two or more consecutive binders shall be used and identified with the appropriate exhibit numbers contained in each.

(3) Each document to be included in the appeal file (letter, telegram, memo, report, invoice, etc.) shall be legible and complete, included as a separate exhibit in the file, and listed in the "Index of Exhibits" by exhibit number and brief description. If a document cannot be legibly reproduced, the illegible unaltered document shall be submitted with an attached accurate typewritten transcription thereof. Assigned counsel will assist the contracting officer in determining which documents are relevant to the issue in the appeal or not privileged for inclusion in the appeal file.

(4) Each appeal file shall contain division sheets separating the different documents listed in the "Index of Exhibits." Division sheets shall be tabbed and numbered consecutively commencing with number one.

(c) *Arrangement of documents.* (1) The first (top) document in the appeal file shall be the "Index of Exhibits." The index shall list, opposite each exhibit number, a brief description of the document. Each document shall be filed (exhibited) in chronological order beginning with the most recent document. For example:

	Exhibit
Board of Contract Appeal's acknowledgement of contractor's notice of appeal	1
Notice of appeal (letter and/or GSA Form 2456, Notice of Appeal, with attachments, if any)	2
Facsimile of Post Office receipt of the final decision letter	3
Contracting officer's final decision letter applicable to the dispute	4
Contractor's request for final decision or other documents of claim in response to which the decision was issued	5

(2) If any individual exhibit is composed of more than one document, each additional document shall be separately numbered and subindexed on the division sheet (e.g., 1.1, 2.1, 5.2.5, etc.) but not shown in the "Index of Exhibits." In addition to the above mandatory exhibits, other pertinent exhibits, such as the following, should be included and exhibited in chronological order:

(i) Copy of the basic contract, including referenced terms and conditions;

(ii) Copy of the repurchase contract, including referenced terms and conditions;

(iii) Copies of specifications or drawings applicable to the dispute;

(iv) Copy of the abstract of offers and list of all offerors solicited for the repurchase contract, if prepared;

(v) Copy of letter of assessment (see § 5A-76.118), including worksheet showing determination of excess costs;

(vi) Copies of defaulted purchase/delivery orders;

(vii) Copies of purchase/delivery orders issued under the repurchase contract; and

(viii) Proof of payment and a detailed disbursement listing annotated and certified, if applicable (See Note, below).

Note.—The information and documents needed shall be obtained from the appropriate GSA accounting center. The finance information will include a detailed disbursement listing annotated with the check number, the check date, and the amount applicable to the repurchase order if different than the check amount. The disbursement listing will be certified by an appropriate finance division official whose title and date of signature will also be shown.

§ 5A-60.205-2 Transmittal of the appeal file.

(a) The original and two copies of the appeal file shall be forwarded to the Assistant General Counsel, Claims and Litigation Division (LC), by a transmittal letter from (1) the procuring director for regional contracts, or (2) FCAT for Central Office contracts. The appeal file shall be accompanied by the contracting officer's detailed statement of facts in a memorandum of position as a separate document which shall be concurred in by assigned counsel, who shall also prepare and attach a statement of legal position. A point of contact must be given LC; name of individual, position, title, and telephone number. (See § 5A-60.206.)

(b) One copy of the appeal file shall be retained by the contracting officer for examination by the appellant. The contracting officer's memorandum of position including assigned counsel's statement of legal position or documents which are not part of the appeal file, furnished separately as background information, are not for examination by the appellant.

(c) Unless the appeal file and contracting officer's memorandum of position are prepared by FCAT, a copy of each letter transmitting the appeal file to LC and a copy of the contracting officer's memorandum of position shall be sent to FCAT.

(d) The appeal file should be concurred in by assigned counsel. After reviewing the appeal file for adequacy, the trail attorney in the Claims and Litigation Division (LC) will transmit the appeal file to the GSA Board of Contract Appeals.

§ 5A-60.206 Contracting officer's memorandum of position.

In addition to preparing the appeal file, the contracting officer (FCAT in the case of Central Office appeal files) shall prepare a memorandum of position (see sample in § 5A-76.309) with concurrence of assigned counsel and with the concurrence of the procuring director. Assigned counsel concurring in the contracting officer's memorandum of position shall also prepare and attach to the memorandum of position a statement of legal position. The memorandum of position is a chronological summary of the actions leading to the dispute and a rationale of the contracting officer's actions for the information of the trial attorney. The memorandum of position shall be submitted to the Assistant General Counsel, Claims and Litigation Division (LC), simultaneously with the appeal file but as a separate document; i.e., it shall

not be included as part of the appeal file, nor be noted in the index. The memorandum of position should include a proposed list of witnesses for a hearing as well as a list of other individuals, whether employees of the Government, appellant, or others, with personal knowledge of the facts concerning the appeal, provided such a list is readily available and does not interfere with timely processing of the memorandum of position. The name, position, affiliation, address, and telephone number of all witnesses and other individuals listed shall be included.

§ 5A-60.207 Procedure following decision of the GSA Board of Contract Appeals.

(a) Decisions of the Board shall be promptly implemented. However, it must be recognized that the contractor may decide to bring suit regarding a Board decision in the U.S. Court of Claims or the Federal District Court. It is also possible for either party to file a motion for reconsideration by the Board within 30 calendar days from the date of the receipt of a copy of the Board decision.

(b) The contracting officer need take no further action (other than administrative) if the Board affirms the contracting officer's original decision, provided a recovery of costs is not due from the contractor. Where a recovery is due, collection shall be initiated by the contracting officer either by (1) a contract amendment adjusting the contract price or (2) a written demand for immediate payment, as appropriate. (In excess cost cases, the Central Office Financial Management Division (BCF), Office of Finance, or regional counterpart, as appropriate, will normally pursue the necessary collection). Any written demand shall instruct the contractor to make payment to the General Services Administration and address it to the appropriate GSA accounting center. A copy of any written demand shall be provided to the appropriate GSA accounting center for information and followup.

(c) When the Board does not uphold the contracting officer's original decision and the Board's decision provides for payment in favor of the contractor, the contracting officer shall prepare a supplemental agreement with concurrence of assigned counsel. The supplemental agreement will insure against further litigation of the same dispute. The contracting officer shall forward the recommendation for payment to the appropriate accounting center with the original of the supplemental agreement (for the contract file) and a copy of the decision of the Board.

PART 5A-72—PROCUREMENT OF STOCK ITEMS

Subpart 5A-72.2—Requirements Contracts for Stock Replenishment

Section 5A-72.202(c) is revised as follows:

§ 5A-72.202 Specifications.

* * * * *

(c) The annual production plan serves as the basis from which item purchase descriptions are updated as necessary and forwarded to the procuring activity in sufficient time for the scheduled procurement. Priority requests and date verifications may be handled by telephone by contacting the appropriate technical support area within the Office of Engineering and Technical Management. In other types of support actions requiring requests for IPD's; i.e., definite quantity buy-on-demand items, small purchase new items added to the supply system, or NSN's not covered in a production plan, contracting officers shall submit two completed copies of GSA Form 2978, Request for Item Purchase Description, to the appropriate technical division in the Office of Engineering and Technical Management.

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PART 5A-73—FEDERAL SUPPLY SCHEDULE PROGRAM

The table of contents for Part 5A-73 is amended to revise the entry for § 5A-73.302 and to add an entry for new § 5A-73.409 as follows:

5A-73.302 Notice to contractor of contract awards.
5A-73.409 Use of official mail by commercial firms.

Subpart 5A-73.2—Preparation and Issuance of Solicitations

1. Section 5A-73.210-1 is revised as follows:

§ 5A-73.210-1 Contractor's report of orders received.

(a) The following clause shall be included in all Federal Supply Schedule solicitations. The clause requires contractors to submit a bimonthly report of all orders placed against a schedule contract. Any exception to this bimonthly reporting requirement must be approved in advance by the Assistant Commissioner for Procurement. (The clause may be modified for use in property rehabilitation contracts to provide for monthly reporting of orders received using GSA Form 72, Contractor's Report of Orders Received.)

Report of Orders Received

Contractors shall furnish bimonthly a report of all orders (form Government agencies and Government Contractors) received during the preceding 2-month reporting period, by dollar value, on each national stock number (NSN), special item number, or subitem upon which an award is recieved. Unless otherwise specified, the report shall be made on GSA Form 72-A, Contractor's Report of Orders Received (prepunched card), and shall be forwarded to the address to be specified at time of award. The bimonthly reports are due on or before the 15th calendar day following the completion of each 2-month period of the contract. (Any partial month is to be considered as 1 month for reporting purposes.) If the total number of months in the contract period is an odd number, the final reporting period will consist of only 1 month and a final report shall be submitted for this 1-month period within 15 calendar days after the end of the contract. Negative reports are required for each reporting period in which no orders are received. The right is specifically reserved by the Government to inspect, without further notice, such records of the Contractor as pertain to sales under any contract resulting from this solicitation. Failure or refusal to furnish the required reports or falsification thereof shall constitute sufficient cause for terminating the contract for default, in accordance with the provisions of Article 11 of Standard Form 32, General Provisions (Supply Contract).

(b) The contracting officer shall furnish the following documents to the unit responsible for procurement transaction reporting (PTR) data entry to enable that unit to properly distribute and process GSA Form 72-A: A copy of (1) each Federal Supply Schedule solicitation (at time of issuance) and (2) each subsequent award document (GSA Form 1535, Recommendation for Award(s), including all amendments). Upon receipt of the award document, the PTR unit shall mail to each contractor a GSA Form 72-B, Notice to Contractor, and one GSA Form 72-A for each reporting period for each national stock number (NSN), special item number (SIN), or subitem awarded. (See FSS P 7840.3 for procedures regarding the processing of GSA Form 72 used in property rehabilitation contracts.)

2. Section 5A-73.210-2 is revised as follows:

§ 5A-73.210-2 Estimated requirements.

Each schedule solicitation shall include in the item listing a column showing the dollar value of orders received as reported by contractors for the latest comparable preceding contract period, if these figures are available. When new items are added, or when the coverage of mandatory

users of the schedule is extended, these figures shall be augmented by the best possible estimates, based upon anticipated volume. To explain to prospective offerors the meaning of these figures, a statement substantially as follows shall be included in the solicitation immediately before (or as a headnote to) the listing of items:

Estimated Requirements. The figures in the "Estimated Requirements" column show (1) purchases in dollars as reported by the previous contractors, or (2) estimates of the anticipated volume where the item is new or its coverage of mandatory users has been extended. No guarantee is given that any quantities will be purchased. The absense of a figure indicates that neither reports of previous purchases nor estimates of requirements are available.

3. Section 5A–73.217–5 is revised as follows:

§ 5A–73.217–5 Price reductions clause.

(a) The Price Reductions clause shown below shall be included in each multiple award Federal Supply Schedule solicitation. The primary purpose of this clause is to retain throughout the contract period the same pricing relationship that existed at the time of contract award between the contractor's discounts to the Government and the discounts to commercial customers. (See § 5A–7.103–73(c) for provisions authorizing price increases.)

Price Reductions

(a) *Reductions to customers other than Federal Agencies.* (1) If, after the date of the offer, the Contractor (i) changes any of the pricing documents, including price lists and information in the discount schedule and marketing data sheets, or related discounts which were furnished to and used by the Government as the basis for negotiating the prices in this contract, or (ii) sells any item covered by this contract at a price below that in any of the above referenced pricing documents so as to reduce any price to any customer, other than the Federal Government, for sales within the contract maximum order limitation, an equivalent price reduction shall apply to this contract for the balance of the contract period or until the price is further reduced or in the case of temporary price reductions, for the duration of any temporary price reduction period. "Equivalent price reductions" means that the contract price shall be reduced so as to maintain the same price or discount relationship between the Government and other customers as existed at the time contract negotiations were concluded. The reduction will be computed by determining the percent by which the price to any customer was reduced and then reducing the contract price by the same percentage. For purposes of this clause any method by which the price is effectively reduced shall constitute a price reduction; provided that temporary price reductions shall be made available to the Goverment under the same terms and conditions as to other customers, except that instead of accepting bonus goods, the Contractor's cost of these goods shall be deducted from the contract price, unless the bonus goods are identical to and accompany the goods being purchased, in which case the Government will accept the bonus goods.

(2) This clause does not apply to any reduction by a Contractor in its prices to States, the District of Columbia, and other political subdivisions.

(3) The Contracting Officer may exempt the application of this clause to a sale at a price below the contract price if caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor.

(b) *Reduction to Federal agencies.* Except for temporary "Government-only" price reductions described below, if, after the effective date of this contract the Contractor reduces the price of any contract item to any Federal agency and the sale falls within the contract maximum order limitation, an equivalent price reduction shall apply to all subsequent sales of the contract item to Federal agencies for the duration of the contract period or until the price is further reduced. The Contractor may offer to the Contracting Officer a temporary "Government-only" price reduction which has a duration of 30 calendar days or more, except during the last month of the contract period when any such offer must be for the remainder of the contract period.

(c) *Effective dates and notifications.*

(1) Any price reduction pursuant to (a)(1), above, shall be effective for the Government at the same time as the price reduction to the other customer. Any price reduction pursuant to (b), above, shall be effective at the time of initial purchase by a Federal agency at the reduced price, except in the case of a temporary "Government-only" price reduction which shall be effective at the time of acceptance by the Contracting Officer. The Contractor shall invoice at such reduced price and indicate thereon that the price reduction is pursuant to this Price Reductions clause until this contract is modified.

(2) The Contractor shall notify the Contracting Officer in writing of any price reduction as soon as possible but not later than 10 calendar days after the effective date. Failure to give timely notice shall require that the price reduction (including temporary price reductions) apply to the contract for the duration of the contract period, or until the price is further reduced, and may constitute a basis for termination of the contract as provided in the Default clause of this contract.

(d) Contractor's statement of price reductions. The Contractor shall furnish within 10 calendar days after the end of the contract period a statement certifying either (1) that there was no applicable reduction or (2) that any price reduction was reported to the Contracting Officer. For each reported price reduction, the Contractor shall show the date when the Contracting Officer was so notified.

(e) Disputes. Contractor's failure to respond to claims made by the Contracting Officer pursuant to this Price Reductions clause or failure by the contracting parties to agree to the Contracting Officer's interpretation, application, or enforcement of its provisions shall constitute a "dispute" within the meaning of the Disputes clause of this contract.

(b) When the above Price Reductions clause is contained in a solicitation, the resulting schedule shall include the following notice (included in GSA Form 2891, Instructions to Users of Federal Supply Schedules):

Notice of Purchase at Reduced Price

If any article or service available from multiple award Federal Supply Schedule contracts has been purchased from the schedule Contractor at a price lower than the schedule contract price, the agency shall, within 10 calendar days, notify the GSA Contracting Officer of this purchase.

(c) The following are selected examples of how the term "equivalent price reduction" in the Price Reductions clause is computed in specific circumstances. These examples are furnished to clarify the meaning of this language.

Example No. 1. The contract is with a regular dealer, and the Government discount is 28 percent from the Manufacturer's Suggested Retail Price List. The discount schedule and marketing data sheet furnished by the offeror referenced the same price list and indicated that the dealer gives a 20 percent discount to other customers. A specific product is listed on the commercial price list furnished to the Government as the basis for negotiation at $100 per unit. This product was sold by the contractor to a customer other than the Government for $75 during the 3rd month of the contract. What "equivalent price reduction" is due the Government for sales of this product for Government orders placed after the $75 sale?

(1) Discounts and net prices:

	Price list price	Discounts offered (percent)	Net price
To the Government	$100	28	$72
To other customers	$100	20	$80

(2) Price reduction granted other customers in 3d month of contract = $5 ($80–$75)

(3) Additional price reduction to other customers = 6.25% (5 ÷ 80).

(4) Comparable price reduction per unit applicable to Government purchases of the product after the $75 sales to other customer = $4.50 ($72 × 6.25%).

(5) New reduced Government unit price = $67.50 ($72 — $4.50)

(6) New Government discount =

$$32.5\%\left(\frac{\$100-\$67.50}{\$100}=\frac{\$32.50}{\$100}\right)=32.5\%$$

Example No. 2. The contract is with a manufacturer and the Government's discount is 30 percent from the Manufacturer's Suggested Retail Price List. The discount schedule and marketing data sheet indicate discounts to regular dealers of 40 percent from the same price list. The contractor increased the discount rate to dealers from 40 percent to 50 percent in the 4th month of the contract period. What "equivalent price reduction" is due the Government?

(1) Discounts and net prices:

	Price list price	Discounts offered (percent)	Net price
To the Government	$100	30	$70
To regular dealers	$100	40	$60

(2) Additional price reduction granted to regular dealers = $10 ($60–$50)

(3) Price reduction percentage = 16.67% (10 ÷ 60).

(4) Comparable price reduction per unit applicable to Government purchases after the reduction in price to regular dealers = $11.67 ($70 × 16.67%).

(5) New reduced Government unit price = $58.33 ($70 — $11.67).

(6) New Government discount =

$$41.7\%\left(\frac{100-58.33}{\$100}=\frac{41.67}{\$100}=.4167\text{ or }41.67\%\right)$$

Subpart 5A-73.3—Evaluation of Offers and Award of Contracts

Section 5A–73.302 is revised as follows:

§ 5A-73.302 Notice to contractor of contract awards.

A notification of contract award shall be issued in accordance with § 5A–2.407–83. A supply of GSA Forms 72 or 72–A (as applicable), Contractor's Report of Orders Received, shall be furnished to the contractor. The following formats may be used to transmit the notification of award:

(a) Awards based on contractor's catalog/pricelist—See sample letter format shown in § 5A–76.314–1.

(b) Awards not based on contractor's catalog/pricelist—See letter format shown in § 5A–76.314–2.

Subpart 5A-73.4—Composition of Federal Supply Schedules

Section 5A–73.409 is added as follows:

§ 5A-73.409 Use of official mail by commercial firms.

The following NOTICE will appear on Federal Supply Schedule, FSC Group 75, Part V, Mailing Envelopes, printed and plain:

Any agency which proposes to authorize a contractor to use official envelopes or labels must first obtain a permit from the U.S. Postal Service. Agencies shall submit an original and two copies of permit applications for each contractor to:

Manager
Government Revenue and Examination Branch
Finance Department
United States Postal Service
Washington, DC 20260

(See U.S. Postal Service Regulation dated June 9, 1977, Subject: Payment for Official Mail-Contractor use of Agency Official Mail.)

PART 5A-74—SPECIAL PURCHASE PROGRAMS

Subpart 5A-74.4—Overseas Supply Support Program

Section 5A–74.407–2 is amended to revise paragraph (h) and to delete paragraph (j), as follows:

§ 5A-74.407-2 Agency for International Development (AID).

* * * * *

(h) Procurements for the Office of International Narcotics Control Matters, Department of State (S/NM). GSA has agreed to recognize a system of priorities which has been installed by S/NM, State/Washington, DC, to obtain equipment and supplies for S/NM programs on an expedited basis. These priority designators are identified as follows:

(1) *Emergency priority (AA).* The emergency priority is used when a serious crisis is impending and the equipment is needed immediately. Procurement will usually be made by State/Washington, DC, by the most rapid means and coordinated with S/NM by phone. Every effort will be made to ship the items by air in a matter of hours.

(2) *Immediate priority (A).* Equipment and supplies needed as soon as possible will be procured under this priority. Procurement and air shipment of the required items will be made within 30 days.

(3) *Rush priority (B).* Equipment and supplies needed quickly to meet predetermined deadlines will be procured under this priority. Procurement and surface or air shipment as directed by S/NM will be made within 90 days or less.

(4) *Routine procurement (C).* Procurement in this category will be made with delivery acceptable within an expedited procurement and shipping schedule.

* * * * *

(j) (deleted)

PART 5A-76—EXHIBITS

The table of contents for Part 5A–76 is amended to delete § 5A–76.318, revise the entry for § 5A–76.314, and to add entries for new §§ 5A–76.201–10, 5A–76.314–1, 5A–76.314–2, and 5A–76.333 as follows:

5A–76.201–10 GSA Form 300 (6 parts), Order for Supplies or Services.
5A–76.314 Sample format of transmittal letter—Federal Supply Schedule contracts.
5A–76.314–1 Catalogs or pricelists required.
5A–76.314–2 Catalogs or pricelists not required.
5A–76.318 [Deleted]
5A–76.333 Format for self-mailer.

Subpart 5A-76.2—Distribution of Documents

Sections 5A–76.201–1, 5A–76.201–7, and 5A–76.201–8 are amended to update instructions regarding the distribution of contractual and related documents, and § 5A–76.210–10 is added as follows:

§ 5A–76.201–1 Purchase/delivery order forms.
§ 5A–76.201–7 Purchase/delivery orders for stock replenishment.
§ 5A–76.201–8 Purchase/delivery orders for direct delivery (DDO's).
§ 5A–76.201–10 GSA Form 300 (6 parts), Order for Supplies or Services.

Note.—The exhibits shown in §§ 5A–76.201–1, 5A–76.201–7, 5A–76.201–8, and 5A–76.201–10 are filed with the original document and do not appear in this volume.

Subpart 5A-76.3—Miscellaneous Exhibits

1. Sections 5A-76.306, 5A-76.307, 5A-76.308, and 5A-76.317 are revised to update exhibits shown in these sections as follows:

§ 5A-76.306 Bidders mailing list system.
§ 5A-76.307 Paying office addresses to be entered on purchase orders.
§ 5A-76.308 Format of letter to transmit a notice of appeal to the GSA Board of Contract Appeals.
§ 5A-76.317 Federal supply selected for source inspection.

Note.—The exhibits shown in §§ 5A-76.306, 5A-76.307, 5A-76.308, and 5A-76.317 are filed with the original document and do not appear in this volume.

2. Section 5A-76.314 is revised to change the section title and to illustrate exhibits under new subsections 5A-76.314-1 and 5A-76.314-2, as follows:

§ 5A-76.314 Sample format of transmittal letter—Federal Supply Schedule contracts.
§ 5A-76.314-1 Catalogs or pricelists required.
§ 5A-76.314-2 Catalogs or pricelists not required.

Note.—The exhibits shown in §§ 5A-76.314-1 and 5A-76.314-2 (under the heading of § 5A-76.314) are filed with the original document and do not appear in this volume.

§ 5A-76.318 [Deleted]

3. Section 5A-76.318 is deleted.

4. Section 5A-76.333 is added as follows:

§ 5A-76.333 Format of self-mailer.

Note.—The exhibit shown in § 5A-76.333 is filed with the original document and does not appear in this volume.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: June 26, 1979.

Bertrand G. Berube,

Acting Assistant Administrator for Acquisition Policy.

[FR Doc. 79-20173 Filed 6-28-79; 8:45 am]

BILLING CODE 6820-82-M

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41 CFR Ch. 101

[FPMR Temp. Reg. A-12, Supp. 2]

Centralized Household Goods Traffic Management; Temporary Regulations

AGENCY: Transportation and Public Utilities Service, General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation extends to May 31, 1980, the expiration date of FPMR Temporary Regulation A-12.

DATES: Effective date: June 1, 1979. Expiration date: May 31, 1980.

FOR FURTHER INFORMATION CONTACT: Gregory G. Haller, Transportation Management Division (703-557-1865).

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A.

Temporary Regulation A-12; Supplement 2

SUBJECT: Centralized household goods traffic management.

1. *Purpose.* This regulation extends the expiration date of FPMR Temporary Regulation A-12.

2. *Effective date.* This regulation is effective June 1, 1979.

3. *Expiration date.* This regulation expires on May 31, 1980.

4. *Explanation of changes.* The expiration date in paragraph 3 of FPMR Temporary Regulation A-12 is revised to May 31, 1980.

Dated: June 14, 1979.

Clarence A. Lee,

Acting Administrator of General Services.

[FR Doc. 79-20184 Filed 6-28-79; 8:45 am]

BILLING CODE 6820-24-M

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41 CFR Ch. 101

[FPMR Temp. Reg. A-11, Supp. 8]

Changes to Federal Travel Regulations; Temporary Regulations

AGENCY: Transportation and Public Utilities Service, General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation amends the Federal Travel Regulations to (a) prescribe criteria for use of Metroliner coach service in the Northeast Corridor, (b) increase the mileage allowance for use of a privately owned automobile under certain circumstances, (c) designate new high rate geographical areas (HRGA) and redefine existing HRGA boundaries and (d) provide for travel and transportation allowances for new appointees to the Senior Executive Service (SES).

DATES: Effective date: The provisions of attachment A to Supplement 8 are effective for travel performed on or after July 1, 1979, except that, for entitlement to travel and transportation expenses for a new appointee to the SES, the new appointee must be reporting for duty on or after July 13, 1979.

Expiration date: The provisions of attachment A to Supplement 8 expire June 30, 1980.

Comments due on or before: September 30, 1979.

ADDRESS: Comments should be addressed to: General Services Administration (TT), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Chandler, Federal Travel Management Division (703-557-8510).

SUPPLEMENTARY INFORMATION: The General Services Administration is required by the Travel Expense Amendments Act of 1975 (Pub. L. 94-22, May 19, 1975) to conduct periodic investigations of the cost of operation of privately owned vehicles for employees traveling on official business and to report to the Congress the results of these investigations. GSA has submitted the results of its latest investigation of the cost of operation of privately owned automobiles to the Congress indicating that the governing regulations would be amended within 30 days as required by 5 U.S.C. 5707.

Section 409 of the Civil Service Reform Act (Pub. L. 95-454, October 13, 1978) amended 5 U.S.C. 5723 to provide travel and transportation expenses for first duty station travel of new appointees to the Senior Executive Service (SES), to the same extent as currently provided for new appointees to shortage category positions, with an effective date of July 13, 1979.

Mr. Allan W. Beres, Commissioner, Transportation and Public Utilities Service, General Services Administration, has determined that in view of the statutory requirements of Pub. L. 94-22 and Pub. L. 95-454, it is impossible to comply with all of the requirements of Executive Order 12044 of March 23, 1978. However, GSA has complied with the Executive Order to the extent possible within the time limitation stated herein.

The National Railroad Passenger Corporation (AMTRAK) has offered a 20-percent discount for official Government travel by Metroliner coach service in the Northeast Corridor between Washington, DC, and New York, NY, and intermediate points. Maximum use of this discount fare by all Federal agencies will result in a substantial savings to the Government for travel expenditures. The Administrator of General Services has determined that to delay implementation of the criteria for the use of the discount fare for the purpose of soliciting public comments prior to implementation would substantially decrease the potential savings and would not be in the best interest of the Government. Therefore, comments are being requested simultaneously with implementation of changes to the

Federal Travel Regulations establishing requirements for the use of the discount fare for official travel by Metroliner coach service.

Supplement 7 to FPMR Temporary Regulation A–11 (44 FR 23222, April 19, 1979) is canceled and deleted from the appendix at the end of Subchapter A of 41 CFR Chapter 101.

(5 U.S.C. 5707; Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, this temporary regulation is listed in the appendix at the end of Subchapter A.

Federal Property Management Regulations; Temporary Regulation A–11; Supplement 8

To: Heads of Federal agencies.
Subject: Changes to Federal Travel Regulations.

1. *Purpose.* This supplement amends the Federal Travel Regulations (FTR), FPMR 101–7, as amended by FPM Temporary Regulation A–11 and Supplements 4, 5, and 7 thereto, to (a) require the use of Metroliner coach service in the Northeast Corridor, (b) increase the mileage reimbursement rate for use of a privately owned automobile under certain circumstances, (c) designate new high-rate geographical areas (HRGA) and redefine boundaries of certain existing HRGA's, and (d) implement certain travel and transportation allowances for new appointees to the Senior Executive Service (SES).

2. *Effective date.* The provisions of attachment A to this supplement are effective for travel performed on or after July 1, 1979, except that for entitlement to relocation allowances for new appointees to the SES, the new appointees must be reporting for duty on or after July 13, 1979.

3. *Expiration date.* This regulation expires on June 30, 1980.

4. *Background.* a. Under authority of the Rail Passenger Service Act, the National Railroad Passenger Corporation (AMTRAK) has agreed to a 20-percent discount for official travel by Metroliner coach service in the Northeast Corridor between Washington, DC, and New York, NY, and intermediate points.

b. The law (5 U.S.C. 5706 and 5733) requires that (1) except as otherwise provided, only actual and necessary travel expenses may be allowed to employees of the Government and (2) the travel of an employee shall be by the most expeditious means of transportation practicable and shall be commensurate with the nature and purpose of the duties of the employee requiring this travel. GSA has determined that use of the discount fare offered by AMTRAK will result in the most cost-effective means of transportation for the majority of the official travel between the applicable points and that the discount fare shall be used to the maximum extent possible. Pertinent provisions of the Federal Travel Regulations are being changed accordingly.

c. The results of GSA's 1978 cost investigations indicated that the weighted average cost of operation of subcompact, compact, and standard size automobiles was 17 cents per mile. Because of the recent increases in the cost of gasoline and other operating expenses, GSA conducted an interim study to update the 1978 cost study date to April 1979. As a result of this study, it has been determined that the weighted average per mile operating cost is now 18.5 cents. This determination has been reported to the Congress as required by 5 U.S.C. 5707, and the regulations are being changed accordingly.

d. In addition to the recently implemented changes to designated high-rate geographical areas (HRGA) effective April 22, 1979, more current subsistence cost data have become available for certain cities. These new data necessitate designation of additional HRGA's and changes in the maximum actural subsistence expense rates and the boundary definitions for certain existing HRGA's

e. Section 409 of the Civil Service Reform Act (Pub. L. 95–454, October 13, 1978) amended 5 U.S.C. 5723(a)(1) to authorize first duty station travel and transportation expenses for new appointees to the Senior Executive Service (SES) to the same extent as currently authorized for new appointees to shortage category positions within the United States (50 States and the District of Columbia). The Act also established the Office of Personnel Management (OPM) with responsibility for civil service functions. The FTR is amended to incorporate these changes.

5. *Explanation of changes.* The provisions of attachment A to this supplement amend the FTR, as amended by FPMR Temporary Regulations A–11 and supplements thereto, for the reasons given below.

a. Paragraph 1–2.2c(1) is revised to require the use of Metroliner coach service in the Northeast Corridor between Washington, DC, and New York, NY, and intermediate points, to the maximum extent possible and to require special authorization or approval for the use of air service instead of Metroliner coach service.

b. Paragraph 1–3.3b is revised to establish criteria for the use of AMTRAK's discount fare for Metroliner coach service.

c. Paragraphs 1–4.2a(2) and 1–4.2c(1) and (2) are revised to implement an increase in the reimbursement mileage rate for the use of privately owned vehicles in certain circumstances.

d. Paragraph 1–4.4b, c, and d are republished without change except to substitute a correct paragraph reference in place of the word "statutory" to clarify that rates should not be authorized in excess of the appropriate rate for use of a privately owned conveyence when advantageous to the Government.

e. Paragraph 1–8.6 is revised to designate additional HRGA's and to increase the maximum actual subsistence expense rate or redefine the boundaries of certain existing HRGA's. Notes have been added or revised to clarify (1) that the maximum rates prescribed for HRGA's are not to be used as per diem rates and should not be referred to as per diem rates and (2) that independent entities (cities, towns, etc.) located inside HRGA boundary lines are included in the HRGA definition for purposes of travel.

f. Paragraphs 2–1.2a(3) and (4) are revised to implement certain travel and transportation allowances for first duty station travel for new appointees to the SES and to show the Office of Personnel Management instead of the former Civil Service Commission.

g. Paragraph 2–1.5f is revised to prescribe conditions governing travel and transportation allowances for new SES appointees and to show the Office of Personnel Management instead of the former Civil Service Commission.

6. *Comments.* Comments and recommendations concerning those provisions of this regulation pertaining to the requirement to use AMTRAK Metroliner coach service between Washington, DC, and New York, NY, and intermediate points are requested and should be submitted to the General Services Administration (TT), Washington, DC 20406, within 90 days of the effective date for possible incorporation into the permanent regulations.

7. *Effect on other issuances.* Supplements 4, 5, and 8 to FPMR Temporary Regulation A–11 contain all current amendments to the Federal Travel Regulations. (Supplement 8 contains a complete current list of designated HRGA's.) Amendments previously contained in Supplement 7 have been carried forward and included

in Supplement 8, and Supplement 7 is hereby canceled.

Dated: June 27, 1979

Clarence A. Lee, Jr.,

Acting Administrator of General Services.

Changes to the Federal Travel Regulations, FPMR 101–7

1. Paragraph 1–2.2c(1) is revised and paragraphs 1–2.2a and b are republished without change, as follows:

1–2.2. *Methods of transportation.*—a. *Authorized methods.* Methods of transportation authorized for official travel include railroads, airlines, helicopter service, ships, buses, streetcars, subways, and taxicabs; Government-furnished and contract rental automobiles and airplanes; privately owned and rented automobiles and airplanes; and any other necessary means of conveyance.

b. *Selecting method of transportation to be used.* Travel on official business shall be by the method of transportation which will result in the greatest advantage to the Government, cost and other factors considered. In selecting a particular method of transportation to be used, consideration shall be given to energy conservation and to the total cost to the Government, including costs of per diem, overtime, lost worktime, and actual transportation costs. Additional factors to be considered are the total distance of travel, the number of points visited, and the number of travelers. 5 U.S.C. 5733 requires that, "The travel of an employee shall be by the most expeditious means of transportation practicable and shall be commensurate with the nature and purpose of the duties of the employee requiring such travel."

c. *Presumptions as to most advantageous method of transportation.*

(1) *Common carrier.* (a) *General.* Since travel by common carrier (air, rail, or bus) will generally result in the most efficient use of energy resources and in the least costly and most expeditious performance of travel, this method shall be used whenever it is reasonably available. Other methods of transportation may be authorized as advantageous only when the use of common carrier transportation would seriously interfere with the performance of official business or impose an undue hardship upon the traveler, or when the total cost by common carrier would exceed the cost by some other method of transportation. The determination that another method of transportation would be more advantageous to the Government than common carrier transportation shall not be made on the basis of personal perference or minor inconvenience to the traveler resulting from common carrier scheduling.

(b) *Determination of advantage to the Government.* It has been determined that use of the National Railroad Passenger Corporation (AMTRAK) Metroliner coach service in the Northest Corridor between Washington, DC, and New York, NY, including intermediate points, is advantageous to the Government. Therefore, the Metroliner coach service shall be used for all travel between the points listed above, except as provided in (c) and (d), below. (See paragraph 1–3.3b(4) for use of official Federal travel discount fare on Metroliner coach service.)

(c) *Use of conventional (regular) rail service and bus service instead of Metroliner coach service.* Conventional (regular) rail service or bus service in the Northeast Corridor between Washington, DC, and New York, NY, and intermediate points, may be used when determined by the agency to be advantageous to the Government, cost, energy and other factors considered and when compatible with the requirements of the official travel.

(d) *Use of air service instead of Metroliner coach service.* Heads of agencies may delegate authority for authorizing and approving the use of air service instead of the discounted Metroliner coach service in the Northeast Corridor when justified under circumstances listed below. This authority shall be held to as high an administrative level as practicable to ensure adequate consideration and review of the circumstances involved in the travel assignment and to prevent abuse of this authority. Advance authorization and the justification for the use of air service under these provisions shall be shown on the travel order, or other form of travel authorization, prior to the actual travel unless extenuating circumstances or emergency situations make advance authorization impossible. In this event, the employee shall obtain written approval from the appropriate agency official at the earliest possible time after the travel is completed and the reasons for the approval shall be stated on or attached to the travel voucher. In the absence of specific authorization or approval stated on or attached to the travel authorization or the travel voucher, the employee shall be responsible for any additional cost resulting from the use of air service. The additional costs shall be the difference between the air service used and the discount fare which AMTRAK would otherwise have charged the Government. Justifications for the use of air service are limited to the following circumstances:

(i) The travel assignment requires round trip travel within the Northeast Corridor during one calendar day and the use of the Metroliner becomes disadvantageous when the factors in 1–2.2b are applied;

(ii) Space is not available on Metroliner coach service or is available too late to accomplish the purpose of the official travel, and the travel is so urgent it cannot be postponed;

(iii) Air service is required for security purposes, or because of exceptional circumstances prescribed by the agency, air service is essential to the successful performance of an agency's mission;

(iv) Air service is more advantageous to the Government as determined by a comparison made on an individual case basis of the total cost to the Government (including costs of actual transportation, subsistence, allowable overtime, lost productive time, etc.) of air service versus Metroliner coach service; and

(v) The use of train service would cause undue hardship to an employee who is handicapped or physically impaired.

* * * * *

2. Paragraph 1–3.3b is revised and paragraph 1–3.3a is republished without change, as follows:

1–3.3. *Travel policy, class of service authorized, and reports.*—a. *General policy.* It is the policy of the Government that less-than-first-class accommodations shall be used for all modes of passenger transportation. Common carrier accommodations shall be as specifically provided in b, c, and d, below and shall apply to both domestic and international travel of civilian employees while on official business for the Government.

b. *Train accommodations.*

(1) *Sleeping car accommodations.* When overnight travel is involved, the lowest first-class sleeping accommodations available shall be allowed. Higher cost accommodations may be authorized or approved upon the employee's certification on the travel voucher that lowest first-class accommodations were not available or that use of superior accommodations were authorized or approved by the head of the agency or the agency head's designee, as being required for security purposes. When practicable, through sleeping accommodations shall be obtained if they are more economical to the Government.

(2) *Parlor car and reserved coach accommodations.* When adequate

reserved coach accommodations are available, officials authorizing travel shall require that those accommodations be used to the maximum extent possible. However, use of a parlor car seat may be allowed when the duration of the train travel exceeds 4 hours.

(3) *Extra-fare trains.* Travel by extra-fare trains may be authorized or approved whenever their use is administratively determined to be more advantageous to the Government or is required for reasons of security. The use of National Railroad Passenger Corporation (AMTRAK) Metroliner coach service is considered to be advantageous to the Government. (See subparagraph (4), below.) (Note: Metroliner Club service is considered to be first-class service.)

(4) *National Railroad Passenger Corporation (AMTRAK) Metroliner coach service.* The National Railroad Passenger Corporation (AMTRAK) offers a 20-percent discount for official Government travel on Metroliner coach service in the Northeast Corridor between Washington, DC, and New York, NY, and intermediate points. Metroliner coach service between these points shall be used to the maximum extent possible as provided in paragraph 1–2.2c(1)(b).

(a) *Reservations.* Reservations for Metroliner coach service shall be made in advance.

(b) *Ticket purchase.* The discount provided by AMTRAK on Metroliner coach service is applicable for official Government travel only. Tickets must be obtained before boarding the Metroliner. Employees purchasing tickets directly from AMTRAK will need to present their Government identification card and will be required to certify on the back of the ticket that "Travel is for official Government business."

(i) *Cash payment.* The procedures in paragraph 1–10.2b for the use of cash shall apply. AMTRAK will accept personal checks as a form of cash payment provided proper identification is shown. Credit cards shall not be used for purchasing discount fare tickets for Metroliner coach service.

(ii) *Use of U.S. Government transportation request (GTR).* The GTR and procedures for its use are prescribed in paragraph 1–10.2 and 41 CFR 101–41.207.

(iii) *Bulk ticket purchases.* Agencies may consider bulk ticket purchases. When purchasing tickets in bulk from AMTRAK, the fare on the ticket will remain in effect for 6 months from the date of purchase. Procedures for bulk ticket purchases are provided in 41 CFR 101–41.203–3.

(c) *Unused tickets.* Unused tickets shall be attached to the travel voucher for refund to the Government. No refunds will be made directly to the employee by AMTRAK.

* * * * *

3. Paragraphs 1–4.2a(2) and 1–4.2c(1) and (2) are revised to read as follows:

1–4.2 *When use of a privately owned conveyance is advantageous to the Government.*

a. * * *

(2) For use of a privately owned automobile: 18.5 cents per mile.

* * * * *

c. * * *

(1) *Round trip when in lieu of taxicab to carrier terminals.* In lieu of the use of a taxicab under 1–2.3c, payment on a mileage basis at the rate of 18.5 cents per mile and other allowable costs as set forth in 1–4.1c shall be allowed for the round-trip mileage of a privately owned automobile used by an employee going from either the employee's home or place of business to a terminal or from a terminal to either the employee's home or place of business. However, the amount of reimbursement for the round trip shall not in either instance exceed the taxicab fare, including tip, allowable under 1–2.3c for a one-way trip between the applicable points.

(2) *Round trip when in lieu of taxicab between residence and office on day of travel.* In lieu of the use of a taxicab under 1–2.3d, payment on a mileage basis at the rate of 18.5 cents per mile and other allowable costs as set forth in 1–4.1c shall be allowed for round-trip mileage of a privately owned automobile used by an employee going from the employee's residence to the employee's place of business or returning from place of business to residence on a day travel is performed. However, the amount of reimbursement for the round trip shall not in either instance exceed the taxicab fare, including tip, allowable under 1–2.3d for a one-way trip between the points involved.

* * * * *

4. Paragraphs 1–4.4b, c, and d are republished without change (except to substitute a correct paragraph reference in place of the word "statutory" in subparagraph b, line 12) as follows:

1–4.4. *When use of a privately owned conveyance is in lieu of a Government-furnished automobile.*

* * * * *

b. *Reimbursement based on Government costs.* Based upon average rental rates which agencies pay for GSA motor pool automobiles and the administrative cost to the user agency, it has been determined that the average mileage rate for authorized use of a privately owned conveyance when use of a Government-furnished automobile for travel in the conterminous United States is 13 cents. Therefore, the mileage rate for authorized use of a privately owned conveyance when use of a Government-furnished automobile would be most advantageous to the Government shall be 13 cents. Exceptions to the above limitation may be authorized if an agency determines that, because of unusual circumstances, the cost of providing a Government-furnished automobile would be higher than 13 cents. In such instances the agency may allow reimbursement at such higher rate within the maximum (see paragraph 1–4.2) that will most nearly equal the cost of the Government-furnished automobile in those circumstances. In addition to mileage for the distance allowed under 1–4.1b, the employee may be reimbursed for expenses authorized under 1–4.1c which would have been incurred if a Government-furnished vehicle had been used.

c. *Partial reimbursement when Government automobile is available.* When an employee who is committed to using a Government-furnished automobile, or who because of the availability of Government-furnished automobiles, would not ordinarily be authorized to use a privately owned conveyance in lieu of a Government-furnished automobile nevertheless requests use of a privately owned conveyance, reimbursement may be authorized or approved. The rate of reimbursement shall be 7 cents per mile, which is the approximate cost of operating a Government-furnished automobile, fixed costs excluded.

d. *Reimbursement claims.* When claiming mileage at the 13-cent rate, the employee shall state on the voucher that a commitment was not made to use a Government-furnished automobile and that reimbursement for use of a privately owned automobile was not limited under 1–4.4c.

* * * * *

5. Paragraph 1–8.6 is revised to read as follows:

1–8.6 *Designated high-rate geographical areas (HRGA).* Under the provisions of 1–8.1b and 1–8.2a(1), for temporary duty travel to or within the cities designated as high-rate geographical areas below, a traveler automatically shall be placed in an actual subsistence expense status and shall be reimbursed for the actual and necessary subsistence expenses

incurred not to exceed the maximum rate prescribed for the particular geographical area involved. (Note: These rates are not to be construed as per diem rates.)

Designated HRGA's [1] [2]	Prescribed maximum daily rates
Akron, OH	$42
Albany, NY (all locations within Albany County) **	47
Albuquerque, NM (all locations within Bernalillo County) **	43
Amarillo, TX	40
Asheville, NC	42
Atlanta, GA	47
Austin, TX	46
Baltimore, MD	50
Baton Rouge, LA	42
Birmingham, AL	42
Boise, ID	41
Boston, MA (all locations within the counties of Middlesex, Norfolk, and Suffolk)	50
Bridgeport, CT (all locations within Fairfield County)	48
Buffalo, NY (all locations within the corporate limits of Buffalo and Niagara Falls, NY)	49
Burlington, VT	45
Casper, WY *	44
Charleston, SC (all locations within Charleston and Berkeley Counties) **	41
Charleston, WV	47
Cheyenne, WY	44
Chicago, IL (all locations within Lake and Cook Counties)	50
Cincinnati, OH	46
Cleveland, OH	50
Columbus, OH	45
Dallas/Ft. Worth, TX (all locations within Dallas and Tarrant Counties)**	50
Dayton, OH (all locations within the corporate limits of Dayton including Wright-Patterson AFB) **	44
Denver, CO (all locations within Denver, Adams, Arapahoe, and Jefferson Counties) **	48
Des Moines, IA	40
Detroit, MI	50
Dover, NJ (all locations within the corporate limits of Dover including Picatinny Arsenal, NJ)	45
Eatontown, NJ (all locations within the corporate limits of Eatontown including Fort Monmouth, NJ)	48
El Paso, TX	43
Ft. Wayne, IN	50
Fresno, CA	43
Great Falls, MT *	41
Harrisburg, PA	45
Hartford, CT (all locations within Hartford County) **	50
Houston, TX (all locations within the corporate limits of Houston including the L. B. Johnson Space Center and Ellington AFB)	50
Indianapolis, IN (all locations within the corporate limits of Indianapolis including Fort Benjamin Harrison, IN)	47
Jacksonville, FL	42
Kalamazoo, MI	42
Kansas City, MO/Kansas City, KS **	48
Lake Placid, NY *	50
Las Vegas, NV	50
Lexington, KY	44
Little Rock, AR *	42
Los Alamos, NM	50
Los Angeles, CA (all locations within Los Angeles, Orange, and Ventura Counties) **	50
Louisville, KY	45
Madison, WI **	47
Manchester, NH **	47
Memphis, TN	45
Miami, FL (all locations within Dade, Broward, Palm Beach, and Monroe Counties) **	50
Milwaukee, WI **	50
Minneapolis/St. Paul, MN (all locations within Anoka, Hennepin, and Ramsey Counties including the Fort Snelling Military Reservation)**	50
Monterey, CA (all locations within Monterey County)	43
Nashville, TN *	45
Newark, NJ (all locations within Bergen, Essex, Hudson, Passaic, and Union Counties)	50
New Haven, CT	45
New Orleans, LA (all locations within Jefferson, Orleans, Plaquemines, and St. Bernard Parishes)	50
New York, NY (all locations within the boroughs of the Bronx, Brooklyn, Manhattan, Queens, and Staten Island and the counties of Nassau and Suffolk)	50
Norfolk, VA, area (all locations within the cities of Norfolk, Virginia Beach, Hampton, Newport News, Portsmouth, and Chesapeake, VA) **	47
Oklahoma City, OK *	43
Omaha, NE **	45
Orlando, FL **	47
Philadelphia, PA (all locations within Philadelphia and Bala Cynwyd, PA)	50
Phoenix, AZ (all locations within the corporate limits of Phoenix and Scottsdale, AZ) **	46
Pittsburgh, PA	50
Pittsfield, MA **	50
Portland, ME **	47
Portland, OR **	50
Portsmouth, NH (all locations within the corporate limits of Portsmouth and Newington (Pease AFB), NH, and Kittery, ME (Portsmouth Naval Shipyard)) *	48
Providence, RI **	50
Raleigh, NC *	42
Richmond, VA **	44
Roanoke, VA **	43
Rochester, NY	45
Rockford, IL *	40
St. Louis, MO	46
Sacramento, CA (all locations within the corporate limits including McClellan AFB and Mather AFB) **	45
Salt Lake City, UT **	43
San Antonio, TX	41
San Diego, CA (all locations within San Diego County) **	50
San Jose, CA (all locations within Santa Clara County)	44
San Francisco/Oakland, CA (all locations within San Francisco and Alameda Counties)	50
San Mateo, CA (all locations within San Mateo County)	43
Santa Barbara, CA (all locations within Santa Barbara County)	50
Seattle, WA (all locations within King County)	49
Spokane, WA	42
Springfield, IL	39
Springfield, MA	41
Syracuse, NY	43
Tampa/St. Petersburg, FL (all locations within Hillsboro and Pinellas Counties) **	42
Toledo, OH	43
Tucson, AZ	48
Tulsa, OK	49
Valley Forge, PA (all locations within the corporate limits of Valley Forge and King of Prussia, PA)	50
Washington, DC (all locations within the corporate limits of Washington, DC; the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince Georges in Maryland)	50
Wichita, KS	44
Wilmington, DE	47
Worcester, MA	44
York, PA	41

[1] The HRGA boundary is defined as "all locations within the corporate limits or entirely surrounded by the boundaries thereof" unless otherwise specified.

[2] HRGA's with county definitions shall include "all locations entirely surrounded by the boundaries thereof."

* Newly designated HRGA.

** Increased maximum rate or redefined boundary for previously designated HRGA.

* * * * *

6. Paragraphs 2–1.2 a(3) and (4) are revised to read as follows: 2–1.2. *Applicability.*

a. *Persons covered.* Except as otherwise provided in these regulations, the following persons are covered:

* * * * *

(3) New appointees to any positions outside the conterminous United States; new appointees to positions within the conterminous United States for which the Office of Personnel Management has determined that a personnel shortage exists; and new appointees to the Senior Executive Service.

(4) Student trainees assigned upon completion of college work to positions within the 50 States and the District of Columbia for which the Office of Personnel Management has determined that a personnel shortage exists.

* * * * *

7. Paragraphs 2–1.5f(1) (a) and (b) are revised and 2–1.5f(1)(a–1) is added, as follows:

2–1.5. *Eligibility and conditions.*

* * * * *

f. *Shortage-category appointees, student trainees, and Senior Executive Service appointees.*

(1) *Coverage.*

(a) *Shortage-category appointees.* The Office of Personnel Management is responsible for the designation of positions that are in the personnel shortage category. Persons appointed to these positions are eligible for travel and transportation to their first official stations at Government expense.

(a–1) *Senior Executive Service (SES) appointees.* New appointees to positions in the Senior Executive Service are eligible for travel and transportation to their first official stations at Government expense.

(b) *Student trainees.* When student trainees, after a period of leave without pay during which they completed college work, are assigned as professional employees to positions in a personnel shortage category (as designated by the Office of Personnel Management), they are eligible for travel and transportation to their places of assignment at Government expense unless they have received a prior payment as indicated in 2–1.5f(2)(c).

* * * * *

[FR Doc. 79-20004 Filed 6-28-79; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL EMERGENCY MANAGEMENT AGENCY
44 CFR, Part 64

[Docket No. FEMA-5610]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency.

ACTION: Final rule.

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

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

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

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Arizona	Maricopa	Avondale, city of	040038-B	June 15, 1979, suspension withdrawn.	Feb. 15, 1974 and Jan. 16, 1976.
Connecticut	Fairfield	Brookfield, town of	090003-B	do	July 26, 1974 and Sept. 17, 1976.
Do	New Haven	Hamden, town of	090078-B	do	Jan. 16, 1974 and May 17, 1977.
Do	Fairfield	Newton, town of	090011-B	do	Oct. 18, 1974 and May 31, 1977.
Illinois	Kane and DuPage	Aurora, city of	170320-B	do	June 14, 1974 and Sept. 24, 1976
Do	Lake	Bannockburn, village of	170359-B	do	Feb. 1, 1974 and Feb. 13, 1976.
Do	Cook and DuPage	Elk Grove, village of	170088-B	do	Nov. 2, 1973 and June 25, 1976.
Do	Cook	Glenview, village of	170096-B	do	June 28, 1974 and Sept. 12, 1975.
Do	Morgan	Jacksonville, city of	170516-B	do	July 19, 1974 and Aug. 20, 1976.
Do	Cook	Morton Grove, village of	170128-B	do	Mar. 1, 1974, and Apr. 30, 1976.
Do	do	Niles, village of	170130-B	do	Mar. 29, 1974 and Mar. 26, 1976.
Do	Iroquois	Watseka, city of	170297-B	do	Mar. 8, 1974.
Do	DuPage	Wheaton, city of	170221-B	do	Apr. 5, 1974 and Sept. 26, 1975.
Do	do	Woodridge village of	170737-A	do	Apr. 5, 1974.
Indiana	Delaware	Albany, town of	180314-B	do	Nov. 23, 1973 and May 21, 1976.
Iowa	Polk	Urbandale, city of	190230-B	do	May 24, 1974 and Sept. 19, 1975.
Do	do	Windsor Heights, city of	190687-B	do	Oct. 22, 1976.
Massachusetts	Middlesex	Concord, town of	250189-A	do	Sept. 6, 1974.
Do	do	Maynard, town of	250204-B	do	July 26, 1974 and Dec. 10, 1976.
Do	Essex	West Newbury, town of	250108-A	do	Aug. 16, 1974.
Michigan	Genesee	Atlas, township of	260393-A	do	Nov. 26, 1976.
Do	Oakland	Beverly Hills, village of	260256-B	do	Feb. 22, 1974 and June 11, 1976.
Do	Genesee	Davison, township of	260664-B	do	Oct. 21, 1977.
Do	do	Flushing, city of	260077-B	do	May 17, 1974.
Do	Wayne	Gibralter, city of	260226-B	do	June 28, 1974 and Aug. 1, 1975.
Do	Lapeer	Lapeer, city of	260112-B	do	May 17, 1974.
Do	Wayne	Rockwood, city of	260241-B	do	Nov. 2, 1973 and Mar. 14, 1975.
Do	Saginaw	Spaulding, township of	260303-A	do	Jan. 24, 1975.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Missouri	Platte	Dearborn, city of	290504-A	do	Sept. 15, 1975.
Do	St. Louis	Des Peres, city of	290347-B	do	May 13, 1977.
Do	Jackson	Grandview, city of	290171-B	do	July 19, 1974 and Jan. 23, 1976.
Do	St. Louis	Jennings, city of	290260-B	do	Feb. 1, 1974 and Aug. 15, 1975.
Do	New Madrid	New Madrid, city of	290259-B	do	May 31, 1974 and Nov. 14, 1975.
Do	Platte	Tracy, city of	290237-A	do	Nov. 22, 1974.
Nebraska	Scottsbluff	Scottsbluff, city of	310206-B	June 15, 1979, suspension withdrawn.	Apr. 5, 1974 and July 23, 1976.
New Hampshire	Hillsborough	Nashua, city of	330037-B	do	Aug. 23, 1974 and Mar. 12, 1976.
Do	Merrimack	Northfield, town of	330118-B	do	Mar. 22, 1974 and Feb. 11, 1977
Do	Rockingham	Salem, town of	330142-B	do	Apr. 23, 1977.
New Jersey	Ocean	Island Heights, borough of	340374-B	do	July 19, 1974 and Dec. 19, 1975.
New York	Westchester	Elmsford, village of	360310-B	do	Apr. 12, 1974 and May 28, 1976.
Do	Nassau	Hewlett Harbor, village of	360409-B	do	Mar. 8, 1974 and June 25, 1976.
Do	Westchester	Mamaroneck, town of	360917-A	do	June 15, 1979.
Do	Dutchess	Wappinger, town of	361337-A	do	Nov. 29, 1974.
Ohio	Franklin	Valleyview, village of	390503-A	do	July 11, 1975.
Oregon	Polk and Marion	Salem, city of	410167-B	do	Aug. 9, 1974 and July 2, 1976.
Pennsylvania	Allegheny	Dravosburg, borough of	420027-B	do	Dec. 28, 1973.
Do	Philadelphia	Philadelphia, city of	420757-B	do	Dec. 6, 1974 and Feb. 27, 1976.
Do	McKean	Port Allegany, borough of	420671-B	do	June 28, 1974.
Do	Berks	Shoemakersville, borough of	420149-B	do	Mar. 22, 1974 and May 14, 1976.
Texas	Cameron	Unincorporated areas	480101-A	do	June 15, 1979.
Do	Gonzales	Gonzales, city of	480254-B	do	May 24, 1974 and April 30, 1976.
Virginia		Charlottesville, city of	510033-C	do	May 24, 1975 and Jan. 3, 1975.
Do		Richmond, city of	510129-B	do	Dec. 6, 1974 and Jan. 3, 1975.
Washington	Grays Harbor	Hoquiam, city of	530061-B	do	June 28, 1974 and Mar. 19, 1976.
West Virginia	Jefferson	Ranson, town of	540068-C	do	May 3, 1974 and April 25, 1975.
Wisconsin	Kewaunee	Algoma, city of	550213-B	do	Jan. 9, 1974 and April 16, 1976.
Do	Milwaukee	Hales Corners, village of	550524-B	do	May 3, 1974 and Nov. 26, 1976.
Michigan	Bay	Williams, township of	260359	June 21, 1979, emergency.	June 17, 1977.
North Carolina	Wake	Unincorporated areas	370368-A	Feb. 26, 1975, emergency, Nov. 15, 1978 regular, Nov. 15, 1978, suspended, June 20, 1979, reinstated.	Nov. 15, 1978.
Pennsylvania	Allegheny	Glassport, borough of	420008-B	Jan. 30, 1975, emergency, June 15, 1979, regular, June 15, 1979, suspended, June 26, 1979, reinstated.	Dec. 7, 1973 and June 18, 1976.
Kentucky	Kenton	Covington, city of	210129-B	Mar. 19, 1974, emergency, June 15, 1979, regular, June 15, 1979, suspended, June 25, 1979, reinstated.	Mar. 15, 1974, and Mar. 5, 1976

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: June 22, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-20079 Filed 6-28-79; 8:45 am]

BILLING CODE 4210-23-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1100

[Ex Parte No. 55 (Sub-No. 24A)]

Rail appellate procedures

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: Revised rail appellate procedures, including procedures for reopening administratively final decisions, adopted for formal Commission proceedings. Procedures generally provide for one level of mandatory review and a discretionary appeal except where the Commission or a division has entered an administratively final initial disposition which voided the requirement of an initial decision.

EFFECTIVE DATE: June 29, 1979.

FOR FURTHER INFORMATION CONTACT: Janice M. Rosenak or Harvey Govetz, Office of Proceedings, Section of Rates, Washington, D.C. 20423; (202) 275-7693.

Rule 98 of 49 CFR Part 1100 is revised as follows:

§ 1100.98 Rail appellate procedures.

(a) *General*—These rules shall apply only in cases where a hearing is required by law or Commission action. They shall not apply to any form of informal proceedings (e.g., car service, suspension, or special permission) in existence or subsequently established, regardless of the procedure adopted by the Commission for handling of any particular case.

(1) Paragraph (b) of this rule provides for the appeal from any initial decision of an administrative law judge, individual Commissioner, employee board, division, or panel of the Commission.

(2) Paragraph (c) of this rule provides for a discretionary administrative review of (i) an appellate action of a review board or division or (ii) an action of a division where the requirement of an initial decision has been voided.

(3) Paragraph (d) of this rule provides for the reopening of an action of the entire Commission in the first instance.

(4) Paragraph (h) of this rule provides for the reopening of any administratively final action of the Commission.

(b) *Appeal of initial decisions.* (1) A party is entitled to one appeal from an initial decision of an administrative law judge, individual Commissioner, employee board, division, or panel of the Commission. The appeal is of right and may not be the subject of further appeal.

If an initial decision is permitted to become the order of the Commission upon expiration of the time for appeal, reexamination of the action by the Commission may only be sought pursuant to paragraph (h).

(2) Appeals and replies shall not exceed 30 pages in length, including the index of subject matter, argument, and appendices or other attachments.

(3) Appeals shall detail the assailed findings, with supporting citations to the record and authorities. Appeals shall be confined to factual and legal issues which are essential to the ultimate and just determination of the proceeding and shall be based on the following grounds:

(i) That a necessary finding of fact is omitted, erroneous, or unsupported by substantial evidence of record;

(ii) That a necessary legal conclusion or finding is contrary to law, Commission precedent, or policy;

(iii) That an important question of law, policy, or discretion, is involved which is without governing precedent;

(iv) That prejudicial procedural error has occurred.

(4) Appeals which are not timely filed or do not comply with the requirements in paragraph (b) (2) and (3) of this section above will be subject to rejection.

(5) The timely filing of an appeal to an initial decision shall stay the effect of the action pending determination of the appeal.

(c) *Discretionary review—petitions for administrative review.* (1) Any party may file a petition for administrative review of an appellate action made by a review board or division pursuant to paragraph (b) of this rule or a decision of a division in the first instance when the requirement of an initial decision was voided. The petition will be granted only upon a showing that:

(i) The prior action involves a matter of general transportation importance, or

(ii) The prior action will be affected materially because of new evidence or changed circumstances.

(2) The petition and any reply shall not exceed 20 pages in length. A separate preface and summary of argument, not exceeding 3 pages, may accompany petitions and replies and shall accompany those that exceed 10 pages in length. To the extent the petition requests further hearing, rehearing, reargument, or reconsideration, the petition shall state in detail the nature of the relief requested and the reasons therefor. When in a petition filed under this section, a party seeks an opportunity to introduce evidence, the evidence must be stated briefly, must not appear to be cumulative, and explanation must be given why it was not previously adduced.

(3) The filing of a petition shall not stay the effect of a prior action except that the Commission may stay the effect of the action upon its own motion or on petition. A petition to stay may be filed in advance of the petition for administrative review and shall be filed within 10 days of service of the action. No reply need be filed. However, if a party elects to file a reply, it must reach the Commission no later than 16 days after service of the action.

(d) *Petitions to reopen actions of the Commission in the first instance.* (1) Any party may file a petition to reopen actions of the entire Commission in the first instance. Petitions to reopen shall state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances, and shall include a request that the Commission make such a determination. Specific appellate procedures shall be provided in cases of interim or tentative decisions.

(2) To the extent a petition requests further hearing, rehearing, reargument, or reconsideration, the petition shall state in detail the nature of the relief requested and the reasons therefor. When in a petition filed under this section opportunity is sought to introduce evidence, the evidence to be adduced must be stated briefly, must not appear to be cumulative, and explanation must be given why it was not previously adduced.

(3) A petition and any reply shall not exceed 20 pages in length. A separate preface and summary of argument, not exceeding 3 pages, may accompany the petition and any reply and shall accompany those that exceed 10 pages in length.

(4) The filing of a petition shall not stay the effect of the prior action except that the Commission may, on its own motion or on petition, stay the effect of its own action in the first instance. A petition to stay may be filed in advance of the petition to reopen and shall be filed within 10 days of service of the action. No reply need be filed. However, if a party elects to file a reply it must reach the Commission no later than 16 days after service of the action.

(e) *Time for filing appeals, petitions for administrative review, and petitions to reopen actions of the entire Commission in the first instance.* Appeals and petitions for administrative

review or reopening pursuant to paragraphs (b), (c), and (d), of this rule must be filed within 20 days after the service of the action for which review is sought or within any further period (not to exceed 20 days) as a division or the Commission may authorize. If an appeal or petition is not filed within the authorized period, all administrative remedies will have been exhausted, and a party may only seek reopening pursuant to paragraph (h).

(f) *Effectiveness.* (1) If an appeal of an initial decision is not timely filed or the Commission does not stay the effectiveness on its own motion, the order set forth in the action shall become the order of the Commission and shall become effective at the expiration of the time for filing.

(2) Any action of the Commission which is not stayed and any action of a division which is not an initial decision and which is not stayed shall become effective 30 days after it is served, unless the Commission or division provides for the action to become effective at an earlier date.

(g) *Petitions for stay and other relief.* (1) A party may petition for a stay of an action pending a request for judicial review, for extension of the compliance date, for modification of the effective date, or for similar procedural relief not otherwise covered by these rules, stating the reasons therefor. The petition shall be filed not less than 10 days prior to the effective date of the action. No reply need be filed. If a party elects to file a reply it must reach the Commission no later than 5 days after the petition is filed.

(2) When actions of the Commission are made effective on less than 15 days' notice, petitions for stay shall be filed as close to the service date as practicable but prior to the institution of court action. No reply need be filed. A party may elect to file a reply, time permitting.

(h) *Petitions to reopen administratively final actions.* Any person at any time may petition for leave to file a petition to reopen any administratively final action of the Commission pursuant to the requirements of Paragraphs (d) (2) and (d) (3) of this rule. A petition for leave to file shall state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances and shall include a request that the Commission make such a determination.

(i) *Exhaustion of remedies and judicial review.* These rules do not relieve the requirement that a party exhaust its administrative remedies before going to court. Any action appealable as of right must be timely appealed. If an appeal, discretionary appeal, or petition seeking reopening is filed under paragraphs (b), (c) or (d) of this rule, before or after a petition seeking judicial review is filed with the courts, the Commission will act upon the appeal or petition after advising the court of its pendency unless action might interfere with the court's jurisdiction.

Dated: June 22, 1979.

By the Commission. Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Vice Chairman Brown absent and not participating.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-20285 Filed 6-28-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[Decision, Revised Service Order No. 1369-A]

Substitution of Trailers for Boxcars

Decided: June 25, 1979.

Service Date: June 26, 1979.

AGENCY: Interstate Commerce Commission.

ACTION: Revised Service Order No. 1369-A.

SUMMARY: Since an emergency no longer exists, Revised Service Order No. 1369 is vacated effective 11:59 p.m., June 25, 1979.

EFFECTIVE DATE: June 25, 1979.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, (202) 275-7840.

Upon further consideration of Revised Service Order No. 1369 (44 FR 23854), and good cause appearing therefore:

It is ordered that: § 1033.1369 Substitution of trailers for boxcars, Revised Service Order No. 1369 is vacated effective 11:59 p.m., June 25, 1979.

(49 U.S.C. (10304-10305 and 11121-11126))

A copy of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.

Secretary.

[FR Doc. 79-20247 Filed 6-28-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

Gulf of Alaska Groundfish; Correction

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Final rule (Errata).

SUMMARY: These amendments are corrections to the regulations governing foreign and domestic fishing for groundfish in the Gulf of Alaska. The amendment excludes fish of the genus *Coryphaenoides* from the "other species" category of fish.

EFFECTIVE DATE: These corrections are effective June 27, 1979.

FOR FURTHER INFORMATION CONTACT: Denton R. Moore, Acting Chief, Permits and Regulations Division, National Marine Fisheries Service, Washington, D.C. 20235, Telephone: (202) 634-7432.

SUPPLEMENTARY INFORMATION: The regulations implementing the Alaska groundfish fishery management plan (see 43 FR 52709 for vessels of the United States; 43 FR 59321 for foreign vessels) include fish of the genus *Coryphaenoides* (rattails) in the specifications of optimum yield (OY) and total allowable level of foreign fishing (TALFF) for the "other species" category of fish (see 50 CFR 611.92(b), Table I and 50 CFR 672.20(a), Table I). The National Oceanic and Atmospheric Administration (NOAA) has since discovered that the specifications of OY and TALFF in the plan (see 43 FR 17242) and the record did not include rattails because, since the species is of no commercial value, the magnitude of past harvest of the species was unknown.

This correction deletes from "other species" the fish of the genus *Coryphaenoides* which were mistakenly included in that category by the implementing regulations.

Signed in Washington, D.C., this 25th day of June, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

(16 U.S.C. 1801 *et seq.*)

PART 611—FOREIGN FISHING

§ 611.92 [Amended]

(A) 50 CFR 611.92(b), Table I, footnote 5, is amended by *adding* the phrase "fish of the genus *Coryphaenoides,*" between the words "herring," and "and".

PART 672—GROUNDFISH OF THE GULF OF ALASKA

§ 672.20 [Amended]

(B) 50 CFR 672.20(a)(1), Table I, footnote, is amended by *deleting* "and" before "Pacific halibut" and by adding the phrase "and fish of the genus *Coryphaenoides*" to the end of the footnote after the words "Pacific halibut".

[FR Doc. 79-20143 Filed 6-28-79; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Ch. II

Editorial Amendments

Editorial Note: The Office of the Federal Register (OFR) is preparing the 1979 Revision to the *Code of Federal Regulations* (CFR) volume containing Title 10, Parts 200—End. Our staff has been working closely with DOE to solve significant problems in editing and codifying these regulations.

As a result, OFR has extended the revision date of this volume to May 31, 1979. The OFR, as authorized by 44 U.S.C. 1506 and 1 CFR 8.1 and 8.2, is also making the following changes in 10 CFR Parts 200—End. These editorial changes are necessary to assure the orderly development of the CFR.

Removed Material

1. The following special rules have been deleted from the 1979 revision of the CFR because internal provisions indicate that they have expired.

Special rule No.	Placement in 10 CFR 200—End revision	Period of time covered by special rule
2	211, Sub. A, P. 158	For the month of July 1976.
3	211, Sub. A, P. 158	For the months of August 1976 through Mar. 31, 1977.
5	211, Sub. A, P. 160	Through Mar. 31, 1977; and through Mar. 31, 1978.
6	211, Sub. A, 44 FR 3469; Jan. 17, 1979	Through Mar. 31, 1979.
1	211, Sub. C, P. 191	Commencing Feb. 1, 1974; and month of May 1974.
2	211, Sub. C, P. 192	Quarter commencing Sept. 1, 1974.
3	211, Sub. C, P. 193	Months of Nov. and Dec. 1974, and Jan. and Feb. 1975.
5	211, Sub. C, P. 195	Quarter commencing Sept. 1, 1975 . . . is not extended beyond Nov. 15, 1975.
8	211, Sub. C, P. 196	For the months of Feb. and Mar. 1977.
9	211, Sub. C, P. 196	Quarter . . . commencing June 1, 1977; and—special allocation . . . for month of Sept. 1977; also allocation period commencing Oct. 1, 1977.
1	211, Sub. D, P. 201	Remain in effect thru Mar. 31, 1977.
2	211, Sub. D, P. 203	Remain in effect thru Mar. 31, 1977.
1	212, Sub. F, P. 307	For the months Jan. thru Mar. 1977.

2. Part 500, entitled "Mandatory Gasoline and Diesel Fuel Rationing Regulations," was established on January 26, 1977, at 42 FR 4819. These regulations were issued subject to the approval by a resolution by each House of Congress in accordance with the procedures specified in section 552 of the Energy Policy and Conservation Act (Pub. L. 94-163).

Since Congressional approval was never granted, Part 500 is being removed from the CFR.

3. In § 212.72, the definitions of "Adjusted decontrol base production level," "Decontrol base production level," and "Decontrolled old crude petroleum" were added on July 29, 1975, at 40 FR 31747. These regulations were issued subject to Congressional review according to the procedures specified under section 4(g)(2) of the Emergency Petroleum Allocation Act of 1973.

Since Congress did not approve this amendment, § 212.72 is amended by removing these definitions.

Appendix Headings

The headings of the appendices in this Chapter are being editorially amended. The intent of these changes is to—

1. Create a uniform system of designation for appendices in this title;

2. Indicate what the material in the appendix is appended to; and

3. Provide a short, descriptive subject heading for each appendix.

The amended headings read as follows:

Old	New
Part 205:	
Appendix II—Guidelines for the Disposition of Requests for Exceptions from Part 213.	Appendix A to Subpart D of Part 205—Disposition of Requests for Exceptions from Part 213.
Part 208:	
Appendix—Summary Sheet to Accompany Draft and Final Environmental Impact Statements.	Appendix A to Part 108—Environmental Impact Statement Summary Sheet.
Part 211:	
Appendix—Guidelines for the Allocation of Propane and Other NGLS for Gas Utility and Gas Transmission Company Use.	Appendix A to Subpart D of Part 211—Allocation Guidelines for Propane and Other Natural Gas Liquid Products for Gas Utility and Transmission Company Use.
Appendix A—Forms and Instructions	Appendix A to Subpart L of Part 211—Reporting Forms and Instructions.
Part 212:	
Appendix—Schedule of No. 9 of monthly price adjustments effective Dec. 1, 1977.	Appendix A to Subpart D of Part 212—Monthly Price Adjustments from February 1976 through August 1979.
Part 430:	
Appendix A1—Uniform test method for measuring the energy consumption of electric refrigerator-freezers.	Appendix A to Subpart B of Part 430—Uniform test method for measuring the energy consumption of electric refrigerators and electric refrigerator-freezers.
Appendix B—Uniform test method for measuring the energy consumption of freezers.	Appendix B to Subpart B of Part 430—Uniform test method for measuring the energy consumption of freezers.
Appendix C—Uniform test method for measuring the energy consumption of dishwashers.	Appendix C to Subpart B of Part 430—Uniform test method for measuring the energy consumption of dishwashers.
Appendix D—Uniform test method for measuring the energy consumption of clothes dryers.	Appendix D to Subpart B of Part 430—Uniform test method for measuring the energy consumption of clothes dryers.
Appendix E—Uniform test method for measuring the energy consumption of water heaters.	Appendix E to Subpart B of Part 430—Uniform test method for measuring the energy consumption of water heaters.
Appendix F—Uniform test method for measuring the energy consumption of room air conditioners.	Appendix F to Subpart B of Part 430—Uniform test method for measuring the energy consumption of room air conditioners.
Appendix G—Uniform method for measuring the energy consumption of unvented home heating equipment.	Appendix G to Subpart B of Part 430—Uniform method for measuring the energy consumption of unvented home heating equipment.
Appendix H—Uniform test method for measuring the energy consumption of television sets.	Appendix H to Subpart B of Part 430—Uniform test method for measuring the energy consumption of television sets.
Appendix I—Uniform test method for measuring the energy consumption of conventional ranges; conventional cooking tops; conventional ovens; microwave ovens and microwave/conventional ranges.	Appendix I to Subpart B of Part 430—Uniform test method for measuring the energy consumption of conventional ranges; conventional cooking tops; conventional ovens; microwave ovens and microwave/conventional ranges.

Old	New
Appendix J—Uniform test method for measuring the energy consumption of automatic and semi-automatic clothes washers.	Appendix J to Subpart B of Part 430—Uniform test method for measuring the energy consumption of automatic and semi-automatic clothes washers.
Appendix K1—Uniform test method for measuring the energy consumption of central system humidifiers.	Appendix K1 to Subpart B of Part 430—Uniform test method for measuring the energy consumption of central system humidifiers.
Appendix K2—Uniform test method for measuring the energy consumption of room humidifiers.	Appendix K2 to Subpart B of Part 430—Uniform test methods for measuring the energy consumption of room humidifiers.
Appendix L—Uniform test method for measuring the energy consumption of dehumidifiers.	Appendix L to Subpart B of Part 430—Uniform test method for measuring the energy consumption of dehumidifiers.
Appendix M—Uniform test method for measuring the energy consumption of central air conditioners.	Appendix M to Subpart B of Part 430—Uniform test method for measuring the energy consumption of central air conditioners.
Appendix N—Uniform test method for measuring the energy consumption of furnaces.	Appendix N to Subpart B of Part 430—Uniform test method for measuring the energy consumption of furnaces.
Appendix O—Uniform test method measuring the energy consumption of vented home heating equipment.	Appendix O to Subpart B of Part 430—Uniform test method for measuring the energy consumption of vented home heating equipment.
Part 450:	
Appendix B—Heating zones for energy measures	Appendix A to Subpart D of Part 450—Heating zones for energy measures.
Appendix C—Cooling zones for energy measures	Appendix B to Subpart D of Part 450—Cooling zones for energy measures.
Appendix A—Energy Price Projections	Appendix A to Part 450—Energy Price Projections.
Appendix B—Discount Factors (Discounting Rate of 10 Percent).	Appendix B to Part 450—Discount Factors (Discounting Rate of 10 Percent).
Appendix C—Factors to adjust future principal and interest payments to base year equivalent values	Appendix C to Part 450—Factors to adjust future principal and interest payments to base year equivalent values.
Part 725:	
Appendix A—Categories of Restricted Data Available (Including Scope Notes for Each Category).	Appendix A to Part 725—Categories of Restricted Data Available.
Appendix B—ERDA's Operations Offices Geographical Areas of Responsibilities.	Appendix B to Part 725—ERDA's Operations Offices and Geographical Areas of Responsibilities
Part 861:	
Appendix A—Perimeter description of the Energy Research and Development Administration's Nevada test site in the State of Nevada.	Appendix A to Part 861—Perimeter Description of ERDA's Nevada Test site.

Standby Regulations

I. Standby Regulations have been published as special rules in 10 CFR Ch II. Because of the relationship to existing regulations, they must be separate from the remaining special rules and given a unique, identifiable designation. We are designating the standby regulations as follows:

Old	New
Special Rule 1 to Part 210	Standby regulation 210-1
Special Rule 10 to Part 211, Subpart C	Standby regulation 211-1
Special Rule 1 to Part 211	Standby regulation 211-2
Special Rule 1 to Part 212, Subpart L	Standby regulation 212-1
Special Rule 1 to Part 212	Standby regulation 212-2

II. The text of the standby regulations are carried in an Appendix A to the Part where they appear. For example, Appendix A to Part 211 contains Standby Regulations 211–1 and 211–2. The full text of any document affecting a standby regulation will be carried with that regulation.

III. A series of bridges or finding aids have been developed to connect the current text of the CFR to the provisions of the Standby Regulation that potentially amends the CFR. These devices—

1. Make the user aware of the existence of alternative text;
2. Connect the CFR section to the standby regulation potentially affecting it; and
3. Indicate activated provisions of any activated standby regulation.

These finding aids include—

1. A two-part table to 10 CFR Ch II indicating published standby regulations; and
2. A note to any potentially affected CFR Section indicating the standby regulation potentially affecting it.

The tables would appear as follows:

DOE/ERA Standby Regulations

Table 1

Standby regulation	Subject	FR
210-1	Standby product price and allocation regs.	44 FR 3936, Jan. 18, 1979
211-1	Standby mandatory crude oil allocation and refinery yield control programs.	44 FR 3423, Jan. 16, 1979
211-2	Standby product allocation regs.	44 FR 3936, Jan. 18, 1979
212-1	Mandatory allocated crude oil pricing rule.	44 FR 3427, Jan. 16, 1979
212-2	Standby product price regs.	44 FR 3942, Jan. 18, 1979

Table 2

Section affected	Standby regulation
210.35	210.-1
211.2	211.-2
211.9	211.-2
211.10	211.-2
211.12	211.-2
211.13	211.-2
211.17	211.-2
211.20	211.-2
211.62	211.-1
211.66	211.-1
211.71	211.-1
211.102	211.-2
211.105	211.-2
211.106	211.-2
211.122	211.-2
211.123	211.-2
211.125	211.-2
211.142	211.-2
211.143	211.-2
211.144	211.-2
211.145	211.-2
211.146	211.-2
211.147	211.-2
211.162	211.-2
211.163	211.-2

Table 2—Continued

Section affected	Standby regulation
211.166	211.-2
211.167	211.-2
211.182	211.-2
211.183	211.-2
211.185	211.-2
211.186	211.-2
211.202	211.-2
211.203	211.-2
212.56	212.-2
212.57	212.-2
212.94	212.-1

The notes to each section that could be affected by a standby regulation read as follows.

§ 211.2 Relationship of subparts.

Unless otherwise specified in Subparts D through K of this part, the general provisions set forth in this subpart apply to the mandatory allocation of all allocated products.

Note.—The provisions of this section may be affected by Standby Regulation 211-2. Standby Regulation 211-2 appears in Appendix A to Part 211. For the convenience of the user, a table listing all Standby Regulations and sections affected appears at the end of this Chapter.

Special Rules

There are four Special Rules in 10 CFR Chapter II which are not standby regulations and which are still in effect. They are—

1. Special Rule No. 7 to Part 211, Subpart A—44 FR 18643; March 29, 1979.
2. Special Rule No. 8 to Part 211, Subpart A—44 FR 24542; April 26, 1979.
3. Special Rule No. 9 to Part 211, Subpart A—44 FR 28616; May 15, 1979.
4. Special Rule No. 2 to Part 212, Subpart F—44 FR 9375; February 13, 1979.

These Special Rules amend or supplement codified regulations. They are normally issued on an emergency basis and effective for a short period of time. The text of any Special Rule currently in effect is carried as Appendix A to the Subpart where they appear.

BILLING CODE 6450-01-M

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10 CFR Part 211

[Docket No. ERA-R-78-18]

Mandatory Petroleum Allocation Regulations; Amendments to Remove 21 Cent Per Barrel Entitlement Penalty on Uncontrolled Crude Oil

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Final Rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is adopting a rule which amends the domestic crude oil allocation (entitlements) program to eliminate the current 21 cent per barrel entitlement penalty on uncontrolled (exempt domestic and imported) crude oil. We have determined that the 21 cent penalty is imposing hardships on certain refiners and is counterproductive to DOE's efforts to alleviate the impacts of current crude oil prices and crude oil shortages.

DATES: Effective for crude oil receipts beginning August 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Norman Breckner (Office of Regulations and Emergency Planning), Economic Regulatory Administration, Room 2304, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-7477.

Douglas McIver (Entitlements Program Office), Economic Regulatory Administration, Room 6128I, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-8660.

Kristina Clark (Office of General Counsel), Department of Energy, 1000 Independence Avenue, S.W., Room 6A-127, Washington, D.C. 20585, (202) 252-6744.

William Webb (Office of Public Information), Department of Energy, 2000 M Street, N.W., Washington, D.C. 20461, (202) 634-2170.

SUPPLEMENTAL INFORMATION:

I. Background
II. Discussion of comments
III. Amendments adopted
IV. Other matters

I. Background

In its March 29, 1976 amendments to the entitlements program (41 FR 13899, April 1, 1976), the Federal Energy Administration (FEA) adopted a fixed advantage or bias under the program for refiners' receipts of lower and upper tier domestic crude oils as compared with receipts of imported or uncontrolled domestic crude oil. This adjustment was implemented by fixing the entitlement price at an amount 21 cents less than the exact differential between the weighted average cost of refiners' receipts of imported and exempt domestic crude oils, on the one hand, and those of lower tier crude oil, on the other. FEA's stated rationale for adopting this provision was "that a fixed advantage of 21 cents per barrel for all domestic crude oil production over receipts of imported crude oil is appropriate, in that the import program identifies this amount as being necessary to preserve incentives for refining domestic crude oil." (41 FR 13899 at 13901).

On November 2, 1978, in a notice of proposed rulemaking regarding production incentives for marginal properties, we noted that "this fixed advantage for refiners' receipts of domestic crude oil may not be serving the purpose for which it was intended, and may be imposing an inappropriate burden on those refiners that are dependent on imported crude oil." (43 FR 52186; November 8, 1978). Citing the special entitlements adjustments for heavy California crude oil, and noting that even without the 21 cent penalty the average cost of imported crude oil exceeds that of uncontrolled domestic and Alaska North Slope (ANS) crude oils also used in calculating the entitlement price, we tentatively concluded that the 21 cent penalty should be eliminated. On April 5, 1979, we adopted a final rule with respect to production incentives for marginal properties, but deferred consideration of our proposal to eliminate the 21 cent penalty and extended the comment period until June 15, 1979. (44 FR 22010, April 12, 1979).

II. Discussion of comments

Following publication of the final rule for production incentives for marginal properties on April 12, 1979, only one additional comment was received on our proposal to eliminate the 21 cent per barrel entitlement penalty for imported crude oil. We recevied over 30 comments on this issue during the original comment period. Generally, refiners favored the proposal while producers opposed it.

Comments in favor of eliminating the penalty expressed the view that the penalty was unnecessary as a means to create an incentive for refiners to purchase and refine domestic crude oil. Many refiners argued that domestic crude oil does not need the 21 cent advantage because of its lower price and more dependable supply. Small and independent refiners which lacked adequate domestic supplies argued that they were especially disadvantaged by the 21 cent penalty. Producers and some refiners with significant domestic production were opposed to eliminating the 21 cent penalty, believing that its elimination would raise the entitlement cost for lower tier and upper tier crude oil and, hence, neutralize the impact of the incentives we had at that time proposed to adopt regarding marignal properties.

III. Amendments adopted

Based on the comments received and our analysis of the issue, we affirm our tentative conclusion expressed in the November 2 notice, and we have determined to eliminate the 21 cent entitlement penalty for imported and exempt domestic crude oils. We further

believe that this action is consistent with the President's temporary suspension of license fees and tariffs on oil imports, which is based on the determination that such fees and tariffs are unnecessary and burdensome to the American public during a period in which shortages of crude oil persist. (Proclamation 4655 of April 6, 1979, 44 FR 21243, April 10, 1979). (Subsequently, on June 12, 1979, the Secretary of Energy extended the suspension of license fees and tariffs on oil imports for the period July, 1979 through December 31, 1979. (44 FR 36096, June 20, 1979). The amendments will become effective beginning with August 1, 1979 crude oil receipts.

Removal of the 21 cent entitlement penalty is accomplished by amending § 211.67(i)(4) to provide that the entitlement price is equal to the exact differential, for the month concerned, between the weighted average cost to refiners of lower tier crude oil and such weighted average cost of imported crude oil, ANS crude oil, stripper well crude oil, incremental tertiary crude oil, and other exempt domestic crude oils. In addition, reference to the 21 cent per barrel adjustment, found in § 211.67(b)(2) (relating to the calculation of the entitlement obligation for upper tier crude oil) is deleted. We are also making a technical correction to § 211.67(b)(2), by reinserting the reference to ANS crude oil in the numerator to the "deemed old oil ratio." This clause was inadvertently removed in the adoption of the final rule providing additional price incentives for tertiary enhanced recovery techniques (43 FR 33679; August 1, 1978).

IV. Other matters

In adopting this rule, we have considered, in accordance with DOE Order 2030, the economic impact of our action, and we completed a regulatory analysis on this issue as part of the regulatory analysis that was prepared for the final rule adopting production incentives for marginal properties. Copies of the regulatory analysis may be obtained from the ERA, Office of Public Information, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461. (202) 634-2170.

In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*), DOE has determined that this final rule does not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of NEPA and therefore an environmental assessment or an environmental impact statement is not required by NEPA and the applicable DOE regulations for compliance with NEPA.

In accordance with Section 404 of the Department of Energy Organization Act (DOE Act) (42 U.S.C. 7101 *et seq.*), the Federal Energy Regulatory Commission received a copy of the proposed rule and has notified the ERA that it has not determined that the proposed regulations would significantly affect any function within its jurisdiction under sections 402(a)(1), (b) and (c)(1) of the DOE Act.

(Emergency Petroleum Allocation Act 1973, 15 U.S.C. 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-51, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 *est seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 211 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective August 1, 1979.

Issued in Washington, D.C., June 27, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

1. Section 211.67 is amended in paragraphs (b)(2) and (i)(4) to read as follows:

§ 211.67 Allocation of domestic crude oil.

* * * * *

(b) *Required purchase of entitlements by refiners.*

* * * * *

(2) To calculate the number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for purposes of the definition of national domestic crude oil supply ratio in § 211.62 of this subpart, paragraph (b)(1) of this section and paragraph (c) of this section, each barrel of old oil shall be equal to one barrel of deemed old oil and each barrel of upper tier crude oil shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, ANS crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less such weighted average cost per barrel to refiners of upper tier crude oil, and the denominator of which is the entitlement price for that month.

* * * * *

(i) *Issuance and transfer of entitlements.*

* * * * *

(4) The price at which entitlements shall be sold and purchased shall be fixed by the ERA for each month and shall be the exact differential between the weighted average cost per barrel to refiners of old oil and such weighted average cost of imported crude oil, ANS crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter, such costs to be equivalent to the delivered costs to the refinery.

[FR Doc. 79-20434 Filed 6-28-79; 9:57 am]
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Proposed Rules

Federal Register
Vol. 44, No. 127
Friday, June 29, 1979

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 958 and 980]

Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oreg.; Proposed Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would require fresh market shipments of onions grown in certain designated counties in Idaho and Malheur County, Oregon, to be inspected and meet minimum quality and size requirements. The regulation should promote orderly marketing of such onions and keep less desirable qualities and sizes from being shipped to consumers.

DATE: Comments due July 16, 1979.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Donald S. Kuryloski, Acting Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 447–6393.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 130 and Order No. 958, both as amended (7 CFR Part 958), regulate the handling of onions grown in certain designated counties in Idaho and Malheur County, Oregon. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Idaho-Eastern Oregon Onion Committee, established under the order, is responsible for its local administration.

This notice is based upon unanimous recommendations made by the committee at its public meeting in Ontario, Oregon, on June 19, 1979. The recommendations of the committee reflect its appraisal of the composition of the 1979 crop of Idaho-Eastern Oregon onions and the marketing prospects for this season and are consistent with the marketing policy it adopted. Harvesting of onions is expected to begin about August 1.

The grade, size, pack, maturity and inspection requirements proposed herein are necessary to prevent onions of low quality or less desirable sizes from being distributed in fresh market channels. They would also provide consumers with good quality onions consistent with the overall quality of the crop, and maximize returns to producers for the preferred quality and sizes.

Exceptions are proposed to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable. Shipments would be allowed to certain special purpose outlets without regard to the grade, size, maturity, pack and inspection requirements, provided that safeguards were met to prevent such onions from reaching unauthorized outlets.

Special purpose shipments would be allowed for planting, livestock feed, charity, dehydration, extraction and pickling since such shipments would not normally enter the commercial fresh market channels and no useful purpose would be served by regulating such shipments. Onions for canning and freezing are exempt under the legislative authority for this part.

To maximize the benefits of orderly marketing the proposed regulation should become effective on August 1, when the marketing season is expected to begin. Interested persons were given an opportunity to comment on the proposal at an open public meeting on June 19, where it was unanimously recommended by the committee. This proposal is similar to regulations in effect for past seasons. It is hereby determined that the period allowed for comments should be sufficient under these circumstances and will tend to effectuate the declared policy of the act.

This proposed regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

7 CFR Part 958 is amended by adding a new § 9585.324 as follows:

§ 958.324 Handling regulation.

During the period August 1, 1979, through April 30, 1980, no person may handle any lot of onions, except braided red onions, unless such onions are at least "moderately cured," as defined in paragraph (f) of this section, and meet the requirements of paragraphs (a) and (b) of this section, or unless such onions are handled in accordance with paragraphs (c) and (d) or (e) of this section.

(a) *Grade and size requirments.*

(1) *White varieties.* Shall be either:

(i) U.S. No. 2, 1 inch minimum to 2 inches maximum diameter; or

(ii) U.S. No. 2, if not more than 30 percent of the lot is comprised of onions of U.S. No. 1 quality, and at least 1½ inches minimum diameter; or

(iii) U.S. No. 1, at least 1½ inches minimum diameter.

However, none of these three categories of onions may be commingled in the same bag or other container.

(2) *Red varieties.* U.S. No. 2 or better grade, at least 1½ inches minimum diameter.

(3) *All other varieties.* Shall be either:

(i) U.S. No. 2 grade, at least 3 inches minimum diameter, if not more than 30 percent of the lot is comprised of onions of U.S. No. 1 quality; or

(ii) U.S. No. 1, 1½ inches minimum to 2¼ inches maximum diameter; or

(iii) U.S. No. 1, at least 2¼ inches minimum diameter. However, none of these three categories of onions may be commingled in the same bag or other container.

(b) *Inspection.*

No handler may handle any onions regulated hereunder unless such onions are inspected by the Federal-State Inspection Service and are covered by a valid applicable inspection certificate, except when relieved of such requirement pursuant to paragraphs (c) or (e) of this section.

(c) *Special purpose shipments.*

The minimum grade, size, maturity and inspection requirements of this section shall not be applicable to shipments of onions for any of the following purposes:

(1) Planting; (2) livestock feed; (3) charity; (4) dehydration; (5) canning; (6) freezing; (7) extraction; and (8) pickling.

(d) *Safeguards.*

Each handler making shipments of onions for dehydration, canning, freezing, extraction or pickling pursuant to paragraph (c) of this section shall:

(1) First apply to the committee for and obtain a Certificate of Privilege to make such shipments;

(2) Prepare, on forms furnished by the committee, a report in quadruplicate on each individual shipment to such outlets authorized in paragraph (c) of this section;

(3) Bill or consign each shipment directly to the applicable processor; and

(4) Forward one copy of such report to the committee office and two copies to the processor for signing and returning one copy to the committee office. Failure of the handler or processor to report such shipments by promptly signing and returning the applicable report to the committee office may be cause for cancellation of such handler's Certificate of Privilege and/or the processor's eligibility to receive further shipments pursuant to such Certificate of Privilege. Upon cancellation of any such Certificate of Privilege the handler may appeal to the committee for reconsideration.

(e) *Minimum quantity exemption.* Each handler may ship up to, but not to exceed, one ton of onions each day without regard to the inspection and assessment requirements of this part, is such onions meet minimum grade, size and maturity requirements of this section. This exception shall not apply to any portion of a shipment that exceeds one ton of onions.

(f) *Definitions.* The terms "U.S. No. 1" and "U.S. No. 2" have the same meaning as defined in the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types), as amended (7 CFR 2851.2830–2851.2854), or the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 2851.3195–2851.3209), whichever is applicable to the particular variety, or variations thereof specifed in this section. The term "braided red onions" means onions of red varieties with tops braided (interlaced). The term "moderately cured" means the onions are mature and are more nearly well cured than fairly well cured. Other terms used in this section have the same meaning as when used in Marketing Agreement No. 130 and this part.

(g) *Applicability to imports.* Pursuant to section 8e of the act and § 980.117 *"Import regulations; onions"* (43 FR 5499); onions imported during the effective period of this section shall meet the grade, size, quality and maturity requirements specified in the introductory paragraph and paragraph (a) of this secion.

Dated: June 26, 1979.

D. S. Kurylocki,

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

[FR Doc. 79-20167 Filed 6-28-79; 8:45 am]

BILLING CODE 3410-02-M

Office of the Secretary

[7 CFR Subtitle A]

Implementation of the Revenue Act of 1978 as it Provides for the Exclusion of Certain Payments From Gross Income

AGENCY: Department of Agriculture.

ACTION: Advance Notice of Proposed Rulemaking and Request for Information and Public Comment.

SUMMARY: Section 543 of the Revenue Act of 1978 (Pub. L. 95–600) provides that certain payments, or portions thereof, received through federal and state programs can be excluded from gross income for federal tax purposes. The exclusions apply to the extent that the Secretary of Agriculture determines that payment is made primarily for the purposes of conservation, environmental protection, forestry, and wildlife habitat and the Secretary of the Treasury determines that the payment does not substantially increase the annual income derived from the property.

A current deduction, depreciation, amortization, depletion, or the investment credit may not be claimed with respect to amounts excluded from gross income under Section 543. If property or improvements are disposed of within twenty years, some or all of any capital gain may be treated as ordinary income. These provisions will apply to payments made after September 30, 1979. They are incorporated in the Internal Revenue Code of 1954 as Section 126 (exclusion) and as Section 1255 (recapture).

In addition, payments received by persons through programs operated by state governments may qualify for exclusion from gross income for federal tax purposes.

States that seek to have payments made through their programs considered for exclusion from gross income should provide six copies of the following information: authorizing legislation; rules or regulations; current policies and procedures under which payments are made; and a description of the practices or measures for which payments are made.

This notice requests information on payments received through state programs, public comments and suggestions dealing with the implementation of Section 543 of the Revenue Act of 1978, and provides a preliminary implementation schedule.

Although the Department of Agriculture is working with the Department of the Treasury to implement Section 543, this action is limited to the responsibilities of the Secretary of Agriculture as prescribed therein.

DATE: All information, comments, and suggestions should be submitted on or before July 15, 1979.

ADDRESS: Information, comments and suggestions, as well as requests for further information, should be addressed to: Dr. Arnold Miller, Office of Budget, Planning and Evaluation, Office of the Secretary, Room 117–A Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–3465.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Miller (202) 447–3465 at the address specified above.

SUPPLEMENTARY INFORMATION: (1) USDA Actions. The Department intends to carry out its responsibilities under Section 543 of Pub. L. 95–600 by taking the following actions:

a. Requesting comments and suggestions from the public on the implementation of this authority;

b. Reviewing and analyzing inputs received from the public as part of the information base leading to the development of proposed policies, criteria and procedures for determining the primary purpose of payments;

c. Proposing policies, criteria and procedures for making these determinations, together with proposed determinations covering payments received through certain USDA programs;

d. Requesting comments on the proposed policies, criteria and procedures for determining the primary purpose of payments;

e. Reviewing and analyzing comments and other public inputs as part of the information base leading to final decisions on policies, criteria, and procedures for determining the primary purpose of payments;

f. Promulgating final decisions on policies, criteria, and procedures for determining the primary purpose of payments;

g. Making determinations of the primary purpose of payments received under qualifying federal and state programs.

(2) State Programs. Payments received by persons through programs operated by state governments may qualify for exclusion from gross income for federal tax purposes. States operating such programs may wish to have payments made through them considered for exclusion from gross income under Section 543. To initiate consideration of payments made through these programs, such state governments should provide six copies of the following materials:

a. Authorizing legislation;

b. Rules or regulations governing the programs;

c. Current policies and procedures under which payments are made; and

d. A description of all practices or measures for which payments are made.

This information should be sent to Dr. Arnold Miller at the address specified above. Receipt of this information by July 15, 1979 will help ensure timely consideration of payments received through state programs.

This request supplements that made to the Governor of each state in a letter of May 24, 1979.

(3) Schedule. a. All comments and suggestions requested in this notice should be received by July 15, 1979.

b. Publication of proposed policies, criteria, and procedures for determining the primary purpose of payments, together with proposed determinations of the purpose of payments received under certain USDA programs, is projected for July 20, 1979.

c. Comments on the proposal received on or before September 20, 1979, will be considered in making decisions on the final policies, criteria, and procedures for determining the primary purpose of payments.

d. Final policies, criteria, and procedures for determining the primary purpose of payments will be promulgated on or about September 25, 1979.

3. Decisionmaking on the primary purpose of payments received through eligible federal and state programs will begin when final policies, criteria and procedures are promulgated.

Issued at Washington, D.C., June 27, 1979.

Signed at Washington, D.C. on June 27, 1979.

Bob Berglund,

Secretary.

[FR Doc. 79-20408 Filed 6-28-79; 8:46 am]

BILLING CODE 3410-90-M

Food Safety and Quality Service

[9 CFR Parts 301, 304, 305, 327, 335, 390, and 391]

Federal Meat Inspection Regulations and Humane Slaughter Regulations

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department proposes to issue regualtions implementing the Humane Methods of Slaughter Act of 1978 (Pub. L. 95-445, 92 Stat. 1069). The proposed regulations would amend the relevant provisions of the Federal meat inspection regulations and the humane slaughter regulations to specify standards and procedures with respect to humane methods of slaughtering and handling in connection with slaughter. The proposed regulations pertain to cattle, sheep, swine, goats, horses, mules, and other equines slaughtered in establishments subject to inspection under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*). These proposed regulations also set forth provisions for enforcement of these standards and procedures and establish rules of practice governing administrative proceedings based upon allegations of inhumane slaughter and handling in connection with slaughter. Additionally, the proposed regulations require that foreign establishments, which export livestock carcasses, parts of carcasses, meat or meat food products into the United States, adopt inspection procedures to ensure that such livestock are humanely slaughtered and handled in connection with slaughter.

DATE: Comments must be received on or before August 28, 1979.

ADDRESS: Written comments to: Executive Secretariat, Attn: Annie Johnson, Room 3807, South Agriculture Building, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold V. Giesemann, Acting Chief Staff Officer, Ante-Mortem and Post-Mortem Inspection Staff, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-3219.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments must be sent in duplicate to the Executive Secretariat. Comments should bear a reference to the date and page number of this issue of the Federal Register. All comments submitted pursuant to this notice will be made available for public inspection in the office of the Executive Secretariat during regular hours of business.

Background

On October 10, 1978, the Humane Methods of Slaughter Act of 1978 (Pub. L. 95-445, 92 Stat. 1069) was enacted. This Act amends the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) to require that all cattle, sheep, swine, goats, horses, mules, and other equines are humanely slaughtered and handled in connection with slaughter. Failure to slaughter or handle such livestock under humane methods, at an establishment receiving Federal meat inspection services, may result in a temporary suspension of inspection services until the establishment furnishes satisfactory assurances that the cause of inhumane slaughter or handling has been corrected. Suggested rules of practice governing such suspensions are set forth in the proposed regulations.

Additionally, the Humane Methods of Slaughter Act of 1978 similarily provides that Federal meat inspection services may be denied an establishment, which applies for such services, when it is determined that livestock have been inhumanely slaughtered or handled at such establishment. The proposed regulations reflect this authority to deny Federal meat inspection services.

The Humane Methods of slaughter Act of 1978 also amends the importation provisions of the Federal Meat Inspection Act to prohibit the importation of any carcasses, parts of carcasses, meat or meat food products, unless the livestock from which they were produced were humanely slaughtered and handled in connection with slaughter. The proposed regulations require that foreign establishments, which export such products to the United States, adopt inspection procedures to ensure that livestock are humanely slaughtered and handled in connection with slaughter.

The report on the hearing of the Senate Committee on Agriculture, Nutrition, and Forestry (S. Rep. No. 1059, 95th Cong., 2nd Sess. (1978)) states that the Department shall oversee humane treatment of livestock at official establishments when the animals come into custody of the establishment. This requires regulations concerning holding pen facilities. Certain facility requirements related to humane treatment of livestock, such as slip-resistant floor surfaces and proper

repair and arrangement of livestock pens for efficient movement of animals, would be required in the proposed regulations. Additionally, regulations concerning handling practices in the pen area prior to slaughter would be required. Certain inhumane practices, such as using sticks, clubs, and sharp pointed implements for driving livestock, would be specifically prohibited. Federal meat inspectors would be required to stop any inhumane practices. Procedures to be followed by Federal inspectors when stopping inhumane practices are specified in the proposed regulations.

Establishments may apply for an extension of time with respect to complying with certain requirements. Criteria for granting such extensions are proposed. No extension can exceed 18 months beyond October 10, 1979.

Whenever inspection is suspended because of noncompliance with the Humane Methods of Slaughter Act, it is proposed that the suspension shall remain in effect until the plant operator takes effective steps to prevent a recurrence or provides acceptable assurances that three will not be any recurrence. In the event the plant operator does not take these steps, a hearing to show cause why the suspension should be terminated may be instituted as prescribed in the proposed rules of practice.

Part 391 of the Federal meat inspection regulations would be revoked since the carcass identification requirement in the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901) has been rescinded. In this regard, the Humane Methods of Slaughter Act of 1978 amended Section 10 of the Federal Meat Inspection Act (21 U.S.C. 610) to prohibit the inhumane slaughter and handling in connection with slaughter of any livestock. Therefore, implementation of humane procedures are no longer optional, and there is no longer any need to identify carcasses derived from livestock slaughtered in accordance with the Humane Methods of Slaughter Act of 1978.

Ritual slaughter and handling in connection with ritual slaughter are exempted from the terms of the Humane Methods of Slaughter Act of 1978.

Accordingly, it is proposed that the Federal meat inspection regulations and the humane slaughter regulations would be amended as follows:

PART 301—DEFINITIONS

1. Section 301.2(a) (9 CFR 301.2(a)) would be amended by inserting a reference to the Humane Methods of Slaughter Act of 1978. Additionally, § 301.2 is amended by the addition of a new § 302.2(ooo), defining "inhumane slaughter and handling in connection with slaughter."

§ 301.2 Definitions.

* * * * *

(a) The Act. The Federal Meat Inspection Act of March 4, 1907, 34 Stat. 1260, as amended by the Wholesome Meat Act of 1967, 81 Stat. 584 and the Humane Methods of Slaughter Act of 1978, 92 Stat. 1069 (21 U.S.C., Sec. 601 *et seq.*).

* * * * *

(ooo) Inhumane slaughter and/or handling in connection with slaughter means slaughter or handling not in accordance with the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901–1906 as amended by 92 Stat. 1069) or Part 390 of the regulations (9 CFR Part 390).

* * * * *

PART 304—APPLICATIONS FOR INSPECTION; GRANT OR REFUSAL OF INSPECTION

2. Section 304.2 (9 CFR 304.2) would be amended by adding a new paragraph (f) to read as follows:

§ 304.2 Drawings, information to be furnished; grant or refusal of inspection.

* * * * *

(f) Grant of inspection may be refused in accordance with the Humane Methods of Slaughter Act of 1978 (92 Stat. 1069) and the applicable rules of practice.

PART 305—OFFICIAL NUMBERS; INAUGURATION OF INSPECTION; WITHDRAWAL OF INSPECTION; REPORTS OF VIOLATIONS

3. Section 305.5 (9 CFR 305.5) would be amended by adding a new paragraph (c) to read as follows:

§ 305.5 Withdrawal of inspection; statement of policy.

* * * * *

(c) Inspection service may be temporarily suspended, in whole or in part, at an official establishment, by the Administrator, to the extent that it is determined necessary to prevent inhumane slaughtering or handling in connection with slaughter of livestock. The Administrator shall notify the operator of the establishment orally or in writing, as promptly as circumstances permit, of such suspension and the reasons therefor. Such suspension shall remain in effect until the operator of the establishment takes effective steps to prevent a recurrence, or provides other acceptable assurances that there will not be any recurrences. Upon request, the operator shall be afforded an opportunity for a hearing to show cause why the suspension should be terminated.

PART 327—IMPORTED PRODUCTS

4. Section 327.2(a)(2)(ii)(*a*) (9 CFR 327.2(a)(2)(ii)(*a*)) would be amended by requiring inspection of the methods of slaughtering and handling in connection with slaughtering as follows:

§ 327.2 Eligibility of foreign countries for importation of products into the United States.

(a) * * *

(2) * * *

(ii) * * *

(*a*) Ante-mortem inspection of animals for slaughter and inspection of methods of slaughtering and handling in connection with slaughtering which shall be performed by veterinarians or by other employees or licensees of the system under the direct supervision of the veterinarians;

* * * * *

PART 335—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE FEDERAL MEAT INSPECTION ACT

5. Part 335 (9 CFR Part 335) would be amended as follows:

Section 335.1 would be amended by adding a new paragraph (c) to read as follows:

§ 335.1 Scope and applicability of rules of practice.

* * * * *

(c) The rules of practice set forth in Subpart D of this Part shall be applicable to the suspension of assignment of inspectors under section 3(b) of the Federal Meat Inspection Act (21 U.S.C. 603(b)). In addition, the definitions applicable to proceedings under the Uniform Rules of Practice (7 CFR 1.132) shall apply with equal force and effect to proceedings under Subpart D.

Part 335 is also amended by the addition of a new Subpart D which reads as follows:

Subpart D—Rules Applicable to Suspension of Assignment of Inspectors Under Section 3(b) of the Federal Meat Inspection Act

Sec.

335.30 Suspension of the assignment of inspectors under Section 3(b) of the Act.

335.31 Written notification to operator of establishment of incident.

335.32 Procedure upon receipt of the establishment answer.

Authority: Sec. 21, 34 Stat. 1260, as amended, 21 U.S.C. 621; 92 Stat. 1069; 42 FR 35625, 35626, 35631.

Subpart D—Rules Applicable to Suspension of Assignment of Inspectors Under Section 3(b) of the Federal Meat Inspection Act

§ 335.30 Suspension of the assignment of inspectors under section 3(b) of the Act.

In any situation in which the Administrator has determined that livestock have been inhumanely slaughtered or handled in connection with slaughter at an official establishment, the Administrator may suspend the assignment of inspectors at that establishment, in whole or in part, as the Administrator determines necessary to prevent inhumane treatment of livestock. The Administrator shall notify an operator of an establishment, orally or in writing, of such suspension as soon as possible. In the event of oral notification, a written confirmation shall be given as promptly as circumstances permit to the operator of the establishment. The written notification or confirmation shall be served upon the operator of the establishment in a manner prescribed in § 1.147(b) of the Uniform Rules of Practice (7 CFR 1.147(b)).

§ 335.31 Written notification to operator of establishment of incident.

The written notification or confirmation, specified in § 335.30, shall constitute the complaint in the proceeding and shall briefly set forth the reason for the suspension of the assignment of inspectors, including allegations of fact which constitute a basis for the action. The complaint shall offer the right to request a hearing with respect to the merits or validity of the suspension action and shall give the establishment the opportunity to furnish written assurances satisfactory to the Secretary that all inhumane slaughtering and handling in connection with slaughter have stopped and will not recur. The complaint shall state the time within which answer by the respondent must be made, which shall not be less than 10 days after service of the complaint.

§ 335.32 Procedure upon receipt of the establishment answer.

If any establishment notified in accordance with § 335.31:

(a) Returns an answer and requests a hearing, the complaint, answer and request for hearing shall be filed with the Hearing Clerk, who shall assign the matter a docket number. The proceeding shall thereafter be conducted in accordance with the rules of practice which shall be adopted for the proceeding; or

(b) Returns written assurances which the Secretary detemines to be unsatisfactory, the establishment shall promptly be informed of this determination in a written notification. Said notification shall briefly set forth the reason the assurances were deemed unacceptable and shall offer the establishment the right to file an answer to the original complaint and to request a hearing with respect to the merits or validity of the suspension action. If any establishment so notified files an answer to the orginal complaint and requests a hearing, a copy of the complaint, answer and request for hearing shall be filed with the Hearing Clerk, who shall assign the matter a docket number. The proceeding shall thereafter be conducted in accordance with the rules of practice which shall be adopted for this proceeding.

(c) Returns written assurances which the Secretary determines to be satisfactory, the suspension shall be terminated and the establishment informed of this action as soon as possible.

PART 390—DESIGNATION OF METHODS

6. Part 390 (9 CFR Part 390) would be amended by redesignating the term "Act" in § 390.1(a) as "Acts" and redefining such term to refer to the Federal Meat Inspection Act in addition to the Act of August 27, 1958, as amended by the Humane Methods of Slaughter Act of 1978. Additionally, new §§ 390.2, 390.3, and 390.4 have been proposed which state requirements relating to humane handling of livestock in connection with slaughter and actions to be taken by the inspector when inhumane treatment is observed.

§ 390.1 Definitions.

* * * * *

(a) The Acts. The Act of August 27, 1958 (Pub. L. 85–765), as amended by the Humane Methods of Slaughter Act of 1978, 92 Stat. 1069, (7 U.S.C. 1901 *et seq.*) and the Federal Meat Inspection Act of March 4, 1907, 34 Stat. 1260, as amended by the Wholesome Meat Act of 1967, 81 Stat. 584 and the Humane Methods of Slaughter Act of 1978, 92 Stat. 1069 (21 U.S.C. 601 *et seq.*).

* * * * *

§ 390.2 Livestock pens, driveways, and ramps.

(a) Livestock pens, driveways, and ramps shall be maintained in good repair. They shall be free of pain-producing objects such as exposed bolts, loose boards, splintered or broken planking, and protruding metal of any kind. There shall be no unnecessary holes or other openings where heads, feet, or legs of animals may be injured.

(b) Floors of livestocks pens, ramps, and driveways shall be constructed with slip-resistant floor surfaces to provide good footing for livestock.

(c) Protection from inclement weather shall be provided for U.S. Suspects and crippled livestock.

(d) Livestock pens and driveways shall be so arranged that sharp corners and direction reversal of driven animals are minimized.

§ 390.3 Handling of livestock.

(a) Driving of livestock to the holding pens from the unloading ramps and from the holding pens to the stunning area shall be done with a minimum of excitment and discomfort to the animals.

(b) The use of electric prods, canvas slappers, or other implements used to drive animals shall be employed as little as possible to minimize excitement and injury to the livestock being driven. Electrical prods attached to AC house current shall be regualted to the lowest effective voltage not to exceed 50 volts AC.

(c) Sticks, pipes, clubs, and sharp pointed objects shall not be use for driving livestock.

(d) Crippled livestock and other animals which are unable to move shall be separated from normal ambulatory animals. Dragging of such animals shall be prohibited.

(e) Animals shall have access to water in all holding pens and, if held longer than 24 hours, access to feed. There shall be sufficient room in the holding pen for animals held overnight to lie down.

(f) Stunning methods approved in this part shall be effectively applied to animals prior to being shackled, hoisted, thrown, cast, or cut.

§ 390.4 Tagging of equipment, alleyways, pens, or compartments to prevent inhumance slaughter or handling in connection with slaughter.

When an inspector observes an incident of inhumane slaughter or inhumane handling in connection with slaughter, he shall take one of the following actions:

(a) If the cause of inhumane treatment is the result of facility deficiencies, disrepair, or equipment breakdown, the inspector shall attach a U.S. Reject tag thereto. No equipment, alleyway, pen, or compartment so tagged shall be used

until made acceptable to the inspector in charge. Such tag so attached shall not be removed by anyone other than an inspector. All livestock slaughtered prior to such tagging may be dressed, processed or prepared under inspection.

(b) If the cause of inhumane treatment is the result of employee actions in handling or driving of livestock, the inspector shall attach a U.S. Reject tag to the alleyway leading to the stunning area. Such tag shall not be removed by anyone other than an inspector. No more livestock shall be moved to the stunning area until the inspector in charge receives satisfactory assurances from the operator of the establishment that there will not be a recurrence. All livestock slaughtered prior to such tagging may be dressed, processed or prepared under inspection.

(c) If the cause of inhumane treatment is the result of improper stunning, the inspector shall attach a U.S. Reject tag to the stunning area. Such tag shall not be removed by anyone other than an inspector. Stunning procedures shall be resumed only upon receipt of satisfactory assurances from the operator of the establishment that there will not by any recurrence. Such assurances shall be given to the inspector in charge. All livestock slaughtered prior to such tagged may be dressed, processed or prepared under inspection.

7. A new § 390.35, which would be rescinded April 11, 1981, would be added to provide criteria for obtaining temporary relief from enforcement of the Humane Methods of Slaughter Act provisions.

§ 390.35 Extension of implementation date.

The Humane Methods of Slaughter Act of 1978 authorizes an extension, not to exceed 18 months after implementation date, for an official establishment to comply with the humane slaughtering and handling provisions of the Act, if undue hardship would result from compliance on the effective date. The operator of an official establishment may submit a request prior to October 11, 1979, for such an extension. These requests must be sent to the regional director, of the geographical area in which the establishment is located, in a letter stating the reason for needing an extension and the anticipated date compliance with the Humane Methods of Slaughter Act can be accomplished. The following criteria will be considered in granting extensions:

(a) Extensive remodeling for humane slaughter—must have scheduled completion date.

(b) Unavailability of contractor to do work—must have firm schedule for start and finish of work.

(c) Supply problems for suitable stunning equipment.

(d) Unavailability of construction materials.

(e) Employee strike preventing remodeling construction or installation of stunning equipment.

(f) Weather problems interferring with installation of equipment.

(g) Other similar problems will be given individual consideration by the Administrator.

PART 391—IDENTIFICATION OF CARCASSES OF CERTAIN HUMANELY SLAUGHTERED LIVESTOCK [Revoked]

8. Part 391 concerning carcass identification would be revoked.

(Sec. 21, 34 Stat. 1260, as amended, 21 U.S.C. 621; 92 Stat. 1069; 42 FR 35625, 35626, 35631)

This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has been designated "significant." An approved Draft Impact Analysis Statement has been prepared and is available from Dr. Arnold V. Giesemann, Acting Chief Staff Officer, Ante-Mortem and Post-Mortem Inspection Staff, Meat and Polutry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Done at Washington, D.C., on June 26, 1979.

Donald L. Houston,

Acting Administrator, Food Safety and Quality Service.

[FR Doc. 79-20270 Filed 6-28-79; 8:45 am]

BILLING CODE 3410-37-M

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 781 0009]

Forbes Health System Medical Staff; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require a Pittsburgh, Pa. medical association (Medical Staff), among other things, to cease engaging in actions having the purpose or effect of excluding from appointment to Medical Staff applicants who were associated with a Health Maintenance Organization (HMO), or who practice on an other than fee-for-service basis. The association would be further prohibited from unreasonably delaying final recommendations on staff privilege applications; and from according discriminatory treatment to HMO-associated members, which may prevent them from providing effective patient care at Forbes. Additionally, Medical Staff would be required to change its Bylaws to conform with the terms of the order.

DATE: Comments must be received on or before August 24, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/C, Alfred F. Dougherty, Jr., Washington, D.C. 20580. (202) 523-3601.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

In the matter of Forbes Health System Medical Staff, an association; agreement containing consent order to cease and desist.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Forbes Health System Medical Staff and its members, and it now appearing that Forbes Health System Medical Staff and its members, hereinafter sometimes referred to as proposed respondent, are willing to enter into an agreement containing an order to cease and desist from the use of acts and practices being investigated;

It is hereby agreed by and between Forbes Health System Medical Staff by its duly authorized officers and its

attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Forbes Health System Medical Staff is an unincorporated association organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania and located at 500 Finley Street, Pittsburgh, Pennsylvania 15206.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of this matter unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby and related material pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event the Commission will take such action as it may consider appropriate, or issue and serve its complaint and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the aforementioned complaint and decision containing the agreed-to order to proposed respondent at its address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The aforementioned complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order of this agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby, and understands that once the order has been issued, proposed respondent will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by then-existing law for each violation of the order occurring or in existence after the order becomes final.

Order

I

It is ordered that the following definitions shall apply in this Order:

A. "Respondent" or "the Medical Staff" means the Forbes Health System Medical Staff, its successors and assigns. The Medical Staff is an unincorporated association consisting of that group of medical physicians, osteopathic physicians, dentists and podiatrists who are granted privileges by the Forbes Health System to attend patients in the Forbes Health System.

B. "Forbes" means Forbes Health System, a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania.

C. "Health Maintenance Organization" means an organization which, in return for advance periodic payments, accepts contractual responsibility to provide or arrange for the provision of a stated range of health care services to an enrolled population.

D. "Applicant" means any medical physician, osteopathic physician, dentist or podiatrist who applies for appointment to the Medical Staff to attend patients in the Forbes Health System.

E. "Effective date of this Order" means the date of issuance of the Commission's Decision and Order with respect to this matter.

F. "Completed application" means submission of the application form and all documentation required by the Bylaws of the Medical Staff.

II

It is further ordered that the Medical Staff shall not directly or indirectly enter into, adhere to, promote or follow any course of conduct, practice or policy, or any agreement or understanding, having the purpose or effect of

(a) excluding any applicant from appointment to the Medical Staff by reason in whole or in part of the fact that such applicant practices medicine, osteopathic medicine, dentistry, or podiatry to any extent on other than a fee-for-service basis, or by reason in whole or in part of the fact that such applicant is associated in any way with a Health Maintenance Organization;

(b) delaying final recommendation by the Medical Staff on the appointment to the Medical Staff of any applicant beyond the first regular quarterly Medical Staff meeting which is eighty or more days after the completed application is submitted, or if the completed application is submitted less than 80 days prior to a regular quarterly medical staff meeting, beyong the end of the next calendar quarter following that in which the completed application is submitted, but in no event beyond 160 days following submission of the completed application; or

(c) according different treatment to a class of Medical Staff members associated in any way with a Health Maintenance Organization, as a result of which the Health Maintenance Organization or any Medical Staff member associated in any way with it may be hindered in or prevented from providing effective patient care at Forbes; provided, however, that individual day-to-day hospital staff administrative decisions, such as scheduling and departmental duty assignments on a seniority basis, shall not constitute a violation of this section unless they constitute a pattern of different treatment.

III

It is further ordered that within sixty (60) days following the effective date of this Order the respondent shall revise the Medical Staff's By-Laws to conform with the requirements of this Order.

IV

It is further ordered that commencing thirty (30) days after the date of this Order the respondent shall mail a copy of this Order and of the Complaint in this proceeding to each officer and member of the Medical Staff and to each applicant for appointment to the Medical Staff.

V

It is further ordered that the respondent shall, within sixty (60) days following the effective date of this Order, and thereafter on the first anniversary date of the effective date of this Order, and at such other times as the Commission may by written notice to the respondent require, file or cause to be filed with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

VI

It is further ordered that the respondent notify the Commission at least thirty (30) days prior to any proposed change in the Medical Staff that may affect compliance obligations arising out of this Order.

It is further ordered that unless altered, modified, or set aside in accordance with Sections 3.71 and 3.72 of the Commission's Rules of Practice or such similar rules as may be in effect from time to time, this Order shall remain in effect for ten (10) years after the effective date of this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Forbes Health System Medical Staff ("Medical Staff").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint in this matter alleges unfair methods of competition and unfair acts or practices by the Medical Staff against a closed-panel Health Maintenance Organization ("HMO") competing with the Medical Staff's members. The Forbes Health System Medical Staff is an unincorporated association with about 375 members. Its members are those medical physicians, osteophathic physicians, dentists, and podiatrists who have been granted hospital staff privileges at Forbes Health System ("Forbes") in the Pittsburgh, Pennsylvania area. Most members of Forbes' Medical Staff practice medicine on a fee-for-service basis, which is the prevailing mode of medical practice in this country. Under the fee-for-service method of providing health care, physicians treat their own patients and, for each service rendered, are paid a fee by those patients (or by a third-party payer such as Blue Cross, Blue Shield, or a commerical insurer).

An HMO is an organization that has, in return for advance periodic payments made by or on behalf of its members ("enrollees"), accepted contractual responsibility to provide—or arrange for the provision of—a stated range of health care services to those enrollees primarily through physicians and other providers identified by and affiliated with the HMO. Because HMOs have potential for realizing cost-efficiencies, they have become part of the federal government's cost containment program in health care.[1] A "closed-panel" HMO provides health care to its enrollees through a limited number of selected physicians and other providers—often employees of the HMO—who are usually compensated in substantial part on a salary or capitation basis.[2] Another type of HMO is the "open-panel" HMO, or Individual Practice Association ("IPA"), in which participation is generally open to all members of a defined class of physicians practicing within the IPA's marketing area. Participating physicians are usually reimbursed by the IPA on a fee-for-service basis.

Staff privileges at hospitals convenient to his or her patients are important for a doctor. It is the grant of hospital staff privileges that authorizes a physician to admit and treat patients in the hospital and enables the physician to provide his or her patients with the range of medical services required in most medical practices. An HMO can maintain control over the cost of care for its enrollees only when their care—including that received while hospitalized—is supervised by a primary care physician on the HMO's staff. The marketability of the HMO's plan depends to some extent on the convenience to the enrolled population of hospital facilities available to the HMO's staff physicians. Exclusion of HMO physicians from hospital privileges, therefore, can have a severe impact on the HMO and its enrollees. In most hospitals, the medical staff, composed of practitioners already holding staff privileges, must review all applications for privileges, and its recommendation can heavily influence the decision ultimately made by the hospital's governing body, which may be composed primarily of laymen.

The proposed complaint in this matter alleges that the Medical Staff and its members acted to hinder competition from a closed-panel HMO by delaying action upon applications for hospital staff privileges made by physicians affiliated with the HMO and by refusing to recommend approval of the applications. The proposed complaint also alleges that the Medical Staff's actions were undertaken for the purpose, and with the effect, of preventing and forestalling competition by the closed-panel HMO with the Medical Staff's members and with the IPA-type HMO in which the Medical Staff's members were interested.

The proposed compliant further alleges that these activities have had the effect of:

(a) Restraining competition among physicians;

(b) Restraining competition among HMOs;

(c) Restraining HMOs growth and their entry into physician services markets;

(d) Denying HMO physicians access to important hospital facilities; and

(e) Denying consumers under the care of HMO physicians access to important hospital facilities.

The proposed order would prohibit the Medical Staff from unreasonably delaying its review of staff privilege applications and from according discriminatory treatment to HMO or other non-fee-for-service applicants or to HMO providers admitted to the Medical Staff. Specifically, the proposed order would prohibit the Medical Staff from engaging in conduct which has the purpose or effect of:

(a) Excluding an applicant from the Medical Staff because the applicant is associated with an HMO or does not practice on a fee-for-service basis;

(b) delaying final recommendation by the Medical Staff on an application for hospital staff privileges beyond a maximum time period ranging from 80 to 180 days (the exact length depending upon how close to the next quarterly Medical Staff meeting the application is submitted); or

(c) According different treatment to HMO providers on the Medical Staff as a result of which the HMO or any Medical Staff member may be hindered in providing effective patient care.

The proposed order would permit the Medical Staff to make day-to-day administrative decisions, such as scheduling and departmental duty assignments, on the basis of seniority,

[1] *See* "The Health Maintenance Organization Act of 1973", 42 U.S.C. §§ 300e, *et seq.*

[2] Reimbursement on a capitation basis usually involves periodic payment by the HMO to an organized physician group of an amount based on the number of enrollees for whom the group accepts responsibility for providing ongoing care.

unless these decisions create a pattern of different treatment for HMO-affiliated providers that could hinder the provision of effective patient care by the HMO or any HMO-affiliated Medical Staff member.

The Medical Staff would be required to change its Bylaws to conform to the proposed order. The Medical Staff would also be required to send a copy of the complaint and order to each of its members and officers and to all applicants for hospital privileges at Forbes. The order would remain in effect for a 10-year period. The Medical Staff would be required to submit periodic compliance reports to the Commission and to notify the Commission of any significant changes in the Medical Staff's organization.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 79-20235 Filed 6-28-79; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1259-7]

Receipt of Implementation Plan Revision for the State of Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Advance Notice of Proposed Rulemaking.

SUMMARY: This notice is to announce the receipt of the ozone attainment plan portion of the State Implementation Plan (SIP) revision for Rhode Island which is available for public review and comment.

Under the requirements of Part D of the Clean Air Act, the State of Rhode Island submitted to EPA on June 11, 1979 a revision to its SIP for certain areas designated as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. As required by the Act, the purpose of this revision is to implement new measures for controlling air pollution and to demonstrate that these measures will provide for attainment of the primary NAAQS as expeditiously as practicable, but no later than December 31, 1982 (in certain instances December 31, 1987). A Notice of Proposed Rulmaking describing the revision and EPA's intended approval or disapproval action will be published in the Federal Register at a later date.

DATES: See Supplementary Information.

ADDRESSES: Copies of the SIP revision are available for inspection at the following addresses: Environmental Protection Agency, Region I, Air Branch, Room 1903, J.F.K. Federal Building, Boston, Massachusetts 02203; Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, DC 20460; and the Rhode Island Department of Environmental Management, Division of Air Resources, Cannon Building, 75 Davis Street, Providence, Rhode Island 02908.

WRITTEN COMMENTS SHOULD BE SENT TO: Frank J. Ciavattieri, Chief, Air Branch, Environmental Protection Agency, Region I, J.F.K. Federal Building, Room 1903, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: Frank J. Ciavattieri, Chief, Air Branch, Environmental Protection Agency, Region I, J.F.K. Federal Building, Room 1903, Boston, Massachusetts 02203, Telephone: (617) 223-5609.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), and on September 11, 1978 (43 FR 40412), pursuant to the requirements of Section 107 of the Clean Air Act, EPA designated areas in each state an non-attainment with respect to the criteria air pollutants. The entire State of Rhode Island is non-attainment for ozone.

Part D of the Clean Air Act requires each state to revise its SIP to meet specific requirements in the non-attainment areas. These SIP revisions were due on January 1, 1979 and must demonstrate attainment of the NAAQS, as expeditiously as practicable, but no later than December 31, 1982, or in limited instances for carbon monoxide and oxidants, no later than December 31, 1987.

On June 11, 1979 EPA received the revised SIP for Rhode Island, and is currently reviewing the revision. The revision addresses strategies for attainment of the NAAQS for ozone. At the completion of this review, a notice will be published in the Federal Register proposing approval or disapproval of the revision.

All interested persons are advised that the proposed revision is available for review at the locations listed, and are invited to comment on its approvability. A file of documents explaining EPA's criteria for approval is also available at EPA offices. The proposed notice referred to above will announce the last day for public comment. This public comment period will end not less than 60 days from this date and not less than 30 days from the published date of EPA's proposal for approval or disapproval.

Dated: June 22, 1979.

Rebecca W. Hanmer,

Acting Regional Administrator, Region I.

[FR Doc. 79-20259 Filed 6-28-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 60]

[FRL 1207-6; Docket No. EN 79-13]

Standards of Performance for New Stationary Sources; Adjustment of Opacity Standard for Fossil Fuel Fired Steam Generator

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA proposes to adjust the NSPS opacity standard applicable to Southwestern Public Service Company's Harrington Station Unit #1 in Amarillo, Texas. The proposal is based upon Southwestern's demonstration of the conditions that entitle it to such an adjustment under 40 CFR 60.11(e).

DATES: Comments must be received on or before July 30, 1979.

ADDRESSES: Comments should be submitted in writing to: Edward E. Reich, Director, Division of Stationary Source Enforcement (EN-341), Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Background information and comments upon the proposed standard will be available for public inspection and copying at the EPA Public Information Reference Unit, Room 2992 (EPA Library), 401 M Street S.W., Washington, D.C. 20460 Specify Docket No. EN 79-13.

FOR FURTHER INFOMATION CONTACT: Richard Biondi, Division of Stationary Source Enforcement (EN-341), Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, telephone no. 202-755-2564.

SUPPLEMENTARY INFORMATION: The Standards of performance for fossil fuel-fired steam generators as promulgated under Subpart D of Part 60 on December 23, 1971 (36 FR 24876) and amended on December 5, 1977 (42 FR 61537) allow emissions of up to 20 percent opacity, except that 27 percent opacity is allowed for one 6-minute period in any hour. This standard also requires reporting as excess emissions all hourly

periods during which there are two or more six-minute periods when the averages opacity exceeds 20 percent.

On December 15, 1977, Southwestern Public Service Company (SPSC) of Amarillo, Texas, petitioned the Administrator under 40 CFR 60.11(e) to adjust the NSPS 20% opacity standard applicable to its Harrington Station coal fired Unit #1 in Amarillo, Texas. The Administrator proposes to grant the petition for adjustment, as SPSC has demonstrated the presence at its Harrington Station Unit #1 of the conditions that entitle it to such relief, as specified in 40 CFR 60.11(e)(3).

On the basis of performance tests conducted on July 18–20, 1977, the Administrator determined that Unit #1 was in compliance with all applicable new source performance standards except opacity. Six minute opacity average during the test indicated results as high as 35–38%, while a previously recorded value showed a maximum of 47.8% on July 16, 1977. By letter of December 5, 1977, SPSC was notified of the Administrator's finding and its right to petition for adjustment of the opacity standard, which it did in a timely manner.

In its petition for adjustment of the opacity standard, SPSC made the following showing: (a) the affected facility and associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests; (b) the tests were performed under the conditions established by the Administrator, and (c) the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard.

As described in the March 8, 1974 Federal Register (39 FR 9308), the Agency utilizes opacity standards as a means to ensure proper operation and maintenance of control systems on a day to day basis. Opacity standards are regulatory requirements, just like the concentration/mass standards. They are separate standards and it is not necessary to show a violation of the mass standard to support enforcement of the opacity standard. Where opacity and concentration/mass standards are applicable to the same source, the opacity standard is not more restrictive than the concentration/mass standard. The concentration/mass standard is established at a level which will result in the design, installation, and operation of the best adequately demonstrated system of emission reduction (taking costs into account) for each source.

The control method used by SPSC at Harrington Station Unit #1 is a hybrid system that uses an electrostatic precipitator and a marble bed scrubber. Although the system can be altered to meet the 20% opacity standard, the cost of such alteration is excessive in view of the system's current effectiveness in meeting all NSPS emission limitations except opacity. Twenty percent opacity could be achieved only by a four-fold increase in pressure drop on the marble bed scrubber (from 15 cm H_2O to 60 cm H_2O), or by a 30% increase in the specific collector area of the electrostatic precipitator. Increasing the pressure drop to 60 cm H_2O would require an additional $1.5 million annually for operation and maintenance, and would require that the scrubber be redesigned to operate at the increased pressure drop. Increasing the specific collector area of the electrostatic precipitator would cost approximately an additional $4 million. Since this facility can meet the mass standard with the equipment installed, it does not appear that the extensive redesign and increased costs are warranted.

In view of the above, EPA proposes that SPSC's Harrington Station Unit #1 be excused from compliance with the 20% opacity standard of 40 CFR 60.42(a)(2). As an alternative, it is proposed that SPSC shall not cause to be discharged into the atmosphere from Harrington Station Unit #1 any gases which exhibit greater than 35% opacity, except that a maximum of 42% opacity shall be permitted for not more than one 6 minute period in any hour. The adjustment will not relieve SPSC of its obligation to comply with any other federal, state or local opacity requirements.

Authority: This amendment is proposed under the authority of Sections 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411 and 7601(a)).

Dated: June 19, 1979.,

Douglas M Costle,

Administrator.

In consideration of the foregoing, it is proposed to amend Part 60 of 40 CFR Chapter I as follows:

Subpart D—Standards of Performance for Fossil Fuel-Fired Steam Generators

1. Section 60.42 is amended by adding paragraph (b)(1) as follows:

§ 60.42 Standard for particulate matter.

(a) * * *

(b)(1) Southwestern Public Service Company shall not cause to be discharged into the atmosphere from its Harrington Station Unit #1 in Amarillo, Texas, any gases which exhibit greater than 35% opacity, except that a maximum of 42% opacity shall be permitted for not more than 6 minutes in any hour.

(Sec. 111, 301(a), Clean Air Act as amended (42 U.S.C. 7411, 7601.))

2. Section 60.45(g)(1) is amended by adding paragraph (i) as follows:

§ 60.45 Emission and fuel monitoring.

* * * * *

(g) * * *

(1) * * *

(i) For sources subject to the opacity standard of Section 60.42(b)(1), excession emissions are defined as any six-minute period during which the average opacity of emissions exceeds 35 percent opacity, except that one six-minute average per hour of up to 42 percent opacity need not be reported.

[FR Doc 79-20156 Filed 6-28-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

[FRL 1258-3]

Proposed Approval of a Delayed Compliance Order Issued by the State of Utah Through the Air Conservation Committee to Kaibab Industries, Panguitch, Utah

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: EPA proposes to approve a delayed compliance order issued by the State of Utah, through the Air Conservation Committee, to Kaibab Industries, Panguitch, Utah. The order requires Kaibab to submit for approval landfill plans; initiate on-site preparation for landfill, excavation, fencing and drainage; complete on-site preparation for landfill; discontinue use of existing TP burners according to the schedule set forth in the order; achieve compliance with Section 2.2.1 of the Utah Air Conservation Regulations; and use of the best practicable systems of emission reduction during the period the Order is in effect. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of

the SIP regulations covered by this order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before July 30, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colordo 80295. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Phillips, Chief, General Enforcement Section, Enforcement Division, EPA Region VIII, 1860 Lincoln Street, Denver, Colorado 80295, telephone (303) 837–2361.

SUPPLEMENTARY INFORMATION: Because this order has been issued to a major source of particulate matter emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Act. EPA may approve the order only if it satisfies the appropriate requirements of this subsection. EPA has preliminarily determined that the order complies with those requirements, but specifically requests public comment on those matters.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under Section 113 of the Act against the source for violations of the regulations covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Utah SIP. Compliance with the proposed order will not exempt Kaibab from complying with applicable requirements contained in any subsequent revisions to the SIP which are approved by EPA.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the Federal Register the Agency's final action on the order is 40 CFR Part 65.

(42 U.S.C. 7413, 7601.)

Dated: June 19, 1979.

Roger Williams,

Regional Administrator, Region VIII.

In consideration of the foregoing, it is proposed to amend Part 65 of Chapter 1, Title 40, Code of Federal Regulations as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. The text of the order reads as follows:

Before the Utah State Air Conservation Committee.

In the Matter of: KAIBAB INDUSTRIES—ORDER.

The Following Order is issued this date pursuant to Section 113(d) of the Clean Air Act, as amended 42 USC Section 7401 et seq. in that Kaibab Industries at the Panguitch, Utah, operation, is not in compliance with Section 2.2.1 of the Utah Air Conservation Regulations. Public hearing on this order was conducted on December 8, 1978. After consideration of all relevant facts it is determined that the schedule for compliance set forth in this Order is as expeditious as practicable, and,

IT IS HEREBY ORDERED that:

1. Kaibab Industries shall complete the following acts on or before the dates specified: a. By December 1, 1978, submit to the Division of Health for approval landfill plans for the Panguitch, Utah operation.

b. By May 1, 1979, initiate on-site preparation for landfill, excavation, fencing and drainage.

c. By June 1, 1979, complete on-site preparation for landfill.

d. By July 1, 1979, discontinue use of existing TP burners at the Panguitch, Utah operation.

2. Kaibab Industries at the Panguitch, Utah operation, shall achieve compliance with Section 2.2.1 of the Utah Air Conservation Regulations by July 1, 1979.

3. That pursuant to Section 133(d)(7), during the period in which this order is in effect, Kaibab Industries shall use the best practicable systems of emission reduction so as to minimize particulate emissions and to avoid any imminent and substantial endangerment to the health of persons and shall further comply with the requirements of the applicable implementation plan insofar as it is able to so comply.

4. Kaibab Industries shall submit reports to the Committee within five (5) days of completion of each phase detailed in paragraph 1 certifying compliance with the outlined schedule.

5. Nothing in this Order shall be construed so as to affect Kaibab Industries' responsibility to comply with any other Federal, State or local regulations.

6. Kaibab Industries has agreed to the above compliance schedule and conditions thereof and considers such schedule reasonable.

7. Kaibab Industries is hereby notified that its failure to achieve final compliance by July 1, 1979, will result in a requirement to pay a noncompliance penalty under Section 120 of the Federal Clean Air Act.

Dated this 22nd day of December, 1978.

By The Air Conservation Committee.

J. Ralph Macfarlane,

Chairman.

[FR Doc. 79-20099 Filed 6-28-79; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

[42 CFR Part 34]

Medical Examination of Aliens

AGENCY: Center for Disease Control, PHS, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: This notice proposes major revisions and editorial changes in the regulations on Medical Examination of Aliens. The regulations were developed to provide for the physical and mental examination of aliens within the United States or in other countries as required by the Immigration laws subject to administrative regulations prescibed by the Attorney General and medical regulations prescribed by the Surgeon General with the approval of the Secretary of Health, Education, and Welfare. In 1967, the Public Health Service was reorganized, and the responsibility for the administration of the program relating to the medical examination of aliens was transferred to the Center for Disease Control. Since then, the program has been modernized in accordance with current epidemiologic concepts and medical diagnostic standards. This revision is proposed to update the regulations in accordance with such concepts and standards. Additional changes are being made to reflect HEW's commitment to revise and clarify its regulations to promote public understanding of its programs.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph F. Giordano, Director, Quarantine Division, Bureau of Epidemiology, Center for Disease Control, PHS, HEW, Atlanta, Georgia 30333, telephone (404) 329–3674, or FTS: 236–3674.

Dated: May 22, 1979.

Julius B. Richmond,

Assistant Secretary for Health.

[FR Doc. 79-20278 Filed 6-28-79; 8:45 am]

BILLING CODE 4110-86-M

[42 CFR Part 71]

Foreign Quarantine

AGENCY: Public Health Service, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: This notice proposes major revisions and editorial changes in the Foreign Quarantine regulations. The regulations were developed to implement the provisions of the Public Health Service Act on preventing the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. In 1967, the Public Health Service was reorganized and the Quarantine Program was transferred to the Center for Disease Control. Since then, the Quarantine Program has been modernized and streamlined. This revision is being proposed to update the regulations in accordance with current concepts of disease surveillance, investigation, and control. Additional changes are being made to reflect HEW's commitment to revise and clarify its regulations to promote public understanding of its programs.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph F. Giordano, Director, Quarantine Division, Bureau of Epidemiology, Center for Disease Control, PHS, HEW, Atlanta, Georgia 30333, telephone (404) 329-3674, or FTS: 236-3674.

Dated: May 22, 1979.

Julius B. Richmond,

Assistant Secretary for Health.

[FR Doc. 20280 Filed 6-28-79; 8:45 am]

BILLING CODE 4110-86-M

[42 CFR Part 72]

Interstate Quarantine: Shipment of Certain Things; Etiologic Agents

AGENCY: Center for Disease Control, PHS, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: The Public Health Service proposes to revise its regulation relating to the interstate shipment of etiologic agents. The proposed revision will expand and clarify the packaging, labeling, and shipping requirements for the materials regulated (including diagnostic specimens and biological products). The revision will also correct the scientific nomenclature and update the list of infectious agents. Additional changes will be made to reflect HEW's commitment to revise and clarify its regulations to promote public understanding of its programs.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Richardson, Director, Office of Biosafety, Center for Disease Control, PHS, HEW, Atlanta, Georgia 30333, telephone (404) 329-3885 or FTS: 236-3885.

Dated: May 22, 1979.

Julius B. Richmond,

Assistant Secretary for Health.

[FR Doc. 29-20279 Filed 6-28-79; 8:45 am]

BILLING CODE 4110-86-M

Notices

Federal Register
Vol. 44, No. 127
Friday, June 29, 1979

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Public Information Meeting

Notice is hereby given pursuant to § 800.6(b)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that on Wednesday, July 11, 1979, at 7 p.m., a public information meeting will be held at the Birkshire Atheneum, One Wendell Avenue, Pittsfield, Massachusetts. The meeting is being called by the Executive Director of the Council in accordance with § 800.6(b)(3) of the Council's regulations. The purpose of the meeting is to provide an opportunity for representatives of national, State, and local units of government, representatives of public and private organizations, and interested citizens to receive information and express their views concerning the proposed construction of a shopping mall in downtown Pittsfield. This is an undertaking of the City of Pittsfield assisted by an Urban Development Action Grant of 14.2 million dollars from the Department of Housing and Urban Development that will adversely affect the Park Square Historic District, a property that is included in the National Register of Historic Places, and the North Street Commercial Block, a property that is eligible for the National Register. Consideration will be given to the undertaking, its effects on National Register and eligible properties, and alternate courses of action that could avoid, mitigate, or minimize any adverse effects on such properties.

The following is a summary of the agenda of the meeting:

I. An explanation of the procedures and purposes of the meeting by a representative of the Executive Director of the Council.

II. A description of the undertaking and an evaluation of its effects on the properties by the City of Pittsfield.

III. A statement by the Massachusetts State Historic Preservation Officer.

IV. Statements from local officials, private organizations and the public on the effects of the undertaking on the properties.

V. A general question period.

Speakers should limit their statement to 5 minutes. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1522 K St., NW., Washington, D.C. 20005/ 202–254–3967.

Robert M. Utley,
Deputy Executive Director.

[FR Doc. 79–20168 Filed 6–28–79; 8:45 am]
BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Applications Being Accepted for Designation in the Saginaw, Mich., Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Applications.

SUMMARY: On January 16, 1977, the designation of the Saginaw Board of Trade was canceled. On that date the Federal Grain Inspection Service (FGIS) commenced providing official services at export and nonexport locations previously serviced by the Saginaw Board of Trade. This notice is to announce that the nonexport area previously serviced by the Saginaw Board of Trade remains open for assignment to an offical agency. Persons interested in applying to service this area as an official agency can obtain the necessary information and application from the Compliance Division of FGIS.

DATE: Comments and applications by August 28, 1979.

FOR APPLICATION AND ADDITIONAL INFORMATION CONTACT: J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8262.

SUPPLEMENTARY INFORMATION: The Saginaw Board of Trade (Board of Trade) provided official inspection services at one export location at Carrollton, Michigan, and interior (nonexport) inspection services in 12 counties surrounding Saginaw. The Board of Trade ceased providing official services at their export port location and at interior (nonexport) locations on midnight, January 15, 1977. In accordance with Section 7(h) of the Act, the FGIS commenced effective January 16, 1977, providing official services for the entire area previously serviced by the Board of Trade.

Pursuant to Sections 7(e)(1) and 7A(c)(1) of the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), the FGIS is required to provide official inspection and weighing services for all grains required or authorized to be inspected and weighed by the Act, at those export port locations where a State is not delegated to perform these official services. The State of Michigan did not qualify for delegation.

Adjacent agencies were contacted in an effort to provide interim service until an official agency could be designated for the interior locations. Due to personnel limitations and anticipated increased operating costs, no official agencies desired to provide official services for the area previously serviced by the Board of Trade.

Section 7(h) of the Act provides FGIS authority to perform official services at nonexport locations where the Administrator determines such services are needed and there is no official agency available or willing to provide these services. FGIS can provide official services at nonexport locations only until such time as the services can be provided on a regular basis by a designated official agency.

This notice announces that the territory previously serviced by the Board of Trade remains open for interested persons to apply for designation as an official agency to service all or any portion of this area.

Interested parties seeking further information or wishing to apply for designation are invited to contact the Compliance Division of FGIS at the address listed above.

The description of the area open for assignment is as follows:

Bounded on the North by: The northern Iosco County line; On the East by: The Lake Huron and Saginaw Bay

shoreline from the northern Iosco County line east to State Route 46.

On the South by: State Route 46 west to State Route 24; State Route 24 south to the southern Tuscola County line; the Tuscola County line west to the eastern Genesee County line; the Genesee County line south; the southern Genesee County line; the western Genesee County line north to Interstate 69; Interstate 69 southwest to the western Shiawassee County line.

On the West by: The western Shiawassee County line north to State Route 21; State Route 21 east to State Route 52; State Route 52 north to the northern Saginaw County line; the Saginaw County line north to the western Bay County line; the Bay County line north; the western Arenac County line north; the northern Arenac County line east to the western Iosco County line; the western Iosco County line north.

It should be noted that in accordance with Section 7(f)(2) of the Act, not more than one official agency shall be operative at one time for any geographic area.

Interested persons may obtain a map of the geographic area by contacting the Compliance Division at the previously mentioned address.

(Sections 8, 9, Pub. L. 94–582, 90 Stat. 2870, 2875, (7 U.S.C. 79, 79a))

Done in Washington, D.C. on: June 25, 1979.

L. E. Bartelt,

Administrator.

[FR Doc. 79–20142 Filed 6–28–79; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Quality Service

Notice and Solicitation of Information: Mechanically Deboned Poultry

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Notice and solicitation of information.

SUMMARY: This notice announces the completion and availability of a study on the health and safety aspects of the use of the product commonly referred to as mechanically deboned poultry (MDP). The product is prepared by a mechanical process. Presently, the product is listed in the ingredients statement of products as the kind of poultry used, e.g., chicken, and is restricted by regulation to a 1 percent bone content. As a result of the study, the Department is soliciting the views of consumers, the industry, the scientific community, and other interested parties on the need for and the nature of any additional regulatory action.

DATE: All comments must be received on or before, August 13, 1979. Any comments received after that date will not be considered.

ADDRESS: Written comments to Executive Secretariat, Attn: Annie Johnson, Room 3807, South Agriculture Building, Ford Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250. Oral comments to Mr. Irwin Fried, (202) 447–6042.

FOR FURTHER INFORMATION CONTACT: Mr. Irwin Fried, Acting Director, Meat and Poultry Standards and Labeling Division, Compliance, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments concerning this notice. Written comments must be sent in duplicate to the office of the executive Secretariat. Comments should bear a reference to the date and page number of this issue of the Federal Register. Any person desiring opportunity for oral presentation of views concerning this notice must make such request to Mr. Fried so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented. All comments submitted pursuant to the notice will be made available for public inspection in the office of the Executive Secretariat during regular hours of business.

Background

As a result of the Department's rulemaking processes regarding mechanically processed (species) [meat food] product (June 1978, Federal Register, 43 FR 26416–26425), a number of questions have arisen concerning poultry products produced by a similar mechanical process.

The poultry industry began in the 1950's to develop the technology to accomplish the mechanical preparation of MDP. The Department's initial reaction to these developments was to consider this type of product adulterated because of the amount of bone present and the physical size of the bone particles. However, the development in the mid 1960's of so-called "second generation" equipment capable of producing product containing less than 1½ percent bone whose particle size was extremely small, prompted the Department to reevaluate this position. At that time, regulatory interest was directed in three areas:

1. The effect of the addition of bone constituents to the diet.

2. The potential problems of radionuclides (particularly strontium 90).

3. The potential problems of other additives such as flouride.

The National Academy of Science addressed these issues in 1964 when it was asked to evaluate the data accumulated on strontium 90 and advise the Department if undesirable amounts would be added to the diet, especially for infants through the consumption of mechanically deboned poultry (MDP). The Food Protection Committee of the National Academy of Science's Food and Nutrition Board concluded, based on the information available, that there was no significant health consequence associated with the amount of bone left in MDP so long as the strontium 90 to calcium ratio in the product did not exceed that of cow's milk. At that time, this ratio was far lower in MDP, approximately one-third that of cow's milk.

As a result of the evaluation and of these technological developments, the Department engaged in a rulemaking proceeding and issued a final regulation defining "boneless poultry" products and imposing a 1 percent limit on their bone content (September 1969, Federal Register 34 FR 13991). The definition and restriction established by this regulation still stand (9 CFR 381.117(d)).

Specific labeling identification as now required for "mechanically processed (species) [meat food] product" has not been required for MDP. It is listed in the ingredients statement of products with the name of the kind of poultry, e.g., chicken.

Over the years, the industry has developed a number of uses for MDP consistent with this regulation, including baby foods, various formulated poultry products in which the poultry portion may be finely divided or chopped, poultry rolls, and more recently a number of poultry sausages such as turkey frankfurters and chicken bologna. The usage level of MDP in a product has been, in part, dependent upon technological capabilities; its use has reached 100 percent of the poultry component in poultry sausages. MDP is also used in red meat products, including franks and bologna, where its use is limited to 15 percent of the total ingredients, excluding added water.

For the past several months, the Food Safety and Quality Service (FSQS) has been conducting an analytical program designed to determine the content of

nutrients and of potential problem substances in MDP. This study was initiated because of the Agency's desire to reevaluate the product in view of (1) the improved scientific technology now used to detect various substances, (2) the larger body of scientific knowledge now available concerning the dietary intake of potentially deleterious substances, and (3) the analogous experience and knowledge acquired during the Agency's evaluation of mechanically processed (species) [meat food] product.

In addition to the data obtained from this analytical program, data were gathered from FSQS files, the scientific literature, unpublished studies by Government agencies and university scientists, and the poultry industry, which created an ad hoc special research committee to coordinate and direct additional studies on substances which are considered potentially harmful.

Details of the study and the resultant evaluation and recommendations have been published in a report titled "Health and Safety Aspects of the Use of Mechanically Deboned Poultry." Copies are available without charge from the Office of Information, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250 and from the following regional information offices:

Connie Crunkleton, Regional Director, Information Division, USDA, Room 206, 1718 Peachtree Street, NW., Atlanta, GA 30309, (404) 257–4154.

Herb C. Jackson, Regional Director, Information Division, USDA, Room 936, 536 South Clark Street, Chicago, IL 60605, (312) 353–3631.

Harold C. Bryson, Regional Director, Information Division, USDA, Room 5C40, 1100 Commerce Street, Dallas, TX 75242, (214) 749–3331.

Brian Killikelly, Regional Director, Information Division, USDA, Room 1653, 26 Federal Plaza, New York, NY 10007, (212) 264–1145.

Ben Darling, Regional Director, Information Division, USDA, Room 702, 630 Sansome Street, San Francisco, CA 94111, (415) 556–6464.

The Department is encouraging consumers, the industry, the scientific community, and other interested groups to review the report and submit comments within 45 days regarding its overall content, thoroughness and quality, as well as comments regarding the specific recommendations contained therein.

Since MDP has been marketed and consumed in large quantities over the past 15 years, the Department has a particularly strong interest in gaining views regarding the proper labeling of products composed wholly or partially of MDP. Specifically, commenters are asked to consider what means, if any, should be taken to implement those recommendations concerning labeling contained in the report. For example:

1. Are the present regulations regarding the labeling of products containing MDP satisfactory?

2. Are additional declaratory statements necessary on the labels of such products in order to inform consumers which products contain MDP? If so, what form should they take and where should they appear on the label?

3. Is it necessary to consider the application of present labeling requirements for mechanically processed (species) [meat food] product to MDP as well? Under these regulations (9 CFR 317.2(j)(13)) when any mechanically processed (species) product is used in the preparation of a meat food product, the name of the finished product shall be further qualified by the phrases "With Mechanically Processed (species) Product" and "Contains Up To ————% Powdered Bone."

The Department will carefully consider comments on these issues and on all other issues discussed in the report in deciding if further regulatory action should be proposed regarding the standards and labeling requirement for this product.

Done at Washington, D.C., on June 21, 1979.

Donald L. Houston,

Acting Administrator, Food Safety and Quality Service.

[FR Doc. 79-19970 Filed 6-28-79; 8:45 am]

BILLING CODE 3410-37-M

Science and Education Administration

Joint Council on Food and Agricultural Sciences; Meeting

According to the Fedeal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Science and Education Administration announces the following meeting:

Name: Joint Council on Food and Agricultural Sciences.

Date and Time: July 11, 12, 13, 1979: 8:30 a.m.–5:00 p.m. (July 11 and 12), 8:30 a.m.–noon (July 13).

Place: Ramada Inn, 1900 North Fort Myer Drive, Arlington, Virginia.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before and after the meeting with the contact person below.

Purpose: Review the status of Council efforts in integrated pest management, small farms, and human nutrition, and assess progress in implementation of a plan and organizational structure for planning and coordination for research, teaching, and extension. The Wednesday, July 11, 1979, session is a joint meeting with the National Agricultural Research and Extension Users Advisory Board for the discussion of jointly held agenda of issues for action by the Users Advisory Board and the Joint Council.

Contact Person: Dr. J. C. Torio, Executive Secretary, Joint Council on Food and Agricultural Sciences, Science and Education Administration, U.S. Department of Agriculture, Room 351–A, Administration Building, Washington, D.C. 20250, telephone (202) 447–6651.

Done at Washington, D.C., this 26th day of June 1979.

James Nielson,

Executive Director, Joint Council on Food and Agricultural Sciences.

[FR Doc. 79-20239 Filed 6-28-79; 8:45 am]

BILLING CODE 3410-03-M

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463, 86 Stat. 770–776), the Science and Education Administration announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board

Date: July 10–11, 1979

Time: 8:30 a.m.–5:00 p.m.

Place: Ramada Inn, 1900 North Fort Myer Drive, Arlington, Virginia

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: Time will be made for non-member statements on July 10, or the public may file written comments before after the meeting with the contact person below.

Purpose: On July 10 the Board will be making preparations for the October report to the Secretary of Agriculture regarding recommendations as to allocations of funding and responsibilities of agricultural research and extension.

On July 11 the Board will be meeting jointly with the Joint Council on Food and Agricultural Sciences to discuss jointly held agenda of issues for actions by Joint Council and Users Advisory Board.

Contact Person for Agenda and more Information: Mr. James Myers, Executive Secretary of the Users Advisory Board,

Science and Education Administration, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202–447–3684.

Done at Washington, D.C., this 15th day of June, 1979.

James Nielson,

Executive Director, National Agricultural Research and Extension Users Advisory Board.

[FR Doc. 79-20240 Filed 6-28-79; 8:45 am]

BILLING CODE 3410-03-M

CIVIL AERONAUTICS BOARD

Environmental Impact Statement

ACTION: Notice of Preparation of Environmental Impact Statement.

SUMMARY: This notice announces the Bureau of Domestic Aviation's intent to prepare an environmental impact statement to assess the effects of expanded air service at Orange County Airport (OCA) on the surrounding community.

DATES: Comments and suggestions by August 1, 1979.

FOR FURTHER INFORMATION CONTACT: Mark W. Atwood, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673–5334.

SUPPLEMENTARY INFORMATION: The Board is considering applications by Frontier, Air California, Western, PSA, Hughes Airwest and Continental for authority for nonstop flights between Orange County (Santa Ana), California, and several western cities. The air carrier's applications have been opposed by the County of Orange, the city of Newport Beach, and Air California. The applications have become controversial because of the effects of the airport noise on the surrounding community.

Because of the sensitivity of this area to increases in aircraft noise, the public controversy which has arisen, and the likelihood that the Board will have to deal with other applications for Orange County authority in the future, the Bureau felt it advisable to study possible environmental effects in greater than usual detail.

The EIS will estimate environmental effects resulting from grant of not only the applications pending, but of applications which may reasonably be anticipated in the near future.

Issues to be addressed include the increase in aircraft noise and air pollution, the effect of the increases on the surrounding communities, and the effect of increased traffic on wildlife in the Upper Newport Bay Ecological Preserve. The EIS will explore alternative courses of action which the Board may take, including denial of the applications, grant of the applications, selection of certain carriers, or imposition of conditions on the carrier's certificate aimed at minimizing environmental impact.

The process by which the scope of the EIS will be determined will last until August 1, 1979. Interested persons and Federal, state and local agencies may participate in this process by submitting written data, comments, or suggestions on issues which should be addressed. Three copies should be sent to the address given above by August 1, 1979. All relevant material received by this date will be given consideration.

Dated: June 25, 1979.

Barbara A. Clark,

Director, Bureau of Domestic Aviation.

[FR Doc. 79-20196 Filed 6-28-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket 34431]

Pan American World Airways, Inc.; Enforcement Proceeding; Hearing

The hearing to be held herein is set for July 10, 1979 at 10 a.m. in Room 1003, Hearing Room B, Universal Building North, 1875 Connecticut Avenue, NW., Washington, D.C. 20428.

Dated at Washington, D.C., June 25, 1979.

Rudolf Sobernheim,

Administrative Law Judge.

[CFR Doc. 79-20195 Filed 6-28-79; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Virginia Advisory Committee; Agenda and Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Virginia Advisory Committee (SAC) of the Commission will convene at 3:00 p.m. and will end at 9:00 p.m., on July 24, 1979, at the Holiday Inn, Room 136, U.S. Route 1 and I–95, Fredericksburg, Virginia 22401.

Persons wishing to attend this open meeting should contact the Committee Chairperson or the Mid-Atlantic Regional Office of the Commission, 2120 L Street, N.W., Room 510, Washington, D.C. 20037.

The purpose of this meeting is to plan activities for fiscal year.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 26, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-20183 Filed 6-28-79; 8:45 am]

BILLING CODE 6335-01-M

Washington Advisory Committee; Agenda and Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Washington Advisory Committee (SAC) of the Commission will convene at 9:00 am and will end at 12 Noon, on August 3, 1979, at 915 Second Avenue, Room 2854, Seattle, Washington 98174.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northwestern Regional Office of the Commission, 915 Second Avenue, Room 2852, Seattle, Washington 98174.

The purpose of this meeting is to discuss Advisory Committee study of minority business enterprises in Washington state.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 26, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-20182 Filed 6-28-79; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Industry and Trade Administration

Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held on Tuesday, July 17, 1979, at 9:00 a.m. in Room 3817, Main Commerce Building, 14th Street and Constitution Avenue NW., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the

Committee, pursuant to section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee was established on February 4, 1974. On July 8, 1975, the Director, Office of export Administration, approved the charter of the Committee. And, on October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

The Subcommittee meeting agenda has four parts:

(1) Opening remarks by the Subcommittee Chairman.

(2) Presentation of papers or comments by the public.

(3) Review of Subcommittee recommendations.

(4) Discussion and preparation of Subcommittee position paper on the qualified general/product distribution license.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available by calling Mrs. Margaret Cornejo, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone A/C 202–377–2583.

For further information contact Mrs. Cornejo either in writing or by phone at the address or number shown above.

Dated: June 26, 1979.

Lawrence J. Brady,

Deputy Director, Office of Export Administration, Bureau of Trade Regulation, Department of Commerce.

[FR Doc. 79-20267 Filed 6-28-79; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Federal I/O Channel Level Interface Standards; Initial Exclusion List

In a notice published in the Federal Register on March 19, 1979 (44 FR 16466), the National Bureau of Standards announced the availability of a proposed initial exclusion list pertaining to Federal Information Processing Standards Publication 60, I/O Channel Interface; Federal Information Processing Standards Publication 61, Channel Level Power Control Interface; and Federal Information Processing Standards Publication 62, Operational Specifications for Magnetic Tape Subsystems. That notice solicited written comments from interested parties regarding the proposed initial exclusion list with a view toward establishing an initial exclusion list.

As a result of comments received relative to that announcement, NBS has established the initial exclusion list. The purpose of this notice is to announce the availability of the initial exclusion list.

Interested parties are invited to submit written comments or recommendations regarding this initial exclusion list to the Director, Institute for Computer Sciences and Technology (ICST), Attention: Interface Standards Exclusion List, National Bureau of Standards (NBS), Washington, D.C. 20234. Comments specifically identifying candidate systems which should be added or removed from the initial exclusion list are especially encouraged. Comments should also include information supporting any proposed additions (or removals) to that list according to the criteria described in the Federal Register announcement of March 19, 1979 (44 FR 16466). Any comments submitted which are deemed by the sender to contain confidential or proprietary information should be appropriately designated and marked.

NBS is maintaining a mailing list of vendors, Federal agencies, and other interested parties to whom copies of the current exclusion list will be sent on a regular basis. Any parties wishing to be included in this mailing list should send a written request to the Director, ICST, Attention: Interface Standards Exclusion List, at the address shown above. Notice of any proposed changes in the exclusion list will be published in the Federal Register and will also be sent to all those parties on the mailing list. In accordance with the procedure previously announced in the mentioned March 19, 1979, Federal Register notice, interested parties will then be allowed forty-five (45) days in which to submit written comments regarding the proposed changes. Following the receipt and review of the comments submitted in response to that Federal Register notice, NBS will make a determination on the proposed changes and will announce that determination in a notice published in the Federal Register Written notice of that determination will also be sent to all parties on the mailing list and to any other parties who have otherwise indicated a desire to be so informed.

The exclusion list will be used in conjunction with the applicability provisions of the Federal I/O channel level interface standards. This list and the exclusion criteria are not a part of the standards themselves, but are provided for in the standards.

Dated: June 25, 1979.

Ernest Ambler,

Director.

[FR Doc. 79-20133 Filed 6-28-79; 8:45 am]

BILLING CODE 3510-13-M

Voluntary Product Standard; Action of Withdrawal

In accordance with section 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10), notice is hereby given of the withdrawal of Voluntary Product Standard PS 61–74, "Plastic Containers (Jerry-Cans) for Petroleum Products."

This withdrawal action is being taken for the reason that PS 61–74 is adequately covered by the American Society for Testing and Materials' standard ASTM D3435–78, "Standard Specification for Plastic Containers (Jerry-Cans) for Petroleum Products," and duplication is inappropriate and not in the public interest. This action is taken in furtherance of the Department's announced intentions as set forth in the public notice appearing in the Federal Register of April 6, 1979 (44 FR 20735) to withdraw this standard.

The effective date for the withdrawal of this standard will be July 28, 1979. This withdrawal action terminates the authority to refer to this standard as a voluntary standard developed under the Department of Commerce procedures.

Dated: June 26, 1979.

Ernest Ambler,

Director.

[FR Doc. 79-20132 Filed 6-28-79; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

National Ocean Survey, National Geodetic Survey, New North American Datum of 1983, Reference for the National Network of Horizontal Geodetic Control

This document serves as official notification of the establishment of a new Datum to which the geographic and plane coordinate values for the National Network of Horizontal Geodetic Control will be referenced. The new Datum shall be known as the "North American Datum of 1983" and may be referred to as "NAD of 1983," "1983 NAD," or "NAD 83."

The National Ocean Survey/National Geodetic Survey is in the process of redefining the existing Datum and readjusting the National Network of Horizontal Geodetic Control. The end result will be new values of geodetic position (latitude and longitude), and all subsequently derived plane coordinates of all published network points. Completion is expected in 1983-84 with publication of the results to require another 12 months. For a discussion of the plane coordinate systems to be published by the National Ocean Survey/National Geodetic Survey that will be referenced to the North American Datum of 1983, see the "Policy on Publication of Plane Coordinates" in FR Doc. 77-8847 published March 24, 1977.

Persons desiring further information on this program may contact Mr. James E. Stem, NOAA, National Ocean Survey, National Geodetic Survey, Rockville, Maryland 20852, 301-443-8749.

Dated: June 22, 1979.

R. L. Carnahan,

Acting Assistant Administrator for Administration.

[FR Doc. 79-20169 Filed 6-28-79; 8:45 am]

BILLING CODE 3510-12-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1979 Proposed Addition

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

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to Procurement List 1979 a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 1, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

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

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed addition, all entities of the Federal Goverrnment will be required to procure the service listed below from workshops for the blind or other severely handicapped.

(b) It is proposed to add the following service to Procurement List 1979, November 15, 1978 (43 FR 53151):

SIC 0782

Grounds Maintenance, Naval Postgraduate School, Monterey, California 93940.

E. R. Alley, Jr.,

Acting Executative Director.

[FR Doc. 79-20164 Filed 6-28-79; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket PV-1449]

Texoma Pipe Line Co.; Tentative Valuation

June 26, 1979.

Notice is hereby given that a tentative valuation is under consideration for Texoma Pipe Line Company, 907 S. Detroit Avenue, Tulsa, OK 74120. This is an annual valuation for Texoma and the date of valuation is as of December 31, 1977.

On or before August 4, 1979, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 72 of the Interstate Commerce Commission's "General Rules of Practice" (49 CFR 1100.72) an original and three copies of petition for leave to intervene in this proceeding. Jurisdiction over oil pipelines, as it relates to establishment of valuations for pipelines, was transferred from the Interstate Commerce Commission to the Federal Energy Regulatory Commission (FERC), pursuant to sections 306 and 402 of the Department of Energy Organization Act, 42 U.S.C. 7155 and 7172, and Executive Order No. 12009, 42 FR 46267 (September 15, 1977).

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under section 19a(h) of the act, thereby enabling it to file a protest. It is required that a copy of the petition to intervene be served at the address shown above for Texoma and that an appropriate certificate of service be attached to the petition. Persons specifically designated in section 19a(h) of the act need not file a petition: they are entitled to file a protest as a matter of right under the statute.

Leon J. Slavin,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 79-20242 Filed 6-28-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1260-2]

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review, Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental Impact Statements which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9)

PERIOD COVERED: This Notice includes EIS's filed during the week of June 18 to 22, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from June 29, 1979, and will end on August 13, 1979. The 30-day wait period for final EIS's will be computed from the date of receipt by EPA and commenting parties.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office

of Environmental Review, EPA for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathi Weaver Wilson, Office of Environmental Review A–104, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755–0780.

SUMMARY OF NOTICE: Appendix I sets forth a list of EIS's filed with EPA during the week of June 18 to 22, 1979 the Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number if available. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the Federal Register and the extended date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agencies.

Appendix V sets forth a list of reports or additional supplemental information on previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: June 26, 1979.

Joseph M. McCabe,

Acting Director, Office of Environmental Review.

Appendix I—EIS's Filed With EPA During the Week of June 18 to 22, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 412A, Washington, D.C. 20250, (202) 447–3965.

Forest Service

Draft

Davy Crockett National Forest Timber Management, Houston and Trinity Counties, Tex., June 19: Proposed is a timber management plan for the Davy Crockett National Forest in Houston and Trinity Counties, Texas. The Plan proposes even-aged forest management on the commercial forest land for production of timber projects on a multiple use-sustained yield basis except where reserved for a specific use. The four alternatives considered are: (1) Low utilization management, (2) all-aged management, (3) high-yield even-aged management with short rotations, (4) even-aged management and (5) no action.(DES–08–13–79–02) (EIS Order No. 90607).

Clarks Fork of the Yellowstone River, Shoshone National Forest, Park County, Wyo., June 19: Proposed is a wild and scenic river study of Clarks Fork of the Yellowstone River located in the Shoshone National Forest in Park County, Wyoming. It has been determined that all 23 miles of the study areas are eligible for inclusion in the system, and it is recommended that 22 miles be classified as a wild river. Opportunities for construction of day use recreation facilities and improving the existing primitive road to the river will be provided. (DES–02–14–79–04) (EIS Order No. 90608).

Final

Island Planning Unit, Flathead National Forest, Flathead and Lake Counties, Mont., June 22: Proposed is a revised land management plan for the Island Planning Unit, located on the Swan Lake Ranger District, Flathead National Forest, in Flathead and Lake Counties, Montana. The plan affects 52,500 acres of national forest lands and recommends that the unit be managed as follows: 42,300 acres for high intensity timber production; 9,700 acres for low intensity timber management; visual quality and whitetailed deer habitat; and 200 acres to preserve a unique area. The alternatives discussed consider various balances of surface and subsurface resource use with wildlife, recreational and visual resources. (USDA–FS–RI (10) FES–ADM–79–03) Comments made by:USDA, DOE, EPA, DOI, DOT, State and local agencies, groups, individuals, and businesses (EIS Order No. 90624).

Ferron-Price Planning Unit, Manti-Lasal National Forest, several counties, Utah, June 19: Proposed are five alternatives for management of the Ferron-Price Planning Unit. The planning unit includes 531,500 acres of the Manti-Lasal National Forest in Carbon, Emery, Sanpete, Utah and Sevier Counties, Utah. The five alternatives consider features such as: (1) wilderness classification of inventoried roadless area; (2) timber harvest/mineral resource uses; (3) emphasis on wildlife habitats, water production, and recreation; and (4) live-stock grazing and forage production. (USDA–FS–R4–FES(ADM)–04–10–79–02). Comments made by: AHP, USDA, HEW, DOI, State and local agencies, groups, individuals and businesses (EIS Order No. 90606)

Final

Cowlitz Planning Unit, Gifford Pinchot National Forest, Lewis and Pierce Counties, Wash., June 22: Proposed is a land management plan for the Cowlitz Planning Unit, Gifford Pinchot National Forest, Lewis and Pierce Counties, Washington. The alternatives considered are: (1) Nonintensive management with emphasis on wilderness and recreation; (2) a mixture of timber production and recreation; (3) maximum production of wood fiber and livestock forage; (4) no action; and (5) maximum timber yield with consideration for wilderness, recreational and wildlife areas, and elk winter range. (USDA–FS–R6–FES(ADM)–79–13). Comments made by: DOE, FERC, COE, HUD, USDA, EPA, DOI, State and local agencies, groups, individuals and businesses (EIS Order No. 90617).

Soil Conservation Service

Draft

Donaldson Creek Watershed Protection, Caldwell and Crittenden Counties, Ky, June 19: Proposed is a watershed protection and flood prevention plan for the Donaldson Creek Watershed located in Caldwell and Crittenden Counties, Kentucky. The remaining measures to be taken are the construction of two floodwater retarding structures. Accelerated land treatment measures, five retarding structures, and 6,700 feet of channel work have been completed. The alternatives considered are: (1) The purchase of flowage easements on the flood plain equal to the area that would be inundated by a 2-year frequency flood, (2) take no action, (3) conduct 24.8 miles of channel work, and (4) installation of the remaining structures and 24.8 miles of channel. (USDA–SCS–EIS–WS–(ADM)–79–1–D–KY) (EIS Order No. 90609)

DEPARTMENT OF DEFENSE

Contact: Col. Charles E. Sell, Chief of the Environmental Office, Headquarters DAEN–ZCE, Office of the Assistant Chief of Engineers, Department of the Army, Room 1E676, Pentagon, Washington, D.C. 20310 (202) 694–4269.

Army

Draft

Tripler Medical Center addition/alteration, Oahu, Honolulu County, Hawaii, June 22. Proposed is the hospital addition and alterations to the Tripler Army Medical Center located in the County of Honolulu, Oahu, Hawaii. The project will involve the

construction of a new, 438,000-square foot hospital wing housing major outpatient clinics, diagnostic and treatment facilities, and supply department; the construction of a new, 24,000-square foot central plant housing chillers, emergency generators, and other mechanical equipment; construction and realignment of roadways, parking areas, utility lines, and other support facilities to serve the new construction or eliminate existing deficiencies; and the renovation and structural upgrading of wings within the hospital. (EIS Order No. 90619.)

Fort Sill training installation, ongoing mission, Comanche County, Okla., June 20: Proposed is the continued operation of the Fort Sill training installation located in Comanche County, Okla. The ongoing mission of the facility is to serve as the U.S. Army Field Artillery Center which trains field artillerymen and representatives from allied nations. Active Army units are also stationed at Fort Sill. The alternatives considered include: 1) No action, 2) change of mission, 3) acquisition of additional lands, 4) reduction or relocation of some operations onpost, and 5) closure of the installation and relocation of operations. (EIS Order No. 90611.)

U.S. Army Corps of Engineers

Contact: Mr. Richard Makinen, Office of Environmental Policy, Attn.: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue NW., Washington, D.C. 20314 (202) 272-0121.

Draft

Willamette Reservoir System, O/M Continuation, several counties, Oreg., June 22: Proposed is the continuation of the current operation and maintenance of the Willamette Reservoir System located in several counties of Oregon. The system consists of 11 storage and 2 reregulation reservoirs constructed by the COE on the Willamette River and its tributaries. Specific authorized purposes of the project are flood control, irrigation, navigation, power production, maintenance of fish life through minimum flows and stream purification. Incidental purposes of the project include recreation, wildlife, and municipal and industrial water supplies. (Portland District.) (EIS Order No. 90616.)

Final

Peabody Coal Company, pit No. 3 extension permit, St. Clair County, Ill., June 22: The proposed action involves the issuance of a permit for the construction of levees, the draining, surface mining, and reclaiming of approximately 40 acres of a bypassed channel and about 200 acres of land of the Kaskaskia navigation project area. Peabody Coal Company has been actively mining coal in the vicinity of New Athens on the Kaskaskia River in St. Clair County, Illinois since the early 1960's. Peabody's operation, River King pit No. 3 has progressed eastward from the vicinity of New Athens with the northern limits of the operation being the original channel of the Kaskaskia River. (St. Louis District) Comments made by: EPA, DOI, USDA, DOT, State and local agencies, groups, individuals, and businesses. (EIS Order No. 90626.)

Final

Strube Lake and Cougar additional unit, Blue River, Lane County, Oreg., June 19: Proposed is the modification of the existing powerhouse at Cougar Dam located in Lane County, Oreg., to accommodate a third generating unit of 35,000 kW capacity, making a combined total capacity of 60,000 kW. Cougar generating facilities would be operated for Peaking, rather than current baseload power generation. To reregulate flows from Cougar, Strube Dam would be constructed about 1.9 miles downstream. A 4,600 kW generating unit would be included in the Strube powerplant. (Portland District.) Comments made by: DOE, FERC, BPA, EPA, DOI, USDA, HUD, State agencies, individuals, and businesses. (EIS Order No. 90610.)

Final Supplement

Beach erosion control project, Anna Maria Key, Manatee County, Fla., June 19: Proposed is the restoration and maintenance of 3.9 miles of beach in Anna Maria Key, Manatee County, Fla. Construction involves hydraulic dredging of sand from the ocean bottom about 1,500 feet offshore of the restoration area. Additional restoration is required for a reach of shoreline 2,000 feet southward from passage key inlet, and a low profile groin would be constructed to stabilize the shoreline at the north end of Anna Maria Key. About 1.18 million cubic yards will be dredged for filling the Bradenton Beach-Holmes Beach Reach. (Jacksonville District.) Comments made by: EPA, DOC, individuals. (EIS Order No. 90605.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, (202) 377-4335.

National Oceanic and Atmospheric Administration.

Final

Guam coastal zone management program (CZM), Guam, June 22. Proposed is the issuance of grant funding for the Guam coastal management program. The program will include: (1) a land-use districting system, (2) rules and regulations for protection of wetlands and management of flood hazard areas as areas requiring special management attention, and (3) implementation of Guam's land use policies to provide overall guidance to the government and the people concerning land and water usage. Comments made by: FERC, EPA, DOI, USDA, DOT, USN, COE, HUD, DOC, local agencies.(EIS Order No. 90625.)

ENVIRONMENTAL PROTECTION AGENCY

EPA, Headquarters

Contact: Ms. Norma Hughes (WH-548), Environmental Protection Specialist, Office of Water and Waste Management, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 245-3051.

Draft

Atlantic Ocean waste disposal site designation; Atlantic Ocean, June 22: Proposed is the designation of a 106-mile chemical waste disposal site in the Atlantic Ocean for continuing use, the site is located approximately one hundred nautical miles East of Cape May, N.J., and is primarily used by industries located in the New York-New Jersey-Delaware area. The purpose of the action is to provide an environmentally acceptable area for the disposal of wastes which (1) comply with EPA's rigid marine impact criteria, or (2) must be disposed of until a suitable, land-based disposal method is available. The alternatives include no action, and the use of other sites. (EIS Order No. 90620.)

Contact: Mr. Eugene Wojcik, Chief, EIS section, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Ill. 60604, (312) 353-2157.

Draft

Rural Lake waste treatment, case study 2, Kandiyohi County, Minn., June 21: Proposed is a wastewater treatment plan for the Green Lake sanitary sewer and water district located in Kandiyohi County, Minn. Seven alternatives have been developed which evaluate alternative collection systems (pressure sewers), treatment techniques (land application), individual and multi-family septic systems (cluster systems), and water conservation. The Green Lake Study area comprises about 24 square miles of fields, farms, wetlands, and residential/commercial lakeside development. (EIS Order No. 90614.)

Contact: Mr. Clinton Spotts, Region VI, Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, Tex 75270, (214) 767-2716.

Draft

WWT Facilities Construction Grant, Santa Fe, Santa Fe County, Calif., June 22: Proposed is the awarding of a grant for the construction of new wastewater treatment facilities of 6 MGD capacity near Aqua Fria Village in Santa Fe County, California. The project includes: A trickling filter plant for secondary treatment, three reservoirs for storage of treated wastewater, land application site of 900 acres with provisions for acquisition of additional acreage, an underground pipeline system for distribution of secondary effluent on the cropland and A 30-inch sewer line. (EIS Order No. 90622).

Contact: Mr. Edward Vest, Region VII, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, MO 64108 (816) 374-2921.

Draft

Dry Creek Interceptor, Wichita, Sedgwick County, Kans., June 20: Proposed is the awarding of a construction grant for the design and construction of an interceptor sewer for the city of Wichita, Sedgwick County, Kansas. This project would replaced a portion of the dry creek sanitary sewer district interceptor sewer. The alternatives are: (1) construct the dry creek gravity sewer, (2) construct the Mt. Vernon gravity sewer to tie into the dry creek sewer, (3) no action,

and (4) others. (EPA–907/9–79–003.) (EIS Order No. 90612.)

Contact: Mr. Ken Bigos, Region IX, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, (415) 556–8030.

Draft

Santa Cruz wastewater facilities plan, 201 grant, Santa Cruz County, Calif., June 18: Proposed is a wastewater treatment facilities plan for the city and county of Santa Cruz, California. The selected alternative would provide oxygen-activated sludge secondary treatment at Nearys Lagoon plant site with year round discharge through an extended outfall to the Pacific Ocean. All of the alternatives considered maintain ocean discharge from the Santa Cruz treatment plant and all upgrade treatment to at least secondary treatment. (EPA–9–CA–Santa Cruz–WWTP–79.) (EIS Order No. 90599.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755–6306.

Draft

Single family construction application procedures policy, June 22: Proposed is a major revision of HUD handbook 4135.1; "Procedures For Approval of Single Family Proposed Construction Applications in New Subdivisions," providing new procedures to be used in lieu of standard subdivision analysis conducted by HUD staff. These new procedures would by implemented through two major changes which are: (1) local area certification, and (2) developer certification. Local area certification will be issued for local jurisdictions which HUD determines have subdivision and environmental criteria and controls acceptable to HUD. The developer certification procedure will be used in noncertified communities. (EIS Order No. 90615.)

Section 104(h)

The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104(h) of the 1974 housing and community development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

Final

Port/Marina development project, Richmond, Contra Costa County, Calif., June 22: Proposed is a Marina/Port development project which encompasses 965 acres within a redevelopment project located in Richmond, Contra Costa County, California. The marina portion of the plan includes a 2,000 berth marina for small boats; 2,000–4,000 new residential units; new commercial uses; parking; and a significant amount of recreational container berths. Port development includes a support area and the interfacing of rail, water and land transportation. (SCH No. 78071113). Comments made by: COE, DOI, EPA, State and local agencies businesses. (EIS Order No. 90623.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Building, Department of the Interior, Washington, D.C. 20240, (202) 343–3891.

Bureau of Reclamation

Draft

Colorado-Big Thompson Windy Gap project, Grand and Larimer Counties, Colo., June 18: Proposed is the Colorado-Big Thompson Windy Gap project. The project located in the state of Colorado with construction activities located in Grand and Larimer Counties. The proposal involves three actions: (1) a change in operation of the existing project; (2) construction and operation of a diversion dam on the Colorado river, a pumping plant, and a 5-mile conduit to Granby reservoir; and (3) construction and operation of a 750-megawatt coal-fired power plant. An annual average of 48,900 acre-feet will be diverted from the Colorado river. (INT–DES–79–33.) (EIS Order No. 90602.)

National Park Service

Draft

Great Smokey Mountains National Park, general management, several counties, North Carolina and Tennessee, June 20: Proposed is a general management plan for the Great Smokey Mountains National Park located in the counties of Swain, Haywood, Graham and Jackson, N.C., and the counties of Sevier, Cocke and Blount, Tenn. The plan includes the construction of new facilities at 16 locations, 58 miles of new roads, and 21 miles of trails; the closure of one primitive campground; the elimination of vehicular access of 21 miles of primitive roads; and management of parklands, vegetation, wildlife, and cultural objects for visitor use and resource protection. (DES–79–34.).(EIS Order No. 90613.)

Draft

Snake River, wild and scenic river study, several counties, Washington, Idaho, and Oregon, June 22: Proposed is the inclusion of a 33 mile segment of the Snake River, bordering the States of Washington, Idaho and Oregon, in the National Wild and Scenic Rivers System. The alternatives considered: (1) No action, (2) Full resource development, (3) 29 miles protected by counties, (4) 29 miles protected by states, (5) 33 miles be added to the Wild and Scenic Rivers System, (6) Protection of Archeological/Historic sites by the National Park Service, (7) Inclusion of the upper 11 miles in the system, and (8) Inclusion of the upper 4 miles into the system. (DES–79–35.) (EIS Order No. 90618.)

Final

Glen Canyon Nat'l Recreation Area, Management County: Several counties, Arizona and Utah, June 22: Proposed is a general management plan and preliminary wilderness proposal for the Glen Canyon National Recreation area, Arizona and Utah. The General Management Plan consists of a management zoning proposal dividing the recreation area into four management zones: Natural (50%), Recreation and Resource Utilization (48%), Cultural (less than 0.1%), and development (almost 2%). Comments made by: AHP, USDA, COE, DOE, HUD, DOI, DOT, FPC, State and local agencies. (EIS Order No. 90627.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation 400 7th Street SW., Washington, D.C. 20590, (202) 426–4357.

Federal Highway Administration

Draft

MD–115, Montgomery Village Avenue to Norbeck, Montgomery County, Md., June 18: Proposed is the construction of 8 miles of arterial highway, MD–115, from Montgomery Village Avenue to Norbeck in Montgomery County, Maryland. All roadway improvements begin with an intersection at Montgomery Village Avenue and extend easterly as a 4–lane dual highway on new location to MD–124. The alternatives consider relocation or reconstruction. The relocation will consist of a 4 or 6–lane dual highway from Laytonsville Road, east to MD–609. Reconstruction would involve upgrading the roadway generally along the existing alignment. (FHWA–MD–EIS–79–02–D.) (EIS Order No. 90603.)

MI–32, Relocation or Reconstruction, Montmorency County, Mich., June 18: Proposed is the reconstruction or relocation of approximately 15.5 miles of MI–32 in Montmorency County, Michigan. The project begins one mile east of the MI–32/33 junction in Atlanta to the Montmorency/Alpena County line. It is proposed that the roadway will be constructed to a 24-foot pavement within a minimum 150 foot right-of-way. The alternatives considered are: (1) do nothing, (2) no-build (low capital expenditure), (3) alternate modes of transportation, and (4) reconstruction or relocation of existing MI–32. (FHWA–MI–EIS–79–01–D.) (EIS Order No. 90601.)

Allen Boulevard, Murry Boulevard to Alice Lane, Beaverton, Washington County, Oregon, June 22: Proposed is the improvement of Allen boulevard from SW Murry Boulevard to SW Alice Lane in Washington County, Oregon. The project length is 1.5 miles. In addition to no-build, two alternatives are considered. Alternative A widens the existing two-lane facility to a four-lane facility with a 66-foot to 72-foot right-of-way. Alternative B is a minimum-build alternative which would overlay the existing street and widen it only at major intersections. (FHWA–OR–EIS–79–06D.) (EIS Order No. 90621.)

I–27, Loop 289 north to loop 289 south, extension, Lubbock County, Tex., June 18: Proposed is the extension of I–27 from loop 289 north, across the city of Lubbock, to loop 289 south, Lubbock County, Tex. The facility is proposed to be a six-lane freeway with maximum utilization of frontage roads. The length of the project is approximately 6.3 miles which may vary with the alternative

chosen. The extension will require a right-of-way of 400 feet, with additional width required at intersections. Three alternative routes are considered. (FHWA–TEX–EIS–79–01–D.) (EIS Order No. 90600.)

Final

I–93 and U.S. 1 Interchange, Boston and Cambridge, Suffolk County, Mass., June 19: Proposed is the reconstruction of the I–93/US 1 Interchange located in the Charleston section of the city of Boston, Suffolk County, Mass. Improvements will include straightening the S-curve at the foot of the Mystic Bridge, construction of two tunnels under City Square, two new loop ramps to connect to I–93, removing existing elevated expressway ramps over City Square, and improving vehicular and pedestrian circulation in City Square, and adjacent surface streets. Three alternatives were considered. (FHWA–MASS–EIS–77–01–F.) Comments made by: DOI, DOC, DOT, COE, EPA, HUD, USDA, State and local agencies, groups and businesses. (EIS Order No. 90604.)

EIS's Filed During the Week of June 18 to 22, 1979

[Statement Title Index—By State and County]

State	County	Status	Statement title	Accession No.	Date filed	Orig. Agency No.
Policy		Draft	Single Family Construction Application Procedures	90615	06-22-79	HUD.
Arizona	Several	Final	Glen Canyon Nat'l Recreation Area, Management	90627	06-22-79	DOI.
Atlantic Ocean		Draft	Atlantic Ocean Waste Disposal Site Designation	90620	06-22-79	EPA.
California	Contra Costa	Final	Port/Marina Development Project, Richmond	90623	06-22-79	HUD.
	Santa Cruz	Draft	Santa Cruz Wastewater Facilities Plan, 201 Grant	90699	06-18-79	EPA.
	Santa Fe	Draft	WWT Facilities Construction Grant, Santa Fe	90622	06-22-79	EPA.
Colorado	Grand	Draft	Colorado-Big Thompson Windy Gap Project	90602	06-18-79	DOI.
	Larimer	Draft	Colorado-Big Thompson Windy Gap Project	90602	06-18-79	DOI.
Florida	Manatee	F Supple	Beach Erosion Control Project, Anna Maria Key	90605	06-19-79	COE.
Guam		Final	Guam Coastal Zone Management Program (CZM)	90625	06-22-79	DOC.
Hawaii	Honolulu	Draft	Tripler Medical Center Addition/Alteration, Oahu	90619	06-22-79	USA.
Idaho	Several	Draft	Snake River, Wild and Scenic River Study	90618	06-22-79	DOI.
Illinois	St. Clair	Final	Peabody Coal Company, Pit No. 3 Extension Permit	90626	06-22-79	COE.
Kansas	Sedgwick	Draft	Dry Creek Interceptor, Wichita	90612	06-20-79	EPA.
Kentucky	Caldwell	Draft	Donaldson Creek Watershed Protection	90609	06-19-79	USDA.
	Crittenden	Draft	Donaldson Creek Watershed Protection	90609	06-19-79	USDA.
Maryland	Montgomery	Draft	MD-115, Montgomery Village Avenue to Norbeck	90603	06-18-79	DOT.
Massachusetts	Suffolk	Final	I-93 and US 1 Interchange, Boston and Cambridge.	90604	06-19-79	DOT.
Michigan	Montmorency	Draft	MI-32, Relocation or Reconstruction	90601	06-18-79	DOT.
Minnesota	Kandiyohi	Draft	Rural Lake Waste Treatment, Case Study 2	90614	06-21-79	EPA.
Montana	Flathead	Final	Island Planning Unit, Flathead NF	90624	06-22-79	USDA.
	Lake	Final	Island Planning Unit, Flathead NF	90624	06-22-79	USDA.
North Carolina	Several	Draft	Great Smokey Mountains National Park, General Mgmt.	90613	06-20-79	DOI.
Oklahoma	Comanche	Draft	Fort Sill Training Installation, Ongoing Mission	90611	06-20-79	USA.
Oregon	Several	Draft	Snake River, Wild and Scenic River Study	90618	06-22-79	DOI.
	Several	Draft	Willamette Reservoir System, O/M Continuation	90616	06-22-79	COE.
	Lane	Final	Strube Lake and Cougar Additional Unit, Blue River	90610	06-19-79	COE.
	Washington	Draft	Allen Blvd., Murry Blvd. to Alice Lane, Beaverton	90621	06-22-79	DOT.
Tennessee	Several	Draft	Great Smokey Mountains National Park, General Mgmt.	90613	06-20-79	DOI.
Texas	Houston	Draft	Davy Crockett National Forest Timber Management	90607	06-19-79	USDA.
	Lubbock	Draft	I-27, Loop 289 North to Loop 289 South, Extension	90600	06-18-79	DOT.
	Trinity	Draft	Davy Crockett National Forest Timber Management	90607	06-19-79	USDA.
Utah	Several	Final	Glen Canyon Nat'l Recreation Area, Management	90627	06-22-79	DOI.
	Several	Final	Ferron-Price Planning Unit, Manti-Lasal NF	90606	06-19-79	USDA.
Washington	Washington	Draft	Snake River, Wild and Scenic River Study	90618	06-22-79	DOI.
	Lewis	Final	Cowlitz Planning Unit, Gifford Pinchot NF	90617	06-22-79	USDA.
	Pierce	Final	Cowlitz Planning Unit, Gifford Pinchot NF	90617	06-22-79	USDA.
Wyoming	Park	Draft	Clarks Fork of the Yellowstone River, Shoshone NF.	90608	06-19-79	USDA.

Appendix II.—*Extension/Waiver of Review Periods on EIS's Filed with EPA*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Waiver/ extension	Date review terminates
ENVIRONMENTAL PROTECTION AGENCY					
Mr. Edward Cox, Solid Waste Information Office, Environmental Protection Agency, 26 W. St. Claire Street, Cincinnati, OH 45268 (513) 684–8492.	Resource Conservation and Recovery Act, Subtitle C.	Draft 90019	01/15/79	Extension	09/12/79
	The comment period for this DEIS has been re-opened.				
U.S. DEPARTMENT OF AGRICULTURE					
Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 412A, Washington, DC 20250 (202) 447–3965.	Davy Crockett National Forest, Timber Management.	Draft 90607	01/29/79 (see appendix I).	Extension	09/14/79
	1Clarks Fork River Wild and Scenic River Study, Wyoming.	Draft 90608	01/29/79 (see appendix I).	Extension	09/11/79
ENVIRONMENTAL PROTECTION AGENCY					
Ms. Norma Hughes (WH–548), Environmental Protection Specialist, Office of Water and Waste Management, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 (202) 245–3051.	106-Mile Ocean Waste, Disposal Site Designation.	Draft 90620	01/29/79 (see appendix I).	Extension	08/27/79

Appendix II.—*Extension/Waiver of Review Periods on EIS's Filed with EPA*—Continued

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Waiver/ extension	Date review terminates
DEPARTMENT OF COMMERCE					
Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, DC 20230 (202) 377-4335.	East and West Flower Gardens, Marine Sanctuary. In addition to the extension on the Draft EIS, the DOC/NOA has extended the review period of the proposed rulemaking published March 13, 1979 (44 FR 22081) on 15 CFR Part 934. The review period for both the Draft EIS and proposed rulemaking is scheduled to close on July 6, 1979..	Draft 90363	04/13/79	Extension	07/06/79

Appendix III.—*EIS's Filed With EPA Which Have Been Officially Withdrawn by the Originating Agency*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Date of withdrawal
None.				

Appendix IV.—*Notice of Official Retraction*

Federal agency contact	Title of EIS	Status/number	Date notice published in "Federal Register"	Reason for retraction
U.S. ARMY CORPS OF ENGINEERS				
Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, NW, Washington, DC 20314 (202) 272-0121.	West Des Moines-Des Moines Flood Protection, Iowa.	Final 90556	06/15/79	Distribution of the FEIS has not been completed.

Appendix V.—*Availability of Reports/Additional Information Relating to EIS's Previously Filed With EPA*

Federal agency contact	Title of report	Date made available to EPA	Accession No.
None.			

Appendix VI.—*Official Correction*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability ublished in "Federal Register"	correction
None.				

[FR Doc. 79-20270 Filed 6-28-79; 8:45 am]

BILLING CODE 6560-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Age Discrimination in Employment Act; Procedures and Opinions

Pursuant to Reorganization Plan No. 1 of 1978, 43 FR 19807 (May 9, 1978), responsibility and authority for enforcement of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.* is transferred from the Department of Labor to the Equal Employment Opportunity Commission. The transfer is effective and the Commission assumes enforcement of this Act on July 1, 1979.

In preparation for the assumption of this new jurisdiction and pursuant to its responsibility under Executive Order 12067 which requires the EEOC to exercise leadership in the development and implementation of a uniform and harmonious body of law concerning employment discrimination, the Commission has undertaken a complete review of the Department of Labor Interpretations (29 CFR Part 860) and Opinion Letters issued by the Wage and Hour Administrator of the Department of Labor. The Commission is currently involved in consultation with other Government agencies in accordance with Executive Order 12044. Soon thereafter, the Commission expects to issue new interim interpretative guidelines as well as new interim procedural and substantive regulations, during which time the public will be given an opportunity to comment on the Commission's proposals. Until that time the Interpretations and Opinion Letters

of the Department of Labor remain in effect, and may be relied upon as provided by section 7(e)(1) of the Age Discrimination in Employment Act.

The Commission has adopted, with only minor changes to reflect the transfer of authority to the Commission, the recordkeeping requirements and administrative exemption provisions of the Department of Labor as set forth in 29 CFR Part 850.

Complaints and information relating to possible violations of the Age Discrimination in Employment Act may be received at any of the offices of the Commission in Washington, D.C., or any of its district or area offices, or by any of its designated representatives. The offices of the Wage and Hour Division of the Department of Labor are designated to receive complaints and information relating to possible violations of the Age Discrimination in Employment Act.

The identity of persons giving information as to violations of the Act shall not be disclosed unless necessary in a court proceeding.

To be sufficient, a charge shall be in writing and need only name the prospective defendant and generally allege the discriminatory acts. However, in order to assist the Commission, a charge should also contain the name, address and telephone number of both the person making the charge and the prospective defendant as well as the approximate number of employees of the prospective defendant and whether proceedings have been commenced under a state fair employment practice law.

Pursuant to the transfer of authority to the Commission, the Commission is authorized to exercise those powers enumerated in sections 9, 11, 16 and 17 of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 209, 211, 216 and 217) and sections 6 and 7 of the Age Discrimination in Employment Act of 1967, as amended. These powers have been delegated by the Commission to the General Counsel, the District Directors, the Director of Field Services, and the Director of Systematic Programs, or their designees. In addition, the General Counsel has been delegated the authority to initiate litigation at the direction of the Commission, and to conduct such litigation.

Signed at Washington, D.C. this 26th day of June 1979.

For the Commission.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

[FR Doc. 79-20139 Filed 6-28-79; 8:45 am]

BILLING CODE 6570-06-M

GENERAL SERVICES ADMINISTRATION

Travel Expenses; Report on the Cost of Operation of Privately Owned Automobiles

The Travel Expense Amendments Act of 1975 (Pub. L. 94-22) requires the Administrator of General Services to conduct periodic investigations of the cost to employees of operating privately owned vehicles while engaged on official business. Further, the Act requires that the results of these investigations be reported to Congress and published in the Federal Register.

Publication of the following report is in compliance with the requirements of the Travel Expense Amendments Act of 1975.

Dated: June 26, 1979.

Paul E. Goulding,

Acting Administrator of General Services.

Report to Congress

The Travel Expense Amendments Act of 1975 (Pub. L. 94-22) requires that the Administrator of General Services, in consultation with the Comptroller General of the United States, the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct periodic investigations of the cost of operating privately owned vehicles to employees while engaged on official travel and report the results to Congress at least once a year. The Act further requires that a determination of the average, actual per mile cost be made based on the results of the investigations. Such figures must be reported to Congress within five days of the determination and published in the Federal Register.

In view of recent increases in the cost of gasoline and other automobile operating expenses, considerable interest has been generated by various agencies, employee organizations, and individual employees with respect to the adequacy of the current 17-cent mileage allowance for use of a privately owned automobile. The General Services Administration has responded by conducting an investigation of these costs. Based on the results of these investigations, I am reporting my determination that the average, actual cost per mile for the operation of a privately owned automobile is 18.5 cents. This is predicated on automobile operating cost data for a weighted average mix of standard, compact, and subcompact sedans as of April 1979, the latest available.

Consultations with representatives of employee organizations, the General Accounting Office, and the Departments of Defense and Transportation have been accomplished. General agreement was expressed with respect to the adequacy of the 18.5 cents as a proposed level of reimbursement.

As noted in the report to Congress on the results of our 1978 cost investigation, the allowances for privately owned airplanes and motorcycles are already at the statutory maximum rates of reimbursement and cannot be increased administratively. Accordingly, airplane and motorcycle operating costs were not addressed in this investigation.

The regulations prescribing 18.5-cent mileage allowance for use of a privately owned automobile will be amended within 30 days.

[FR Doc. 79-20303 Filed 6-28-79; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 76F-0392]

Cyclamate (Cyclamic Acid, Calcium Cyclamate, and Sodium Cyclamate); Availability of Interlocutory Decision Following a Formal Evidentiary Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of an interlocutory decision following a formal evidentiary public hearing in a rulemaking proceeding about the artificial sweetner cyclamate. The Commissioner of Food and Drugs is remanding the case to the Administrative Law Judge to develop the evidence further on certain issues relating to the safety of cyclamate.

EFFECTIVE DATE: This action is effective on June 26, 1979.

FOR FURTHER INFORMATION CONTACT: Ted Herman, Regulations Policy Staff (HFC-10), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: Notice of availability of the Commissioner's decision is given here pursuant to § 12.130 (21 CFR 12.130). A copy of the decision itself is on display in the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, Md. 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

Dated: June 26, 1979.

William F. Randolph,

Deputy Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-20333 Filed 6-27-79; 12:11 pm]

BILLING CODE 4110-03-M

[FDA-225-79-8400]

Good Laboratory Practices; Memorandum of Understanding With Health and Welfare Canada

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding with the Health Protection Branch, Health and Welfare Canada. The purpose of the understanding is to set forth cooperative working arrangements for developing standards or guidelines of good laboratory practices (GLP's) for nonclinical laboratories and for establishing programs of inspection to implement those standards or guidelines.

DATES: The agreement became effective May 10, 1979.

FOR FURTHER INFORMATION CONTACT: Gary Dykstra, Regulatory Operations Section (HFC–22), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3470.

SUPPLEMENTARY INFORMATION: Pursuant to the notice published in the Federal Register of October 3, 1974 (39 FR 35697) stating that future memorandums of understanding and agreements between FDA and others would be published in the Federal Register (see § 20.108(c) (21 CFR 20.108(c)), the agency is issuing the following memorandum of understanding:

Memorandum of Understranding Between Health Protection Branch, Health and Welfare Canada, and Food and Drug Administration, Department of Health, Education, and Welfare

In a significant number of cases the bioresearch data submitted to one national authority are based on studies conducted by laboratories located in the country of another national authority. Therefore, the standards observed by all non-clinical laborities in each country that engage[s] in such research should be those universally recognized in the applicable research fields as good laboratory practices so that there is substantial uniformity between the two countries as to the standards observed by the non-clinical laboratories located therein. Where the bioresearch data submitted to one national authority originate from a laboratory within the country of another national authority, the latter should be able to provide the former with the kind of information that the former may need to be assured that the laboratory is operated in accordance with recognized good laboratory practices.

I. Purpose

This Memorandum of Understanding constitutes a statement of intent by the signatory agencies of Canada and the United States to develop standards or guidelines of good laboratory practices (GLPs) for non-clinical laboratories and to establish programs of inspection to implement those standards or guidelines. This Memorandum reflects the concern of the parties for assuring the quality and integrity of bioresearch data submitted to national authorities with respect to products within their respective areas of responsibility.

II. Items for Future Discussion

The overall goal of the parties to this Memorandum is to reach a position in which they will respectively establish substantially consistent GLP standards or guidelines applicable to non-clinical laboratories within their respective jurisdictions and will carry out mutually acceptable programs of inspections of such laboratories to determine compliance with such standards or guidelines. This Memorandum will serve as the framework for future negotiations concerning future memoranda between the parties to provide for reciprocal recognition of non-clinical laboratory inspection programs and reports.

Such future memoranda shall provide for the following specific matters:

(1) Adequate inspection programs by national authorities, which would involve inspection approximately every two years of non-clinical laboratories conducting studies intended to be submitted to national authorities. Inspections shall include an assessment of laboratory procedures and operations, and also where appropriate audits of data from completed studies submitted to national authorities.

(2) Procedures by which either party to this agreement can request the other to conduct an inspection or data audit of a non-clinical study.

(3) Procedures for exchange and acceptance of records and reports relating to inspections, data audits or other relevant matters. The parties understand that adequate account must be taken of the laws of each other with respect to confidentiality and Freedom of Information. (In the case of materials transmitted to the Food and Drug Administration, adequate account must be taken of the U.S. Freedom of Information Act.) The parties recognize the need to protect trade secrets.

(4) Consultation between the parties to resolve differences of views with respect to GLP compliance matters that may be occasioned by the differences in practices between the two countries.

(5) Consultation betweeen the parties on contemplated changes in GLP standards or guidelines.

III. Inspections for Mutual Understanding and Consistency

The parties agree that it is desirable that inspections be conducted for the purpose of promoting mutual understanding of their respective inspection programs and consistency of inspection practices and assessments. The parties intend to conduct such inspections beginning in the near future.

Neither party shall initiate an inspection or data audit of a laboratory located in the other country without having first obtained the consent of the national authority of that country. Joint inspections shall be conducted under the auspices of the host country.

IV. Liaison

The parties respectively appoint the following officials to serve as liaisons for all communications regarding matters relative to this Memorandum or GLPs generally.

For Health Protection Branch: Director, Bureau of Field Operations (currently Dr. C. Broughton), Field Operations Directorate, Health Protection Branch, Health and Welfare, 255 Argyle Street, Ottawa, Canada.

For the Food and Drug Administration: Director, Bioresearch Monitoring Staff (currently Mr. Ernest Brisson), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

V. Duration

This Memorandum shall become effective on the date of the last signature and shall continue in effect unless modified by mutual written consent of

the parties. Either party may withdraw from this Memorandum by written notice to the other.

Dated: May 10, 1979.

Approved and accepted for the Health Protection Branch.

A. B. Morrison,

Assistant Deputy Minister.

Dated: May 10, 1979.

Approved and accepted for the Food and Drug Administration.

Sherwin Gardner,

Deputy Commissioner.

Effective date. This memorandum of understanding became effective May 10, 1979.

Dated: June 21, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-19966 Filed 6-28-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 76F-0352]

Goodyear Tire & Rubber Co.; Withdrawal of Petition for Food Additive

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the withdrawal without prejudice of the petition (FAP 6B3192) proposing safe use of poly(α-methylstyrene) as an optional adjuvant in the production of rubber-modified polystyrene intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued:

In accordance with § 171.7 *Withdrawal of petition without prejudice* of the procedural food additive regulations (21 CFR 171.7), Goodyear Tire and Rubber Co., Akron, OH 44316 has withdrawn its petition (FAP 6B3192), notice of which was published in the Federal Register of September 10, 1976 (41 FR 38540), proposing that § 177.1640 *Polystyrene and rubber-modified polystyrene* (formerly § 121.2510 (21 CFR 121.2510), before recodification published in the Federal Register of March 15, 1977 (42 FR 14302)) be amended to provide for the safe use of poly(α-methylstyrene) as an optional ingredient in rubber-modified polystyrene intended for use in contact with food.

Dated: June 21, 1979.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 79-19963 Filed 6-28-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79F-0129]

American Cyanamid Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: American Cyanamid Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N*-(hydroxymethyl) acrylamide as a monomer in acrylic copolymers and vinyl acetate copolymers used as components of paper and paperboard for food-contact use.

FOR FURTHER INFORMATION CONTACT: John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3244) has been filed by American Cyanamid Co., Wayne, NJ 07470, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of *N*-(hydroxymethyl) acrylamide as a monomer in acrylic copolymers and vinyl acetate copolymers used as components of paper and paperboard for food-contact use.

The agency has determined that the proposed action falls under § 25.1(f)(1)(v) (21 CFR 25.1(f)(1)(v)) and is exempt from the requirements of an environomental impact analysis report, and that no environmental impact statement is necessary.

Dated: June 21, 1979.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 79-19964 Filed 6-28-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 77E-0387]

Mitsui Petrochemical Industries, Ltd.; Withdrawal of Petition for Food Additives

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the withdrawal without prejudice of the petition (FAP 6B3194), proposing safe use of ethylene/butene-1 copolymer for food contact and for the use of tetrakis [methylene(3,5-di-*tert*-butyl-4-hydroxy-hydrocinnamate)] methane as an antioxidant and/or stabilizer in the production of the copolymer.

FOR FURTHER INFORMATION CONTACT: John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued:

In accordance with § 171.7 *Withdrawal of petition without prejudice* of the procedural food additive regulations (21 CFR 171.7), Mitsui Petrochemical Industries, Ltd., 200 Part Ave., New York, NY 10017 has withdrawn its petition (FAP 6B3194), notice of which was published in the Federal Register of December 23, 1977 (42 FR 64440), proposing that the food additive regulations be amended to provide for the safe use of ethylene/butene-1 copolymer as articles or components of articles intended for food-contact use and that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of tetrakis [methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane in the production of the copolymer.

Dated: June 21, 1979.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 79-19965 Filed 6-28-79; 8:45 am]

BILLING CODE 4110-03-M

Health Care Financing Administration

Medicare Program; Economic Index for Physicians' Services for the Period July 1979 Through June 30, 1980

Notice is hereby given that the economic index for increases in the prevailing charges for physicians' services under Part B of Medicare (title XVIII of the Social Security Act), for the period July 1, 1979 through June 30, 1980, is 1.533.

Background

Payment under Medicare, Part B for a physician's service is based on a reasonable charge which may not exceed the lowest of (1) the physician's

actual charge for the service, (2) his customary charge for that service, or (3) the prevailing charges of physicians in the locality. The prevailing charge for a service, before adjustment for the economic index, is calculated at the 75th percentile of physican customary charges. This method of calculating the prevailing charge is further specified in section 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3)) and in HCFA regulations at 42 CFR 405.504. Under these authorities, the prevailing charge for a service in a locality may also not exceed the level in effect for that service in the locality on June 30, 1973, except to the extent justified on the basis of appropriate indicators of economic change.

42 CFR 405.504 establishes an economic index for this purpose, consisting of two components: One measuring increases in general earnings levels (attributable to factors other than increases in productivity) and the other measuring increases in expenses of the kind incurred by physicians.

Calculating the Economic Index

Items 1 through 6 in Table 1 below are the elements used in computing the increase in the physicians' expenses component of the economic index. These elements reflect data on the ratio of the expenses of practice to the gross incomes from practice of self-employed physicians. Each of the elements is assigned a weight, ranging from .05 for private transportation and .07 for malpractice insurance premiums to .43 for hourly earnings of nonsupervisory personnel. A total weight of 40 percent is assigned to the increase in expenses of physicians' practices. The other component (item 9) reflects increases in general earings levels exclusive of productivity increases. It is assigned a weight of 60 percent.

The principal source of the data used is the data for calendar year 1978 set forth in *The Monthly Labor Review*, published by the U.S. Department of Labor. The increase for each element and component from 1977 to 1978 was calculated on the basis of this data and their weighted values were summed. This yielded an increase factor of 1.0716 (see Table 1). That factor, multiplied by the economic index for the period ending June 30, 1979, adjusted as explained below (1.4304), resulted in the new economic index of 1.533. This means that the prevailing charges for physicians' services to be used during a 12-month period beginning July 1, 1979, may not exceed the prevailing charges in effect on June 30, 1973 by more than 53.3 percent.

Because the Bureau of Labor Statistics has periodically retroactively revised some of the statistics and data on which earlier economic indexes were based, it was necessary for us to recompute some of the values and ratios for earlier years in order to obtain an accurate index for the current year. As a result, the actual economic index for July 1, 1978 through June 30, 1979 was adjusted from 1.426 to 1.430. Table 2 sets forth the revised values.

Table 1.—*Calculation of the Increase Factor for the Period July 1979 Through June 1980 To Be Applied to the Revised Economic Index for the Prior 12-Month Period*

	Ratio of 1978 values to 1977 values	Weight (percent)[1]
1. Hourly earnings of nonsupervisory workers in finance, insurance, and real estate	1.0793	.43X40
2. Housing component of the consumer price index	1.0863	.10X40
3. Private transportation component of the consumer price index	1.0493	.05X40
4. Drugs and pharmaceutical component of the producer price index	1.0541	.08X40
5. All other, miscellaneous, expenses (tied to the entire consumer price index)	1.0760	.27X40
6. Premiums for malpractice insurance	[2]1.0085	.07X40
7. Average weekly earnings of production and nonsupervisory workers	1.0778	
8. Index of output per man hour of employed nonfarm workers	1.0052	
9. Change in average weekly earnings net of change in output per man hour	1.0722	60
Increase factor of the economic index over the prior 12-month period	1.0716	

[1] The weights, including the malpractice component, were derived from a special study done for HCFA by a consultant in 1977.

[2] Derived from a survey of several major insurers.

Table 2.—*Determination of the Economic Index for the Period July 1979 Through June 1980*

12-month period ending June 30,	Economic index for the period, adjusted for revision in BLS statistics since the announcement [1]
1976	1.1887
1977	1.2732
1978	1.3431
1979	1.4304
1980	1.5328

[1] See text for explanation.

FOR FUTHER INFORMATION, CONTACT: Paul Riesel (301) 594–9595, Guy King (301) 594–2826.

(Secs. 1102, 1832, 1833, 1842(b)(3), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395u, and 1395hh))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance.)

Dated: June 25, 1979.

Leonard D. Schaeffer,

Administrator, Health Care Financing Administration.

[FR Doc. 79-20141 Filed 6-28-79; 8:45 am]

BILLING CODE 4110-35-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6980-A and AA-6980-C]

Alaska Native Claims Selection

On December 12, 1974, Huna Totem Corporation, for the Native village of Hoonah, filed selection application AA-6980-A and on December 18, 1974, filed selection application AA-6980-C under the provisions of Sec. 16(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 706; 43 U.S.C. 1601, 1615(b) (1976)) (ANCSA), for the surface estate of certain lands in the vicinity of Chichagof Island.

As to the lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 16(b) of ANCSA, aggregating approximately 20,648.74 acres, is considered proper for acquisition by Huna Totem Corporation and is hereby approved for conveyance pursuant to Sec. 14(b) of ANCSA.

Copper River Meridian, Alaska (Surveyed)

U.S. Survey 751, situated at Hoonah, District of Alaska.

Containing 0.67 acres.

U.S. Survey 2414 lots 1, 2, 3, 5, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, situated on Hoonah and Gartina Sloughs, about one mile southeast of Hoonah.

Containing 53.07 acres.
Aggregating 53.74 acres.

Lands on Which Additional Survey Is Required

U.S. Survey 2414, the Gartina Highway, the Right-of-Way lot located between lots 6 and 12, and the Right-of-Way lot located between lots 15 and 16, 21 and 22.

Containing approximately 7 acres.

U.S. Survey 2594, on westerly shore of Spasskaia Bay, excluding Native allotment application AA-6546 Parcel A.

Containing approximately 5 acres.
Aggregating approximately 12 acres.

Copper River Meridian, Alaska (Unsurveyed)

T. 43 S., R. 60 E.

Secs. 13 and 24 (fractional), excluding Native allotment application AA–7835;
Sec. 23, E½SE¼;
Sec. 25 (fractional), all;
Sec. 26, E½NE¼, SW¼NE¼, S½SW¼, SE¼;
Sec. 27, all;
Sec. 28, N½, SE¼;
Sec. 35 (fractional) excluding Native allotment applications AA–5710 Parcel B and AA–7833;
Sec. 36 (fractional), all.

Containing approximately 2,980 acres.

T. 43 S., R. 61 E.
Secs. 5, 6, 7, 14, 15 and 16 (fractional), all;
Sec. 20 (fractional), excluding U.S. Surveys 1472, 1620, 2375, 2449, and 3843 and Native allotment application AA–7880;
Sec. 21 (fractional), excluding U.S. Surveys 1472, 1929, 2375, 2449 and 4539 and Native allotment applications AA–7880 and AA–8013;
Sec. 22, excluding AA–24961 request for designation under Sec. 3(e) of ANCSA for a Radio Electronic Site, U.S. Air Force;
Secs. 23 and 24 (fractional), all;
Secs. 25 and 26, all;
Sec. 27 (fractional), excluding U.S. Surveys 2097, 2124, 2128, 2414, and 4539;
Sec. 28 (fractional), excluding U.S. Surveys 736, 751, 1735, 1929, 2097, 2128, 2577, 3716, 3717, and 4539;
Secs. 29 and 32 (fractional), all;
Sec. 33 (fractional), excluding Native allotment application AA–5710 Parcel A;
Sec. 34 (fractional), excluding U.S. Surveys 2414 and 2595;
Secs. 35 and 36, all.

Containing approximately 7,045 acres.

T. 43 S., R. 62 E.
Secs. 19, 29, and 30 (fractional), all;
Sec. 31 (fractional), excluding Native allotment application AA–6546 Parcel B;
Sec. 32 (fractional), excluding U.S. Surveys 1777 and 2594 and Native allotment application AA–6546 Parcels A and B;
Sec. 33 (fractional), S½.

Containing approximately 1,298 acres.

T. 44 S., R. 62 E.
Sec. 4 (fractional), excluding U.S. Surveys 1777;
Sec. 5 (fractional), excluding U.S. Surveys 1777 and 2594 and Native allotment application AA–6546 Parcel A;
Sec. 6, NE¼;
Secs. 8 and 9, all;
Sec. 10, SW¼;
Sec. 15, W½, SE¼;
Sec. 16, all;
Sec. 17, E½E½
Sec. 20, NE¼NE¼, S½N½, N½S½, SE¼SE¼;
Sec. 21, all;
Sec. 22, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 26, S½SW¼;
Sec. 27, W½, SE¼;
Sec. 28, all;
Sec. 29, NE¼NE¼, S½N½, S½;
Sec. 32, E½NE¼
Secs. 33 and 34, all;
Sec. 35, S½NE¼, W½, SE¼.

Containing approximately 9,260 acres.

Aggregating approximately 20,583.

The conveyance issued for the surface estate of the lands described above shall contain the following reservation to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (1976));

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (1976)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in casefile AA–6980–EE, are reserved to the United States. All easements are subject to applicable Federal, State, or municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a 25 foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs Gross Vehicle Weight (GVW)).

50 Foot Trail—The uses allowed on a 50 foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, and four-wheel drive vehicles.

60 Foot Road—The uses allowed on a sixty (60) foot wide road easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, four-wheel drive vehicles, automobiles, and trucks.

100 Foot Proposed Road—The uses allowed on a one hundred (100) foot wide road easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, four-wheel drive vehicles, automobiles, and trucks. All roads in this category must be proposed for construction within a five-year period. If the road is not constructed the easement will be reduced to a trail and the uses will be consistent with the trail width. If after the road has been constructed a lesser width is sufficient to accommodate the road, the easement shall be reduced to a 60 foot wide easement.

a. (EIN 2 G, L) An easement sixty (60) feet in width for an existing road from Hoonah in Sec. 28, T. 43 S., R. 61 E., Copper River Meridian, northerly to a Radio-Electronic Site. The uses allowed are limited to U.S. Government, its assignees, agents, or successors.

b. (EIN 3 G) An easement for an existing access trail twenty-five (25) feet in width from road EIN 4 D9 in Sec. 34, T. 43 S., R. 61 E., Copper River Meridian, easterly to Spasski Bay. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

c. (EIN 4 D9) An easement sixty (60) feet in width for an existing road from Hoonah in Sec. 28, T. 43 S., R. 61 E., Copper River Meridian, southeasterly to trail EIN 3 G then south to the airstrip. The uses allowed are those listed above for a sixty (60) foot wide road easement.

d. (EIN 4a D9) An easement sixty (60) feet in width for an existing road from the villege of Hoonah in Sec. 28, T. 43 S., R. 61 E., Copper River Meridian, northerly to Inner Point Sophia. The uses allowed are those listed above for a sixty (60) foot wide road easement.

e. (EIN 5 G) An easement one hundred (100) feet in width for a proposed road from existing road EIN 4 D9 in Sec. 34, T. 43 S., R. 61 E., Copper River Meridian, southeasterly to public lands. The uses allowed are those listed above for a one hundred (100) foot wide road easement.

f. (EIN 6 G) An easement one hundred (100) feet in width for a proposed road from Sec. 6, T. 44 S., R. 62 E., Copper River Meridian, easterly to public land. The uses allowed are those listed above for a one hundred (100) foot wide road easement.

g. (EIN 70 C5) An easement for a proposed access trail fifty (50) feet in width from the beach in Sec. 13, T. 43 S., R. 60 E., Copper River Meridian, westerly to isolated public lands. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1976))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of ANCSA, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. Requirements of Sec. 22(k) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 715; 43 U.S.C. 1601, 1621(k) (1976)), that until December 18, 1983, the portion of the above-described lands located within the boundaries of a national forest shall be managed under the principles of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands;

4. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (1976)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section;

5. The following third-party interests, if valid, created and identified by United States Forest Service, as provided by Sec. 14(g) of ANCSA;

A. Special Use Permits issued to:

(1) Town of Hoonah, for a cemetery located on Pitt Island, in Sec. 28 T. 43 S., R. 61 E., Copper River Meridian, covering 15 acres.

(2) City of Hoonah, issued for the Hoonah Municipal Watershed in Secs. 23 and 26 T. 43 S., R. 61 E., Copper River Meridian, containing 46.7 acres.

(3) Alaska Department of Public Works, Division of Aviation, for constructing, maintaining and operating a 3800' by 100' airstrip in Secs. 34 and 35, T. 43 S., R. 61 E., Copper River Meridian, containing 465 acres.

(4) Robert L. Andree, for a right-of-way 238 feet long by 20 feet wide extending from Corner #2 of Mr. Andree's property to the right-of-way of the North Hoonah Road located in E½SE¼NE¼ Sec. 20, T. 43 S., R. 61 E., Copper River Meridian, containing approximately 0.1 acres.

(5) Pelican Cold Storage Co., for a right-of-way for pipeline purposes from Hoonah Elimination Boundary, extending approximately 1,260.5 feet northeasterly to the creek between Larsen Creek and Shotter Creek, located in S½ Sec. 21, N½ Sec. 28, T. 43 S., R. 61 E., Copper River Meridian, covers 1,260.5 feet.

(6) Excursion Inlet Packing Co., for a water transmission line right-of-way 8-foot wide extending from Excursion Inlet Packing Company cannery site to the dam and intake on Sawmill Creek with branch flume from lower supply tank, extending in a northeast direction for a distance of 820 feet to a small unnamed creek, for a total length of 5,972 feet in E½ Sec. 20 and W½ Sec. 21, T. 43 S., R. 61 E., Copper River Meridian, containing approximately 1.01 acres.

(7) Excursion Inlet Packing Company, for a telephone line right-of-way located in Secs. 20 and 21, T. 43 S., R. 61 E., Copper River Meridian, for 0.77 miles.

(8) Ken Dietering, for a residence located on lot 11, U.S. Survey 2414, Gartina-Game Creek Residence Group, containing 3.21 acres.

(9) Kenneth J. Grant and Sharon M. Grant, for a residence located on lot 12, U.S. Survey 2414 Gartina-Game Creek Residence Group, containing 2.98 acres.

(10) Robert F. Norton, for a residence located in SW¼SE¼ Sec. 19, T. 43 S., R. 62 E., Copper River Meridian, West portion of lot 6, Neck Point Group of Residences, containing 1.11 acres.

(11) Frank see, for a residence located in NW¼NE¼ Sec. 30, T. 43 S., R. 62 E., Copper River Meridian, lot 3, Neck Point Residence Group, Spasski Bay, containing 0.39 acres.

B. Timber Sale Contract (12-11-010-1545), Alaska Lumber and Pulp Co., Inc. for the lands on Chickagof Island.

Huna Totem Corporation is entitled to conveyance of 23,040 acres of land selected pursuant to Sec. 16(b) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is 20,648.74 acres. The remaining entitlement of approximately 2,391.26 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA, conveyance to the subsurface estate of the lands described above shall be granted to Sealaska Corporation when conveyance is granted to Huna Totem Corporation for the surface estate, and shall be subject to the same conditions as the surface conveyance.

There are no inland water bodies considered to be navigable within the above described lands.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the Southeast Alaska Empire (Juneau). Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until July 30, 1979, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Huna Totem Corporation, P.O. Box 290, Hoonah, Alaska 99829.
Sealaska Corporation, One Sealaska Plaza, Suite 400, Juneau, Alaska 99801.

Robert D. Arnold,

Assistant to the State Director for ANCSA.

[FR Doc. 79-20237 Filed 6-28-79; 8:45 am]

BILLING CODE 4310-84-M

[AA-6656-A]

Alaska Native Claims Selection

On November 14, 1978, and January 2, 1979, the State of Alaska filed selection applications and amendments thereto, serialized AA-21150, AA-21154, and AA-21161, for lands in the general area of the Native village of Chistochina.

None of the above State selections are valid applications as to the lands described below because the lands were segregated from selections at the time of the State's filings by withdrawal by sec. 11(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 696; 43 U.S.C. 1601, 1610(a)(1) (1976)).

Therefore, the following State selection applications for the lands listed below are hereby rejected:

Copper River Meridian, Alaska (Unsurveyed)

AA-21150

T. 9 N., R. 2 E.
Secs. 1 to 6, inclusive, all;
Secs. 8, 9, 17, 19, 20, 21, 28 and 29, all;
Sec. 30, excluding Native allotment application AA-6712 Parcel A;
Secs. 32 to 35, inclusive, all;
Sec. 36, all.

Containing approximately 12,672 acres.

AA-21154

T. 10 N., R. 3 E.
Secs. 2, 11, 14, 23, and 26, all;
Secs. 31 to 36, inclusive, all.

Containing approximately 7,028 acres.

AA–21161

T. 11 N., R. 6 E.
Secs. 20 to 24, inclusive, those portions lying north of the Glenn Highway;
Secs. 29 and 30, those portions lying north of the Glenn Highway.

Containing approximately 3,008 acres.
Aggregating approximately 22,663 acres.

The State selection applications rejected above aggregate approximately 22,663 acres. Further action on these State selection applications as to the lands not rejected herein will be taken at a later date.

On August 9, 1974 Cheesh-Na, Incorporated, for the Native village of Chistochina, filed selection application and subsequent amendments, all serialized AA–6656–A, under the provisions of sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (1976)) (ANCSA), for the surface estate of certain lands in the vicinity of Chistochina, Alaska.

The village corporation selected certain lands described below which were withdrawn by sec. 11(a)(1) of ANCSA. Section 12(a)(1) of ANCSA provides that village selections shall be made from lands withdrawn by sec. 11(a). Since none of the above listed State selections were valid applications, as to the lands listed above, this acreage will not be charged against the 69,120 acres limitation as State selected lands as set forth in sec. 12(a) of ANCSA.

As to the lands described below, the application, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to sec. 12(a) of ANCSA, aggregating approximately 65,864.73 acres, is considered proper for acquisition by Cheesh-Na, Incorporated and is hereby approved for conveyance pursuant to sec. 14(a) of ANCSA:

Surveyed Lands

United States Survey 4661, Lot 3 situated on the southeasterly side of the Glenn-Tok Highway at Chistochina station.

Containing 0.03 acre.

United States Survey 4981, lot 2 situated on the Glenn Highway at Chistochina, Alaska.

Containing 1.15 acres.

Copper River Meridian, Alaska

T. 9 N., R. 4 E.
Sec. 2, Lots 1, 2, 3, and 4, W½NE¼, W½;
Sec. 4, Lots 1 and 2, N½, SW¼, W½SE¼;
Sec. 5, all;
Sec. 6, Lots 1, 2, 3, and 4, E½, E½W½;
Sec. 7, Lots 1, 2, 3, and 4, E½, E½W½;
Sec. 8, all;
Sec. 9, W½;
Sec. 16, Lots 3, 4, 5, 6, 7, 11, 12, 13, 14, 15, 16, 17, 18, W½NW¼;
Sec. 17, N½, N½S½, SE¼SE¼;
Sec. 18, Lots 1, 2, 3, 4, E½, E½W½;
Sec. 19, Lots 1, 2, and 3, N½NE¼, SW¼NE¼, E½NW¼;
Sec. 20, Lots 1, 4, and 5.

Containing 5,812.70 acres.

T. 10 N., R. 4 E.
Sec. 25, Lots 1 and 2;
Sec. 26 Lots 1, NW¼;
Sec. 34, all;
Sec. 35, Lots 1, 4, 5, 6, 7, 8, NW¼NE¼, S½NW¼, SW¼, SW¼SE¼;
Sec. 36, Lots 1, 3, 4, 6, 8 to 15 inclusive, SE¼.

Containing 1,679.85 acres.

Surveyed Lands Requiring Additional Survey

Copper River Meridian, Alaska

T. 9 N., R. 4 E.
Sec. 9, Lots 1, 2, and 3, NE¼NE¼, W½E½, excluding Native allotment application AA–6712 and the unsurveyed tract of land lying between lot 1 of U.S. Survey 5524 and the centerline of the Glenn Highway;
Sec. 16, Lots 1, 2, excluding the unsurveyed tract of land lying between lots 1 and 3 of U.S. Survey 5524 and the centerline of the Glenn Highway, Lots 8, 9 and 10, excluding Native allotment application AA–7590.

Containing approximately 258 acres.

T. 10 N., R. 4 E.
Sec. 25, N½, SW¼, NE¼SE¼, W½SE¼, excluding Native allotment applications AA–5836 and AA–5893 Parcel A;
Sec. 26, Lot 2, NE¼, N½SW¼, SE¼, excluding U.S. Survey 5293, Homesite application AA–3073, and Native allotment application AA–6610;
Sec. 35, Lots 2 and 3, excluding Homesite application AA–2153;
Sec. 36, Lots 2 and 5, NW¼NE¼, NE¼NW¼, excluding Native allotment application AA–6748 Parcel B.

Containing approximately 770 acres.

Unsurveyed Lands

T. 9 N., R. 2 E.
Secs. 1 to 6, inclusive, all;
Secs. 8, 9, 17, 19, 20, 21, 28 and 29, all;
Sec. 30, excluding Native allotment application AA–6712 Parcel A;
Secs. 32 to 35, inclusive, all;
Sec. 36, excluding U.S. Survey 5231.

Containing approximately 12,672 acres.

T. 8 N., R. 3 E.
Secs. 1 and 2, excluding the Copper River;
Sec. 3, all.

Containing approximately 1,475 acres.

T. 9 N., R. 3 E.
Sec. 6, all.

Containing approximately 630 acres.

T. 10 N., R. 3 E.
Secs. 2, 11, 14, 23, and 26, all;
Secs. 31 to 36, inclusive, all.

Containing approximately 7,028 acres.

T. 8 N., R. 4 E.
Sec. 6, all.

Containing approximately 597 acres.

T. 9 N., R. 4 E.
Sec. 1, excluding the Copper River;
Sec. 2, unsurveyed portion, excluding the Copper River;
Sec. 3, excluding U.S. Surveys 3319, 3119A, 3222, 5196, and 5362;
Sec. 10, excluding U.S. Surveys 5362 and 5524, Native allotment application AA–6712 Parcel B, and the Copper River;
Secs. 11 and 12, excluding the Copper River;
Sec. 13, all;
Sec. 14, excluding the Copper River;
Sec. 15, excluding U.S. Surveys 4661 and 5524, and the Copper River;
Secs. 19 and 20, unsurveyed portion, excluding the Copper River;
Sec. 21, excluding the Copper River;
Secs. 22 to 29, inclusive, all;
Sec. 30, excluding the Copper River;
Secs. 31 to 36, inclusive, all.

Containing approximately 14,692 acres.

T. 10 N., R. 4 E.
Sec. 24, excluding Native allotment application AA–5893 Parcel A;
Sec. 31, all.

Containing approximately 1,248 acres.

T. 9 N., R. 5 E.
Sec. 6, all.

Containing approximately 630 acres.

T. 10 N., R. 5 E.
Sec. 1, all;
Sec. 2, excluding U.S. Survey 4962;
Sec. 3, all;
Sec. 4, excluding Native allotment application AA–6046;
Secs. 5 to 9, inclusive, all;
Sec. 10, excluding U.S. Survey 5197 and Native allotment applications A–061592, AA–7072, AA–7429 Parcel A, and AA–7770 Parcel B;
Sec. 11, excluding U.S. Surveys 3510, 4962 and 5197, and Native allotment applications A–061592, AA–6330, and AA–7770 Parcel A;
Secs. 12, 14, 15, and 16, excluding the Copper River;
Secs. 17 and 18, excluding U.S. Survey 5272;
Secs. 19, 20, and 30, excluding the Copper River;
Sec. 31, all.

Containing approximately 12,202 acres.

T. 11 N., R. 5 E.
Sec 36, all.

Containing approximately 640 acres.

T. 11 N., R. 6 E.
Secs. 20 to 23, inclusive, all;
Sec. 24, excluding U.S. Survey 4803;
Sec. 25, excluding U.S. Surveys 3333 and 4803;
Secs. 29, 30, and 31, all.

Containing approximately 5,529 acres.
Aggregating approximately 65,864.73 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (1976)); and

2. Pursuant to sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (1976)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in casefile AA-6656-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a 25 foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs Gross Vehicle Weight (GVW)).

50 Foot Trail—The uses allowed on a 50 foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, and four-wheel drive vehicles.

60 Foot Road—The uses allowed on a sixty (60) foot wide road easement are: travel by foot, dogsleds, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, four-wheel drive vehicles, automobiles, and trucks.

One Acre Site—The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

a. (EIN 4 D9) An easement for an existing access trail fifty (50) feet in width from the Glenn Highway (Tok Cutoff) in sec. 34, T. 10 N., R. 4 E., Copper River Meridian, northerly generally paralleling the Chistochina River to public land. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

b. (EIN 6a D9) An easement for an existing access trail fifty (50) feet in width from site EIN 6b D9 at Mile 37.7 Glenn Highway (Tok Cutoff) in sec. 24, T. 10 N., R. 4 E., Copper River Meridian, northerly to public land. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

c. (EIN 6b D9) A one (1) acre site easement in sec. 24, T. 10 N., R. 4 E., Copper River Meridian, at Mile 37.7 of the Glenn Highway (Tok Cutoff). The uses allowed are those listed above for a one (1) acre site easement.

d. (EIN 7a D9) An easement for an existing trail fifty (50) feet in width from site EIN 7b C5 at Mile 51.9 of the Glenn Highway (Tok Cutoff) in sec. 23, T. 11 N., R. 6 E., Copper River Meridian, northerly to public land. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

e. (EIN 7b C5) A one (1) acre site easement at Mile 51.9 of the Glenn Highway (Tok Cutoff) on the north side of the highway in sec. 23, T. 11 N., R. 6 E., Copper River Meridian. The uses allowed are those listed above for a one (1) acre site easement.

f. (EIN 17a D1) An easement for an existing access trail fifty (50) feet in width from the Glenn Highway (Tok Cutoff) at Mile 40 in sec. 17, T. 10 N., R. 5 E., Copper River Meridian, southerly to site EIN 17c C5 on the Copper River. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

g. (EIN 17c C5) A one (1) acre site easement upland of the ordinary high water mark in sec. 20, T. 10 N., R. 5 E., Copper River Meridian, on the right bank of the Copper River. The uses allowed are those listed above for a one (1) acre site easement.

h. (EIN 23 C5) An easement for an existing access trail twenty-five (25) feet in width from the Gakona River in sec. 25, T. 9 N., R. 1 E., Copper River Meridian, northeasterly to site EIN 23b C5 on the shore of Fox Lake in sec. 21, T. 9 N., R. 2 E., Copper River Meridian, and continuing northeasterly to trail EIN 4 D9. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

i. (EIN 23b C5) A site easement upland of the ordinary high water make in sec. 21, T. 9 N., R. 2 E., Copper River Meridian, on the south shore of Fox Lake. The site is one (1) acre in size with an additional twenty-five (25) foot wide easement on the bed of the lake along the entire waterfront of the site. The uses allowed are those listed above for a one (1) acre site easement.

j. (EIN 33 E) An easement for a proposed access trail fifty (50) feet in width from the Glen Highway (Tok Cutoff) at Mile 51.9 in sec. 23, T. 11 N., R. 6 E., Copper River Meridian, southerly to public land. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

k. (EIN 34 E) An easement for a proposed access trail fifty (50) feet in width from site EIN 17c C5 in sec. 20, T. 10 N., R. 5 E., Copper River Meridian, on the Copper River, southerly to public land. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

l. (EIN 36 C4) An easement sixty (60) feet in width for an existing road from the Glen Highway (Tok Cutoff) in sec. 16, T. 9 N., R. 4 E., Copper River Meridian, northeasterly through Lot 10 of sec. 16 to private inholdings and a Bureau of Indian Affairs School. The uses allowed are those listed above for a sixty (60) foot wide road easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands and surveyed lands requiring additional survey hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, sec. 6(g) (1976))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to sec. 17(b)(2) of ANCSA, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. Airport lease A-058163, containing approximately 25 acres, located in the SW¼SW¼ of sec. 26, the NE¼ of sec. 34, and the NW¼NW¼ of sec. 35, of unsurveyed T. 10 N., R. 4 E., Copper River Meridian, issued to William Lee Barnhart under the provisions of the act of May 24, 1928 (45 Stat. 728-729; 49 U.S.C. 211-214 (1970));

4. A right-of-way (A-058841) for a Federal Aid Highway material site. Act of August 27, 1958, as amended, 23 U.S.C. 317, as to SW¼ of protracted sec. 2, T. 8 N., R., 3 E., Copper River Meridian;

5. A right-of-way (A-058838) for a Federal Aid Highway material site. Act of August 27, 1958, as amended, 23 U.S.C. 317, as to Lots 4, 5 and 6 of sec. 16, T. 9 N., R. 4 E., Copper River Meridian;

6. A right-of-way (A-058843) for a Federal Aid Highway material site. Act of August 27, 1958, as amended 23 U.S.C. 317, as to Lot 4 and the SE¼SW¼ of sec. 18, ans as to Lot 1 and the NE¼NW¼ of sec. 19, T. 9 N., R. 4 E., Copper River Meridian;

7. A right-of-way (A-058292) for Federal Aid Highway material site. Act of August 27, 1958, as amended, 23 U.S.C. 317, as to the S½ of protracted

sec. 20, T. 11 N., R. 6 E., Copper River Meridian;

8. A right-of-way (A–048295) for a Federal Aid Highway material site. Act of August 27, 1958, as amended, 23 U.S.C 317, as to the SW¼SW¼ of protracted Sec. 20, the NW¼NW¼ of protracted sec. 29, and the NE¼NE¼ of protracted sec. 30, T. 11 N., R. 6 E., Copper River Meridian;

9. A right-of-way (A–058735) for a federal Aid Highway material site. Act of August 27, 1958, as amended, 23 U.S.C. 317, as to the SE¼ or protracted sec. 20, T. 11 N., R. 6 E., Copper River Meridian;

10. An easement and right-of-way 50 feet in width (25 feet on each side of the centerline), conveyed to RCA Alaska Communication, Inc. by Easement Deed dated January 10, 1971, AA–6188, pursuant to the Alaska Communications Disposal Act (81 Stat. 441; 40 USC 771, et seq.) as to: secs. 2, 3, T. 8 N., R. 3 E.; secs 3, 4, 9, 10, 16, 17, 18, 19, T. 9 N., R. 4 E.; secs. 24, 25, 26, 34, 35, T. 10 N., R. 4 E.; secs. 1, 2, 9, 10, 11, 16, 17, 18, 19, T. 10 N., R. 5 E.; sec. 36, T. 11 N., R. 5 E.; secs. 20 21, 22, 23, 24, 29, 30, T. 11 N., R. 6 E.; Copper River Meridian;

11. An easement for highway purposes, including appurtenant protective, scenic and service areas, extending 150 feet on each side of the centerline of the Glenn Highway (Tok Cutoff), as established by Public Land Order 1613 (23 FR 2376), pursuant to the Act of August 1, 1956, (70 Stat. 898) and transferred to the State of Alaska pursuant to the Alaska Ominbus Act, Pub. L. 86–70 (73 Stat. 141) as to; secs. 2, 3, T. 8 N., R. 3 E.; secs. 3, 4, 9, 10, 16, 17, 18, 19, T. 9 N., R. 4 E.; secs. 24, 25, 26, 34, 35, T. 10 N., R. 4 E.; secs. 1, 2, 9, 10, 11, 16, 17, 18, 19, T. 10 N., R. 5 E.; secs. 36, T. 11 N., R. 5 E.; secs. 20, 21, 22, 23, 24, 29, 30, T. 11 N., R. 6 E.; Copper River Meridian; and

12. Requirements of sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (1976)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Cheesh-Na, Incorporated is entitled to conveyance of 69,120 acres of land selected pursuant to sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage coveyed or approved for conveyance is approximately 65,864.73 acres. The remaining entitlement of approximately 3,255.27 acres will be coveyed at a later date.

Pursuant to sec. 14(f) of ANCSA, conveyance of the subsurface estate of the lands described above shall be issued to AHTNA, Inc. when the surface estate is conveyed to Cheesh-Na, Incorporated and shall be subject to the same conditions as the surface conveyance.

Within the above described lands, only the following inland water body is considered to be navigable:

The Copper River.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the Tundra Times and the Anchorage Daily News. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13 Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until July 30, 1979, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Cheesh-Na, Incorporated, Chistochina via Gakona, Alaska 99586.

AHTNA, Inc., Drawer G, Copper Center, Alaska 99573.

Sue Wolf,

Chief, Branch of Adjudication.

[FR Doc. 79–20175 Filed 6–28–79; 8:45 am]

BILLING CODE 4310–84–M

[AA–6709–B through AA–6709E]

Alaska Native Claims Selections

On August 19, 1974, September 27, 1974, and December 6, 1974, the Ounalashka Corporation, for the Native village of Unalaska, filed selection applications AA–6709–B through AA–6709–E, as amended, under the provisions of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (1976)) (ANCSA), for the surface estate of certain lands located near the village, including lands within the Aleutian Islands National Wildlife Refuge (Executive Order (EO) 1733).

As to the lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

This decision approves approximately 501 acres of National Wildlife Refuge lands for conveyance to the Ounalashka Corporation, for a cumulative total of approximately 671 acres. This does not exceed the 69,120 acres permitted under sec. 12(a)(1).

In view of the foregoing, the surface estate of the following described lands, selected pursuant to sec. 12(a), aggregating approximately 102,884 acres, is considered proper for acquisition by the Ounalashka Corporation, and is hereby approved for conveyance pursuant to sec. 14(a) of the Alaska Native Claims Settlement Act:

Lands Outside the Aleutian Islands National Wildlife Refuge (E.O. 1733), Seward Meridian, Alaska (Unsurveyed)

Portions of Land on Unalaska and Sedanka Islands, excluding any offshore islands, rocks and pinnacles within the following protracted description:

T. 72 S., R. 116 W.
- Secs. 8, 9 and 11 (fractional), all;
- Sec. 14 (fractional), excluding U.S. Survey 3594;
- Secs. 16, 17 and 20 (fractional), all;
- Sec. 21, all;
- Sec. 23, excluding U.S. Survey 3594;
- Secs. 26 and 27, all;
- Sec. 28 (fractional), excluding Native allotment AA–7041;
- Secs. 29, 31 and 32 (fractional), all;
- Sec. 33, all.

Containing approximately 6,109 acres.

T. 73 S., R. 116 W.
Secs. 6 and 7, all;
Sec. 24 (fractional), all;
Sec. 25 (fractional), excluding U.S. Survey 811;
Secs. 34, 35 and 36 (fractional), all.

Containing approximately 1,520 acres.

T. 74 S., R. 116 W.
Secs. 1, 2 and 3 (fractional), all;
Secs. 7, 11 and 12 (fractional), all;
Sec. 13, all;
Secs. 14, 18 and 19 (fractional), all;
Secs. 30 and 31 (fractional), all;

Containing approximately 5,765 acres.

T. 72 S., R. 117 W.
Sec. 5 (fractional), all;
Sec. 7 (fractional), excluding Native allotment AA–6309 Parcel B;
Sec. 8 (fractional), all;
Sec. 18 (fractional), excluding Native allotment AA–6309 Parcel B;
Sec. 31 (fractional), all.

Containing approximately 1,030 acres.

T. 73 S., R. 117 W.
Secs. 1 and 5 (fractional), all;
Secs. 6, 7 and 8, all;
Secs. 12, 13 and 14 (fractional), all;
Secs. 17 to 20, inclusive, all;
Sec. 23 (fractional), excluding U.S. Survey 3583;
Secs. 26, 27 and 28 (fractional), all;
Secs. 29 to 32, inclusive, all;
Secs. 33 and 34 (fractional), all;

Containing approximately 10,684 acres.

T. 74 S., R. 117 W.
Secs. 4 and 5 (fractional), all;
Sec. 6, all;
Secs. 7 and 8 (fractional), all;
Secs. 12 to 15 (fractional), inclusive, all;
Secs. 18 and 20 (fractional), all;
Secs. 21, 22 and 23 (fractional), all;
Sec. 24, all;
Secs. 26 and 27 (fractional), all;
Secs. 29, 30 and 31 (fractional), all;
Sec. 35 (fractional), all.

Containing approximately 5,982 acres.

T. 75 S., R. 117 W.
Secs. 6 and 7 (fractional), all.

Containing approximately 810 acres.

T. 71 S., R. 118 W.
Secs. 28 and 29 (fractional), all;
Secs. 32 and 33 (fractional), all.

Containing approximately 1,385 acres.

T. 72 S., R. 118 W.
Secs. 4 and 5 (fractional), all;
Secs. 9 and 12, all;
Sec. 13, (fractional), excluding Native allotment AA–6611;
Secs. 16 and 20, all;
Secs. 21 and 22, all;
Sec. 23, excluding U.S. Survey 3591 lot 2;
Sec. 24 (fractional), excluding U.S. Survey 3591 lots 1 and 2 and Native allotment AA–6611;
Sec. 25 (fractional), excluding U.S. Survey 3591 lot 2, Native allotment AA–6308 and the Makushin River;
Sec. 26, excluding U.S. Survey 3591 lot 2, Native allotment AA–6308 and the Makushin River;
Secs. 27, 28 and 29, all;
Sec. 35, all;
Sec. 36, excluding Native allotment AA–6308.

Containing approximately 10,090 acres.

T. 73 S., R. 118 W.
Sec. 1 (fractional), all;
Sec. 4 (fractional), excluding U.S. Survey 3593;
Secs. 5 and 6 (fractional), all;
Sec. 7 (fractional), excluding U.S. Survey 3595;
Sec. 8 (fractional), all;
Sec. 11 (fractional), excluding U.S. Survey 778, U.S. Survey 853, U.S. Survey 1945, U.S. Survey 1991, U.S. Survey 1992 and U.S. Survey 4988 Tract B;
Sec. 12, excluding U.S. Survey 778 and U.S. Survey 1994;
Sec. 13, excluding U.S. Survey 778, U.S. Survey 1944 and U.S. Survey 5185;
Sec. 14, excluding U.S. Survey 778;
Sec. 16 (fractional), excluding U.S. Survey 3588 and Quit Claim Deed AA–8981;
Sec. 17 (fractional), all;
Sec. 18, all;
Sec. 19 (fractional), excluding Native allotments AA–6624 and AA–6627;
Sec. 20 (fractional), excluding Native allotment AA–6627;
Sec. 21 (fractional), excluding U.S. Survey 3588 lot 2, Native allotments A–059486 and AA–6309 Parcel A;
Secs. 24 and 25, all;
Sec. 28, excluding Native allotments AA–6309 Parcel A and AA–6612;
Sec. 29 (fractional), excluding U.S. Survey 3586, and Native allotments AA–6309 Parcel A, AA–6311 and AA–6612;
Sec. 30 (fractional), excluding U.S. Survey 3586 and Native allotment AA–6624;
Secs. 31, 32 and 33, all;
Sec. 36, all.

Containing approximately 10,244 acres.

T. 74 S., R. 118 W.
Sec. 1 (fractional), all;
Secs. 10 to 13 (fractional), inclusive, all;
Secs. 14 and 21, all;
Secs. 22, 23 and 24 (fractional), all;
Secs. 27 to 30 (fractional), inclusive, all;
Secs. 33 to 36 (fractional), inclusive, all.

Containing approximately 6,638 acres.

T. 75 S., R. 118 W.
Sec. 1, all;
Secs. 2 to 5 (fractional), inclusive, all;
Secs. 7 and 8 (fractional), all;
Sec. 9, all;
Secs. 10, 11 and 12 (fractional), all;
Sec. 13, all;
Sec. 14, 15 and 16 (fractional), all.

Containing approximately 7,401 acres.

T. 73 S., R. 119 W.
Sec. 1 (fractional), excluding U.S. Survey 3587;
Sec. 2, all;
Sec. 12 (fractional), excluding U.S. Survey 3595;
Secs. 13, 14 and 15, all;
Sec. 36, all.

Containing approximately 4,160 acres.

T. 74 S., R. 119 W.
Secs. 1 and 2, all;
Secs. 11, 14 and 15, all;
Secs. 20 to 23, inclusive, all;
Secs. 27, 28 and 29, all;
Secs. 30 to 34 (fractional), inclusive, all.

Containing approximately 9,303 acres.

T. 75 S., R. 119 W.
Secs. 3 to 8 (fractional), inclusive, all;
Secs. 9, 17 and 18, all.

Containing approximately 4,886 acres.

T. 74 S., R. 120 W.
Secs. 14 and 15, excluding Humpback Creek;
Secs. 16 and 17, all;
Secs. 19 and 20 (fractional), all;
Sec. 21 (fractional), excluding Humpback Creek;
Sec. 22, excluding Humpback Creek;
Sec. 23, all;
Secs. 25 to 28 (fractional), inclusive, all.

Containing approximately 5,955 acres.

T. 75 S., R. 120 W.
Secs. 1, 2 and 3 (fractional), all;
Secs. 5 and 6 (fractional), all;
Sec. 7, all;
Secs. 8 to 12 (fractional), inclusive, all;
Sec. 13, all;
Secs. 14 and 16 (fractional), all;
Secs. 17 and 18, all;
Secs. 21, 22 and 23 (fractional), all;
Sec. 24, all;
Secs. 25 to 28 (fractional), inclusive, all;
Sec. 32, all;
Secs. 33 to 36 (fractional), inclusive, all.

Containing approximately 10,422 acres.

Aggregating approximately 102,384 acres outside the Aleutian Islands National Wildlife Refuge (E.O. 1733).

Lands Within the Aleutian Islands National Wildlife Refuge (E.O. 1733), Seward Meridian, Alaska (Unsurveyed)

Lands consisting of islands, rocks and pinnacles within the following protracted description:

T. 74 S., R. 117 W.
Secs. 14 and 31 (fractional), excluding Unalaska Island.

Containing approximately 40 acres.

T. 75 S., R. 117 W.
Sec. 6 (fractional), excluding Unalaska Island.

Containing approximately 5 acres.

T. 71 S., R. 118 W.
Secs. 21 and 28 (fractional), excluding Unalaska Island.

Containing approximately 20 acres.

T. 73 S., R. 118 W.
Sec. 20 (fractional), excluding U.S. Survey 3592 and Unalaska Island.

Containing approximately 30 acres.

T. 74 S., R. 118 W.
Secs. 24 and 29 (fractional), excluding Unalaska Island.

Containing approximately 35 acres.

T. 75 S., R. 118 W.
Sec. 4 (fractional), excluding Unalaska Island.

Containing approximately 10 acres.

T. 74 S., R. 120 W.
Secs. 21 and 29 (fractional), excluding Unalaska Island.

Containing approximately 45 acres.

T. 75 S., R. 120 W.
Sec. 10 (fractional), excluding Unalaska Island;
Secs. 15 and 22 (fractional), excluding Unalaska Island;
Secs. 23 and 26 (fractional), excluding Unalaska Island.

Containing approximately 316 acres.

Aggregating approximately 501 acres within the Aleutian Islands National Wildlife Refuge (E.O. 1733).

Total aggregated acreage approximately 102,885 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (1976)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (1976)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file AA-6709-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsleds, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

60 Foot Road—The uses allowed on a sixty (60) foot wide road easement are: travel by foot, dogsleds, animals, snowmobiles, two and three-wheel vehicles, four-wheel drive vehicles, automobiles, and trucks.

One Acre Site—The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading shall be limited to 24 hours.

a. (EIN 2 D9) An easement for an existing access trail twenty-five (25) feet in width from Broad Bay in Sec. 25, T. 72 S., R. 118 W., Seward Meridian, westerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

b. (EIN 3 C4) An easement sixty (60) feet in width for an existing road from the east side of Captains Bay in Sec. 15, T. 73 S., R. 118 W., Seward Meridian, northeasterly to Summer Bay thence southwesterly to Unalaska. The uses allowed are those listed above for a sixty (60) foot wide road easement.

c. (EIN 3a C4) An easement for an existing access trail twenty-five (25) feet in width from road EIN 3 C4 near Summer Bay in Sec. 32, T. 72 S., R. 116 W., Seward Meridian, southeasterly to Agamgik Bay. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

d. (EIN 4 D9) An easement for an existing access trail twenty-five (25) feet in width from Portage Bay in Sec. 34, T. 74 S., R. 119 W., Seward Meridian, northeasterly to Erskine Bay. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

e. (EIN 8 D9) An easement for an existing access trail twenty-five (25) feet in width from Humpback Bay along right bank Humpback Creek in Sec. 21, T. 74 S., R. 120 W., Seward Meridian, northeasterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

f. (EIN 8a C5) A one (1) acre site easement upland of the mean high tide line in Sec. 21, T. 74 S., R. 120 W., Seward Meridian, on the north shore of Humpback Bay. The uses allowed are those listed above for a one (1) acre site.

g. (EIN 14 C4) An easement for a proposed access trail twenty-five (25) feet in width from Uniktali Bay in Sec. 10, T. 74 S., R. 118 W., Seward Meridian, westerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

h. (EIN 14a C5) A one (1) acre site easement upland of the mean high tide line in Sec. 10, T. 74 S., R. 118 W., Seward Meridian, on the west shoreline at head of Uniktali Bay. The uses allowed are those listed above for a one (1) acre site.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1976))], contract, permit, right-of-way or easement, and the right of the lessee, contractee, permitee or grantee to the complete enjoyment of all rights, privileges and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of ANCSA, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. The naval airspace reservation of Executive Order No. 8680, dated February 14, 1941.

4. Grazing Lease A-057947 to the Choate Livestock and Trading Company within T. 72 S., R. 116 W., Seward Meridian, Tps. 73 S., Rs. 116, 117, 118 and 119 W., Seward Meridian and Tps. 74 S., Rs. 117, 118 and 119 W., Seward Meridian, under the act of March 4, 1927 (44 Stat. 1452; 48 U.S.C. 471, 471a and 471o).

5. Requirements of Sec. 22(g) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 714; 43 U.S.C. 1601, 1621(g) (1976)), that (a) the above-described lands which were within the boundaries of the Aleutian Islands National Wildlife Refuge on December 18, 1971, remain subject to the laws and regulations governing use and development of such refuge, and that (b) the right of first refusal, if said land or any part thereof is ever sold by the above-named corporation, is reserved to the United States; and

6. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (1976)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section;

The Ounalashka Corporation is entitled to conveyance of 115,200 acres of land selected pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. To date, approximately 110,405 acres of this entitlement have been approved for conveyance; the remaining entitlement of approximately 4,795 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of the Alaska Native Claims Settlement Act, conveyance to the subsurface estate of the lands described above, excluding those lands which have been withdrawn by E.O. 1733 and which are reserved thereby as a national wildlife refuge, shall be granted to The Aleut Corporation when conveyance is granted to the Ounalashka Corporation for the surface estate, and shall be subject to the same conditions as the surface conveyance. Section 12(a)(1) provides that when a village corporation selects the surface estate of lands within a national wildlife refuge system, the regional corporation may make selections of the subsurface estate, in an equal acreage, from other lands withdrawn by Sec. 11(a) within the region.

There are no inland water bodies considered to be navigable within the lands described. The Makushin River is determined to be under tidal influence from Broad Bay, eastward upstream through Sec. 26, T. 72 S., R. 118 W., Seward Meridian and Humpback Creek

is also determined to be under tidal influence from Humpback Bay upstream northeasterly through the selection.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the ANCHORAGE TIMES. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until July 30, 1979, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements of filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is to be taken, the adverse parties to be served are:

Ounalashka Corporation, Unalaska, Alaska 99685.

The Aleut Corporation, 833 Gambell Street, Anchorage, Alaska 99501.

Sue A. Wolf,

Chief, Branch of Adjudication.

[FR Doc. 79-20176 Filed 6-28-79; 8:45 am]

BILLING CODE 4310-84-M

[AA-6676-A, AA-6676-B, AA-6676-D through AA-6676-F, AA-6676-H and AA-6676-J through AA-6676-L]

Alaska Native Claims Selections

On January 25 and December 9 and 16, 1974, Koliganek Natives Limited, for the Native village of Koliganek, filed selection applications AA-6676-A and AA-6676-B, AA-6676-D through AA-6676-F, AA-6676-H and AA-6676-J through AA-6676-L under the provisions of sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (1976)) (ANCSA), for the surface estate of certain lands in the Koliganek area.

The Bristol Bay Native Corporation filed regional selection application AA-8097-14 pursuant to sec. 12(c) of ANCSA on December 5, 1975 for the surface and subsurface estates of certain lands within T. 5 S., R. 49 W., Seward Meridian. Koliganek Natives Limited properly selected secs. 9 through 12 and secs. 14, 15 and 16 in village selection application AA-6676-L on December 9, 1974. Departmental regulation 43 CFR 2651.4(d) states:

Village corporation selections within sections 11(a)(1) and (a)(3) areas shall be given priority over regional corporation selections for the same lands.

In view of this, regional selection application AA-8097-14 is hereby rejected as to the following described lands:

Seward Meridian, Alaska (Unsurveyed)

T. 5 S., R. 49 W.
Secs. 9 to 12, inclusive, all;
Secs. 14, 15 and 16, all.

Containing approximately 4,480 acres.

Further action on regional selection application AA-8097-14 as to those lands not rejected herein will take place at a later date.

As to lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry prefected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to sec. 12(a), aggregating approximately 76,203 acres, is considered proper for acquisition by koliganek Native Limited, and is hereby approved for conveyance pursuant to sec. 14(a) of the Alaska Native Claims Settlement Act:

Seward Meridian, Alaska (Unsurveyed)

T. 5 S., R. 45 W.
Secs. 1,11 and 12, excluding the Mulchatna River;
Secs. 13 and 14, all;
Sec. 15, excluding Native allotment AA-6393 Parcel A;
Sec. 16, excluding the Mulchatna River;
Sec. 21, all;
Sec. 22, excluding Native allotment AA-6393 Parcel A;
Secs. 23 and 24, all;
Secs. 27, 28, and 29, all;
Sec. 31, excluding Native allotment AA-6387 Parcel A and the Mulchatna River;
Secs. 32 and 33, all.

Containing approximately 10,073 acres.

T. 5 S., R. 46 W.
Sec. 19, excluding the Nushagak River;
Sec. 29, all;
Sec. 30, excluding the Nushagak River;
Sec. 31, excluding Native allotment AA-7837 Parcel A and the Nushagak River;
Sec. 32, excluding the Nushagak River;
Sec. 33, all;
Secs. 34, 35, and 36, excluding the Mulchatna River.

Containing approximately 4,759 acres.

T. 3 S., R. 47 W.
Secs. 5, excluding Native allotment AA-7805 Parcel A and B;
Sec. 6, excluding Native allotment AA-7850 Parcel A and the Nushagak River;
Sec. 7, excluding the Nushagak River;
Secs. 8, and 17, all;
Sec. 18, excluding the Nushagak River;
Secs. 19, 20 and 29, all;
Sec. 30, excluding Native allotment AA-7845 Parcel B;
Sec. 31, all.

Containing approximately 6,611 acres.

T. 4 S., R. 47 W.
Secs. 6 and 7, all;
Secs. 18 and 19, excluding the Nushagak River;
Secs. 29 to 32, inclusive, excluding the Nushagak River.

Containing approximately 4,376 acres.

T. 5 S., R. 47 W.
Secs. 1 to 9, inclusive, excluding the Nushagak River;
Sec. 10, all;
Secs. 11, 12, and 13, excluding the Anushagak River;
Sec. 14, excluding Native allotment AA-7663;
Secs. 15 and 16, all;
Sec. 17, excluding Native allotment AA-7850 Parcel C;
Secs. 18, 19 and 20, all;
Sec.21, excluding U.S. Survey 3509;
Sec. 22, excluding native allotment AA-7810 Parcel A;
Sec. 23, excluding Native allotments AA-7663 and AA-7784 Parcel B;
Sec. 24, excluding Native allotments AA-7665, AA-7784 Parcel B, AA-7838 Parcel A, and the Nushagak River;
Sec. 25, excluding Native allotment AA-7665 and the Nushagak River;
Secs. 26, 27 and 28, all;
Sec. 29, excluding native allotment AA-7664;
Secs. 30 to 35, inclusive, all;
Sec. 36, exclusing the Nushagak River.

Containing approximately 20,457 acres.

T. 3 S., R. 48 W.
Sec. 19, excluding the Nuyakuk River;
Sec. 20, all;
Secs. 24 and 25, excluding the Nushagak River;
Sec. 28, all;
Secs. 29 to 32, inclusive, excluding the Nuyakuk River;
Sec. 33, excluding Native allotment AA-7809 Parcel A and the Nuyakuk River;
Sec. 36, excluding the Nushagak River.

Containing approximately 6,098 acres.

T. 4, R. 48 W.
Secs. 1 and 2, excluding the Nushagak River;

Secs. 3 and 4, excluding native allotment AA–7786 Parcel A and the Nuyakuk River;
Sec. 5, excluding the Nuyakuk River;
Secs. 6 and 8, all;
Sec. 9, excluding Native allotments AA–7165 Parcel B, AA–7182 Parcel A and the Nuyakuk River;
Sec. 10, excluding native allotments AA–7165 Parcel B, AA–8116 Parcel D and the Nuyakuk River;
Secs. 11 and 12, excluding the Nuyakuk and the Nushagak Rivers;
Sec. 13, excluding the Nushagak River;
Sec. 14, excluding the Nuyakuk River;
Secs. 15, 16 and 21, all;
Sec. 22, excluding Native allotment AA–7806 Parcel A;
Sec. 23, excluding Native allotment AA–7838 Parcel C;
Sec. 24, all;
Secs. 25 and 26, excluding Native allotment AA–7787;
Sec. 36, all.

Containing approximately 12,831 acres.

T. 5 S., R. 48 W.
Sec. 1, excluding Native allotments AA–7693, AA–7838 Parcel D and the Nushagak River;
Sec. 2, excluding the Nushagak River;
Sec. 3, all;
Secs. 7 to 10, inclusive, all;
Sec. 11, excluding Native allotment AA–7693;
Sec. 12, excluding Native allotment AA–7693 and the Nushagak River;
Sec. 13, excluding Native allotment AA–7838 Parcel B;
Sec. 14, all.

Containing approximately 6,518 acres.

T. 5 S., R. 49 W.
Secs. 9 to 12, inclusive, all;
Secs. 14, 15, and 16, all.

Containing approximately 4,480 acres.
Aggregating approximately 76,203 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (1976)); and

2. Pursuant to sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (1976)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file AA–6676–EE, are reserved to the United States. All easements are subject to applicable Federal, State, or municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

50 Foot Trail—The uses allowed on a fifty (50) foot wide trail easement are: travel by foot, dogsleds, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles, track vehicles and four-wheel drive vehicles.

One Acre Site—The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

a. (EIN 25 C4) A one (1) acre site easement upland of the ordinary high water mark in sec. 21, T. 5 S., R. 45 W., Seward Meridian, on the right bank of the Mulchatna River. The uses allowed are those listed above for a one (1) acre site easement.

b. (EIN 25a C4) An easement for a proposed access trail twenty-five (25) feet in width from site EIN 25 C4 in sec. 21, T. 5 S., R. 45 W., Seward Meridian, westerly to public lands.

c. (EIN 26 C4) A one (1) acre site easement upland of the ordinary high water mark in sec. 13, T. 5 S., R. 48 W., Seward Meridian, on the right bank of the Nushagak River. The uses allowed are those listed above for a one (1) acre site easement.

d. (EIN 26a C4) An easement for a proposed access trail twenty-five (25) feet in width from site EIN 26 C4 in sec. 13, T. 5 S., R. 48 W., Seward Meridian, southerwesterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

c. (EIN 27 C4) A one (1) acre site easement upland of the ordinary high water mark in sec. 1, T. 5 S., R. 48 W., Seward Meridian, on the left bank of the Nushagak River near the confluence of a small unnamed stream. The uses allowed are those listed above for a one (1) acre site easement.

f. (EIN 27a C4) An easement for a proposed access trail twenty-five (25) feet in width from site EIN 27 C4 in sec. 1, T. 5 S., R. 48 W., Seward Meridian, northeasterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

g. (EIN 28 C4) A one (1) acre site easement upland of the ordinary high water mark in sec. 23, T. 4 S., R. 48 W., Seward Meridian, on the right bank of the Nuyauk River. The uses allowed are those listed above for a one (1) acre site easement.

h. (EIN 28a C4) An easement for a proposed access trail twenty-five (25) feet in width from site EIN 28 C4, sec. 23, T. 4 S., R. 48 W., Seward Meridian, southerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

i. (EIN 29 C4) A one (1) acre site easement upland of the ordinary high water mark in sec. 18, T. 4 S., R. 47 W., Seward Meridian, on the left bank of the Nushagak River. The uses allowed are those listed above for a one (1) acre site easement.

j. (EIN 29a C4) An easement for a proposed access trail twenty-five (25) feet in width from site EIN 29 C4 in sec. 18, T. 4 S., R. 47 W., Seward Meridian, easterly to public lands.

k. (EIN 30 C4) A one (1) acre site easement upland of the ordinary high water mark in sec. 36, T. 3 S., R. 48 W., Seward Meridian, on the right bank of the Nushagak River. The uses allowed are those listed above for a one (1) acre site easement.

l. (EIN 30a C4) An easement for a proposed access trail twenty-five (25) feet in width from site EIN 30a C4 in sec. 36, T. 3 S., R. 48 W., Seward Meridian, westerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

m. (EIN 35 E) An easement for an existing access trail twenty-five (25) feet in width from Koliganek southeasterly along the right bank of the Nushagak River to the south line of sec. 31, T. 5 S., R. 46 W., Seward Meridian, continuing on to New Stuyahok. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter use.

n. (EIN 36 C5) An easement for an existing access trail fifty (50) feet in width from Nushagak River in sec. 21, T. 5 S., R. 47 W., Seward Meridian, to the airstrip in sec. 21, T. 5 S., R. 47 W., Seward Meridian. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat.

339, 341, 48 U.S.C. Ch. 2, sec. 6(g) (1976))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to sec. 17(b)(2) of ANCSA, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law.

3. Airport lease A–058749, containing approximately 109.2 acres, located within S½ sec. 21, N½NW¼ sec. 28, T. 5 S., R. 47 W., Seward Meridian, issued to the State of Alaska, Department of Public Works, Division of Aviation (now the Department of Transportation and Public Facilities) under the provisions of the Act of May 24, 1928 (45 Stat. 728–729; 49 U.S.C. 211–214 (1976));

4. Airport lease AA–8341, containing approximately 55.9 acres, located within S½ sec. 21, N½NE¼ sec. 28, T. 5 S., R. 47 W., Seward Meridian, issued to the State of Alaska, Department of Public Works, Division of Aviation (now the Department of Transportation and Public Facilities) under the provisions of the Act of May 24, 1928 (45 Stat. 728–729; 49 U.S.C. 211–214 (1976)); and

5. Requirements of sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (1976)), that the grantee hereunder convey those portions, if any, of the lands hereinafter granted, as are prescribed in said section.

Koliganek Natives Limited is entitled to conveyance of 92,160 acres of land selected pursuant to sec. 12(a) of the Alaska Native Claims Settlement Act. To date, approximately 76,203 acres of this entitlement have been approved for conveyance; the remaining entitlement of approximately 15,957 acres will be conveyed at a later date.

Pursuant to sec. 14(f) of the Alaska Native Claims Settlement Act, conveyance of the subsurface estate of the lands described above shall be granted to Bristol Bay Native Corporation when conveyance is granted to Koliganek Natives Limited for the surface estate and shall be subject to the same conditions as the surface conveyance.

Only the following water bodies within the described lands are considered to be navigable:

Nuyakuk River.
Mulchatna River.
Nushagak River.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the ANCHORAGE TIMES. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknow parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until July 30, 1979 to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the adverse parties to be served are:

Koliganek Natives Limited, Koliganek, Alaska 99576.
Bristol Bay Native Corporation, P.O. Box 198, Dillingham, Alaska 99576.

Sue A. Wolf,
Chief, Branch of Adjudication.

[FR Doc. 79-20177 Filed 6-28-97; 8:45 am]
BILLING CODE 4310-84-M

[AA-6716-A and AA-6716-B]

Alaska Native Claims Selection

On November 13, 1974, Mentasta, Incorporated, for the Native village of Mentasta Lake, filed selection applications AA–6716–A and AA–6716–B under the provisions of sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (1976)) (ANCSA), for the surface estate of certain lands in the vicinity of Mentasta Lake.

The village corporation selected lands which were withdrawn by secs. 11(a)(1) and 11(a)(2) of ANCSA. Section 11(a)(2) specifically withdrew, subject to valid existing rights, all lands within the townships withdrawn by sec. 11(a)(1) that had been selected by, or tentatively approved to, but not yet patented to the State of Alaska under the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, sec. 6(b) (1976)).

Section 12(a)(1) of ANCSA provides that village selections shall be made from lands withdrawn by sec. 11(a). Section 12(a)(1) further provides that no village may select more than 69,120 acres from lands withdrawn by sec. 11(a)(2).

The State filed general purposes grant selection applications F–028163 (Anch.), F–028165 (Anch.), F–028167 (Anch.), F–028169 (Anch.) and F–028352 (Anch.) pursuant to sec. 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, sec. 6(b) (1976)), for lands in T. 13 N., Rs. 9, 10, 11 E., Ts. 14 and 15 N., R. 11 E., Copper River Meridian, Alaska. Each application was amended to include all lands in the townships, excluding patented lands.

The following described lands which are State selected and were tentatively approved have been properly selected under village selection applications AA–6716–A and AA–6716–B. Accordingly, the tentative approvals are hereby rescinded and the State selection applications identified below are rejected as to the following described lands:

State Selection F–028352 (Anch.), Filed September 26, 1961, Tentatively Approved February 6, 1964

U.S. Survey 4362 Tract D, excluding Native allotment application F–12963 (Anch.).
Containing approximately 100 acres.

Copper River Meridian, Alaska (Surveyed)

T. 13 N., R. 9 E.
Tract A excluding Native allotment applications F–031218 (Anch.) Parcel A, F–12052 (Anch.), F–12306 (Anch.) Parcel B, F–12307 (Anch.), F–12944 (Anch.), F–12963 (Anch.), F–13059 (Anch.), F–13065 (Anch.) Parcel A, F–13707 (Anch.), F–13710 (Anch.) Parcels A and B, F–13735 (Anch.) Parcel B and F–14582 (Anch.), and Open-to-Entry Leases ADL–49752, ADL–49753, ADL–52492, ADL–51166, ADL–51709, ADL–53039, ADL–53041 and ADL–52410.
Containing approximately 21,189 acres.

State Selection F–028169 (Anch.), Filed July 27, 1961, Tentatively Approved December 10, 1963

Copper River Meridian, Alaska (Surveyed)

T. 13 N., R. 10 E.
Tract "A", those portions more particularly described as: (protracted)
Secs. 1 to 11, inclusive, excluding Native allotment applications F–8594 (Anch.) Parcels A and B, F–12306 (Anch.) Parcels A and F–17744 (Anch.) Parcel A.
Containing approximately 6,637 acres.

State Selection F-028167 (Anch.), Filed July 27, 1961, Tentatively Approved November 19, 1963

Copper River Meridian, Alaska (Surveyed)

T. 13 N., R. 11 E.
Those portions more particularly described as: (protracted)
Secs. 4, 5 and 6 excluding Native allotment application F-12306 (Anch.) Parcel C.
Containing approximately 1,900 acres.

State Selection F-028165 (Anch.), Filed July 27, 1961, Tentatively Approved February 26, 1964

Copper River Meridian, Alaska (Surveyed)

T. 14 N., R. 11 E.
Tract "A", those portions more particularly described as: (protracted)
Secs. 4, 5, 9, 16, 21, 28, 32 and 33, excluding Native allotment applications F-8594 (Anch.) Parcel C and F-14022 (Anch.) Parcel A.
Containing approximately 4,870 acres.

State Selection F-028163 (Anch.), Filed July 27, 1961, Tentatively Approved May 1, 1964

Copper River Meridian, Alaska (Surveyed)

T. 15 N., R. 11 E.
Those portions more particularly described as: (protracted)
Secs. 16, 20, 21, 29 and 32.
Containing approximately 3,200 acres.

The State selected lands rejected above aggregate approximately 37,896 acres. Further action on the subject State selection applications as to those lands not rejected herein will be taken at a later date.

The total amount of lands which have been properly selected by the State, including any selection applications previously rejected to permit conveyances to Mentasta, Incorporated is 37,896 acres, which is less than the 69,120 acres permitted by sec. 12(a)(1) of ANCSA.

As to the lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to sec. 12(a) of ANCSA, aggregating approximately 65,170 acres, is considered proper for acquisition by Mentasta, Incorporated and is hereby approved for conveyance pursuant to sec. 14(a) of ANCSA:

U.S. Survey 4362, located at Mentasta, Alaska, on both sides of the Old Mentasta Road, those portions described as follows:
Tract B, excluding Native allotment applications F-032026 (Anch.) and F-534 (Anch.);
Tract D, excluding Native allotment applications F-032026 (Anch.), F-534 (Anch.), and F-12963 (Anch.).
Containing approximately 355 acres.

Copper River Meridian, Alaska (Unsurveyed)

T. 12 N., R. 9 E.
Secs. 3, 4, 9 and 10, all;
Sec. 15, excluding Native allotment application A-058197 and U.S. Survey 5247;
Sec. 10, excluding U.S. Survey 5247;
Sec. 20, excluding U.S. Survey 3331;
Sec. 21, excluding U.S. Surveys 4337 and 4976.
Containing approximately 5,043 acres.

T. 13 N., R. 8 E.
Sec. 1, excluding U.S. Survey 4362 and Native allotment application F-12148 (Anch.);
Sec. 2, excluding U.S. Survey 4362;
Secs. 3 to 10, inclusive, all;
Sec. 11, excluding U.S. Surveys 3615, 4362 and Native allotment application F-032026 (Anch.);
Sec. 12, excluding U.S. Surveys 3615, 4362 and Native allotment applications F-534 (Anch.), F-12148 (Anch.), F-12963 (Anch.), F-032026 (Anch.), F-17766 (Anch.) Parcel A and F-14587 (Anch.);
Sec. 13, excluding U.S. Survey 3615 and Native allotment applications F-14587 (Anch.) and F-17766 (Anch.) Parcel A;
Sec. 14, excluding U.S. Survey 3615;
Secs. 15 to 36, inclusive, all.
Containing approximately 21,976 acres.

Copper River Meridian, Alaska (Surveyed)

T. 13 N., R. 9 E.
Tract A, those portions more particularly described as: (protracted)
Sec. 1, all;
Sec. 2, excluding U.S. Survey 4361 and Native allotment application F-13721 (Anch.);
Sec. 3, excluding U.S. Survey 4361 and Native allotment applications F-12307 (Anch.), F-13059 (Anch.) and F-13735 (Anch.) Parcel B;
Sec. 4, excluding Native allotment applications F-13059 (Anch.), F-13710 (Anch.) Parcel B and F-14582 (Anch.);
Sec. 5, excluding U.S. Surveys 4364 and 4385 and Native allotment applications F-13065 (Anch.) Parcel A and F-14582 (Anch.);
Sec. 6, excluding U.S. Surveys 3616, 4362 and 4364;
Sec. 7, excluding U.S. Surveys 3616, 4362, 4364 and Native allotment applications F-12963 (Anch.) and F-031218 (Anch.) Parcel A;
Sec. 8, excluding Native allotment applications F-12944 (Anch.), F-13710 (Anch.) Parcel A, F-14582 (Anch.), and Open-to-Entry Leases ADL-49752, ADL-49753 and ADL-52492;
Sec. 9, excluding Native allotment application F-14582 (Anch.);
Sec. 10, excluding Native allotment application F-13735 (Anch.) Parcel B;
Sec. 11, excluding U.S. Survey 4361;
Secs. 12 to 16, inclusive, all;
Sec. 17, excluding Native allotment applications F-12944 (Anch.) and F-13713 (Anch.);
Sec. 18, excluding Native allotment applications F-12306 (Anch.) Parcel B, F-13707 (Anch.), and Open-to-Entry Leases ADL-51166, ADL-51709, ADL-53039 and ADL-53041;
Sec. 19, all;
Sec. 20, excluding Native allotment application F-13713 (Anch.);
Sec. 21, excluding Open-to-Entry Lease ADL 52410;
Secs. 22 and 23, excluding U.S. Survey 4016 and Native allotment application F-12052 (Anch.);
Secs. 24 to 31, inclusive, all;
Sec. 32, excluding Native allotment application F-13721 (Anch.) Parcel B;
Secs. 33 to 36, inclusive, all.
Containing approximately 21,189 acres.

T. 13 N., R. 10 E.
Tract "A", those portions more particularly described as: (protracted)
Sec. 1, all;
Sec. 2, excluding U.S. Survey 4045 and Native allotment application F-8594 (Anch.) Parcel B;
Sec. 3, excluding Native allotment application F-17744 (Anch.) Parcel A;
Sec. 4, all;
Sec. 5, excluding U.S. Survey 5621;
Sec. 6, excluding U.S. Survey 5621;
Sec. 7, excluding Native allotment application F-12306 (Anch.) Parcel A;
Sec. 8, excluding Native allotment application F-12306 (Anch.) Parcel A;
Secs. 9 to 11, inclusive, all.
Containing approximately 6,637 acres.

T. 13 N., R. 11 E.
Those portions more particularly described as: (protracted)
Secs. 4 and 5, all;
Sec. 6, excluding Native allotment application F-12306 (Anch.) Parcel C.
Containing approximately 1,900 acres.

T. 14 N., R. 11 E.
Tract "A", those portions more particularly described as: (protracted)
Sec. 4, excluding U.S. Survey 4030;
Secs. 5 and 9, all;
Secs. 16 and 21, all;
Sec. 28, excluding U.S. Surveys 2980, 3030 and Native allotment application F-8594 (Anch.) Parcel C;
Sec. 32, excluding U.S. Surveys 2980, 3722, 4356 and Native allotment application F-14022 (Anch.) Parcel A;
Sec. 33, excluding U.S. Survey 2980.
Containing approximately 4,870 acres.

T. 15 N., R. 11 E.
Those portions more particularly described as: (protracted)
Secs. 16, 20, 21, 29 and 32, all.
Containing approximately 3,200 acres.
Aggregating approximately 65,170 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the

Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (1976)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (1976)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in casefile AA-6716-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs Gross Vehicle Weight (GVW)).

50 Foot Trail—The uses allowed on a fifty (50) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, and four-wheel drive vehicles.

60 Foot Road—The uses allowed on a sixty (60) foot wide road easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, four-wheel drive vehicles, automobiles, and trucks.

100 Foot Proposed Road—The uses allowed on a one hundred (100) foot wide road easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, four-wheel drive vehicles, automobiles, and trucks. All roads in this category must be proposed for construction within a five-year period. If the road is not constructed the easement will be reduced to a trail and the uses will be consistent with the trail width. If after the road has been constructed a lesser width is sufficient to accommodate the road, the easement shall be reduced to a 60 foot wide easement.

One Acre Site—The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

a. (EIN 2 C3, D1, L) An easement sixty (60) feet in width for an existing road from the Glenn Highway (Tok Cutoff) in sec. 12, T. 13 N., R. 9 E., Copper River Meridian, westerly to the village of Mentasta Lake. The uses allowed are those listed above for a sixty (60) foot wide road easement.

b. (EIN 3a C5, D9) An easement for an existing access trail twenty-five (25) feet in width from the Glenn Highway (Tok Cutoff) in sec. 7, T. 13 N., R. 10 E., Copper River Meridian, northwesterly to public land. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

c. (EIN 5 C5, D1, L) An easement for an existing access trail fifty (50) feet in width from the Glenn Highway (Tok Cutoff) in sec. 35, T. 13 N., R. 9 E., Copper River Meridian, southeasterly to public land. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

d. (EIN 8 C1, C5) A site easement upland of the ordinary high water mark in sec. 3, T. 12 N., R. 9 E., Copper River Meridian, on the right bank of the Slana River at the southwest corner of the Slana River Bridge. The site is one (1) acre in size with an additional twenty-five (25) foot wide easement on the bed of the river along the entire waterfront of the site. The uses allowed are those listed above for a one (1) acre site easement.

e. (EIN 10 C3, C5, D1, D9, L) An easement for an existing access trail fifty (50) feet in width from Mentasta Lake Villege in sec. 1, T. 13 N., R. 8 E., Copper River Meridian, northwesterly to public land. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

f. (EIN 11 C3, C5, D1, D9, L) An easement for an existing access trail twenty-five (25) feet in width from the Glenn Highway (Tok Cutoff) in sec. 21, T. 12 N., R. 9 E., Copper River Meridian, northwesterly to public land in sec. 17, T. 12 N., R. 9 E., Copper River Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

g. (EIN 22 C5, D1, L) An easement for an existing access trail fifty (50) feet in width from the Glenn Highway (Tok Cutoff) in sec. 28, T. 14 N., R. 11 E., Copper River Meridian, southerly paralleling the Little Tok River to public land. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

h. (EIN 24a D1, L) An easement for an existing access trail twenty-five (25) feet in width from the Glenn Highway (Tok Cutoff) in sec. 8, T. 14 N., R. 11 E., Copper River Meridian, easterly to public land. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

i. (EIN 33 C5) An easement for the upgrading and realignment of the Glenn Highway (Tok Cutoff) from the Slana River Bridge in sec. 3, T. 12 N., R. 9 E., Copper River Meridian, northeasterly to Bartell Creek in sec. 7, T. 13 N., R. 10 E., Copper River Meridian. The specific description of this easement is described in right-of-way application AA-14620. The uses allowed are those listed above for a one hundred (100) foot wide road easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, sec. 6(g) (1976))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (1976)), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. A right-of-way for material sites granted under the Federal Aid to Highways Act of August 27, 1958, as amended (72 Stat. 885; 23 U.S.C. 317) as to:

a. F-026112, E½NW¼, protracted sec. 14, T. 13 N., R. 9 E., Copper River Meridian.

b. F-031654, protracted sec. 35, T. 13 N., R. 9 E., Copper River Meridian.

c. F-029821, protracted sec. 1, T. 13 N., R. 10 E., Copper River Meridian.

d. F-031377, protracted sec. 1, T. 13 N., R. 10 E., Copper River Meridian.

e. F-029821, S½, protracted sec. 4, T. 13 N., R. 10 E., Copper River Meridian.

f. F-031525, S½SW¼, protracted sec. 5, T. 13 N., R. 10 E., Copper River Meridian.

g. F-029041, S½SE¼, protracted sec. 6, T. 13 N., R. 10 E., Copper River Meridian.

h. F-031672, SE¼NE¼, protracted sec. 1, T. 13 N., R. 10 E., Copper River Meridian and SW¼NW¼, sec. 6, T. 13 N., R. 11 E., Copper River Meridian.

i. F-025169, NE¼NE¼, protracted sec. 16, T. 14 N., R. 11 E., Copper River Meridian.

j. F–025172, SE¼SE¼, protracted sec. 9, T. 14 N., R. 11 E., Copper River Meridian.

k. F–025372, E½, protracted sec. 16, T. 15 N., R. 11 E., Copper River Meridian.

4. The following third-party interests, if valid, created and identified by the State of Alaska, as provided by Sec. 14(g) of ANCSA;

a. Right-of-way Permit, ADL 27074, traversing selected lands in protracted Secs. 5, 28, and 32, T. 14 N., R. 11 E., and protracted Secs. 29 and 32, T. 15 N., R. 11 E., Copper River Meridian.

b. Utility lease ADL–30089 located in S½SW¼SW¼ of protracted sec. 16 and N½NW¼NW¼ of protracted sec. 21, T. 14 N., R. 11 E., Copper River Meridian (Surveyed Tract A).

5. An easement for highway purposes, including appurtenant protective, scenic and service areas, extending 150 feet on each side of the centerline of the Glenn Highway (Tok Cutoff), as established by Public Land Order 1613 (23 F. R. 2376), pursuant to the Act of August 1, 1956 (70 Stat. 898) and transferred to the State of Alaska pursuant to the Alaska Omnibus Act, P.L. 86–70 (73 Stat. 141) as to protracted secs. 3, 10, 15, 16, 20 and 21, T. 12 N., R. 9 E., protracted secs. 11, 12, 14, 15, 22, 23, 27, 34 and 35, T. 13 N., R. 9 E., protracted secs. 1, 2, 3, 4, 5, 6, 7 and 8, T. 13 N., R. 10 E., protracted sec. 6, T. 13 N., R. 11 E., protracted secs. 4, 5, 9, 16, 28 and 32, T. 14 N., R. 11 E., protracted secs. 16, 20, 21, 29 and 32, T. 15 N., R. 11 E., Copper River Meridian, Alaska;

6. An easement and right-of-way 50 feet in width (25 feet on each side of the centerline), conveyed to RCA Alaska Communication, Inc. by Easement Deed dated January 10, 1971, F–13508, pursuant to the Alaska Communications Disposal Act (81 Stat. 441; 40 U.S.C. 771, et seq.) as to: Protracted secs. 3, 10, 15, 16, 20, 21, T. 12 N., R. 9 E., protracted secs. 11, 12, 14, 15, 22, 23, 26, 27, 34, 35, T. 13 N., R. 9 E., protracted secs. 1 to 10 inclusive, T. 13 N., R. 10 E., protracted sec. 6, T. 13 N., R. 11 E., protracted secs. 4, 5, 9, 16, 28, 32, T. 14 N., R. 11 E., protracted secs. 16, 20, 21, 29, 32, T. 15 N., R. 11 E., Copper River Meridian, Alaska; and

7. Requirements of sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (1976)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Mentasta, Incorporated is entitled to conveyance of 69,120 acres of land selected pursuant to sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is 65,170 acres. The remaining entitlement of approximately 3,950 acres will be conveyed at a later date.

Pursuant to sec. 14(f) of ANCSA, conveyance of the subsurface estate of the lands described above shall be issued to AHTNA, Inc. when the surface estate is conveyed to Mentasta, Incorporated, and shall be subject to the same conditions as the surface conveyance.

There are no inland water bodies considered to be navigable within the above described lands.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the ANCHORAGE TIMES and the TUNDRA TIMES. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until July 30, 1979 to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Mentasta, Incorporated, Mentasta Lake via Tok, Alaska 99780.

AHTNA, Inc., Drawer G, Copper Center, Alaska 99573.

State of Alaska, Division of Lands, 323 East Fourth Avenue, Anchorage, Alaska 99501.

Robert D. Arnold,

Assistant to the State Director for ANCSA.

[FR Doc. 79-20178 Filed 6-28-79; 8:45 am]

BILLING CODE 4310-84-M

[Tentative Sales No. A66 and 66]

Gulf of Mexico; Call for Nominations of and Comments on Areas for Oil and Gas Leasing

Section 102 of the Outer Continental Shelf Lands Act Amendments of 1978 describes the purposes of that Act. One of the purposes is to establish policies and procedures intended to expedite exploration and development of the Outer Continental Shelf (OCS) in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade. Equally important purposes include balancing energy resource development with the protection of the human, marine and coastal environments, as well as assuring States and local governments the opportunity to review and comment on decisions relating to OCS activities. To assist the Secretary of the Interior in carrying out these purposes, and pursuant to 43 CFR 3301.3, nominations are hereby requested for areas on the Gulf of Mexico, Outer Continental Shelf for possible oil and gas leasing under the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343 as amended). Pursuant to 43 CFR 3301.4, the Secretary is also requesting comments on the possible environmental impacts and potential use conflicts in specified areas. Nominations for two proposed sales are being solicited in one Call.

Description of Areas

Nominations will be considered for any or all of the blocks seaward of the submerged lands of the adjacent States which are to be found on the Official Protraction Diagrams and Leasing Maps listed below.

These blocks may be found on Outer Continental Shelf Official Protraction Diagrams and Leasing Maps which may be purchased from the Manager, New Orleans OCS Office, Bureau of Land Management, Hale Boggs Federal Building, 500 Camp Street, Suite 841, New Orleans, Louisiana 70130, as follows:

OCS Leasing Maps

South Texas set	$5.00 This set	Latest approval or revision date
1	South Padre Island Area	7/16/54
1A	South Padre Island Area East Addition	5/6/65
2	North Padre Padre Island Area	7/16/54
2A	North Padre Padre Island Area East Addition	5/6/65
3	Mustang Padre Island Area	10/30/61
3A	Mustang Padre Island Area East Addition	1/23/67
4	Matagorda Padre Island Area	7/16/54

East Texas Set	$7.00 This Set	
5	Brazos Area	7/16/54
5B	Brazos Area South Addition	9/24/59
6	Galveston Area	7/16/54
6A	Galveston Area South Addition	9/24/59
7	High Padre Island Area	8/55
7A	High Island Area East Addition	1/23/67
7B	High Island Area South Addition	9/24/59
7C	High Padre Island Area East Addition South Extension	9/24/59
8	Sabine Pass Area	3/7/77

Louisiana Set	$17.00 This Set	
1	West Cameron Area	7/22/54
1A	West Cameron Area West Addition	1/30/57
1B	West Cameron Area South Addition	9/8/59
2	East Cameron Area	8/1/73
2A	East Cameron Area South Addition	9/8/59
3	Vermilion Area	7/22/54
3A	South Marsh Island Area	8/7/59
3B	Vermilion Area South Addition	9/8/59
3C	South Marsh Island Area South Addition	9/8/59
3D	South Marsh Island Area North Addition	1/18/72
4	Eugene Island Area	7/22/54
4A	Eugene Island Area South Addition	9/8/59
5	Ship Shoal Area	6/8/54
5A	Ship Shoal Area South Addition	9/8/59
6	South Timbalier, South Pelto, and Bay Marchand Areas	12/9/54
6A	South Timbalier Area South Addition	7/22/68
7	Grand Isle Area	6/8/54
7A	Grand Isle Area South Addition	3/7/61
8	West Delta Area	6/8/54
8A	West Delta Area South Addition	11/24/61
9	South Pass Area	5/11/73
9A	South Pass Area South and East Addition	9/8/59
10	Main Pass and Breton Sound Areas	7/22/54
10A	Main Pass Area South and East Addition	9/8/59
11	Chandeleur Area	7/22/54
11A	Chandeleur Area East Addition	9/8/59
12	Sabine Pass Area	3/7/77

OCS Official Protraction Diagrams

$2.00 Per Map

Gulf of Mexico		Latest approval or revision Date
NG 14-3	Corpus Christi	1/27/76
NG 14-6	Port Isabel	1/27/76
NG 15-1	East Breaks	1/27/76
NG 15-2	Garden Banks	12/2/76
NG 15-3	Green Canyon	12/2/76
NG 15-4	Alaminos Canyon	3/26/76
NG 15-5	Keathley Canyon	12/2/76
NG 15-6	Walker Ridge	12/2/76
NG 16-1		12/2/76
NG 16-2		12/2/76
NG 16-3	The Elbow	12/2/76
NG 16-4		12/2/76
NG 16-5		12/2/76
NG 16-6		12/2/76
NG 17-1	St. Petersburg	12/2/76
NG 17-4	Charlotte Harbor	12/2/76
NH 15-12	Ewing Bank	12/2/76
NH 16-4	Mobile	12/21/77
NH 16-5	Pensacola	12/2/76
NH 16-7	Viosca Knoll	12/2/76
NH 16-8	Destin Dome	12/2/76
NH 16-9	Apalachicola	1/15/76

OCS Official Protraction Diagrams—Continued

$2.00 Per Map

Gulf of Mexico		Latest approval or revision Date
NH 16-10	Mississippi Canyon	12/2/76
NH 16-11	De Soto Canyon	12/2/76
NH 16-12	Florida Middle Ground	12/2/76
NH 17-7	Gainesville	1/27/76
NH 17-10	Tarpon Springs	12/2/76

Instructions on Call

Nominations must be described by referring to the Outer Continental Shelf official Protraction Diagrams and Leasing Maps prepared by the Bureau of Land Management, Department of the Interior and referred to above. Only whole blocks may be nominated. Those nominating twelve blocks or more are requested to arrange their nominations into three groups according to the priority of their interest.

In addition to nominations, we are seeking comments about particular geological, environmental, biological, archaeological, socieconomic conditions or problems, or other information which might bear upon potential leasing and development of particular blocks where available. Comments should be specific as possible in identifying individual blocks or areas which should receive special concern and analysis.

Nominations and comments must be submitted not later than August 31, 1979, in envelopes labeled "Nominations of Tracts for Leasing in the Outer Continental Shelf—Gulf of Mexico" or "Comments on Leasing in the Outer Continental Shelf—Gulf of Mexico", as appropriate. They must be submitted to the Director, Attention 720, Bureau of Land Management, Department of the Interior, Washington, D.C. 20240. Copies shoud be sent to the Conservation Manager, U.S. Geological Survey, Gulf of Mexico Area, P.O. Box 7944, Metairie, Louisiana 70010, and to the Manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management, Hale Boggs Federal Building, 500 Camp Street, Suite 841, New Orleans, Louisiana 70130.

Use of Information From Call

Nominations will be evaluated and used along with other geologic and geophysical information to determine what, if any, tracts should be tentatively selected for further environmental analysis pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and the OCS Lands Act, as amended. Generally, because of limits on the geographic scope of areas which can be sucessfully planned for a single sale, only a portion of the tracts nominated are selected for further environmental analysis and possible leasing. The nominations from this call will be used to develop two separate sales in the Gulf of Mexico.

Comments will be considered along with other relevant information available to the Secretary to determine what tracts should be designated for further environmental analysis and study. As a general rule, tracts which are believed to have potential for the production of hydrocarbons are not excluded from further environmental study unless the Secretary has sufficient information to conclude that it is not possible for those tracts to be developed in an environmentally safe manner.

In any event, selection of tracts for further environmental analysis does not insure that the tracts will be subsequently offered for lease or that they will be deleted for environmental or use conflicts. It simply insures that more information will be available when that decision is made. In performing the additional environmental analysis leading to a sale decision, the Department will take into account comments received as it determines particular areas and issues for attention.

Final selection of tracts for competitive bidding will be made only at a later date after compliance with established Departmental procedures and all requirements of the National Environmental Policy Act of 1969. Notice of any tracts finally selected for competitive bidding will be published in the Federal Register stating the conditions and terms for leasing and the place, date, and hour at which bids will be received and opened.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

June 26, 1979.

Approved.

Heather L. Ross,

Acting Assistant Secretary of the Interior.

[FR Doc. 79-20277 Filed 6-28-79; 8:45 am]

BILLING CODE 4310-84-M

[INT FES 79-24]

Outer Continental Shelf of the Western and Central Gulf of Mexico; Availability of Final Environmental Statement Regarding Proposed Oil and Gas Lease Sale No. 58A

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement relating to a proposed Outer

Continental Shelf (OCS) oil and gas lease sale of 122 tracts consisting of 235,924.55 hectares (582,529.75 acres) of submerged lands on the OCS offshore Texas, Louisiana, Mississippi and Alabama (OCS Sale No. 58A).

Single copies of the final environmental statement can be obtained from the Office of the Manager, New Orleans OCS Office, Bureau of Land Management, Hale Boggs Federal Building, Suite 841, 500 Camp Street, New Orleans, Louisiana 70130, and from the Office of Public Affairs, Bureau of Land Management (130), Washington, D.C. 20240.

Copies of the final environmental statement will also be made available for inspection in the following public libraries: Austin Public Library, 401 West Ninth Street, Austin, Texas; Houston Public Library, 500 McKinney, Houston, Texas; Rosenburg Library, 2310 Sealy, Galveston, Texas; Dallas Public Library, 1954 Commerce Street, Dallas, Texas; La Ratama Library, 505 Mesquite Street, Corpus Christi, Texas; Texas South Most College Library, 80 Fort Brown Street, Brownsville, Texas; New Orleans Public Library, 219 Loyala Avenue, New Orleans, Louisiana; Louisiana State Library, Baton Rouge, Louisiana; Lafayette Public Library, 301 West Congress Street, Lafayette, Louisiana; Calcasieu Parish Library System, Downtown Branch, Lake Charles, Louisiana; Harrison County Library, 21st Avenue and Beach, Gulfport, Mississippi; Mobile Public Library, 701 Government Street, Mobile, Alabama; and Brazoria County Library, 410 Brazport Boulevard, Freeport, Texas.

Approved: June 26, 1979.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

Larry E. Meierotto,

Assistant Secretary of the Interior.

[FR Doc. 79-20142 Filed 6-28-79; 8:45 am]

BILLING CODE 4310-84-M

Eastern States Office, Change of Location and Temporary Closing

Notice is hereby given that the Eastern States Office, Bureau of Land Management, in Silver Spring, Maryland, will be closed to the public Tuesday, July 10, 1979 through July 29, 1979, to facilitate moving to the new location of 350 South Pickett Street, Alexandria, Virginia. The new mailing address of the Eastern States Office, effective July 13, 1979, will be Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia, 22304.

In accordance with Title 43, Code of Federal Regulations, §§ 1821.2; 1821.2-1; 1821.2-2; 1821.2-3: applications, payments, and other documents received for filing in the normal course of business for July 10, 1979-July 29, 1979 shall be deemed to be filed as of 10:00 a.m., July 27, 1979.

Dated: June 25, 1979.

Lowell J. Udy,

Director, Eastern States.

[FR Doc. 79-20145 Filed 6-28-79; 8:45 am]

BILLING CODE 4310-84-M

Outer Continental Shelf, Central and Western Gulf of Mexico; Leasing Systems, Sale No. 58

Sec. 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act, as amended, requires that, at least 30 days before any lease sale, a notice be submitted to the Congress and published in the Federal Register:

(A) identifying the bidding systems to be used and the reasons for such use; and

(B) designating the tracts to be offered under each bidding system and the reasons for such designation.

A. *Bidding systems to be used.* In OCS Lease Sale #58, a system employing a cash bonus bid with a constant royalty fixed at 16⅔% will be used on 73 tracts. This system is authorized by Sec. 8(a)(1)(A) of the OCS Lands Act, as amended. A system employing a cash bonus bid with a royalty established according to a semi-logarithmic sliding scale will be used on the remaining 53 tracts. This system is authorized by Sec. 8(a)(1)(C) of the OCS Lands Act, as amended. The use of the sliding scale royalty system was first introduced in OCS Lease Sale #43 and used again in the last five OCS lease sales as part of the commitment by the Department of the Interior and the Department of Energy to develop and test new bidding systems.

The sliding scale is designed to establish higher royalty rates for larger reservoirs with higher production rates. In such cases, the expected bonus would be reduced, which may improve competition for leases. This would also tend to reduce the likelihood of production losses that could result if royalty rates are set by other means, such as royalty bidding, at levels so high that production is made uneconomic. These production losses are dependent upon the different exploration, development and production costs for the specific area. The formula provided for Sale #58 is based on the assumed costs for this area and is slightly different from that utilized in some recent sales, for example, Sale #49.

The sliding scale used in Sales #43 and #45 was linear in form. Although this form is easy to depict it has three disadvantages which may affect the socially optimal level of production. At certain levels of production, a linear schedule causes erratic fluctuations in the royalty charged on increments in output which may lead producers to make socially non-optimal production decisions in order to minimize these royalty impacts on revenues. Marginal royalty rates also can reach very high levels even though average rates are low. In addition, because production costs are non-linear it can be shown that the royalty rate schedule should more closely conform to the functional form of these costs in order to minimize production losses.

The fixed sliding scale formula operates in the following way: when the quarterly value of production, adjusted for inflation, is less than or equal to $13.236229 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $13.236230 million, but less than or equal to $1662.854082 million, the royalty percent due on the unadjusted value is given by the formula

$$R_j = b(\text{Ln}(V_j/S))$$

where

R_j = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j

$b = 10.0$

V_j = the value of production in quarter j, adjusted for inflation, in millions of dollars

$S = 2.5$

When the adjusted quarterly value of production is equal to or greater than $1662.854083 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor.

The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the *Survey of Current Business* by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production saved, removed, or sold as determined pursuant to 30 CFR 250.64 and Sec. 6(b) of the lease form.

The form of the sliding scale royalty schedule is identical to that used in OCS Sale No. 51. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However, this rate is applied to the unadjusted quarterly value of production to determine the royalty payments due.

The system employing cash bonus bids with a constant fixed royalty has been used extensively since the passage of the OCS Lands Act in 1953. Its use in Sale No. 58 will provide data with which to compare the data from use of the sliding scale royalty system. The use of the two bidding systems in Sale No. 58 is consistent with the requirements of sec. 8(a)(5)(B) of the OCS Lands Act, as amended.

B. *Designation of Tracts.* The following tracts are to be offered for bonus bidding with a fixed sliding scale royalty:

58–3, 58–4, 58–6, 58–7, 58–8, 58–9, 58–11, 58–13, 58–14, 58–26, 58–30, 58–38, 58–39, 58–40, 58–41, 58–42, 58–43, 58–44, 58–45, 58–55, 58–56, 58–57, 58–58, 58–59, 58–60, 58–61, 58–62, 58–63, 58–64, 58–65, 58–67, 58–68, 58–74, 58–75, 58–79, 58–80, 58–88, 58–89, 58–94, 58–96, 58–97, 58–98, 58–99, 58–100, 58–102, 58–103, 58–104, 58–105, 58–106, 58–107, 58–108, 58–109, and 58–110.

Bids on the remaining tracts to be offered at this sale must be on a cash bonus basis with a fixed royalty of 16⅔ percent.

The selection of tracts to be offered under the sliding scale royalty system was made for the following reasons:

1. A sufficient number of tracts was needed to provide data for valid statistical analysis while limiting the risk of losses caused by unforeseen problems which could arise in the use of any new bidding system. A sample size of approximately 42% (53 tracts) was determined to be appropriate.

2. The range and distribution of the characteristics of sliding scale royalty tracts were to match, as closely as possible, the range and distribution of the characteristics of the tracts being offered in the sale. Such characteristics include estimated resources, water depth, structure depth, favorable vs. unfavorable location of tracts on structures, and the location of tracts across trends.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

Approved: June 22, 1979.

Cecil D. Andrus,

Secretary of the Interior.

[FR Doc. 79–19953 Filed 6–28–79; 8:45 am]

BILLING CODE 4310–84–M

Outer Continental Shelf, Gulf of Mexico; Oil and Gas Lease Sale No. 58

1. *Authority.* This notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331) as amended by the OCS Lands Act Amendments of 1978 (92 Stat. 629) and the regulations issued thereunder (43 CFR Part 3300).

2. *Filing of Bids.* Sealed bids will be received by the Manager, New Orleans Outer Continental Shelf (OCS) Office, Bureau of Land Management, Hale Boggs Federal Building, 500 Camp Street, Suite 841, New Orleans, Louisiana 70130. Bids may be delivered, either by mail or in person, to the above address until 4:15 p.m., c.s.t., July 30, 1979; or by personal delivery to The Grand Ballroom, Royal Sonesta Hotel, 300 Bourbon Street, New Orleans, Louisiana 70130, between the hours of 8:30 a.m., c.s.t., and 9:30 a.m., c.s.t., July 31, 1979. Bids received by the Manager later than the times and dates specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., c.s.t., July 31, 1979. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published in 44 FR 24348, April 25, 1979.

3. *Method of Bidding.* A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Leasing (insert number of tract), not to be opened until 10 a.m., c.s.t., July 31, 1979," must be submitted for each tract. A suggested form appears in paragraph 17 of this notice. Bidders are advised that tract numbers are assigned solely for administrative purposes and are not the same as block numbers found on official protraction diagrams or leasing maps. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft, or certified check, payable to the order of the Bureau of Land Management. No bid for less than a full tract as described in paragraph 13 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, as well as submit a sworn statement that the bidder is qualified under 43 CFR Subpart 3302. The suggested form for this statement to be used in joint bids appears in paragraph 18. Other documents may be required or bidders under 43 CFR 3302.4. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination of intimidation of bidders.

4. *Bonus Bidding With a Fixed Sliding Scale Royalty.* Bids on tracts 58–3, 58–4, 58–6, 58–7, 58–8, 58–9, 58–11, 58–13, 58–14, 58–26, 58–30, 58–38, 58–39, 58–40, 58–41, 58–42, 58–43, 58–44, 58–45, 58–55, 58–56, 58–57, 58–58, 58–59, 58–60, 58–61, 58–62, 58–63, 58–64, 58–65, 58–67, 58–68, 58–74, 58–75, 58–79, 58–80, 58–88, 58–89, 58–94, 58–96, 58–97, 58–98, 58–99, 58–100, 58–102, 58–103, 58–104, 58–105, 58–106, 58–107, 58–108, 58–109, 58–110 must be submitted on a cash bonus bid basis with the percent royalty due in amount or value of production saved, removed or sold fixed according to the sliding scale formula described below. This formula fixes the percent royalty at a level determined by the value of lease production during each calendar quarter. For purposes of determining the royalty percent due on production during a quarter, the value of production during the quarter will be adjusted for inflation as described below. The determination of the value of the production on which royalty is due will be made pursuant to 30 CFR 250.64.

The fixed sliding scale formula operates in the following way: when the quarterly value of production, adjusted for inflation, is less than or equal to $13.236229 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $13.236230 million, but less than or equal to $1662.854082 million, the royalty percent due on the unadjusted value or amount of production is given by

$$Rj = b[\text{Ln}\ (Vj/S)]$$

where

Rj = the percent royalty that is due and payable on the unadjusted amount or

value of all production saved removed or sold in quarter j
b=10.0
Ln=natural logarithm
Vj=the value of production in quarter j, adjusted for inflation, in millions of dollars
S=2.5

When the adjusted quarterly value of production is equal to or greater than $1662.854083 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, Rj, the calculation will be rounded to five decimal places (for example, 18.17612 percent). This calculation will incorporate the adjusted quarterly value of production, Vj, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 15.392847 millions of dollars).

The form of the sliding scale royalty schedule is illustrated in Figure 1. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However, this rate is applied to the unadjusted quarterly value of production to determine the royalty payments due.

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the Survey of Current Business by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production saved, removed, or sold as determined pursuant to 30 CFR 250.64. The timing of procedures for inflation adjustments and determinations of the royalty due will be specified at a later date. Table 1 provides hypothetical examples of quarterly royalty calculations using the sliding scale formula just described under two different values for the quarterly price index.

BILLING CODE 4310-84-M

Figure 1
Form of the Sliding Royalty Schedule

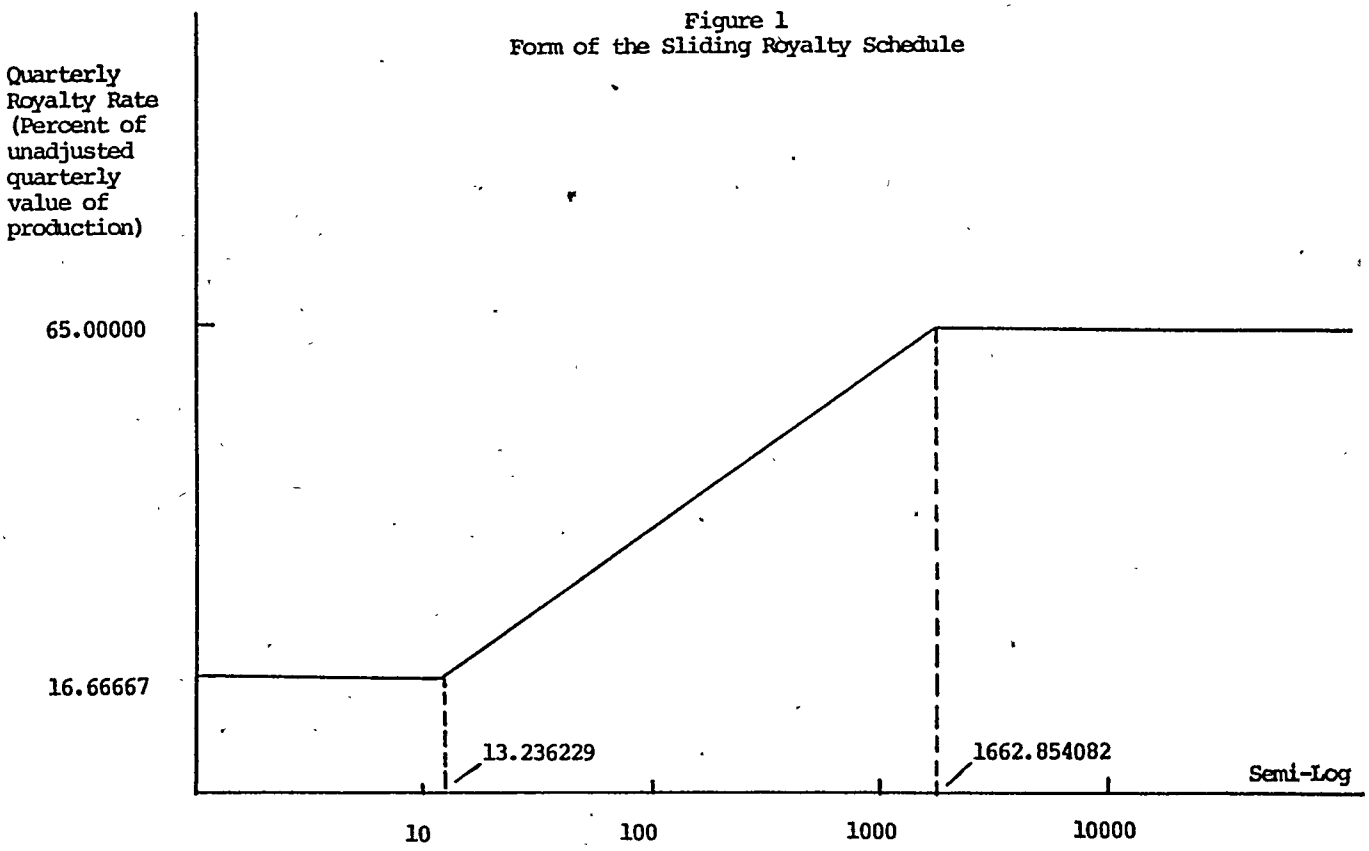

TABLE 1. HYPOTHETICAL QUARTERLY ROYALTY CALCULATIONS

(1) Actual Value of Quarterly Production (Millions of Dollars)	(2) GNP Fixed Weighted Price Index	(3) Inflation Factor[a]	(4) Adjusted Value of Quarterly Production[b] (V_j, Millions of $)	(5) Percent Royalty Rate (R_j)	(6) Royalty Payment[c] (Millions of Dollars)
10.000000	200.0	4/3	7.500000	16.66667	1.666667
30.000000	200.0	4/3	22.500000	21.97225	6.591675
90.000000	200.0	4/3	67.500000	32.95837	29.662533
270.000000	200.0	4/3	202.500000	43.94449	118.650123
810.000000	200.0	4/3	607.500000	54.93061	444.937941
10.000000	250.0	5/3	6.000000	16.66667	1.666667
30.000000	250.0	5/3	18.000000	19.74081	5.922243
90.000000	250.0	5/3	54.000000	30.72693	27.654237
270.000000	250.0	5/3	162.000000	41.71306	112.625262
810.000000	250.0	5/3	486.000000	52.69918	426.863358

a Column (2) divided by 150.0 (assumed value of GNP fixed weighted price index at time leases are issued).

b Column (1) divided by Inflation Factor.

c Column (1) times Column (5). All values are rounded for display purposes only.

BILLING CODE 4310-84-C

Leases awarded on the basis of a cash bonus bid with fixed sliding scale royalty will provide for a yearly rental or minimum royalty payment of $3 per acre or fraction thereof.

Bidders for these tracts should recognize that the Department of Energy is authorized, under Section 302 (b) and (c) of the Department of Energy Organization Act, to establish production rates for all Federal oil and gas leases.

5. *Bonus Bidding With a Fixed Constant Royalty.* Bids on the remaining tracts to be offered at this sale must be on a cash bonus basis with a fixed royalty of 16⅔ percent. Leases which may be issued will provide for a yearly rental payment or minimum royalty payment of $3 per acre or fraction thereof. A suggested cash bonus bid form is shown in paragraph 17.

6. *Equal Opportunity.* Each bidder must have submitted by 9:30 a.m., c.s.t., July 31, 1979, the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140–8 (November 1973), and the Affirmative Action Representation Form, Form 1140–7 (December 1971).

7. *Bid Opening.* Bids will be opened on July 31, 1979, beginning at 10 a.m., c.s.t., at the address stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing and recording bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight, July 31, 1979, that bid will be returned unopened to the bidder, as soon thereafter as possible.

8. *Deposit of Payment.* Any cash, cashier's checks, certified checks, or bank drafts, submitted with a bid may be deposited in a suspense account in the Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

9. *Withdrawal of Tracts.* The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for that tract.

10. *Acceptance or Rejection of Bids.* The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(a) The bidder has complied with all requirements of this notice and applicable regulations;

(b) The bid is the highest valid cash bonus bid; and

(c) That amount of the bid has been determined to be adequate by the Secretary of the Interior.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of $25 or more per acre or fraction thereof.

11. *Successful Bidders.* Each person who has submitted a bid accepted by the Secretary of the Interior will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's annual rental and satisfy the bonding requirements of 43 CFR 3304.1 within the time provided in 43 CFR 3302.5.

12. *Leasing Maps/Official Protraction Diagrams.* Tracts offered for lease may be located on the following leasing maps/official protraction diagrams which are available from the Manager, New Orleans Outer Continental Shelf Office at the address stated in paragraph 2.

(a) Outer Continental Shelf Leasing Maps—Texas Nos. 1 through 8. These maps are arranged in two sets, Nos. 1 through 4 (7 maps), which sell for $5 per set; and Nos. 5 through 8 (9 maps), which sell for $7 per set.

(b) Outer Continental Shelf Leasing Maps—Louisiana Nos. 1 through 12. This is a set of 27 maps which sells for $17.

(c) Outer Continental Shelf Official Protraction Diagrams:

NG 14–3 Corpus Christi.
NG 15–2 Garden Banks.
NG 15–3 Green Canyon.
NH 16–7 Viosca Knoll.
NH 16–10 Mississippi Canyon.
These sell for $2 each.

13. *Tract Descriptions.* The tracts offered for bid are as follows:

Note.—There may be gaps in the numbers of the tracts listed. Some of the blocks identified in the final environmental statement may not be included in this notice. Also, some of the blocks are included in prior environmental statements rather than the environmental statement for this sale.

TENTATIVE TRACT LIST
SALE #58

OCS LEASING MAP, SOUTH PADRE ISLAND AREA, EAST ADDITION, TEXAS MAP NO. 1A
[Approved May 6, 1965]

Tract	Block	Description	Acreage
58-1	A-58	All	5,760

OCS LEASING MAP, NORTH PADRE ISLAND AREA, EAST ADDITION, TEXAS MAP NO. 2A
[Approved May 6, 1965]

58-2	A-10	All	5,760

OCS LEASING MAP, MUSTANG ISLAND AREA, TEXAS MAP NO. 3
[Approved July 16, 1954; Revised October 30, 1961]

58-3	738	All	5,760
58-4	739	All	5,760
58-5	832	All	5,760

OCS LEASING MAP, MUSTANG ISLAND AREA, EAST ADDITION, TEXAS MAP NO. 3A
[Approved January 23, 1967]

58-6	A-97	All	5,760
58-7	A-153	All	5,760
58-8	A-162	All	5,760

OCS LEASING MAP, MATAGORDA ISLAND AREA, TEXAS MAP NO. 4
[Approved July 16, 1954]

58-9	669	All	5,760

OCS LEASING MAP, BRAZOS AREA, TEXAS MAP NO. 5
[Approved July 16, 1954]

58-10	(341	(1)	
	(342	(1)	5,004.64

OCS LEASING MAP, BRAZOS AREA, SOUTH ADDITION, TEXAS MAP NO. 5B
[Approved September 24, 1959]

58-11	A-69	All	5,760

OCS LEASING MAP, GALVESTON AREA, TEXAS MAP NO. 6
[Approved July 16, 1954]

58-12	(103	(12)	
	(104	(12)	2,375
58-13	353	All	5,760
58-14	384	All	5,760

OCS LEASING MAP, GALVESTON AREA, SOUTH ADDITION, TEXAS MAP NO. 6A
[Approved September 24, 1959]

58-15	A-126	All	5,760
58-16	A-132	All	5,760
58-17	A-155	All	5,760
58-18	A-156	All	5,760
58-19	A-187	All	5,760
58-20	A-190	All	5,760

OCS LEASING MAP, HIGH ISLAND AREA, TEXAS MAP NO. 7
[Approved July 16, 1954; Revised August 1955]

58-21	35	All	5,760
58-22	105	(13)	5,240

OCS LEASING MAP, HIGH ISLAND AREA, SOUTH ADDITION, TEXAS MAP NO. 7B
[Approved September 24, 1959]

58-23	143	(3)	5,760

OCS LEASING MAP, HIGH ISLAND AREA, EAST ADDITION, TEXAS MAP NO. 7A
[Approved January 23, 1967]

58-24	38	All	5,760
58-25	39	All	2,927.95

OCS LEASING MAP, HIGH ISLAND AREA, SOUTH ADDITION, TEXAS MAP NO. 7B
[Approved September 24, 1959]

58-26	A-441	All	5,760
58-27	A-549	All	5,760
58-28	A-550	All	5,760

OCS LEASING MAP, SABINE PASS AREA, TEXAS MAP NO. 8
[Approved March 7, 1977]

58-29	18	(3)	3,644.17

OCS LEASING MAP, WEST CAMERON AREA, LOUISIANA MAP NO. 1
[Approved June 8, 1954; Revised July 22, 1954]

58-30	55	All	5,000
58-31	69	S½	2,500
58-32	170	All	5,000
58-33	214	All	5,000
58-34	215	All	5,000
58-35	223	All	5,000
58-36	259	All	5,000
58-37	260	All	5,000

OCS LEASING MAP, WEST CAMERON AREA, WEST ADDITION, LOUISIANA MAP NO. 1A
[Approved November 15, 1955; Revised January 30, 1957]

58-38	160	All	1,266.32
58-39	161	All	5,000
58-40	164	All	5,000
58-41	294	All	5,000
58-42	295	All	5,000
58-43	370	All	5,000

OCS LEASING MAP, WEST CAMERON AREA, SOUTH ADDITION, LOUISIANA MAP NO. 1B
[Approved September 8, 1959]

58-44	452	All	5,000
58-45	463	All	5,000
58-46	561	All	5,000
58-47	610	All	5,000
58-48	615	All	5,000
58-49	637	All	5,000

OCS LEASING MAP, EAST CAMERON AREA, LOUISIANA MAP NO. 2
[Approved June 8, 1954; Revised August 1, 1973]

58-50	24	All	5,000
58-51	30	All	5,000
58-52	31	All	5,000

OCS LEASING MAP, EAST CAMERON AREA, SOUTH ADDITION, LOUISIANA MAP NO. 2A
[Approved September 8, 1959]

58-53	239	All	5,000
58-54	240	All	5,000

OCS LEASING MAP, VERMILION AREA, LOUISIANA MAP NO. 3
[Approved June 8, 1954; Revised June 25, 1954; July 22, 1954]

58-55	36	W½NE¼; NW¼; S½.	4,375
58-56	68	All	5,000
58-57	69	All	5,000
58-58	72	All	4,461.05
58-59	90	All	5,000

OCS LEASING MAP, VERMILION AREA, SOUTH ADDITION, LOUISIANA MAP NO. 3B
[Approved September 8, 1959]

58-60	288	All	5,000

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, LOUISIANA MAP NO. 3A
[Approved August 7, 1959]

58-61	65	All	5,000

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, SOUTH ADDITION, LOUISIANA MAP NO. 3C
[Approved September 8, 1959]

58-62	80	All	5,000
58-63	97	All	5,000
58-64	98	All	5,000
58-65	99	All	5,000
58-66	110	All	2,851.63
58-67	147	All	5,000
58-68	155	All	5,000

OCS LEASING MAP, SOUTH MARSH ISLAND AREA, NORTH ADDITION, LOUISIANA MAP NO. 3D
[Approved April 16, 1971; Revised January 18, 1972]

58-72	255	All	5,000
58-73	256	All	5,000
58-74	272	All	5,000
58-75	277	All	5,000

OCS LEASING MAP, EUGENE ISLAND AREA, SOUTH ADDITION, LOUISIANA MAP NO. 4A
[Approved September 8, 1959]

58-76	268	All	5,000
58-77	274	All	5,000
58-78	289	All	5,000

OCS LEASING MAP, SHIP SHOAL AREA, LOUISIANA MAP NO. 5
[Approved June 8, 1954]

58-79	171	All	5,000
58-80	197	All	5,000

OCS LEASING MAP, SOUTH PELTO AREA, LOUISIANA MAP NO. 6
[Approved June 8, 1954; Revised July 22, 1954; December 9, 1954]

58-81	6	All	5,000
58-82	21	All	5,000

OCS LEASING MAP, SOUTH TIMBALIER AREA, LOUISIANA MAP NO. 6
[Approved June 8, 1954; Revised July 22, 1954; December 9, 1954]

58-83	28	NW¼; S½	3,750
58-84	34	All	3,772.18
58-85	50	All	5,000
58-86	75	All	4,845

OCS LEASING MAP, WEST DELTA AREA, LOUISIANA MAP NO. 8
[Approved June 8, 1954]

58-87	183	All	2,148.46

OCS LEASING MAP, WEST DELTA AREA, LOUISIANA MAP NO. 8
[Approved June 8, 1954]

58-88	78	All	5,000

OCS LEASING MAP, WEST DELTA AREA, SOUTH ADDITION, LOUISIANA MAP NO. 8A
[Approved September 8, 1959; Revised November 24, 1961]

58-89	112	All	5,000

OCS LEASING MAP, BRETON SOUND AREA, LOUISIANA MAP NO. 10
[Approved June 8, 1954; Revised July 22, 1954]

58-90	53	(4)	2,466.73
58-91	56	N½	2,497.275

OCS LEASING MAP, MAIN PASS AREA, LOUISIANA MAP NO. 10
[Approved June 8, 1954; Revised July 22, 1954]

58-92	43	E½NE¼SW¼; S½SW¼; SE¼.	2,020.03
58-93	44	(5)	2,708.31
58-94	121	All	4,994.55

OCS LEASING MAP, MAIN PASS AND BRETON SOUND AREAS, LOUISIANA MAP NO. 10
[Approved June 8, 1954; Revised July 22, 1954]

58-95	Area: Main Pass—(37.	(6 13)	
	Area: Breton Sound—(56.	(2 13)	1,739.02

OCS LEASING MAP, MAIN PASS AREA, SOUTH AND EAST ADDITION, LOUISIANA MAP NO. 10A
[Approved September 8, 1959]

58-96	297	All	4,560.81
58-97	310	All	4,999.98
58-98	313	All	4,999.98

OCS OFFICIAL PROTRACTION DIAGRAM, CORPUS CHRISTI NG 14-3
[Approved June 15, 1974; Revised January 27, 1976]

58-99	612	All	5,760
58-100	656	All	5,760

OCS OFFICIAL PROTRACTION DIAGRAM, GARDEN BANKS NG 15-2
[Approved February 15, 1973; Revised December 2, 1976]

58-101	193	All	5,760

OCS OFFICIAL PROTRACTION DIAGRAM, GREEN CANYON NG 15-3
[Approved February 15, 1973; Revised December 2, 1976]

58-102	19	All	5,760
58-103	63	All	5,760

OCS OFFICIAL PROTRACTION DIAGRAM, VIOSCA KNOLL NH 16-7
[Approved October 10, 1972; Revised February 15, 1973; August 1, 1973; December 2, 1976]

58-104	863	All	5,760
58-105	898	All	1,456.22
58-106	907	All	5,760

OCS OFFICIAL PROTRACTION DIAGRAM, MISSISSIPPI CANYON NH 16-10

[Approved February 15, 1973; Revised December 2, 1976;

58-107	942	All	5,231.5

OCS OFFICIAL PROTRACTION DIAGRAM, MISSISSIPPI CANYON NH 16-10

[Approved February 15, 1973; Revised December 2, 1976;

58-108	198	All	5,760
58-109	241	All	5,760
58-110	574	All	5,760

OCS LEASING MAP, MATAGORDA ISLAND AREA, TEXAS MAP No. 4

[Approved July 16, 1954]

58-111	526	(1 3)	1,355
58-112	557	(1 3)	5,620
58-113	(558		
	(565	(1)	5,743
58-114	657	(1)	5,071.18

OCS LEASING MAP, BRAZOS AREA, TEXAS MAP No. 5

[Approved July 16, 1954]

58-115	374	(1)	1,177
58-116	437	All	5,760
58-117	(438		
	(439	(1)	5,055

OCS LEASING MAP, GALVESTON AREA, TEXAS MAP No. 6

[Approved July 16, 1954]

58-118	213	(1)	4,730
58-119	222	(1)	5,525

OCS LEASING MAP, HIGH ISLAND AREA, TEXAS MAP No. 7

[Approved July 16, 1954; Revised August 1955]

58-120	33	(1)	4,740

OCS LEASING MAP, SABINE PASS AREA, TEXAS MAP No. 8

[Approved March 7, 1977]

58-121	17	(1)	2,041.91

OCS LEASING MAP, SABINE PASS AREA, LOUISIANA MAP<No. 12

[Approved March 7, 1977]

58-122	3	(1)	1,316.62
58-123	(5		
	(6	(1)	4,983.20
58-124	9	All	4,254.39

OCS LEASING MAP, WEST CAMERON AREA, LOUISIANA MAP No. 1

[Approved June 8, 1954; Revised July 22, 1954]

58-125	23	(1)	3,323.64
58-126	42	All	5,000

OCS LEASING MAP, EAST CAMERON AREA, LOUISIANA MAP No. 2

[Approved June 8, 1954; Revised August 1, 1973]

58-127	9	(1)	203.62
58-128	9	(10)	884.30

OCS LEASING MAP, SOUTH TIMBALIER AREA, LOUISIANA MAP No. 6

[Approved June 8, 1954; Revised July 22, 1954; December 9, 1954]

58-129	11	(11)	1,248.13

[1]That portion of the lease block seaward of the Three Marine League Line.

[2]That portion of the lease block located in Zone 3 as that Zone is defined in the Interim Agreement (October 12, 1956) between the United States and the State of Louisiana.

[3]Geological Survey may invoke mandatory unitization provision as set forth in Sec. 16 of the lease form.

[4]That portion of the east half of the lease block which is more than three geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, June 16, 1975 (United States. vs. Louisiana, 422 U.S. 13).

[5]That portion of the lease block which is more than three, geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, June 16, 1975 (United States vs. Louisiana, 422 U.S. 13) excluding the NE¼SE¼; SE¼NE¼.

[6]That portion of the lease block located in Zone 2 as that Zone is defined in the Interim Agreement (October 12, 1956) between the United States and the State of Louisiana.

[7]That portion of the lease block seaward of the Three Marine League Line measured from the historic shoreline described in the United States. vs. Louisiana No. 9 Original (394 U.S. 836).

[8]That portion of the lease block which is more than three geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, June 16, 1975 (United States vs. Louisiana, 422 U.S. 13).

[9]That portion of the south half of the lease block which is more than three geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, June 16, 1975 (United States vs. Louisiana, 422 U.S. 13) to the Zone 1 Line as that Zone is defined in the Interim Agreement (October 12, 1956) between the United States and the State of Louisiana.

[10]W½SW¼ and that portion of the north half of the lease block which is more than three geographical miles seaward from the line described in the supplemental decree of the U.S. Supreme Court, June 16, 1975 (United States vs. Louisiana, 422 U.S. 13).

[11]That portion of the lease block described as follows: Beginning at the southeast corner of said block which is described by coordinates x=2,264,446.02, y=127,591.99; thence westerly along the south boundary of the block, 15,600.00 ft. to coordinates x=2,249,846.02, y=127,591.99; thence northerly along the west boundary of the block 6,645.35 ft. to coordinates x=2,248,846.02, y=134,237.34; thence N. 76°17'04" E., 499.25 ft. to coordinates x=2,249,331.04, y=134,355.71; thence S. 65°53'32" E., 16,559.30 ft. to coordinates x=2,264,446.02, y=127,591.99, the point of beginning.

[12]U.S. Geological Survey may exercise its authority to permit location of structures off or outside the leased premises.

14. *Lease Terms and Stipulations.* All leases issued as a result of this sale will be for an initial term of 5 years. Leases issued as a result of this sale will be on Form 3300-1 (September 1978), available from the Manager, New Orleans Outer Continental Shelf Office, at the address stated in paragraph 2. For leases resulting from this sale for tracts offered on a cash bonus basis with fixed sliding scale royalty, listed in paragraph 4, Form 3300-1 will be amended as follows:

Sec. 6. *Royalty on Production.* (a) The lessee agrees to pay the lessor a royalty of that percent in amount or value of production saved, removed or sold from the leased area as determined by the sliding scale royalty formula as follows. When the quarterly value of production, adjusted for inflation, is less than or equal to $13.236229 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $13.236230 million, but less than or equal to $1662.854082 million, the royalty percent due on the unadjusted value or amount of production is given by

$$Rj = b[\mathrm{Ln}\ (Vj/S)]$$

where

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j

b = 10.0

Ln = natural logarithm

Vj = the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 2.5

When the adjusted quarterly value of production is equal to or greater than $1662.854083 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, Rj, the calculation will be rounded to five decimal places (for example, 18.17612 percent). This calculation will incorporate the adjusted quarterly value of production, Vj, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 15.392847 millions of dollars). Gas of all kinds (except helium) is subject to royalty. The lessor shall determine whether production royalty shall be paid in amount or value.

Except as otherwise noted, the following stipulations will be included in each lease resulting from this proposed sale. In the following stipulations the term Supervisor refers to the Gulf of Mexico Area Oil and Gas Supervisor for Operations of the Geological Survey and the term Manager refers to the Manager of the New Orleans OCS Office of the Bureau of Land Management.

Stipulation No. 1

If the Supervisor, having reason to believe that a site, structure or object of historical or archaeological significance hereinafter referred to as "cultural resource", may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling and pipeline and platform

placement, hereinafter in this stipulation referred to as "operation", the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural and cultural environmental data shall be examined by a qualified marine survey archaeologist to determine if indications are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archaeologist shall be submitted by the lessee to the Supervisor and to the Manager for review.

If such cultural resource indicators are present the lessee shall: (1) locate the site of such operation so as not to adversely affect the identified location; or (2) establish, to the satisfaction of the Supervisor, on the basis of further archaeological investigation conducted by a qualified marine survey archaeologist or underwater archaeologist using such survey equipment and techniques as deemed necessary by the Supervisor, either that such operation will not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archaeologist or underwater archaeologist shall be submitted to the Supervisor and the Manager for review. Should the Supervisor determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the Supervisor has given directions as to its preservation.

The lessee agrees that if any site, structure, or object of historical or archaeological significance should be discovered during the conduct of any operations on the lease area, he shall report immediately such findings to the Supervisor, and make every reasonable effort to preserve and protect the cultural resource from damage until the Supervisor has given directions as to its preservation.

Stipulation No. 2

(To be included only in the lease resulting from this proposed sale for tract 58–49):

Operations within the circle with a radius of 8110 meters around point A, located by X=1,366,160, Y=−276,160 (Louisiana Lambert System), shall be restricted as specified in either (a) or (b) below at the option of the lessee:

(a) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than ten meters, from the bottom.

(b) The operator (lessee) shall submit a monitoring plan as part of the exploration and development and production plans. The monitoring plan will be designed to assess the effects of oil and gas exploration and development operations on the biotic communities of the nearby banks:

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor on a schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations.

If it is decided that surface disposal of drilling fluids or cuttings presents no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank is being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the Supervisor shall require shunting as specified in (a) above or other appropriate operational restrictions.

Stipulation No. 3

(To be included only in the lease resulting from this proposed sale for tract 58–101):

No structures, drilling rigs, or pipelines will be allowed within the circle with a radius of 2300 meters around point B, located by X=1,622,643, Y=10,090,585 (Universal Transverse Mercator Projection Grid System).

Operations within the circle with a radius of 4130 meters around point B shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than ten meters, from the bottom.

Operations outside the circle with a radius of 4130 meters but within the circle with a radius of 7790 meters around point B shall be restricted as specified in either (a) or (b) below at the option of the lessee:

(a) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than ten meters, from the bottom.

(b) The operator (lessee) shall submit a monitoring plan as part of the exploration and development and production plans. The monitoring plan will be designed to assess the effects of oil and gas exploration and development operations on the biotic communities of the nearby banks:

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Supervisor on a schedule established by the Supervisor, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided that surface disposal or drilling fluids or cuttings presents no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank is being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the Supervisor shall require shunting as specified in (a) above or other appropriate operational restrictions.

Stipulation No. 4

(To be included in any leases resulting from this proposed sale for the sliding scale royalty tracts listed in paragraph 4 of this notice.)

(a) The royalty rate on production saved, removed or sold from this lease is subject to consideration for reduction under the same authority that applies to all other oil and gas leases on the Outer Continental Shelf (30 CFR 250.12(e)). The Director, Geological Survey, may grant a reduction for only one year at a time and reduction of royalty rates will not be approved unless production has been underway for one year or more.

(b) Although the royalty rate specified in section 6(a) of this lease or as subsequently modified in accordance with applicable regulations and stipulations is applicable to all production under this lease, not more than 16⅔ percent of the production saved, removed or sold from the lease area may be taken as royalty in amount,

except as provided in Sec. 15(d); the royalty on any portion of the production saved, removed or sold from the lease in excess of 16⅔ percent may only be taken in value of the production saved, removed or sold from the lease area.

Stipulation No. 5

(To be included in any leases resulting from this sale for tracts 58–1, 58–2, 58–3, 58–4, 58–5, 58–6, 58–7, 58–8, 58–9, 58–99, 58–100 and 58–114.)

Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf, to any persons or to any property of any person or persons who are agents, employees or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with the programs and activities of the Naval Air Training Command, Naval Air Station, Corpus Christi, Texas.

Notwithstanding any limitation of the lessee's liability in Sec. 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against and to defend at its own expense the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against, and to defend at its own expense the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

The lessee agrees to control his own electromagnetic emissions and those of his agents, employees, invitees, independent contractors or subcontractors emanating from individual, designated defense warning areas in accordance with requirements specified by the commander of the appropriate onshore military installation, i.e., Naval Air Training Command, Naval Air Station, Corpus Christi, Texas, to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing or operational activities, conducted within individual designated warning areas. Necessary monitoring control, and coordination with the lessee, his agents, employees, invitees, independent contractors or subcontractors, will be affected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any perior of time between the lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

The lessee agrees that prior to operating or causing to be operated on its behalf boat or aircraft traffic into individual, designated warning areas, the lessee shall coordinate and comply with instructions from the Commander, Naval Air Training Command, Naval Air Station, Corpus Christi, Texas. Such coordination and instruction will provide for positive control of boats and aircraft operating into the warning areas at all times.

Stipulation No. 6

(Any lease for tract 58–106 will include this stipulation which will apply to operations within the designated SW¼ of the tract):

A large fault scarp displaces the seafloor by 180 feet in the southwest corner. Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas will not be allowed in the vicinity of the fault until the lessee has demonstrated to the Supervisor's satisfaction that exploratory drilling operations, structures (platforms), casing and wellheads can be safely designed to protect the environment in case fault movement occurs at the proposed location. This may necessitate that all exploration for and development of oil or gas be performed from locations outside of the area of potential fault movement, either within or outside the tract.

Stipulation No. 7

(Any lease for tract 58–88 will include this stipulation which will apply to operations within the designated N½ of the tract):

Designated portion of this tract may be subject to mass movement of sediments and shallow faulting. Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas, and the emplacement of pipelines will not be allowed within the designated portion of this lease block unless or until the lessee has demonstrated to the Supervisor's satisfaction that mass movement of sediments is unlikely or that exploratory drilling operations, structures (platforms), casing, wellheads and pipelines can be safely designed to protect the environment in case such mass movement occurs at the proposed location.

If exploratory drilling operations are allowed, site specific surveys shall be conducted to determine the potential for slumping and mass movement of sediments. If emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas are allowed, all slump blocks or mass movements of sediments in the lease block must be mapped. This may necessitate all exploration for and development of oil and gas be performed from locations outside the area of unstable sediments, either within or outside this lease block.

Stipulation No. 8

(To be included only in any lease resulting from this proposed sale for tract 58–110):

All of this tract may be subject to mass movement of sediments and shallow faulting. Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas, and the emplacement of pipelines will not be allowed within this lease block unless or until the lessee has demonstrated to the Supervisor's satisfaction that mass movement of sediments is unlikely or that exploratory drilling operations, structures (platforms), casing, wellheads and pipelines can be safely designed to protect the environment in case such mass movement occurs at the proposed location. If exploratory drilling operations are allowed, site specific surveys shall be conducted to determine

the potentials for slumping and mass movement of sediments.

If emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas is allowed, all slump blocks or mass movement sediments in the lease block must be mapped. This may necessitate all exploration for and development of oil or gas be performed from locations off this lease block and outside the area of unstable sediments.

15. *Information to Lessees.* The Department of the Interior will seek the advice of the States of Texas, Louisiana, Mississippi, Alabama, Florida and other Federal agencies, to identify areas of special concern which might require appropriate protective measures for live bottom areas and areas which might contain cultural resources.

If it is determined that live bottom areas might be adversely impacted by the proposed activities, then the Supervisor, in consultation with the Regional Director, Fish and Wildlife Service (FWS), the Manager, BLM and the States, will require the lessee to undertake any measures deemed economically, environmentally, and technologically feasible to protect live bottom areas.

Bidders should be aware that the U.S. Geological Survey is considering banning the use of halogenated phenols in all drilling and production operations.

On September 18, 1978, the OCS Lands Act Amendments of 1978 was enacted (92 Stat. 629). Some sections of current regulations applicable to OCS leasing operations are inconsistent with this new legislation, and the legislation requires the issuance of some new regulations. The inconsistencies will be corrected by rulemakings and the new regulations will be issued as soon as possible. Nevertheless, bidders are notified that provisions of the new OCS Lands Act Amendments shall apply to all leases offered at this lease sale and shall supersede all inconsistent provisions in current regulations applicable to OCS leasing operations.

Some of the tracts offered for lease may fall in areas which may be included in fairways, precautionary zones, or traffic separation schemes. Corps of Engineers permits are required for construction of any artificial islands, installations and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf in accordance with section 4(e) of the Outer Continental Shelf Lands Act of 1953 as modified by the 1978 Amendments. Due to restrictions established by the Corps of Engineers on platforms in anchorage areas which require that platforms cannot be located closer than two (2) nautical miles form one another, the Director, USGS, may require that each of the following groups of tracts be operated and produced under a unit, pooling of drilling agreement approved by him. This would eliminate possible resource loss due to development limitations caused by platform location restrictions:

Group 1: Tracts 58–12, 58–22, and 58–23.

Group 2: Tracts 58–111 and 58–112.

In addition, due to restrictions on the location of permanent structures in fairways, the lessee of tract 58–95 may be required to locate, with the approval of the Director, USGS, physically off the lease block to drill and recover potential hydrocarbons resources.

Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

Bidders are also advised that in accordance with Sec. 16 of each lease offered at this sale the lessor may require a lessee to operate under a unit, pooling or drilling agreement and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with either a different royalty rate or a royalty rate based on a sliding scale.

16. *OCS Orders.* Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico Orders, as of their effective date, and any other applicable OCS Order as it becomes effective.

17. *Suggested Bid Form.* It is suggested that bidders submit their bids to the Manager, New Orleans Outer Continental Shelf Office, in the following form:

Oil and Gas Bid

The following bid is submitted for an oil and gas lease on the tract of the Outer Continental Shelf specified below:

Tract No.....
Total Amount bid.....
Amount per Acre.....
Amount of Cash Bonus Submitted with Bid.....

Proportionate Interest of Company(s) Submitting Bid

Qualification No.....
Percent Interest.....
Company.....
Address.....
Signature.....
(Please type signer's name under signature)

18. *Required Joint Bidders Statement.* In the case of joint bids, each joint bidder is required to execute a joint bidder's statement before a notary public and submit it with his bid. A suggested form for this statement is shown below.

Joint Bidder's Statement

I hereby certify that——————— (entity submitting bid) is eligible under 43 CFR 3302 to bid jointly with the other parties submitting this bid.

Signature
(Please type signer's name under signature)

Sworn to and subscribed before me this ——— day of ——————— 19—.

Notary Public
State of ———————
County of ———————

Arnold E. Petty,
Acting Associate Director, Bureau of Land Management.

Approved: June 22, 1979.

Cecil D. Andrus,
Secretary of the Interior.

[FR Doc. 79-10952 Filed 6-28-79; 8:45 am]
BILLING CODE 4310-84-M

Bureau of Reclamation

Contract Negotiations With Brewster Flat Irrigation District, Chief Joseph Dam Project, Washington; Intent To Begin Repayment Contract Negotiations

It is the policy of the Department of the Interior to afford the general public an opportunity to provide input into the decisionmaking process regarding Bureau of Reclamation repayment and water service contracts.

The Department of the Interior, through the Bureau of Reclamation, intends to open negotiations to amend the June 6, 1956, repayment contract with Brewster Flat Irrigation District, Brewster, Washington. That contract was executed under authority of the Act of July 27, 1954 (68 Stat. 568), which authorized the Secretary of the Interior to construct, operate, and maintain the Foster Creek Division of the Chief Joseph Dam Project. Under the law, the district contracted to repay an appropriate share of the construction costs commensurate with payment ability, over a 50-year period.

The amount to be repaid by the district under the 1956 repayment contract was based on the payment capacity of 2,432 acres which were

determined to be irrigable under then existing technology. As the project developed, additional scattered tracts of land totaling approximately 360 acres were planted to fruit trees and began receiving project water. The proposed contract amendment will permit these additional lands to repay their share of the project construction costs, thus increasing the irrigators' repayment to the United States for the Foster Creek Division.

The contract will be renegotiated pursuant to the Act of July 27, 1954, and the Reclamation Project Act of 1939 (53 Stat. 1187), as amended.

The public may observe any negotiating sessions. Advance notice of such meetings, if any, will be furnished on request. Requests must be in writing and must specify that the requesting party is interested in the proposed Brewster Flat contract. Inquiries should be addressed to the Regional Director, Attention Code 440, Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724.

A proposed draft contract will be made available for public review. Thereafter, a 30-day period will be allowed for receipt of written comments from the public.

For further information on scheduled negotiating sessions and copies of the proposed contract form, please contact: Mr. Lowell Oamek, Agricultural Economist, Division of Water, Power and Lands, at the address shown above; telephone 208–384–1161.

Dated: June 21, 1979.

R. Keith Higginson,

Commissioner of Reclamation.

[FR Doc. 79-19959 Filed 6-28-79; 8:45 am]

BILLING CODE 4310-09-M

Contract Negotiations With the Gravely Fort Water District; Availability of the Proposed Water Service Contract for Public Review and Comment

The Department of the Interior, through the Bureau of Reclamation, has completed the negotiation of a proposed water service contract with the Gravely Ford Water District, Madera, California. The major purpose of the contract is to provide a maximum supply of 14,000 acre-feet of nonfirm, Class 2 water from Millerton Lake of the Central Valley Project, California.

Gravely Ford Water District is located about 15 miles west of Madera, California and is adjacent to the Southwest corner of Madera Irrigation District and the San Joaquin River. There are about 9,000 irrigable acres in the district, a portion of which has been historically irrigated using groundwater and a purchased water supply from another district. The major water supply, groundwater, is being seriously overdrafted and the district is in need of a supplemental water supply.

The water to be made available under the proposed contract will be released from Millerton Lake into the Madera Canal. Pursuant to an agreement with the Madera Irrigation District, the water will be delivered from the Madera Canal by Madera's distribution system and released into Cottonwood Creek which extends into the Gravely Ford Water District. From this point, it will be diverted into the Gravely Ford Canal which traverses the district in a south-north direction.

The water rate will be $5.40 per acre-foot with a provision that this rate can be redetermined in 1981 and every fifth year thereafter during the term of the contact which will terminate on February 28, 1995.

For further information and copies of the proposed contract, please contact Mr. A. J. Thayer, Repayment Specialist, Division of Water and Power Resources Management, 2800 Cottage Way, Sacramento, California 95825, telephone No. (916) 484–4498.

All written comments on the proposed contract will be received up to 30 days from the date of this notice. A summary of all written comments received will be submitted to the Secretary of the Interior for consideration prior to approval or disapproval of the contract. All written correspondence concerning the proposed contract is available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

Dated: June 25, 1979.

R. Keith Higginson,

Commissioner of Reclamation.

[FR Doc. 79-20054 Filed 6-28-79; 8:45 am]

BILLING CODE 4310-09-M

Proposed Colorado-Big Thompson-Windy Gap Projects, Colorado; Public Hearing on Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for the Colorado Big Thompson-Windy Gap Projects. This statement (INT DES 79–33 dated June 18, 1979) was filed with the Environmental Protection Agency on June 18, 1979, and made available for public review and comment on June 19–21, 1979.

The draft statement discusses the environmental impacts of the operation of the Bureau of Reclamation's Colorado-Big Thompson Project; construction and operation of the Windy Gap Project, consisting of a diversion dam on the Colorado River, a pumping plant, and a 5-mile conduit to Granby Reservoir; the construction and operation of the Platte River Power Authority's proposed Rawhide Powerplant and changes in the operation of the C–BT Project as a result of the Windy Gap Project. The statement also identifies and discusses the alternatives to the actions and the impacts related thereto.

Public hearings will be held in Granby and Loveland, Colorado, by the Bureau of Reclamation to receive comments on the draft environmental statement. The Granby hearing will be held at Middle Park High School on August 2, 1979, starting at 1 p.m. and the Loveland hearing at Loveland Community Building, 545 North Cleveland Avenue, Loveland, Colorado, on August 3, 1979, starting at 1 p.m. Hearing witnesses will be allowed 10 minutes for an oral presentation of their comments. Speakers will not be permitted to trade or consolidate the time in order to obtain a longer oral presentation; however, the Hearings Officer may allow a speaker to provide additional oral comments after all persons scheduled to comment have been heard. Such additional oral comments shall also be limited to 10 minutes.

Persons wishing to make statements at the hearing will be scheduled in the order that their written or telephone request is received unless a specific time period is requested. If a speaker requests a specific time period, he will be scheduled to appear as close to the requested time as possible. Any scheduled speaker not present when called will lose his privilege in the scheduled order, and his name will be recalled after all other scheduled speakers have been heard.

Organizations or individuals desiring to present statements at the hearings should contact the Lower Missouri Regional Office, Bureau of Reclamation, Building 20, Denver Federal Center, Denver, Colorado 80225, telephone (303) 234–3779, by letter or telephone and request to be scheduled for a presentation. Requests for scheduled presentations will be accepted until 4 p.m. on July 31, 1979. Speaking requests received subsequent to that time will be handled on a first come, first served basis following the scheduled

presentations. Written comments from those unable to attend and from those wishing to supplement their oral presentations, will be accepted for the record until 4 p.m., August 13, 1979. Such written comments should be addressed to the Regional Director at the address listed above, and should specify that they are to be included in the hearing record.

Dated: June 26, 1979.

R. Keith Higginson,

Commissioner.

[FR Doc. 79-20130 Filed 6-28-79; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Endangered and Threatened Species Permit; Receipt of Application

Applicant: Dr. John R. Hendrickson, University of Arizona, Tucson, Arizona 85721.

The supplement requests a permit to import and take scrapings from sea turtle shells for amino acid analysis. Samples from all sea turtle species are not expected to result in any discomfort to any specimens beyond temporary restraint of the animal.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, Fish and Wildlife Service (WPO) Washington, D.C. 20240.

This application has been assigned file number PRT 2-4315. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before July 30, 1979. Please refer to the file number when submitting comments.

Dated: June 18, 1979.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 79-20238 Filed 6-28-79; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Outer Continental Shelf (OCS) Orders

On May 18, 1979 (44 FR 29258) the following revised OCS Orders were published effective July 1, 1979, for the Atlantic OCS Area, Pacific OCS Area, Gulf of Alaska OCS Area, and Gulf of Mexico OCS Area:

OCS Order No. 1. Identification of Well Platforms, Structures, Mobile Drilling Units, and Subsea Objects.

OCS Order No. 2. Drilling Operations.

OCS Order No. 3. Plugging and Abandonment of Wells.

OCS Order No. 4. Determination of Well Producibility.

OCS Order No. 5. Production Safety Systems.

OCS Order No. 7. Pollution Prevention and Control.

OCS Order No. 12. Public Inspection of Records.

Since this publication, numerous requests have been received to delay the effective date of the revised Orders until the impacts of the revision can be determined and the necessary procedures have been taken for implementation. Accordingly, the effective date is hereby extended to October 1, 1979. In addition, the USGS will accept additional comments on the contents of the OCS Orders until August 1, 1979. Specific comments are solicited on the following paragraphs and subparagraphs:

Order No. 2

1.2 Application for Permit to Drill.
3.6 Pressure Testing of Casing.
5.7.1 BOP Testing Frequency.
5.9 Blowout-Preventer Drills.

Order No. 3

2 Temporary Abandonment.

Order No. 4

1 Application for Determination of Well Producibility.

Order No. 5

3.1 Installation.
3.8 Temporary Removal for Routine Operations.
5.1.5 Engine Exhausts.
5.1.8 Firefighting Systems.
5.1.9a Fire and Gas Detection Systems.
5.6.1 Surface-Safety Value and Associated Actuator Records.

Order No. 12

2.11 Expired Leases.

It is anticipated that there will be further revisions in the OCS Orders. By Federal Register Notice of June 15, 1979, Vol. 44, No. 117, pg. 34650-34651, a modification was made of the effective date for the required use of certified surface-and subsurface-safety valves as required by paragraphs 3.2 and 4.3 of OCS Order No. 5. The dates for implementation of these requirements as set forth in this Notice will remain the same.

Another modification that will be made concerns paragraph 1.1.3(a) of OCS Order No. 7 which requires the use of closed sumps. It has been determined that a properly designed, operated, and maintained sump system that does not permit the discharge of free oil into the OCS waters may be installed. Existing inadequately designed, operated, and maintained sumps which permit the discharge of free oil into OCS waters will have to be replaced.

In an editorial review of these Orders, certain typographical and technical errors were found. Some of the technical errors have an impact on the regulation of oil and gas lease operations on the OCS. Ths most significant errors were the following:

1. Order No. 2—subparagraph 3.4 second paragraph, first sentence: should be "normal" instead of "abnormal."
2. Order No. 2—subparagraph 5.3, footnotes on chart: should be "1" instead of "3.4."
3. Order No. 2—subparagraph 5.4.1 third sentence: should be "permit" instead of "prevent."
4. Order No. 2—paragraph 8: The date of the Second Edition should be "October 1979" instead of "June 1979."
5. Order No. 5—subparagrpah 5.1.10e, first sentence: the paragraph reference should be "4.4e(2)" instead of "4.3e.(2)."
6. Order No. 5—subparagraph 6.1.3.2, second paragraph: should be "changeout" instead of "chargeout."

All modifications of the OCS Orders will be published in the Federal Register as soon as possible and prior to the new effective date.

Another recent Federal Register Notice concerning OCS Orders is the proposed Arctic OCS Orders Nos. 1, 2, 3, 4, 5, 7 and 12, FR Vol. 44, No. 115, June 13, 1979, pages 34060-34076.

Comments on the OCS Orders should be submitted to the Chief, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 620, Reston, Virginia 22092.

Booklet copies of the finalized revised OCS Orders will not be available until after October 1, 1979.

For further information, contact Mr. Richard B. Krahl, Chief, Branch of Marine Oil and Gas Operations, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 620, Reston, Virginia 22092. Telephone: (703) 860-7531.

Dated: June 27, 1979.

J. R. Balsley,

Acting Director.

[FR Doc. 79-20365 Filed 6-28-79; 8:45 am]

BILLING CODE 4310-31-M

Office of the Secretary

[INT FES 79-25]

U.S. Fish and Wildlife Service's Mammalian Predator Damage, Management for Livestock Protection in the Western United States; Availability of Final Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of a final environmental impact statement (FEIS) on the U.S. Fish and Wildlife Sevice's western predator damage management program.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; Pub. L. 91-190, the Department of the Interior has prepared a Final Environmental Impact Statement (FEIS) on the Service's western predator damage management program. The FEIS examines the Service's mammalian predator damage management program as presently conducted in the Western United States and its impact on the biological, physical, cultural, and economic environment; on recreation, human health and safety, wilderness areas, domestic animals, energy, and on public attitudes.

The final statement is available for inspection and copies are available, upon request, from the following locations:

Associate Director, Wildlife Resources (ADG), U.S. Fish and Wildlife Service, 18th and C Streets, N.W., Room 3254, Washington, D.C. 20240, telephone (202) 343-5333.

Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Ore. 97232, telephone (503) 231-6118.

Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue, S.W., Albuquerque, N. Mex. 87103, telephone (505) 766-2321.

Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minn. 55111, telephone (612) 725-3563.

Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., Atlanta, Ga. 30347, telephone (404) 881-4671.

Regional Director, U.S. Fish and Wildlife Service, 1 Gateway Center, Suite 700, Newton Corner, Mass. 02158, telephone (617) 965-5100, Ext. 9200.

Regional Director, U.S. Fish and Wildlife Service, Lake Plaza North, 134 Union Boulevard, Lakewood, Colo. 80228, telephone (303) 234-2209.

Alaska Area, U.S. Fish and Wildlife Service, 1101 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 276-3800.

A limited number of single copies are also available by writing the Chief, Division of Animal Damage Control at the address below.

FOR FURTHER INFORMATION, CONTACT: Clarence E. Faulkner, Chief, Division of Animal Damage Control, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone: 202-632-7463.

Dated: June 27, 1979.

Larry E. Meierotto,

Assistant Secretary.

[FR Doc. 79-20353 Filed 6-28-79; 8:45 a.m.]

BILLING CODE 4310-10-M

INTERNATIONAL JOINT COMMISSION

Regulating Lake Superior; Public Notice

June 21, 1979.

The International Joint Commission, as part of its consideration of the desirability of amending its 1914 Orders of Approval relating to the regulation of the outflow from Lake Superior, to accommodate a system of regulation that would take into account the levels of Lake Superior as well as those of Lakes Michigan/Huron, wishes to advise the public that it has received a report on the Environmental Evaluation of Lake Superior Regulation Plan 1977, a plan of regulation that might be instituted if the 1914 Orders were amended to permit the implementation of "systemic" regulation of the Lakes. Such systemic regulation was envisaged in the Commission's 1976 report to Governments on Further Regulation of the Great Lakes, if warranted after hearing.

The report was prepared by the Detroit district Corps of Engineers, "solely in order that a reasoned judgement can be made by the United States member of the International Lake Superior Board of Control" and does not purport to be an Environmental impact statement as generally understood in Canada or in the United States.

The Commission, before making a decision on amending the 1914 Orders of Approval, which would permit the implementation of Plan 1977, wishes to provide the public with an opportunity to comment on this additional information which was not available when the Commission held public hearings on this matter in 1978-1979. Copies of the above report are available for inspection at the locations listed hereunder and may also be obtained upon request to either of the Secretaries of the Commission upon payment of duplication costs. Interested persons have until August 1, 1979 to submit their comments to either of the Secretaries listed below.

Places of Inspection

Duluth, Minnesota Public Library, Main Branch, 10 West Second Street.

Bayliss Public Library, Sault Ste. Marie, Michigan.

Minneapolis, Minnesota Public Library, 300 Nicolet Mall.

Buffalo, New York Public Library, Lafayette Square.

St. Clair, Michigan Public Library, 310 South Second St.

D. G. Chance

Secretary, International Joint Commission, Berger Building, 18th Floor, 100 Metcalf Street, Ottawa, Ontario K1P 5M1.

D. LaRoche,

Secretary, International Joint Commission, 1717 H Street, N.W., Rm. 203, Washington, D.C. 20440, Stop No. 86.

[FR Doc. 79-20194 Filed 6/28/79; 8:45 am]

BILLING CODE 4710-14-M

DEPARTMENT OF LABOR

Employment and Training Administration

State of Maine; Notice of Ending of Extended Benefit Period

This notice announces the ending of the Extended Benefit Period in the State of Maine, effective on June 30, 1979.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of the Employment Security Amendments of 1970, Public Law 91-373; 26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State or the nation, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. This Act is implemented by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when unemployment in the State or in all States collectively reaches the high levels set in the Act. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when unemployment in the State is no longer at the high levels set in the Act. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Maine on March 11, 1979, and has now triggered off.

Determination of "Off" Indicator

The head of the employment security agency of the State of Maine has determined, in accordance with the State law and 20 CFR 615.12(e), that the average rate of insured unemployment in the State for the period consisting of the week ending on June 9, 1979, and the immediately preceding twelve weeks, has decreased so that for that week there was an "off" indicator in that State. Therefore, the Extended Benefit Period in that State terminates with the week ending on June 30, 1979.

Information for Claimants

Persons who wish information about their rights to Extended Benefits in the State of Maine should contact the nearest local office of the Maine Employment Security Commission.

Signed at Washington, D.C., on June 26, 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 79-20198 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on Wednesday, July 18, 1979 in Room N-4437, New Department of Labor Building, Third Street and Constitution Avenue, N.W., Washington, D.C. 20210.

The meeting is open to the public and will begin at 9:00 a.m.

The meeting agenda includes a general discussion of standards development and enforcement activities. The Committee will hear a progress report on health standards in the construction industry.

Written data, views or arguments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Oral presentations will be scheduled at the discretion of the chairman, depending on the extent to which time permits. Communications may be mailed to: Ken Hunt, Committee Management Officer, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N-3635, Washington, D.C. 20210, phone 202-523-8024.

Materials provided to members of the Committee are available for inspection and copying at the above address.

Signed at Washington, D.C. this — day of June 1979.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 79-20308 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefit Programs

[Application Nos. D-1233 and D-1288]

Proposed Exemption for Certain Transactions Involving Pension Plan and Trust and Profit Sharing Plan and Trust of Anderson Radiological Associates, P.A.

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of two parcels of real property by the Pension Plan and Trust of Anderson Radiological Associates, P.A. (the Pension Plan) and the Profit Sharing Plan and Trust of Anderson Radiological Associates, P.A., (the Profit Sharing Plan) (collectively, the Plans), to Ella Enterprises, a partnership whose three partners own all of the issued and outstanding stock of Anderson Radiological Associates, P.A. (the Employer), the sponsoring Employer of the Plans. The proposed exemption, if granted, would affect participants and beneficiaries of the Plans, the partners of Ella Enterprises, the Employer, the trustees of the Plans and the Executive Committee of the Plans.

DATES: Written comments must be received by the Department of Labor on or before July 30, 1979.

ADDRESS: All written comments (at least three copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application Nos. D-1233 and D-1288. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Robert N. Sandler of the Department of Labor, (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of section 406(a) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code. The proposed exemption was requested in applications filed on behalf of the Plans pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency of the exemption is issued solely by the Department.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file

with the Department for the complete representations of the applicants.

1. On July 8, 1974 each Plan purchased an undivided one-half interest in two separate parcels of unimproved real property located on Ella Street, Anderson, South Carolina, for an aggregate amount of $38,220 from James Lee Barrett, an independent third party. The parcels each have dimensions of 50 feet by 175 feet. Since their purchase, the two properties have generated no income to the Plans. The responsbility for making investment decisions for the Plans lies with the First National Bank of South Carolina, Trustee of both Plans.

2. The Plans propose to sell their undivided one-half interests in the two properties to Ella Enterprises, whose three partners own all of the issued and outstanding stock of the Employer. The proposed price is $50,000. The three partners are John H. Smith, President of the Employer, William E. Kennedy, Secretary of the Employer and A. O. Meridith, Jr., an employee of the Employer. The aggregate cash consideration for each Plan will be $25,000.

3. Two appraisals of the properties have been secured from independent appraisers. Durham-Meehan Company, Inc., stated that the market value of the properties was $43,500 as of March 27, 1979. Ziegler & Taylor Company concluded that the market value of the properties was $43,750 as of July 31, 1978.

4. The proposed sales price of $50,000 will therefore be in excess of appraised value. Additionally, no sales commission will be paid in connection with the proposed sale.

5. In summary, the applicants represent that the proposed sale of the two properties meets the statutory criteria for an exemption under section 408(a) of the Act because, (a) the sale would be a one-time transaction for cash, (b) the Plan will be able to dispose of non-income producing property, (c) the sale price is higher than fair market value as determined by two independent appraisers, and (d) the decision to engage in the transaction has been made by an independent fiduciary.

Notice to Interested Parties

Notice of the proposed exemption will be given to all interested parties, including all participants and beneficiaries of the Plans, within five days of the publication of this Notice of Pendency in the Federal Register, by hand delivery or by mailing them copies of the Notice of Pendency. Such notification will also inform interested persons of their right to comment with respect to the pending exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act, and section 4975 (c)(1)(E) and (F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of the participants and beneficiaries; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code and Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time period set forth. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the pending exemption. Comments received will be available with the application for exemption at the address set forth above.

Proposed Exemption

Based on the representations set forth in the applications, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1. If the exemption is granted, the restrictions of section 406(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975 (c)(1)(A) through (D) of the Code, shall not apply to the sale of the Plans' undivided one-half interests in two parcels of real property located on 1011 Ella Street, Anderson, South Carolina and legally described as Lots Number Eight(8) and Nine(9), Block "A" on a plat recorded in Deed Book W-3 at page 54 of the records of the office of the Clerk of Court for Anderson County, South Carolina, by the Plans to Ella Enterprises, for a cash consideration to each Plan of $25,000, provided that the total consideration of $50,000 is not less than the fair market value of the properties. The pending exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C. this 25th day of June, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-20161 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1229]

Construction Fasteners, Inc.; Proposed Exemption for a Sales Transaction Involving Profit Sharing Plan

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of fifteen Investment Certificates of John Wesley College, a Michigan non-profit

corporation, with a face value of $1,000, each, by the Genesee Merchants Bank & Trust, Co. (the Trustee), as trustee for the Construction Fasteners, Inc. Profit Sharing Plan (the Plan), to the Construction Fasteners, Inc. (the Employer). The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Trustee, the Employer, and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor (the Department) on or before August 16, 1979.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application N. D–1229. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216

FOR FURTHER INFORMATION CONTACT: C. E. Beaver, of the Department of Labor, telephone (202) 523–8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Trustee, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

(1) The Employer is a Michigan corporation with its principal place of business in the City of Flint, Genesee County, Michigan. Two individuals own all of the issued and outstanding shares of stock of the Employer. Mr. Ben Handa owns 80 percent of these shares and Mr. Wayne Toles owns 20 percent.

(2) Mr. Handa had been trustee for the Plan, but following enactment of the Act, Mr. Handa turned over the duties of trustee to the Trustee, a Michigan banking corporation with its principal place of business in Genesee County, Michigan. The Plan has six participants.

(3) The Trustee acquired, on or about January 18, 1975, and holds fifteen John Wesley College Investment Certificates, with a total face value of $15,000 which were issued by John Wesley College of Owosso, Michigan. The John Wesley College met financial reverses and is currently under the jurisdiction of the United States District Court, Eastern District of Michigan, Southern Division in Bankruptcy pursuant to a petition for reorganization. The proposed plan for reorganization provides for repayment of bonds, in the nature of those held by the Trustee for the Plan, at 25 percent of their face value. These repayments would be made over a period of approximately 25 years, beginning on July 1, 1981.

(4) If the proposed exemption is granted, the Employer proposes to purchase for $15,000 in cash the fifteen John Wesley College Investment Certificates from the Trustee of the Plan. This will permit the Plan to receive all of the face value of the Certificates upon the grant of the proposed exemption in place of receiving only approximately 25 percent of the face value over a 25 year period.

Notice to Interested Persons

Notice of the proposed exemption as published in the Federal Register will be delivered to each participant and the Trustee within 15 days of its publication in the Federal Register.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the

cash sale of fifteen John Wesley College Investment Certificates by the Trustee of the Plan to the Employer for not less than $15,000, or the current fair market value thereof, whichever is higher.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of June 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-20160 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

Adele Manufacturing et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 9, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 9, 1079.

The petitions filed in this case are available for inspecition at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Adele Manufacturing (ILGWU)	Rio Grande, Puerto Rico	6/18/79	6/6/79	TA-W-5630	Men's underwear and shorts.
Aileen Inc., Victoria Plant (workers)	Victoria, Virginia	6/7/79	5/14/79	TA-W-5631	Ladies & girls sportwear.
BFJ Sales Co. (workers)	Sandford, Florida	6/18/79	6/13/79	TA-W-5632	Wholesale distributor of electronic equipment.
Distro Co. (workers)	Paterson, New Jersey	6/7/79	5/19/79	TA-W-5633	Cuts material for Peter Pan.
E. I. Dupont De Nemours & Co. Chambers Works.	Deepwater, New Jersey	6/18/79	6/13/79	TA-W-5634	Dyes, tetra ethyl lead, freon & various chemical intermediates and hylene.
England & Compton Co. (UMWA)	Mullens, West Virginia	6/12/79	6/7/79	TA-W-5635	Hauling coal, reclaim slate, dumps, clean sludge ponds.
Highlander LTD (workers)	Morgantown, North Carolina	6/18/79	6/14/79	TA-W-5636	Ladies knit tops.
Independence Inds. of Kyser-Roth (workers)	Independence, Virginia	6/18/79	6/15/79	TA-W-5637	Sew Hosiery, also knitting of hosiery.
Kennecott Copper Corp., Nevada Mine Division (UMWA).	Ruth, Nevada	6/18/79	6/15/79	TA-W-5638	Smelting equipment.
Kennecott Copper Corp., Nevada Mine Division (UMWA).	McGill, Nevada	6/18/79	6/15/79	TA-W-5639	Smelting equipment.
Kennecott Copper Corp., Nevada Mine Division (UMWA).	Ely, Nevada	6/18/79	6/15/79	TA-W-5640	Smelting equipment.
Linda Jo Outlet Store (company)	Gainesville, Texas	6/18/79	6/12/79	TA-W-5641	Selling of women's shoes produced by Linda Shoe Co.
Philips Mfg. (ILGWU)	Rio Grande, Puerto Rico	6/18/79	6/6/79	TA-W-5642	Men's underwear and shorts.
Rio Grande Mfg. (ILGWU)	Rio Grande, Puerto Rico	6/18/79	6/6/79	TA-W-5643	Men's underwear and shorts.
Riverton Coal Co. Mine #35 (workers)	Charleston, West Virginia	5/29/79	5/21/79	TA-W-5644	Mining of coal.
Transamerica Delaval (UMWA)	Trenton, New Jersey	6/18/79	6/16/79	TA-W-5645	Turbine and IMO pump.
United States Steel Corp. (USWA)	Buffalo, New York	6/18/79	6/5/79	TA-W-5646	Pulverized limestone.
Vinco Fashions Co. Inc. (company)	Jersey City, New Jersey	6/18/79	6/14/79	TA-W-5647	Ladies coats.
Wearwell Trousers (workers)	Worcester, Massachusetts	6/18/79	6/11/79	TA-W-5648	Men's and ladies' pants, ladies' skirts.
Winer Mfg. Co. (workers)	Hammond, Indiana	6/18/79	6/20/79	TA-W-5649	Grain leather coats, sheep skin coats, split cow coats, wool coats.

[FR Doc. 79-20199 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4985]

Anna Myers, Los Angeles, Calif.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification

of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on March 19, 1979, in response to a worker petition received on March 15, 1979, which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing ladies' dresses and sportswear at Anna Myers, Los Angeles, California. The investigation revealed that the plant produces primarily ladies' dresses, skirts and blouses. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdiyision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department surveyed the manufacturers for whom Anna Myers performed contract work in 1977 and 1978. Some of the manufacturers reduced contracts with the subject firm and experienced reduced sales from 1977 to 1978. A survey of these manufacturers' customers revealed that customers which decreased purchases of ladies' dresses, skirts, and blouses from the manufacturers and increased purchases of imported dresses, skirts and blouses in 1978 compared to 1977 were an insignificant percentage of the manufacturers' sales.

Conclusion

After careful review, I determine that all workers of Anna Myers, Los Angeles, California are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-20200 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5420]

Annie Jean Originals, New York, N.Y.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974 (19 U.S.C. 2273), an investigation was initiated on May 18, 1979, in response to a worker petition received on May 14, 1979, which was filed on behalf of workers and former workers producing junior knit tops at Annie Jean Originals, New York, New York. During the course of the investigation it was determined that Annie Jean Originals is not a company, but the brand name under which junior knit tops manufactured by Steve Gee Ltd. were sold. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 20th day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-20201 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5372]

Bergen Dyers, Inc., Paterson, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on May 10, 1979, in response to a worker petition received on May 7, 1979, which was filed on behalf of workers and former workers dyeing acrylic machine knitting yarns at the Paterson, New Jersey plant of Bergen Dyers, Incorporated. The investigation revealed that the plant dyes primarily acrylic hand knitting yarn. In the following determination, without regard to whether any of the criteria have been met, the following criterion has not been met:

That increase of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The petitioners allege in their petition that imports of finished acrylic sweaters have adversely affected sales at Bergen Dyers.

In discussing the term "like or directly competitive" as used in the Trade Act of 1974, the Senate Finance Committee noted that under the Trade Expansion Act of 1962, the courts concluded that imported finished articles are not like or directly competitive with domestic component parts thereof, *United Shoe Workers of America, AFL-CIO,* v. *Bedell,* 506 F.2d 174, (1974). (S. Rept. 93-1298, 93rd Cong., 2d Sess., 1974, p. 122.) In that case, the court held that imported finished women's shoes were not like or directly competitive with shoe counters.

Similarly, imported finished sweaters cannot be considered to be like or directly competitive with yarn. Imports of yarn must be considered in determining import injury to workers producing or dyeing yarn.

Inasmuch as all types of yarn are generally interchangeable and substitutable in their end uses, all types of yarn may be considered like or directly competitive with yarn dyed at Bergen Dyers, Incorporated.

U.S. imports of all yarns have been less than 1.8 percent of U.S. production in the years 1974 through 1977. U.S. imports of non-cellulosic spun yarn, which includes acrylic, have been less than .9 percent in the years 1974 through 1977.

One customer represented the majority of Bergen Dyers' sales in 1977, 1978 and 1979. The Department surveyed this customer regarding purchases of yarn. The customer did not purchase imported yarn during the period under investigation.

Conclusion

After careful review, I determine that all workers of Bergen Dyers, Incorporated, Paterson, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-20202 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5312]

Bert Lorell of California, d.b.a. Lorell of California, Gardena, Calif.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 30, 1979, in response to a worker petition received on April 25, 1979, which was filed on behalf of workes and former workers producing ladies' apparel (jackets and vests) at Bert Lorell of California d.b.a. Lorell of California, Gardena, California. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's suits increased in quantity from 1977 to 1978.

Bert Lorell of California is a contractor, sewing ladies' jackets and vests for one manufacturer. A Department of Labor survey of that manufacturer revealed that, from 1977 to 1978 and in the first quarter of 1979 compared with the same period in 1978, the manufacturer increased imports, in dollars, of ladies' suits and decreased purchases of ladies' jackets and vests from Bert Lorell of California.

Conclusion

After careful review of the facts obtained in the investigtion, I conclude that increases of imports of articles like or directly competitive with ladies' jackets and vests produced at Bert Lorell of California d.b.a. Lorell of California, Gardena, California contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Bert Lorell of California d.b.a. Lorell of California, Gardena, California who became totally or partially separated from employment on or after April 13, 1978, are eligible to apply for adjustment assistance under Title II, Chapte 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-20203 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W- 5282 and 5283]

Bethlehem Steel Corp., Baltimore Yards (Key Highway and Fort McHenry Yards), Baltimore, Md.; Negative Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of investigations regarding certifications of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 25, 1979, in response to a worker petition received on April 17, 1979, which was filed by the Industrial Union of Marine and Shipbuilder Workers of American on behalf of workers and former workers repairing ships at the Key Highway and Fort McHenry Yards of the Baltimore Yards of the Bethlehem Steel Corporation in Baltimore, Maryland. The investigation revealed that the Key Highway and Fort McHenry Yards are collectively referred to as the Baltimore Yards and share the same workforce and management and essentially constitute a single facility.

The Baltimore Yards of the Bethlehem Steel Corporation are engaged in providing the service of repairs and maintenance on marine vessels for a variety of firms.

Thus, workers of the Baltimore Yards do not produce an article within the meaning of Section 223(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the Baltimore Yards by ownership, or a firm related by control. In any case, the reduction in demand for services must orginate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

The Baltimore Yards of the Bethlehem Steel Corporation and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in ship repair and maintenance at the Baltimore Yards of the Bethlehem Steel Corporation are employed by that firm. All personnel actions and payroll transactions are controlled by the Baltimore Yards of the Bethlehem Steel Corporation. All employee benefits are provided and maintained by the Baltimore Yards of the Bethlehem Steel Corporation. Thus, the Baltimore Yards of the Bethlehem Steel Corporation, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of the Key Highway and Fort McHenry Yards (the Baltimore Yards) of the Bethlehem Steel Corporation in Baltimore, Maryland are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-20204 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5147]

Brown Shoe Co., Steelville, Mo.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 3, 1979, which was filed on behalf of workers and former workers producing shoe components at the Steelville, Missouri plant of Brown Shoe Company. The investigation revealed that the Steelville plant produces shoe components for use in the production of men's, women's and children's shoes by Brown Shoe Company. The preponderance of sales by Brown Shoe Company is comprised of men's and women's shoes. It is concluded that all of the requirements have been met.

U.S. imports of women's nonrubber footwear, except athletic, increased relative to domestic production in 1977 compared to 1976 and increased absolutely and relatively in 1978 compared to 1977. The ratio of imports to domestic production reached 153.6 percent in 1978, the highest in the 1974–1978 period.

U.S. imports of men's dress and casual footwear, except athletic, increased absolutely and relatively in 1977 compared to 1976 and increased relative to domestic production in 1978 compared to 1977. In 1978, the ratio of imports to domestic production rose to 81.0 percent, the high for the 1974–1978 period.

The Department surveyed the customers of Brown Shoe Company. The survey revealed that some customers decreased purchases from the subject firm while increasing imports of men's and women's shoes in 1978 compared to 1977 and in the first quarter of 1979 compared to the first quarter of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's and women's shoes produced at Brown Shoe Company contributed importantly to the decline in sales or production and to the total or partial separation of workers of the Steelville, Missouri plant of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Steelville, Missouri plant of Brown Shoe Company, who became totally or partially separated from employment on or after July 22, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-20205 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5316]

Cliftex Corp., New Bedford, Mass.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 30, 1979, in response to a worker petition received on April 23, 1979, which was filed on behalf of workers and former workers producing men's suits and sportcoats at Cliftex Corporation, New Bedford, Massachusetts. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The average number of production workers at plant "B" of Cliftex Corporation increased in every quarter of 1978 and in the first quarter of 1979 when compared with the same quarters of 1977 and 1978, respectively. The average weekly hours worked per employee did not change significantly during this period.

The average number of production workers at the Riverside plant and plant "A" increased in every quarter of 1978 compared with the same quarters of 1977. The number of workers in the first quarter of 1979 remain virtually unchanged when compared with the first quarter of 1978. The average weekly hours worked per employee did not change significantly during this period.

Conclusion

After careful review, I determine that all workers of Cliftex Corporation, New Bedford, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-20206 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5454]

Cobblers, Inc., Williamsport, Pa., Harrisburg, Pa., York, Pa.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on May 24, 1979, in response to a worker petition received on May 21, 1979, which was filed on behalf of workers and former workers producing women's footwear at Cobblers, Incorporated, Williamsport, Pennsylvania. It is concluded that all of the requirements have been met.

Imports of women's nonrubber footwear, except athletic, increased relative to domestic production in 1977 compared with 1976. Imports increased both absolutely and relative to domestic production of women's nonrubber footwear has exceeded 100 percent in every year since 1974.

A Department survey revealed that retail customers of Cobblers, Incorporated increased purchases of imported women's footwear in 1978 compared with 1977 and in the first quarter of 1979 compared with the same period in 1978. These customers decreased their purchases from Cobblers, Incorporated during the same periods of comparison.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's footwear produced at the Williamsport, Pennsylvania plant of Cobblers, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Williamsport, Pennsylvania plant of Cobblers, Incorporated including workers at Cobblers' retail outlets in Williamsport, Harrisburg and York, Pennsylvania who became totally or partially separated from employment on or after October 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-20207 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5285]

Cresco Pollack Sportswear, Inc., Ashland, Ohio; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility

requirements of Section 222 of the Act must be met.

The investigation was initiated on April 25, 1979, in response to a worker petition received on April 20, 1979, which was filed by the United Garment Workers of America on behalf of workers and former workers producing men's leather and cloth outercoats at Kroh, Inc., Ashland, Ohio. The investigation revealed that the correct name of the company is Cresco-Pollack Sportswear, Inc. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales of men's leather and cloth outercoats by Cresco Pollack Sportswear, Inc. increased in quantity and value in 1978 from 1977 and during the first four months of 1979 compared to the same period of 1978. Production by Cresco increased in value in 1978 from 1977 and during the first four months of 1979 compared to the same period of 1978. Compared to the same quarter of the previous year, sales and production by Cresco increased in value during five consecutive quarters from the first quarter of 1978 through the first quarter of 1979.

Conclusion

After careful review, I determine that all workers of Cresco Pollack Sportswear, Inc., Ashland, Ohio are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of June, 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-20208 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W- 5150 and 5150A]

Dean Trucking, Inc., Quinwood, W. Va., D & H Division, Summersville, W. Va.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 5, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers of Dean Trucking Company, Incorporated, Quinwood, West Virginia, a contract hauler. The investigation revealed that the correct company name is Dean Trucking, Incorporated, and that the D and H Division of Dean Trucking, Incorporated operated Mine #2 of the Brady Cline Coal Company, Summersville, West Virginia in 1977–1978.

With respect to workers of the D and H Division, Summersville, West Virginia, of Dean Trucking, Incorporated and workers of Dean Trucking, Incorporated, Quinwood, West Virginia, engaged in transporting coal from Mine #2 of the Brady Cline Coal Company, operated by the D and H Division, it is concluded that all of the criteria have been met.

U.S. imports of coke increased absolutely and relative to domestic production from 1976 to 1977 and from 1977 to 1978.

Workers of other mines in Summersville, West Virginia of the Brady Cline Coal Company engaged in employment related to the production of metallurgical coal have been previously certified as eligible to apply for adjustment assistance. (See TA-W-5218, cert, June 8, 1979). Customers purchasing metallurgical coal from all of the mines of Brady Cline Coal Company (including coal mined from Mine #2 under contract by the D and H Division of Dean Trucking, Incorporated) reduced purchases from Brady Cline and increased imports of metallurgical coal and/or coke from 1977 to 1978.

The contract with the D and H Division of Dean Trucking, Incorporated to mine coal from Mine #2 of the Brady Cline Coal Company, Summersville, West Virginia, was not extended beyond June 30, 1978.

With respect to workers of Dean Trucking, Incorporated other than those engaged in mining or transporting coal from Mine #2 of the Brady Cline Coal Company, these workers are engaged in the transportation by truck of coal from a customer's mine to a tipple or cleaning plant.

Thus, workers of Dean Trucking, Incorporated other than those engaged in mining or transporting coal from Mine #2 of the Brady Cline Company do not produce an article within the meaning of Section 222(3) of Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Dean Trucking, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Dean Trucking, Incorporated and its customers have not controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers of Dean Trucking, Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by Dean Trucking, Incorporated. All employee benefits are provided and maintained by Dean Trucking, Incorporated. Workers are not, at any time, under employment or supervision by customers of Dean Trucking, Incorporated. Thus, Dean Trucking, Incorporated, and not any of its customers, must be considered to be the "workers' firm."

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal mined by the D and H Division, Summersville, West Virginia, of Dean Trucking, Incorporated, Quinwood, West Virginia and transported from Mine #2 of the Brady Cline Coal Company, Summersville, West Virginia, by Dean Trucking, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the D and H Division, Summersville, West Virginia, of Dean Trucking, Incorporated, Quinwood, West Virginia, and workers of Dean Trucking, Incorporated engaged in the transport of the output of Mine #2 of the Brady Cline Coal Company, Summersville, West Virginia who became totally or partially separated from employment on or after March 27, 1978 and before July 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-20209 Filed 6-28-97; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5359]

Excel Development, Inc., Bench Mountain Mine, Richwood, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on May 8, 1979 in response to a worker petition received on April 9, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers engaged in the mining of coal at Excel Development, Incorporated, Richwood, West Virginia. The investigation revealed that the petition applies specifically to workers at the Bench Mountain Mine, Rickwood, West Virginia. In the following determination, without regard to whether any of the criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Excel Development, Incorporated, operates the Bench Mountain Mine under contract with another mining company. In a previous determination (TA-W-5184 & 5230) it was determined that metallurgical coal mined and processed at that mining company is distributed primarily to foreign users. Therefore, any imports of coal or coke would have a negligible effect on the sales and/or production and employment at Excel Development, Incorporated.

Conclusion

After careful review, I determine that all workers of Excel Development, Incorporated, Bench Mountain Mine, Richwood, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-20210 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5317]

Freight Consolidation Services, Inc., Jersey City, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 30, 1979, in response to a worker petition received on April 12, 1979, which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America on behalf of workers and former workers of Freight Consolidation Service, Incorporated, Hoboken, New Jersey, engaged in unloading cars. The investigation revealed that the location of the workers on whose behalf the petition was filed is Jersey City, New Jersey, and that the correct company name is Freight Consolidation Services, Incorporated.

The Jersey City, New Jersey facility of Freight Consolidation Services, Incorporated is engaged in providing the service of loading and unloading automobiles from rail cars. The subject firm is a subsidiary of FCS Industries, Incorporated, a holding company, and is affiliated with Van Craft Industry of Delaware, Incorporated, which manufactures and sells decking equipment.

Thus, workers of the Jersey City, New Jersey facility of Freight Consolidation Services, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from the parent firm, a firm otherwise related to Freight Consolidation Services, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Freight Consolidation Services, Incorporated and its customers have no controlling interest in one another. The Jersey City, New Jersey facility of the subject firm does not direct any of its services to the company's manufacturing affiliate. The parent firm does not produce an article.

All workers engaged in loading and unloading automobiles at the Jersey City, New Jersey facility of Freight Consolidation Services, Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by Freight Consolidation Services, Incorporated. All employee benefits are provided and maintained by Freight Consolidation Services, Incorporated. Workers are not, at any time, under employment or supervision by customers of Freight Consolidation Services, Incorporated. Thus, Freight Consolidation Services, Incorporated, and not any of its customers, must be considered to be the "workers' firm."

Conclusion

After careful review, I determine that all workers of Freight Consolidation Services, Incorporated, Jersey City, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-20211 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5408]

Gold Seal Garter Corp., New York City, N.Y.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility

requirements of Section 222 of the Act must be met.

The investigation was initiated on May 16, 1979, in response to a worker petition received on May 14, 1979, which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing brassieres, girdles and garter belts at Gold Seal Garter Corporation, New York, New York. The investigation revealed that the plant produces bras, girdles, bra and panty sets and leotards. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A certification of eligibility to apply for adjustment assistance applicable to workers at the New York City, New York facility of Gold Seal Garter Corporation was issued by the Department of Labor on April 29, 1977 (TA-W-1667). That certification expired April 29, 1979, two years from its date of issuance.

The value of Gold Seal Garter Corporation's annual sales, adjusted for price change, increased in 1978 compared to 1977 and in the first quarter of 1979 compared to the first quarter of 1978. The employment declines which began at Gold Seal Garter Corporation immediately prior to the termination of the previous certification and which have continued can be attributed to a change in product mix to leotards, which are sewn by other domestic contractors, and to a greater emphasis on girdles. The production of girdles is less labor intensive than the production of bras, which constituted a higher percentage of the product mix in 1977. Both leotard and girdle production require less labor at the New York facility than the production of bras.

Conclusion

After careful review, I determine that all workers of Gold Seal Garter Corporation, New York City, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-20212 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5288]

Haas Tailoring Co., Baltimore, Md.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 25, 1979 in response to a worker petition received on April 23, 1979 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's and women's suits and uniforms at Haas Tailoring Company, Baltimore, Maryland. The investigation revealed that the plant produces primarily men's custom tailored suits. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Customers of Haas Tailoring Company who were surveyed indicated that they did not purchase imported men's custom tailored suits in 1977, 1978, or during the first five months of 1979.

Conclusion

After careful review, I determine that all workers of Haas Tailoring Company, Baltimore, Maryland are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-20213 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5320]

Hattie-Carnegie Industries, Harry Rosenfeld Division, New York, N.Y.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility to apply for adjustment assistance, each of the group eligibility requirments of Section 222 of the Act must be met.

The investigation was initiated on April 30, 1979 in response to a worker petition received on April 23, 1979 which was filed by the Leather Goods, Plastics, Handbags and Novelty Workers Union on behalf of workers and former workers producing ladies' handbags at Hattie-Carnegie Industries, Harry Rosenfeld Division, New York, New York. It is concluded that all of the requirements have been met.

U.S. imports of handbags increased absolutely and relative to domestic production in 1977 and 1978 compared to the previous year. Imports as a percentage of production exceeded 100 percent in 1976, 1977, and 1978.

Customers of the Harry Rosenfeld Division of Hattie-Carnegie Industries increased purchases of imported handbags in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' handbags produced at Hattie-Carnegie Industries, Harry Rosenfeld Division, New York, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Hattie-Carnegie Industries, Harry Rosenfeld Division, New York, New York who became totally or partially separated from employment on or after April

18, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-20214 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5395]

Heppenstall Co., Pittsburgh, Pa.; Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on May 15, 1979 in response to a worker petition received on May 14, 1979 which was filed by the United Steelworkers of America on behalf of workers and former workers producing forging and metal cutting knife at Heppenstall Company, Pittsburg, Pennsylvania. The investigation revealed that the correct product is materials handling equipment. In the following determination, without regard to whether any of the criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that none of Heppenstall Company's major domestic customers for materials handling equipment purchased any imported materials handling equipment in 1976, 1977, 1978 or the first four months of 1979.

Conclusion

After careful review, I determine that all workers engaged in employment related to the production of materials handling equipment at Heppenstall Company, Pittsburgh, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-20215 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5337]

Holly Coal Co., Summersville, W. Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on May 2, 1979 in response to a worker petition received on April 25, 1979 which was filed on behalf of workers and former workers producing coal for Holly Coal Company, Summersville, West Virginia. The investigation revealed that Holly Coal Company's sole business is managing the Brady Cline Coal Company, the Margaret Peerless Coal Company (both of which are engaged in mining metallurgical coal) and the Gauley Coal Sales Company (a coal preparation plant). It is concluded that all of the requirements have been met.

during the course of the investigation it was established that workers of Brady Cline Coal Company (se TA-W-5218), Gauley Coal Sales Company (TA-W-5222) and Margaret Peerless Coal Company (TA-W-5228) were certified eligible to apply for adjustment assistance on June 8, 1979. The Holly Coal Company is individually incorporated although wholly-owned by the same individuals who own the above-mentioned companies.

The petitioning workers can be considered employees of the same firm as the employees of the Brady Cline Coal Company, Gauley Coal Sales Company and Margaret Peerless Coal Company and are engaged in administrative and support functions for these companies. The Holly Coal Company is directly dependent upon the mining operations of the coal mines and preparation plant. Workers at Holly Coal Company experienced total and partial separations as a result of decreased activity in the mines and preparation plant.

Holly Coal Company experienced partial as well as total separations following the closing of many of the mines and the preparation plant.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal produced at Brady Cline Coal Company, Gauley Coal Sales Company and Margaret Peerless Coal Company contributed importantly to the total or partial separation of workers of the Holly Coal Company. In accordance with the provisions of the Act, I make the following certification:

All workers of the Holly Coal Company, Summersville, West Virginia who became totally or partially separated from employment on or after January 1, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-20216 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5321]

Ideal Outerwear Co. Inc., East Newark, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 30, 1979 in response to a worker petition received on April 23, 1979 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's sportswear, jackets and coats at Ideal Outerwear Company, East Newark, New Jersey. The investigation revealed that the correct name of the firm is Ideal Outerwear Company, Incorporated, and that it produces men's

cloth outer jackets and men's leather coats and jackets. In the following determinations, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that there have been no declines in sales, production and employment at the subject firm beyond normal seasonal fluctuations.

Sales of men's cloth and leather jackets and coats at Ideal Outerwear Company, Incorporated increased from 1976 to 1977, from 1977 to 1978, and increased in the first quarter of 1979 compared with the same period in 1978.

Production of men's cloth and leather jackets and coats increased from 1976 to 1977, from 1977 to 1978, and in the first four months of 1979 compared with the same period in 1978. Production was higher in each quarter of 1978 than in the same periods in 1977.

Employment of production workers and average weekly hours worked at Ideal Outerwear, Incorporated increased in 1978 compared with 1977 and in the first quarter of 1979 compared with the first quarter of 1978. Employment of production workers was higher in each quarter of 1978 than in the same periods in 1977.

Conclusion

After careful review, I determine that all workers of Ideal Outerwear Company, Incorporated, East Newark, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-20217 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5292]

J. Molofsky & Sons., Inc., Baltimore, Md.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 25, 1979 in response to a worker petition received on April 23, 1979 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's pants at J. Molofsky and Sons, Inc., Baltimore, Maryland. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A survey was conducted by the Department of Labor among the manufacturers for whom J. Molofsky and Sons, Incorporated performed contract work. The survey revealed that the manufacturers neither contracted work out to foreign contractors nor purchased imported men's pants from 1977 to 1978 and in the first quarter of 1979 compared to the first quarter of 1978. Most manufacturers indicated increased contract work with other domestic contractors.

Conclusion

After careful review, I determine that all workers of J. Molofsky and Sons, Inc., Baltimore, Maryland are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C, this 22nd day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-20218 Filed 6-28-79; 8:45 a.m.]

BILLING CODE 4510-28-M

[TA-W-5153]

John Brown Harris, Inc., Quinwood, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 5, 1979 in response to a worker petition received on April 3, 1979 which was filed on behalf of workers and former workers mining metallurgical coal at John Brown Harris, Incorporated, Quinwood, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that most of the coal sold by John B. Harris, Inc., was exported. A Department survey indicated that major domestic customers, who reduced purchases of coal from the strip mine and the deep mine of John B. Harris, did not import coal or coke during 1977, 1978, or the first quarter of 1979.

Conclusion

After careful review, I determine that all workers of John Brown Harris, Incorporated, Quinwood, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-20219 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5479]

John Elliott Leather Co.; Newark, N.J.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974 (19 USC 2273), an investigation was initiated on May 29, 1979, in response to a worker petition received on May 22, 1979, which was filed on behalf of workers and former workers producing tanned and finished leather at John Elliott Leather Company, Newark, New Jersey.

In a letter dated June 6, 1979, the petitioner requested the withdrawal of

the petition, (TA-W-5479). Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 25th day of June 1979.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-20220 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5305]

Lilly Augering Co., Inc., Willis Branch Mine, Fayette County, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 26, 1979, in response to a worker petition received on April 23, 1979, which was filed by the United Mine Workers of America on behalf of workers formerly mining coal at Lilly Augering Company, Incorporated, the Willis Branch Mine, Fayette County, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Departmental survey conducted with the sole domestic coal company that contracted work with Lilly Augering Company, Incorporated revealed that this coal company did not employ any foreign contractors nor did it purchase any grades of imported coal. A survey was then conducted with the coal company's customers and revealed that the majority of the coal was exported to France.

Conclusion

After careful review, I determine that all workers of Lilly Augering Company, Incorporated, the Willis Branch Mine, Fayette County, West Virginia, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-20221 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5287]

M. Golderberg & Sons, Inc., Philadelphia, Pa.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 25, 1979, in response to a worker petition received on April 23, 1979, which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's slacks at M. Goldenberg and Sons, Incorporated, Philadelphia, Pennsylvania. The investigation revealed that the plant does not produce slacks but does produce men's sport shirts. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' woven sport shirts increased absolutely and relative to U.S. production in 1978 compared to 1977 and increased absolutely in the first quarter of 1979 compared to the same period of 1978. The import to domestic production ratio for the first quarter of 1979 is not yet available.

U.S. imports of men's and boys' knit sport and dress shirts, excluding T-shirts, increased absolutely and relative to U.S. production in 1978 compared to 1977.

A Departmental survey was conducted with the retail customers of M. Goldenberg and Sons, Incorporated. The survey revealed that several customers, which represent a significant portion of Goldenberg's sales decline in the January through April 1979 period, increased their purchase of imported sport shirts and decreased their purchases from M. Goldenberg. In aggregate, the surveyed customers increased their reliance on foreign sources for their men's sport shirts demand in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's sport shirts produced at M. Goldenberg and Sons, Incorporated, Philadelphia, Pennsylvania, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of M. Goldenberg and Sons, Incorporated, in Philadelphia, Pennsylvania, who became totally or partially separated from employment on or after December 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-20222 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5387]

Owens-Illinois, Inc., Bridgeton, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of investigations regarding certifications of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on May 14, 1979, in response to a worker petition received on May 9, 1979, which was filed on behalf of workers and former workers producing glass containers at the Bridgeton, New Jersey plant of Owens-Illinois, Incorporated. Without regard to whether any of the other criteria have been met, the following criteria has not been met.

That increased of imports of articles like or directly competitive with articles produced by the firm of appropriate subdivision have contributed importantly to the separations, or

threat thereof, and to the absolute decline in sales or production.

Evidence developed in the course of the investigation revealed that imports of glass containers decreased both absolutely and relative to domestic production from 1977 to 1978, then increased slightly both absolutely and relatively during the first quarter of 1979 compared to the first quarter of 1978. The ratio of imported glass containers to domestic production never exceeded .59 percent during the 1974–1978 period.

None of the customers of the Bridgeton, New Jersey, plant who were surveyed purchased glass containers from foreign sources.

Conclusion

After careful review, I determine that all workers of the Bridgeton, New Jersey plant of Owens-Illinois, Incorporated, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-20223 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5296]

Plastilite Corp., Eight Mile, Ala.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 25, 1979, in response to a worker petition received on April 23, 1979, which was filed on behalf of workers and former workers producing balsa wood fishing floats at the Eight Mile, Alabama, plant of the Plastilite Corporation. It is concluded that all of the requirements have been met.

On April 30, 1979, Plastilite Corporation ceased production of balsa wood fishing floats at its Eight Mile, Alabama, plant. Plastilite began importing finished balsa floats from a company owned facility in Costa Rica. All future requirements of balsa wood fish floats will be produced in Costa Rica and imported for re-sale by Plastilite Corporation.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with balsa wood fishing floats produced at the Eight Mile, Alabama, plant of the Plastilite Corporation contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Eight Mile, Alabama, plant of the Plastilite Corporation who became totally or partially separated from employment on or after March 31, 1979, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-20224 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5345, 5346, and 5347]

Preservati Construction Co., Inc., McDowell County, W. Va., Tazewell County, Va.; Negative Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of investigations regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigations were initiated on May 2, 1979, in response to worker petitions received on April 23, 1979, which were filed by the United Mine Workers of America on behalf of workers and former workers mining coal at the McDowell County, West Virginia, and Tazewell County, Virginia, mines of Preservati Construction Company, Inc. The investigation revealed that the mines primarily produce metallurgical coal, and that the mine in McDowell County is known as the Blackwolf Mine and the mines in Tazewell County are known as the Horsepen Mines #1 and #2. In the following determination, at least one of the criteria has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department conducted surveys of Preservati Construction Company's customers purchasing all the production of the Blackwolf Mine (TA–W–5345 and Horsepen Mines #1 and #2 (TA–W–5346 and TA–W–5347). The customer purchasing all coal production from the Blackwolf Mine does not purchase imported coal or coke. Although sales of metallurgical coal by this customer decreased in 1978, a secondary customer survey was not conducted since the Department previously determined that this loss in sales was due to a decrease in export sales. Total domestic sales of this customer increased in 1978 compared to the like period in 1977.

With respect to the customer that purchased all the Horsepen Mine's #1 and #2 production, notwithstanding that this customer increased purchases of imported coke in 1978 compared to 1977 and in the first quarter of 1979 compared to the first quarter of 1978, these purchases of imported coke were due to the unavailability of metallurgical coal caused by the 1977–1978 UMWA strike. Average employment at Horsepen Mines #1 and #2 increased in April-November 1978 compared to April-November 1977 and increased in the first quarter of 1979 compared to the first quarter of 1977. Average shipments in terms of quantity also increased in the period April-December 1978 when compared to April-December 1977, and increased again in the first quarter of 1979 compared to the first quarter of 1977.

Conclusion

After careful review, I determine that all workers of Preservati Construction Company, Inc.'s, Blackwolf Mine, McDowell County, West Virginia (TA–W–5345), and Horsepen Mines #1 and #2 (TA–W–5346 and 5347) in Tazewell County, Virginia, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-20225 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5414]

Rand & Rand, Inc., Philadelphia, Pa.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on May 16, 1979 in response to a worker petition received on May 14, 1979 which was filed by the International Ladies Garment Workers Union on behalf of workers and former workers producing school uniform at Rand and Rand, Incorporated, Philadelphia, Pennsylvania. The investigation revealed that the plant produces girls' parochial school uniforms. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or productions.

The petition alleges that imports of dresses adversely affected employment and sales or production at Rand and Rand. Rand and Rand produces only girls' parochial school uniforms. The school uniforms are designed expressly to meet the specifications of American parochial schools. Dresses cannot be considered to be like or directly competitive with girls' parochial school uniforms. Import of girls' parochial school uniforms must be considered in determining import injury to workers producing girls' parochial school uniforms at Rand and Rand.

The Department's investigation indicated that there are no significant imports of girls' parochial school uniforms. Fluctuations in Rand and Rand sales in recent years are attributable to a depressed domestic market; the market for parochial school uniforms has followed closely parochial school enrollement levels.

Conclusion

After careful review, I determine that all workers of Rand and Rand, Incorporated, Philadelphia, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd days of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-20226 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5298]

Rossanna Knitted Sportswear, West Deptford, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 25, 1979 in response to a worker petition received on April 23, 1979 which was filed by three workers on behalf of workers and former workers producing ladies' knitted sportswear at Rossanna Knitted Sportswear, West Deptford, New Jersey. The investigation revealed that the knitted sportswear consisted of women's sweaters, skirts and tops. In the following determination, without regard to whether any of the criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Company sales increased in 1977 as compared to 1976 and increased again in 1978 as compared to 1977. All of the garments produced and sold by Rossanna Knitted Sportswear are manufactured by domestic and foreign apparel contractors. Therefore, Rossanna's refinishing, marketing and administrative operations and employment therein at the West Deptford facility are dependent on both imported and domestically made knitted garments.

Company imports decreased in 1977 as compared to 1976 but increased in 1978 as compared to 1977. Company imports continued to increase in the first quarter of 1979 as compared to the same quarter in 1978.

The employment of most company workers was terminated in May 1979 following the transfer of Rossanna's warehouse operation from West Deptford, New Jersey to Duncansville, Pennsylvania and the transfer of its administration division from West Deptford, New Jersey to Bridgeport, Connecticut.

Conclusion

After careful review, I determine that all workers of Rossanna Knitted Sportswear, West Deptford, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-20227 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5376 and TA-W-5377]

Samco Sportswear, Inc., St. Paul, Minn., and Samco Sportswear of Crosby, Inc., Crosby, Minn.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974 (19 U.S.C. 2273), an investigation was initiated on May 10, 1979 in response to a worker petition received on May 4, 1979 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing insulated underwear and ski wear at Samco Sportswear, Incorporated, St. Paul, Minnesota, and workers producing snowmobile, hunting and ski wear at Samco Sportswear of Crosby, Incorporated, Crosby, Minnesota.

In a letter dated June 18, 1979, the petitioner, Business Representative for the Amalgamated Clothing and Textile Workers Union, requested the withdrawal of the petitions (TA-W-5376) and (TA-W-5377). Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 25th day of June 1979.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-20228 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5300 and TA-W-5301]

Strongwear Slack, Inc., Easton, Pa., and Strongwear Pants Co., Inc., Easton, Pa.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of investigations regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigations were initiated on April 25, 1979 in response to a worker petition received on April 23, 1979 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing ladies' slacks at Strongwear Slack, Incorporated, Easton, Pennsylvania and on behalf of workers and former workers producing men's and ladies' slacks at Strongwear Pants Company, Incorporated, Easton, Pennsylvania. The investigation revealed that men's slacks, women's slacks, women's skirts and tennis shorts for men and women are produced by Strongwear Pants Company, Incorporated. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Strongwear Slack, Incorporated performs work for Strongwear Pants Company, Incorporated. Strongwear Pants Company, Incorporated is a contractor that sells to various clothing manufacturers.

The Department of Labor conducted a survey of manufacturers who reduced purchases from Strongwear Pants Company, Incorporated. Manufacturers who purchase all of the products made by Strongwear were represented in the survey.

With respect to women's slacks and skirts, manufacturers who reduced purchases from Strongwear in the first quarter of 1979 compared to the same period one year earlier did not purchase any imported women's slacks or skirts. Sales of women's slacks and skirts by these manufacturers increased in 1978 and in the first quarter of 1979 compared to the same periods one year earlier.

With respect to men's slacks, manufacturers who reduced purchases from Strongwear in 1978 and in the first quarter of 1979 compared to the same periods one year earlier either purchased no imports or reduced purchases of imports during those period of time. The Department of Labor conducted a survey of customers of manufacturers who reported that their own sales decreased. None of the customers surveyed increased purchases of imported men's slacks in the first quarter of 1979 compared to the same period one year earlier.

With respect to tennis shorts, none of the manufacturers purchased any imports. A survey was conducted of the customers of those manufacturers whose own sales declined. None of the customers surveyed increased purchases of imports in 1978 or in the first quarter of 1979 compared to the same periods one year earlier.

Conclusion

After careful review, I determine that all workers of Strongwear Slack, Incorporated, Easton, Pennsylvania and Strongwear Pants Company, Incorporated, Easton, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-20229] Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5357]

Underground Energy Corp., Underground Energy Mine, Wyoming County, W. Va.; Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certication of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on May 3, 1979 in response to a worker petition received on April 30, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers engaged in the contract mining of coal at Underground Energy Corporation, Underground Energy Mine, Wyoming County, West Virginia. In the following determination, without regard to whether any of the criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or apropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Underground Energy Mine was shut down for much of 1978 due to the U.M.W.A. strike from December 9, 1977 to March 27, 1978 and due to a strike at the Norfolk and Western Railroad during July, August and September, 1978. The Norfolk and Western Railroad hauls all of the coal mined by Underground Energy Corporation. When the non-strike periods of 1977 and 1978 are compared sales and production at the mine increased in 1978 compared to 1977. Sales and production at the mine increased in the first quarter of 1979 compared to the first quarters of 1977 and 1976.

Conclusion

After careful review, I determine that all workers of Underground Energy Corporation, Underground Energy Mine, Wyoming County, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning

[FR Doc. 79-20230 Filed 6-28-79; 8:45 a.m.]

BILLING CODE 4510-28-M

[TA-W-5280]

United States Pipe & Foundry Co., Burlington, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the

results of an investigation regarding certification of eligibility to apply for worker ajdustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 23, 1979, in response to a worker petition received on April 18, 1979, which was filed by the United Steelworkers of America on behalf of workers and former workers producing steel pipe and ductile iron pipe at the Burlington, New Jersey plant of United States Pipe and Foundry Company. In the following determination, with respect to workers in both the ductile iron pipe division and the steel pipe division, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of cast iron pressure pipe (ductile pipe) have been negligible in the period since 1974. The ratio of imports of cast iron pressure pipe to domestic shipments has been less than one-half of one percent from 1974 through 1978. The large number of building codes prevalent throughout the United States and high transportation costs for ductile pipe discourage imports.

Furthermore, the layoffs of workers in the ductile pipe division can be attributed to reduced housing starts. Production of ductile pipe is closely tied to the construction industry. Apparent U.S. consumption of cast iron pressure pipe has followed trends in new construction in the 1974–1978 period.

Workers producing steel pipe at the Burlington plant form a separately identifiable subdivision. There have been no layoffs of workers producing steel pipe, or reductions in workers' hours in the period from January 1978 to the present. No layoffs are planned in the immediate future.

Conclusion

After careful review, I determine that all workers of United States Pipe and Foundry Company, Burlington, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-20231 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5495]

Venable & Billups Corp., Perry Branch Mine No. 1, Chapmanville, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to made an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on May 31, 1979 in response to a worker petition received on May 25, 1979 which was filed on behalf of workers and former workers of Venable and Billups, Coporation, Chapmanville, West Virginia, mining coal at Perry Branch Mine #1. In the following determination, without regard to whether any of the criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that workers of Venable & Billups, Corporation, mining coal at Perry Branch Mine #1 were laid off as a result of a contract dispute.

On January 26, 1979 Venable & Billups ceased coal mining operations at Perry Branch Mine #1, due to a contract dispute with the firm holding the subleases to the mine. All workers were subsequently laid off.

Conclusion

After careful review, I determine that all workers of Venable & Billups, Corporation, Chapmanville, West Virginia, mining coal at Perry Branch Mine #1 are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-20232 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5369]

White Ridge Coal Co., Raleigh County, W. Va.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 8, 1979, in response to a worker petition received on April 23, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at the Standard Pocahontas Strip Mine of White Ridge Coal Company, Raleigh County, West Virginia.

During the course of the investigation, it was established that all workers at the Standard Pocahontas Strip Mine of White Ridge Coal Company were separated from employment in October, 1977. Since that time, White Ridge has had an independent contractor mine coal at Standard Pocahontas Strip Mine. White Ridge Coal has not employed anyone at the subject mine since October 1977. Section 223(b) of the Trade Act of 1974 states that no certification under this section may apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than one year prior to the date of the petition.

The date of the petition in this case is April 19, 1979, and, thus, workers terminated prior to April 19, 1978, are not eligibile for program benefits under Title II, Chapter 2, Subchapter B of the Trade Act of 1974. The investigation is therefore terminated.

Signed at Washington, D.C. this 20th day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-20233 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5328]

Young Heritage, Sun Cloud, New York, N.Y.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding

certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 30, 1979 in response to a worker petition received on April 23, 1979 which was filed on behalf of workers and former workers producing women's wool coats, suits, rainwear and jackets at Young Heritage and its subsidiary, Sun Cloud, New York, New York. The investigation revealed that the plant produced primarily women's wool coats and jackets. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. Imports increased to 3,036 thousand dozen in 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

The Department conducted a survey of some of the customers who bought ladies coats from Young Heritage and Sun Cloud in 1976, 1977 and 1978. Several of the customers indicated they reduced purchases from Young Heritage and Sun Cloud and increased imports from 1976 to 1977 and in 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's coats and jackets produced at Young Heritage and Sun Cloud, New York, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Young Heritage and Sun Cloud, New York, New York who became totally or partially separated from employment on or after September 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-20234 Filed 6-28-79; 8:45 am]

BILLING CODE 4510-28-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on the Bailly Generating Station, Nuclear 1; Change of Meeting Time

The July 9, 1979 meeting of the ACRS Subcommittee on the Bailly Generating Station, Nuclear 1 has been rescheduled to meet at 2 p.m. instead of 1 p.m. as previously announced in the Federal Register on June 22, 1979 (44 FR 36519).

All other items regarding this meeting remain the same as stated in the cited Federal Register notice. Further information regarding this meeting can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Ragnwald Muller (telephone 202/634-1413) between 8:15 a.m. and 5 p.m., EDT.

Dated: June 25, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-20068 Filed 6-28-79; 8:45 am]

BILLING CODE 7590-01-M

Staff Assessment of Proposed Agreement Between the NRC and the State of Rhode Island

Notice is hereby given that the U.S. Nuclear Regulatory Commission is publishing for public comment the staff assessment of a proposed agreement received from the Governor of the State of Rhode Island for the assumption of certain of the Commission's regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

The staff assessment of the proposed agreement, the proposed agreement and a narrative, prepared by the State of Rhode Island and describing the State's proposed program for control over sources of radiation, is set forth below as an appendix to this notice. A copy of the program narrative, including the reference appendices,[1] appropriate State legislation and Rhode Island regulations, is available for public inspection in the Commission's public document rooms at 1717 H Street, NW., Washington, D.C. All interested persons desiring to submit comments and suggestions for the consideration of the Commission in connection with the proposed agreement should send them, in triplicate, to the Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; Attention: *Edgar C. Ashley (301) 492-7767* on or before July 30, 1979.

Exemptions from the Commission's regulatory authority which would implement this proposed agreement, have been published in the Federal Register and codified as Part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

Dated at Bethesda, Maryland, this 25th day of June 1979.

For the U.S. Nuclear Regulatory Commission.

Robert G. Ryan,

Director, Office of State Programs.

Appendix—Staff Assessment—Summary

The Commission has received a proposal from the Governor of Rhode Island for the State to enter into an agreement with the NRC whereby the NRC would relinquish and the State would assume certain regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

I. Background

A. Section 274 of the Atomic Energy Act of 1954, as amended provides a mechanism whereby the NRC may transfer to the States certain regulatory authority over agreement materials[1] when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that:

"The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection b. has become effective, or upon request of the Governor of such State, may terminate or suspend all or part of its agreement with the State and reassert the licensing and regulatory authority vested in it under this Act, if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section."

B. In a letter dated May 25, 1979, Governor J. Joseph Garrahy of the State of Rhode Island requested that the Commission enter into an agreement with the State pursuant to section 274 of the Atomic Energy Act of 1954, as amended, and proposed that the agreement become effective on October 1, 1979. The Governor certified that the State of Rhode Island has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State of Rhode Island desires to assume regulatory responsibility for such materials.

[1] Filed with the Office of the Federal Register as part of the original document.

[1] A. Byproduct materials; B. Source materials; and C. Special nuclear materials in quantities not sufficient to form a critical mass.

The Governor has certified that there is no byproduct material as defined in section 11e.(2) of the Act within the State and that there is no activity within the State resulting in the production of byproduct material as defined in section 11e.(2) of the Act. At the same time, the staff has determined that there are no NRC licenses outstanding in the State for byproduct material as defined in section 11e.(2) of the Act or for any activity within the State resulting in the production of byproduct material as defined in section 11e.(2) of the Act.

The proposed agreement provides for necessary amendments to the agreement in the event that the State wishes to regulate byproduct material as defined in section 11e.(2) of the Act and recognizes that it will be necessary to amend the agreement in the event any activity resulting in the production of byproduct material as defined in section 11e.(2) of the Act is found to exist within the State.

The eight Articles of the proposed agreement cover the following areas:

I. Lists the materials covered by the agreement.

II. Lists the Commission's continued authority and responsibility for certain activities.

III. Allows for certain regulatory changes by the Commission.

IV. References the continued authority of the Commission for common defense and security and safeguards purposes.

V. Pledges the best efforts of the Commission and the State to achieve coordinated and compatible programs.

VI. Recognizes reciprocity of licenses issued by the respective agencies.

VII. Sets forth criteria for termination or suspension of the agreement.

VIII. Specifies the effective date of the agreement.

C. Title 23, Chapter 1.3, as amended, of the General Laws of Rhode Island authorizes the Radiation Control Agency of the Department of Health to issue licenses to, and perform inspections of, users of radioactive materials under the proposed agreement and otherwise carry out a total radiation control program.

Rhode Island Rules and Regulations for the Control of Radiation, adopted in accordance with the Rhode Island Radiation Control Act, Title 23, Chapter 1.3 of the General Laws and the Administrative Procedure Act, Title 42, Chapter 35 of the General Laws, provides standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. The regulations are not applicable to agreement materials until the effective date of the agreement. The Rhode Island regulations became effective June 2, 1978 as they relate to x-ray machines and non-agreement materials such as naturally occurring and accelerator produced radioactive materials.

D. Environmental radiation issues with which the Division of Occupational Health and Radiation Control has been involved include: monitoring and assessment of the impact of radioactive fallout from nuclear weapons testing; monitoring and assessment of off-site impact of effluents from facilities utilizing large quantities of special nuclear materials; review of environmental reports and safety analysis reports submitted to support applications for EPA permits and NRC licenses; monitoring and assessment of levels of radioactivity in public, community, and private drinking water supplies; and assistance to other State agencies when environmental radiation issues arise.

The Rhode Island Department of Environmental Management (DEM) is the department responsible for environmental protection within the State. The State laws governing hazardous waste, air pollution, and water pollution are included in Appendix I of the description of Rhode Island Radiation Control Program. The memoranda of understanding from the three divisions involved are contained in Appendix X.

The Division of Land Resources, DEM, will not issue a permit for a low-level radioactive waste burial site until a license has been issued by the Radiation Control Agency. Presently, the Division of Air Resources, DEM, does not have any air quality standards for radioactive air pollutants, and in the absence of any guidance from the United States Environmental Protection Agency (EPA), the division does not plan to regulate such materials.

The Division of Water Resources, DEM, does not issue EPA water discharge permits, but they do certify the adequacy of the applications. In their review they will assure that all discharges meet the standards contained in Appendix A, Table II, Column II of the Rhode Island rules and regulations.

E. The estimated budget for Radiation Control for fiscal year 1980 (July 1, 1979 to June 30, 1980) is $164,500. Funding for Radiation Control is 78% State and 22% Federal. Federal funds include $12,600 from the Bureau of Radiological Health for compliance testing of diagnostic x-ray and $23,590 in HEW block grant monies.

It it estimated that $78,000 will be necessary to fund the radioactive materials activities of the Radiation Control Section. Radioactive material activities in the section will include naturally occurring and accelerator produced radioactive materials (NARM), environmental radiation programs and impact reviews, emergency response, industrial and academic x-ray facilities and agreement material activities.

Approximately one-third of the radioactive material budget, or $25,700 will be designated for the agreement material activities.

It is expected that close to 45 of approximately 50 NRC radioactive material licenses currently in effect in Rhode Island would be transferred to the State under the proposed Agreement. The State's budget for the agreement material program would therefore be approximately $570 per license. This compares to our recommended funding level range of $200–$350 per license.

II. Assessment of Proposed Rhode Island Program for Control of Agreement Materials

References: Criteria for Agreement With States Under Section 274 of the Atomic Energy Act of 1954, as Amended.[1]

Objectives

1. *Protection, Development.* A state regulatory program shall be designed to protect the health and safety of the people against radiation hazards, thereby encouraging the constructive uses of radiation.

Based upon the analysis of the State's proposed regulatory program (following) the staff believes the Rhode Island proposed regulatory program for agreement materials is adequately designed to protect the health and safety of the people against radiation hazards.

Radiation Protection Standards [2]

Statutory authority to formulate and promulgate rules and regulations is contained in the Rhode Island Radiation Control Act (Title 23 of the general laws entitled, "Health and Safety," Chapter 1.3, hereafter referred to as RIRCA) Section 23–1.3–2 (4). In accordance with that authority, the state has proposed Rules and regulations for the Control of Radiation (hereafter referred to as RIRR) which include radiation protection standards which would apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass upon the effective date of an agreement between the state and the Commission pursuant to Section 274b of the Atomic Energy Act of 1954, as amended.

References: RIRCA Section 23–1.3–2 (4) RIRR Part A.

3. *Uniformity in Radiation Standards.* It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by 10 CFR Part 20 of the NRC regulations based on officially approved radiation protection guides.

Technical definitions and terminology contained in the Rhode Island regulations including those related to units of measurement and radiation dose are uniform with those contained in 10 CFR Part 20, *except* the definition of byproduct material conforms to that contained in the Atomic Energy Act prior to enactment by Congress of P.L. 95–604, 92 Stat. 3021 et seq., November 8, 1978, the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). Enactment of P.L. 95–604 took place after promulgation of the proposed state regulations. The staff notes that Rhode Island is not now the site of mill tailings from ores processed primarily for their source material content nor is it likely to become such a site in the foreseeable future. The definition of byproduct material currently in use by the 25 Agreement States is that contained in the Atomic Energy Act of 1954, as amended prior to enactment of P.L. 95–604. NRC staff is preparing draft model State legislation which, when enacted by affected states, will enable them to conform

[1] As adopted in February 1961 (26 FR 2537, March 24, 1961), and amended in November 1965 (30 FR 15044, December 4, 1965). Minor editorial changes have been made to reflect changes in reorganization and authority of Federal agencies.

[2] The Conference of Radiation Control Program Directors' model State regulations and State legislation for control of radiation were used as a basis for all criteria enunciated.

with the requirements of UMTRCA, including the amended definition of byproduct material. The States have until November 7, 1981 to enact such legislation and adopt other necessary regulatory requirements if the states desire to continue to regulate ores processed primarily for their source material content and disposal of byproduct materials as defined in Section 11e (2) of the Atomic Energy Act, as amended, pursuant to a Section 274b agreement with the NRC.

In view of the above, the absence of a definition of byproduct material conforming to that contained in Section 11e (2) of the Atomic Energy Act of 1954, as amended, is not viewed as a significant departure at this time from the need for uniformity in radiation standards and should not be considered an impediment towards signing of a Section 274b agreement.

References: RIRR Part A and Annex, Governor Garrahy's letter dated May 25, 1979, Enclosure (1).

4. *Total Occupational Radiation Exposure.* The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.

The Rhode Island regulations cover all sources of radiation within the State's jurisdiction and provide for consideration of the total radiation exposure of individuals from all sources of radiation in the possession of a licensee or registrant.

References: RIRR, Part A.2.1 and A.2.2.

5. *Surveys, Monitoring.* Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.

The requirements for surveys to evaluate potential exposures from sources of radiation and the personnel monitoring requirements are uniform with those contained in 10 CFR Part 20.

References: RIRR Parts A.3.1, A.3.2 and A.3.7 (c), (d) and (f); C.8.2(c); E.2.15, and Annex, definition No. 157.

6. *Labels, Signs, Symbols.* It is desirable to achieve uniformity in labels, signs and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.

The prescribed radiation labels, signs and symbols are uniform with those contained in 10 CFR Part 20, Parts 30 thru 32 and Part 34. The Rhode Island posting requirements are also uniform with those contained in Part 20.

References: RIRR Parts A.3.3 and A.3.4, Part C, and Part E.2.

7. *Instruction.* Persons working in or frequenting controlled areas shall be instructed with respect to the hazards of excessive exposure to radioactive materials and in precautions to minimize exposure.

The Rhode Island regulations contain requirements for instructions and notices to workers that are uniform with those contained in 10 CFR Part 19.

Reference: RIRR Part A.6.

8. *Storage.* Licensed radioactive material in storage shall be secured against unauthorized removal.

Licensed radioactive material in storage must be secured against unauthorized removal from places of storage.

Reference: RIRR Parts A.3.6 and E.2.3.

9. *Waste Disposal.* The standards for the disposal of radioactive materials into the air, water, and sewers, and burial in the soil shall be in accordance with Part 20. Holders of radioactive material desiring to release or dispose of quantities in excess of the prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

The standards for the disposal of radioactive materials into the air, water and sewers and by burial in the soil are uniform with those in 10 CFR Part 20.

Holders of radioactive materials licenses desiring to release or dispose of concentrations or quantities in excess of the prescribed limits are required to obtain special permission from the Rhode Island Department of Health. The criteria for granting exceptions, as specified in the regulations, are uniform with those contained in 10 CFR Part 20.

References: RIRR Part A.4.

10. *Regulations Governing Shipment of Radioactive Materials.* The state shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U.S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues.

The transportation of licensed material including by common and contract carriers where such transportation is subject to the regulations of the U.S. Department of Transportation or the U.S. Postal Service is exempt from licensing. Other transportation is subject to licensing requirements and licensees must comply with applicable requirements of the U.S. Department of Transportation.

References: RIRR Parts A.1.4(b), C.4.3 and C.7.

11. *Records and Reports.* The state regulatory program shall require that holders and users of radioactive materials: (a) maintain records covering personnel radiation exposures, radiation surveys, and disposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of his exposure to radiation; (e) at request of an employee advise him of his annual radiation exposure; and (f) inform each employee in writing when he has received radiation exposure in excess of the prescribed limits.

The Rhode Island regulations require the following records reports by licensees and registrants:

a. Records covering personnel radiation exposures, radiation surveys and disposal of materials.

Reference: RIRR Parts A.5., C.8.2(c) and E.2.15.

b. Records of receipts and transfer of licensed materials.

Reference: RIRR Part A.1.5.

c. Reports of radiation incidents, overexposures and excessive levels and concentrations are defined in provisions uniform with those contained in 10 CFR Part 20.

Reference: RIRR Parts A.5.2, A.5.3, and A.5.4.

d. Reports to former employees or to individuals of their exposure to radiation or radioactive material.

Reference: RIRR Parts A.5.6, A.5.7, and A.6.4.

12. *Additional Requirements and Exemptions.* Consistent with the overall criteria here enumerated and to accommodate special cases or circumstances, the regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.

The Rhode Island Department of Health is authorized to impose upon any licensee or registrant, by rule, regulation, or order such requirements in addition to those established in the regulations as it deems appropriate or necessary to minimize danger to public health and safety or property.

Reference: RIRR Part A.1.8.

The Rhode Island Department of Health is authorized to exempt certain radiation sources, uses or users from licensing or registration requirements when it makes a finding that the exemption will not constitute a significant risk to the public health and safety.

Reference: RIRCA 23-1.3-5(d).

Prior Evaluation of Uses of Radioactive Materials

13. *Prior Evaluation of Hazards and Uses, Exceptions.* In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups—those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without preevaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the regulatory authority may wish to provide a means for

authorizing broad use of materials without evaluating each specific use.

Prior to the issuance of a specific license for the use of radioactive material, the Rhode Island Department of Health will require the submission of information on, and will make an evaluation of, the potential hazards of such uses, and the capability of the applicant.

References: RIRR Parts C.1, C.3.1(b), and C.5, Governor Garrahy's letter dated May 25, 1979, Enclosure (2).

Provision is made for the issuance of general licenses for byproduct, source and special nuclear materials in situations where prior evaluation of the licensee's qualifications, facilities, equipment and procedures is not required. The regulations grant general licenses under the same circumstances as those under which general licenses are granted in the Commission's regulations.

References: RIRR Parts C.1, C.3.1(a), C.4 and C.6.

14. *Evaluation Criteria.* In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls.

In evaluating a proposal to use agreement materials, the Rhode Island Department of Health will determine whether:

a. The applicant is qualified by reason of training and experience to use the material in question for the purpose requested in a manner as to minimize danger to public health and safety or property;

b. The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property; and

c. The issuance of the license will not be inimical to the health and safety of the public.

Reference: RIRR Part C.5.2.

Special requirements for the issuance of specific licenses are contained in the regulations.

References: RIRR Parts C.5.3, C.5.4 and C.5.5.

15. *Human Use.* The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally, licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.

The use of radioactive materials or sealed sources on or in humans will be permitted only by licensed physicians possessing prescribed experience in the use, handling and administration of radioisotopes or radiation. Rhode Island requirements regarding such use are uniform with those of the NRC.

References: RIRR Part C.5.3(a) thru (d). Governor Garrahy's ltr dtd May 25, 1979; Enclosure (2).

Inspection

16. *Purpose, Frequency.* The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine, and to assist in obtaining, compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

The possession and use of radioactive materials will be subject to inspection by the Rhode Island Department of Health and also to the performance of tests as required by or performed by the Department. Inspection and testing will be conducted to determine compliance with State regulations and to determine adequacy of the licensee's radiation protection program. Proposed inspection procedures are similar to those of the NRC Office of Inspection and Enforcement.

The frequency of inspections is dependent upon the type and scope of the licensed activities and will be at least as frequent, and in most cases, more frequent than inspections of similar licensees by NRC.

References: RIRR Parts A.1.6 and A.1.7, Governor Garrahy's ltr dtd May 25, 1979, Enclosure (2).

17. *Inspections Compulsory.* Licensees shall be under obligation by law to provide access to inspectors.

The Director of Health or his duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with the state radiation control act and rules and regulations issued thereunder.

References: RIRCA Section 23-1.3-4. RIRR Part A.1.6(a).

18. *Notification of Results of Inspection.* Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

When there are items of noncompliance, licensees must be informed at the time of inspection. Written notices of violations will also be provided by the Department.

References: RIRR Part A.7.1 (a), (b) and (c). Governor Garrahy's ltr dtd May 25, 1979, Enclosure (2).

Enforcement

19. *Enforcement.* Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials; the obtaining of injunctive relief; and the imposing of civil or criminal penalties.

The Department is equipped with the necessary powers for prompt enforcement of the regulations as follows:

a. Each Notice of Violation will require a consent agreement whereby the licensee shall provide a written response to the Agency within ten days of service of the Notice of Violation.

Reference: RIRR Part A.7.1(c).

b. The Department may issue orders to suspend, modify or revoke licenses.

Reference: RIRR Part A.7.4.

c. When the administrator finds that an emergency exists requiring immediate action to protect the public health or welfare, he may issue an order reciting the existence of such an emergency and require such action be taken as deemed necessary to meet the emergency. The order shall be effective immediately, but upon application to the Director of Health, a hearing shall be afforded within 15 days.

References: RIRCA Section 23-1.3-9, RIRR Part A.7.3.

d. A civil action may be instituted in superior court on behalf of the agency for injunctive relief to prevent the violation of the provisions of RCA 23-1.3 or codes, rules or regulations promulgated hereunder, and said court may proceed in the action in a summary manner or otherwise and may restrain in all such cases any person from violating any of the provisions of this chapter or said rules or regulations.

Reference: RIRCA Section 23-1.3-10.

e. Any person who willfully violates any provisions of Radiation Control Act, the regulations, or orders issued thereunder may be guilty of a misdemeanor and subject to a fine or imprisonment, or both.

Reference: RIRR Part A.1.9.

Personnel

20. *Qualifications of Regulatory and Inspection Personnel.* The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected.

To perform these functions involved in evaluation and inspection, it is desirable that there be personnel holding a bachelor's degree or equivalent in the physical and/or life sciences, and that the personnel have had training and experience in radiation protection. The person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These people should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the

regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. As they gain experience and competence in the field, the trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories, proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

a. *Number of Personnel.* There are approximately 50 NRC specific licenses in the State of Rhode Island. Under the proposed agreement, the State would assume responsibility for about 45 of these licenses. In addition, there are approximately 1,500 X-ray machines and 10 radium users in the State. The Radiation Control Agency is staffed with two professional persons to carry out the radioactive material control activities. We estimate the State will need to apply a minimum of 0.5 to 0.75 person-years of effort to the program. The present personnel together with their assigned responsibilities are as follows:

James E. Hickey: Chief, Division of Occupational Health and Radiation Control. Administrator, Radiation Control Agency. Responsible for overall administration and supervision of Division activities.

James L. Nolan: Supervising Radiation Control Specialist. Will be responsible for the radioactive materials control program, environmental surveillance and emergency response activities. Mr. Nolan will administer the licensing and inspection activities.

The Agency also has four persons specifically assigned to the X-ray program.

b. *Training.* The academic and specialized short course training for those persons involved in the administration, licensing and inspection of radioactive materials is shown below.

Mr. Hickey holds an M.S. degree in Occupational and Radiological Health from the Harvard School of Public Health. Mr. Nolan holds an MSE degree in Air Resources Engineering from the University of Washington. Mr. Hickey and Mr. Nolan attended the following specialized short courses:

James Hickey—

Radionuclide Analysis by Gamma Spectroscopy—DHEW, PHS, BRH, November 1966, Rockville, Maryland.—Ten Days

State Emergency Planning in Relation to Licensed Nuclear Facilities—USAEC, March 1973, Brookhaven, New York.—Three Days

Orientation in Regulatory Practices and Procedures—USNRC, September 1976, Bethesda, Maryland.—Ten Days.

James Nolan—NRC "Ten-Week Health Physics and Radiation Protection Course"

NRC "Medical Use of Radionuclides for State Regulatory Personnel"—Five days

NRC "Orientation Course in Regulatory Practices and Procedures"—Ten days

NRC "Radiological Emergency Response Operations"—Eight days

NRC "Inspection Procedures"—Five days

NRC "Safety Aspects of Industrial Radiography for State Regulatory Personnel"—Five days

USEPA—Five courses on air pollution—Four to five days each.

c. *Experience.* Mr. Hickey has been Health Specialist and Program Administrator, Rhode Island Department of Health, Occupational and Radiological Health Program since 1968. Mr. Nolan has been inspecting X-ray facilities, is a Health Physicist on the State emergency response team and supervisor of the radiological environmental monitoring program since January 1978. Mr. Nolan also worked as an Air Pollution Control Engineer and supervisor in the Air Quality Management Section of the State Department of Health during the period 1972–1978.

d. *Medical Advisory Committee.* The State's Medical Advisory Committee is an integral part of the Rhode Island Radiation Advisory Commission. By law, the Commission shall consist of eleven members. Areas of medical expertise represented on the Commission are nuclear medicine, nuclear pharmacy, veterinary medicine, dentistry, diagnostic radiology, radiological physics, and radiologic technology. Applications for non-routine medical uses of radioactive materials will be referred to the Commission for evaluation and recommendations.

Reference: RIRRCA 23–1.3–13.

Special Nuclear Material

21. *Conditions Applicable to Special Nuclear Material.* The State's regulations do not prohibit or interfere with the duties imposed by the NRC on holders of special nuclear material owned by the U.S. Department of Energy or licensed by NRC, such as the responsibility of licensees to supply to the NRC reports to transfer and inventory.

Reference: RIRR Part A.1.1(a).

22. *Special Nuclear Material Defined.* The definition of special nuclear material in quantities not sufficient to form a critical mass, as contained in the Rhode Island regulations, is uniform with the definition in 10 CFR Part 150.

Reference: RIRR Annex, Definition 151.

Administration

23. *Fair and Impartial Administration.* The State has incorporated into its program provisions for a fair and impartial administration of its regulatory program. Public participation is provided for in the:

(a) adoption, amendment, or repeal of rules;

Reference: RIRCA 23–1.3–2(c)(4), RI Administrative Procedures Act 42–35, RIRR preamble.

(b) granting, suspending, revoking, or amending of any license;

Reference: RI APA 42–35, RIRR A.7.

(c) determination of compliance with rules and regulations.

Reference: RI APA 42–35, RIRR A.7.

Any person adversely affected by the final determination of the Agency may petition for the judicial review of such determination in the superior court and finally by appeal to the State Supreme Court.

Reference: RI APA 42–35.

Arrangements for Discontinuing NRC Jurisdiction

24. *State Agency Designation.* The Rhode Island Department of Health's Division of Occupational Health and Radiation Control has been designated as the State's Radiation Control Agency.

Reference: RIRCA 23–1.3–2.

25. *Existing NRC Licenses and Pending Applications.* The Agency has made provision to continue NRC licenses in effect temporarily after the transfer of jurisdiction. Such licenses will expire either 90 days after receipt from the Agency of a notice of expiration or on the date of expiration specified in the federal license, whichever is earlier.

Reference: RIRCA 23–1.3–7.

26. *Relations with Federal Government and Other States.* The Rhode Island Radiation Control Agency is charged with advising, consulting and cooperating with the federal government, other states and interstate agencies, political subdivisions, industries, and with groups concerned with control of radiation sources.

Reference: RIRCA 23–1.3–2.

27. *Coverage, Reciprocity.* The proposed Rhode Island agreement provides for the assumption of regulatory authority over the following categories of materials within the State:

(a) Byproduct materials, as defined by Section 11e.(1) of the Atomic Energy Act, as amended.

(b) Source materials.

(c) Special nuclear materials in quantities not sufficient to form a critical mass.

Reference: Proposed Agreement, Article I.

Provision has been made by Rhode Island for the reciprocal recognition of licenses to permit activities within Rhode Island of persons licensed by other jurisdictions. This reciprocity is like that granted under 10 CFR Part 150.

Reference: RIRR C.6.

28. *NRC and Department of Energy Contractors.* The State's regulations provide that certain NRC and DOE contractors or subcontractors are exempt from the State's requirements for licensing and registration of

sources of radiation which such persons receive, possess, use, transfer, or acquire.

Reference: RIRR A.1.4(c).

III. Staff Conclusion

Section 274d of the Atomic Energy Act of 1954, as amended, states: "The Commission shall enter into an agreement under subsection b. of this section with any State if—

"(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

"(2) the Commission finds that the State program is in accordance with the requirements of subsection o. and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement."

The staff has concluded that the State of Rhode Island meets the requiremets of section 274 of the Act. The State's statutes, regulations, personnel, licensing, inspection and administrative procedures are compatible with those of the Commission and adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

Agreement Between the U.S. Nuclear Regulatory Commission and the State of Rhode Island and Providence Plantations for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

WHEREAS, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

WHEREAS, The Governor of the State of Rhode Island and Providence Planations is authorized under 23-1.3-7 of the General Laws of Rhode Island to enter into this Agreement with the Commission; and

WHEREAS, The governor of the State of Rhode Island and Providence Plantations certified on May 25, 1979, that the State of Rhode Island and Providence Plantations (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and

WHEREAS, The Governor of the State of Rhode Island and Providence Plantations certified on May 25, 1979, that there is no byproduct material as defined in section 11e.(2) of the Act within the State and that there is no activity within the State resulting in the production of byproduct material as defined in section 11e.(2) of the Act; and

WHEREAS, The Commission found on , that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

WHEREAS, The Commission found on , that there are no NRC licenses outstanding in the State for byproduct material as defined in section 11e.(2) of the Act or for any activity within the State resulting in the production of byproduct material as defined in section 11e.(2) of the Act; and

WHEREAS, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

WHEREAS, The Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and

WHEREAS, The State and the Commission recognize that it will be necessary to consider amendments to this Agreement in the event that the State wishes to regulate byproduct material as defined in Section 11e.(2) of the Act and that it will be necessary to amend this Agreement in the event any activity resulting in the production of byproduct material as defined in section 11e.(2) of the act is found to exist within the State; and

WHEREAS, The Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, III, and IV, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in section 11e.(1) of the Act;

B. Source materials; and

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

Article III

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article IV

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations, or offers to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article V

The Commission will use its best efforts to cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of Standards and regulatory programs of the State and the commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

Article VI

The Commission and the State agree that it is desirable to provide for reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with section 274 of the Act.

Article VIII

This Agreement shall become effective on October 1, 1979 and shall remain in effect unless and until such time as it is terminated pursuant to Article VII.

Done at Providence, State of Rhode Island, in triplicate, this ———— day of ————.

For the United States Nuclear Regulatory Commission.

For the State of Rhode Island and Providence Plantations.

J. Joseph Garrahy,
Governor.

The Rhode Island Radiation Control Program

Foreword

The State of Rhode Island and Providence Plantations, while recognizing that the scientific, medical, and industrial usages of atomic energy can be beneficial to its citizens, is also cognizant of the hazards inherent to ionizing radiation. With these hazards in mind, and considering that the State is committed to attain the highest practicable degree of protection for the public from the harmful effects of all types of radiation exposure and simultaneously permit the many beneficial applications of radiation, the 1976 Rhode Island State Legislature enacted the present Radiation Control Act.

Section 274 of the Atomic Energy Act of 1954, as amended, authorizes the United States Nuclear Regulatory Commission (NRC) to enter into an agreement with the governor of a state for purposes of transferring to that state certain functions of licensing and regulatory control of byproduct, source, and less than critical quanities of special nuclear material.

Section 23-1.3-7 of the 1976 Rhode Island Radiation Control Act authorizes the Governor, on behalf of the State, to enter into an agreement with the NRC, which would provide a disontinuance of certain responsibilities of the NRC relating to ionizing radiation and the assumption of such responsibilities by the State. A copy of this legislation is contained in Appendix I.

History

Prior to 1960, radiation control activities were integrated with the other program activities of the Division of Occupational Health of the Rhode Island Department of Health. About that time radiological health was recognized as an area of concern requiring a set of special program activities within the Division. The development of these activities generally has paralleled that of other states with the important exception that comprehensive radiation control legislation was not adopted until 1976.

In the early 1960's emphasis was placed upon personnel training in radiological health through attendance at U.S. Public Health Service courses. A state Industrial Code relating to Occupational Radiation Protection was adopted in June 1964. In response to the requirements of this Code, a registration of radiation sources was conducted and completed during 1965. Radiation protection surveys of X-ray facilities and facilities utilizing Radium began at this time. An environmental radiation surveillance network was established by the Division during the early 1960's to measure fallout and has provided continuous data since that time. The need for radiological emergency response capability was recognized with the occurrance of a criticality accident in the state in 1964 which resulted in one radiation death. The Division has cooperated with other agencies to provide this capability and is presently engaged in updating the State Emergency Response Plan.

The Division has been actively representing the State of Rhode Island as a member of the Conference of Radiation Control Program Directors, (CRCPD), and the New England Radiological Health Committee, (NERHC), since their inceptions. Both organizations bring together state and federal agencies for cooperative efforts toward reduction of radiation exposure.

Radioactive material users have been provided assistance with hazards evaluations and reduction upon request. These services have been available to and utilized by Nuclear Regulatory Commission licensees as well as users of naturally occurring and accelerator produced radioactive materials (NARM). Division personnel have taken every opportunity to accompany NRC inspectors in order to become familiar with problems uncovered in Rhode Island and procedures used for inspections and compliance.

Environmental radiation issues with which this Division has been involved include: monitoring and assessment of the impact of radioactive fallout from nuclear weapons testing; monitoring and assessment of off-site impact of effluents from facilities utilizing large quantities of special nuclear materials; review of environmental reports and safety analysis reports submitted to support applications for EPA permits and NRC licenses; monitoring and assessment of levels of radioactivity in public, community, and private drinking water suppliers; and assistance to other state agencies when environmental radiation issues arise.

Medical and dental radiography presents by far the largest man-made source of ionizing radiation exposure to the state's population. As a result, programs to reduce this exposure have been given priority over the years. Early programs emphasized physical surveys to encourage voluntary compliance with NCRP recommendations for equipment and structural shielding. In 1968 emphasis shifted somewhat to programs designed to lower patient dose through user assistance. At that time a program was developed and implemented by which dental exposures could be normalized to provide optimum diagnostic quality at minimum patient exposure.

This Rhode Island program described in an article published in the American Journal of Public Health in August 1970 (contained in Appendix VIII) became the basis for the Dental Exposure Normalization Technique (DENT) program sponsored by the federal Food and Drug Administration's Bureau of Radiological Health (BRH, FDA). Under their sponsorship, DENT has since been implemented by most states. The Division has also conducted Technique Normalization programs for mammography, and for podiatric, chiropractic, and cephalometric X-ray procedures. In later years the quality assurance aspects of these programs have received special attention.

In 1975 the Division began its participation in the Nationwide Evaluation of X-Ray Trends (NEXT) program sponsored by CRCPD and BRH, FDA. A stratified random sample of 100 X-ray facilities was chosen and surveyed under this program. The results, including mean exposures for Rhode Island for various routine radiographic procedures, were published in the Rhode Island Medical Journal in 1978, and this paper is included in Appendix VIII. The Division continues to utilized the NEXT program in its X-ray control effects.

During 1976 it was decided by the State's Legislature that comprehensive legislation and regulations for control of radiation were necessary and desirable in Rhode Island to accomplish further reductions in population exposure to radiation. The State Radiation Control Act, Title 23, Chapter 1.3 of the General Laws was enacted in May 1976. Acting in accordance with this legislation, the Director of Health designated the renamed Division of Occupational Health and Radiation Control as the State Radiation Control Agency and designated the current Chief of that Division as the Agency's Administrator. The Director also appointed the eleven-member Radiation Advisory Commission as provided by the legislation.

Regulations for x-ray facilities, which are modeled after the Suggested State Regulations for Control of Radiation, were drafted by the Agency and reviewed by the Radiation Advisory Commission. After a public hearing in accordance with the State's Administrative Procedures Act, the Agency's first regulations were adopted in June 1978. These regulations provide for annual registration of all x-ray facilities and certain services to x-ray facilities. The initial registration was completed in September 1978. Inspection of x-ray facilities on a scheduled basis for compliance with regulations began shortly thereafter.

The State Radiation Control Act also provides the authority for the Governor to enter into an Agreement for the assumption of certain licensing and inspection functions of NRC. In December 1978, regulations were adopted to facilitate the transition of authority from NRC to the State Radiation Control Agency. These regulations become effective on the date of an Agreement.

Organization, Functions, and Responsibilities

The Rhode Island Department of Health was established in April 1878, under Section 23 of the General Laws of Rhode Island. This department is responsible for promoting and protecting the health of the people of Rhode Island by:

(1) formulating policy and providing leadership and coordination of health services;

(2) directing the planning, regulation, and development of health resources; and

(3) providing personal and environmental health services.

The act creating the state Board of Health established a six-member board to make investigations into the causes of disease, especially epidemics and endemics among the people, the sources of mortality, and the effects of localities, employments, conditions, and circumstances on the public health. Subsequent legislation seting up individual divisions within the Health Department delegated the responsibility for promulgating rules and regulations to each individual division.

The Department has four Associate Directors with broad program responsibilities in: 1) Management and Support Services, 2) Health Planning and Development, 3) Preventative Medicine, and 4) Community Health Services. A chart showing the present organization of the Department of Health is contained in Appendix II.

Funding for the Department is both state and federal. Federal Block Grants are used to fund many of the Health Department programs, but specific federal grants are also employed (e.g., Drinking Water Program). Funding for the Radiation Control Agency is 22% federal and 78% state and has the services of one assignee from the Bureau of Radiological Health.

Under the Radiation Control Act, a Radiation Advisory Commission consisting of 11 members was established. The commission members are appointed by the Director of Health and include persons representing engineering, diagnostic radiology, nuclear medicine, dentistry, veterinary medicine, industrial radiation protection, and radiologic technology. Appendix III lists the membership of the present commission. It is the duty of the commission to advise the Agency on technical matters relating to radiation. The Radiation Control Agency has authority to regulate the use of all sources of ionizing radiation, except those which it may exempt or are under the jurisdiction of The Federal Government. A chart showing the organization of the Radiation Control Agency is shown in Appendix II.

All members of the Agency have experience in health physics and have specialized traning in this field. Professional staff including both new personnel and existing personnel will attend NRC training courses to attain and maintain a high level of technical competency. Members also have experience in operating laboratory and survey equipment. Responsibilities, job descriptions, background, and experience of radiation control personnel are given in Appendix IV.

The Supervising Radiation Control Specialist in charge of the Radioactive Materials Section will be responsible for licensing, inspections, investigations into incidents, and response to emergencies involving radioactive materials. It is anticipated that he will spend half of his time on the agreement program. The Administrator of the Radiation Control Agency (the Chief of the Division of Occupational Health and Radiation Control) will review and sign licenses and will review all inspection reports. His time on the agreement program will amount to a tenth of a man-year. Other members of the Radiation Control staff will also participate in the agreement program such that the total staff commitment will be one man-year. These breakdowns are further quantified in the budget contained in Appendix VII.

Rhode Island is an OSHA Consultation State and not an Enforcement State; therefore, it is not anticipated that the activities of the Occupational Health Section will impact on the Radioactive Materials Section.

Scope of Activities

The Radiation Control Agency administers the regulatory program associated with licensing of radioactive materials and registration of radiation-producing machines, environmental surveillance, special projects, and response to emergency situations involving sources of radiation. Chapters 18 and 18A of the state health plan, included in Appendix IX, detail the objectives and methods of the Division.

Within the State of Rhode Island there are 1,520 registered x-ray machines: 827 dental units, 631 medical units, and 62 industrial x-ray units. The number of NRC licenses within the State of Rhode Island as of December 31, 1978 was 49.

It is anticipated that the State will assume approximately 45 of these licenses. The number of facilities using radium sources is estimated at 10, and most of these are hospitals presently under NRC license. Three linear accelerators are in use for radiation therapy, and three small particle accelerators are in use at local universities.

Regulatory Procedures and Policy

Licensing and Registration

The Radiation Control Act requires licensing of all radioactive materials and registration of all radiation-producing machines except such sources as may be specifically exempted by regulations. License fees will be charged in accord with the schedule contained in Appendix III.

Licensing procedures, as provided in Parts A and C of the Rhode Island Rules and Regulations for the Control of Radiation, are consistent with those of the NRC. The license applications and form contained in Appendix V will be used in conjunction with Licensing and Regulatory Guides provided by the NRC.

General licenses are provided by regulation without filing an application with the Agency or the issuance of a licensing document. General licenses will be issued for specified materials under specified conditions when it is determined that the issuance of specific licenses is not necessary to protect the public and occupational health and safety. Specific licenses or amendments thereto will be issued upon review and approval of an application. A specific license will be issued only to named persons or facilities under the supervision of named persons and will incorporate appropriate conditions and expiration date. Pre-licensing inspections will be conducted when appropriate.

The Agency will request the advice of the Radiation Advisory Commission, or appropriate members thereof, with respect to any matter pertaining to a medical license application, or to criteria for reviewing applications.

All applications for non-routine medical uses of radioactive materials will be referred to the Radiation Advisory Commission for advice and consultation. Appropriate research protocols will be required as part of an application. The Agency will maintain knowledge of current developments, techniques, and procedures for medical uses applicable to the licensing program through continuing contact and information exchange with the NRC, other agreement states, and the medical profession.

The registration program for radiation-producing machines will continue, and the use of naturally occurring and accelerator produced radionuclides will now be licensed.

Inspection

The Agency is presently initiating an inspection and compliance program for x-ray equipment registrants which is similar to the proposed inspection and compliance program for radioactive materials.

Inspections for the purpose of evaluating radiation safety and determining compliance with appropriate regulations and provisions of licenses will be conducted as scheduled or in response to requests or complaints. Inspection frequency will be based upon the extent of the potential hazard and experience with the particular facility. Inspection priorities may be changed on a case-by-case basis consistent with current NRC practices. It is anticipated that state inspections of licensed facilities will be conducted in accordance with a priority schedule similar to that shown as follows:

Priority	Type of license	Inspection frequency
I	Broad Medical Broad Academic Industrial Radiography.	6 mos. or less.
II	Industrial	1 yr. or less.
III	Academic Medical Civil Defense	1 yr. or less.
IV	Limited Medical Limited Industrial	2 yrs. or less.
V	Generally Licensed Devices.	As required.

Inspections will be made by pre-arrangement with the licensee or may be unannounced as the Agency determines to be most constructive. Written inspection procedures provided by the NRC will be followed in conducting the inspections and preparing reports.

The Rhode Island Radiation Control Agency has personnel trained in regulatory practices and procedures. Additionally, Agency personnel have accompanied NRC compliance inspectors on field inspections to gain a higher degree of competence in evaluating radiation safety and determining compliance with appropriate regulations and license provisions. Inspections will include the observation of pertinent facilities, operators, and equipment; a review of pertinent records and of radioactive materials—all as appropriate to the scope of the activity, conditions of the license and applicable regulations. In addition, independent measurements will be made, as appropriate.

At the start and conclusion of an inspection, personal contact will be made at management level whenever possible. Following the inspection, results will be discussed with management. Prompt investigations and reports will be made of all reported or alleged incidents to determine the cause, the steps taken for correction, and the prevention of similar incidents in the future.

Compliance and Enforcement

Compliance with regulations and license conditions will be determined by inspections and evaluation of inspection reports. When there are items of non-compliance, the licensee or registrant will be informed at the time of inspection as follows:

(1) When the items are minor and the licensee or registrant agrees at the time of inspection to correct them, written inspection findings will be prepared which will list the items of non-compliance, confirm any corrections made during the inspection, and require acknowledgement by the person interviewed. The licensee or registrant will be informed that a review of any corrective action items will be conducted at the time of the next regular inspection or by a reinspection.

(2) When the non-compliance is considered serious, the person interviewed will be informed at the time of inspection. Written inspection findings will be sent to the licensee or registrant which will list the items of non-compliance and require a response within 20 days including proposed corrective action and an estimated date of completion of the corrective action.

(3) If no reply is received to the initial letter within the specified time, a Notice of Violation is issued. This Notice of Violation, mailed to management, will require a written Consent Agreement including proposed corrective action and an estimated date of completion of the corrective action. If considered appropriate, an unannounced reinspection will be made shortly after the estimated date of completion.

(4) Continued non-compliance as determined by the reinspection or by failure to reply within 10 days of the Notice of Violation will necessitate an Order of Abatement from the Agency. Such formal proceedings will follow the procedures contained in A.7.2 of the Rules and Regulations for the Control of Radiation.

The Agency uses its best efforts to attain compliance through cooperation and education prior to initiating formal legal procedures such as the Notice of Violation and Order of Abatement.

Upon request by a licensee, or upon the determination by the Agency, the terms and conditions of a license may be amended, consistent with the Act or regulations, to meet changing conditions in operations or to remedy technicalities of non-compliance.

Effective Date of License Transfer

Any person who possesses a license for agreement materials issued by the NRC, on the effective date of the agreement with the NRC, shall be deemed to possess a like license issued by the Agency, which shall expire either 90 days after the receipt from the Agency of a notice of expiration of such license, or on the date of expiration specified in the federal license, whichever is earlier.

Administrative Procedures and Judicial Review

The basic standards of procedures for administrative agencies in the State of Rhode Island are set forth in 42-35 of the General Laws of Rhode Island found in Appendix I. The Agency shall follow this law and the Radiation Control Act with respect to hearings, issuance of orders, and judicial review of findings.

Compatibility and Reciprocity

In promulgating the present Rules and Regulations for the Control of Radiation, the Agency has, insofar as practicable, maintained compatibility with NRC and agreement state regulations; has avoided requiring dual licensing and has provided for reciprocal recognition of other agreement states and federal licenses.

Through these regulations the State has adopted radiation protection standards and will strive to maintain compatibility with NRC and other Agreement States. The Agency will also cooperate with NRC and other Agreement States in interchanging information and statistics relating to control of radioactive materials.

Coordination With the Department of Environmental Management

The Department of Environmental Management is the department responsible for environmental protection within the state. The state laws governing hazardous waste, air pollution, and water pollution are included in Appendix I, and the memoranda of understanding from the three divisions involved are contained in Appendix X.

The Division of Land Resources will not issue a permit for a low level radioactive waste burial site until a license has been issued by the Radiation Control Agency. Presently the Division of Air Resources does not have any air quality standards for radioactive air pollutants, and in the absence of any guidance from the United States Environmental Protection Agency (EPA), the division does not plan to regulate such materials.

The Division of Water Resources does not issue EPA water discharge permits, but they do certify the adequacy of the applications. In their review they will assure that all discharges meet the standards contained in Appendix A, Table II, Column II of the Rhode Island rules and regulations.

Radiation Laboratory Services

The Radiation Control Agency has the capability of evaluating samples collected during routine inspections and for making independent measurements. In addition to the survey instruments listed in Appendix VI, the Division has a large variety of air sampling equipment for industrial hygiene surveys including portable air sampling pumps for filters and charcoal cartridges, smoke tubes, and a velometer. If the need for a neutron survey meter arises, one can be borrowed from the University of Rhode Island. All survey instruments used for inspection and emergency response will be calibrated quarterly as per NRC State Agreements—Division III Information Notice H.2.

The Division of Laboratories has capabilities of gamma spectroscopy and gross alpha-beta counting of environmental samples. For more sophisticated non-routine evaluations, samples will be sent to the EPA lab in Montgomery, Alabama.

Emergency Response

The Rhode Island Radiation Control Agency has technically trained personnel and specialized equipment to investigate and evaluate incidents involving ionizing radiation. The Agency continues to prepare for such response by providing the following:

(1) trained staff for advisement required to meet any given situation;

(2) trained and equipped staff for emergency field activities;

(3) transportation by automobile to site of incident;

(4) established liason with appropriate NRC and DOE Operations Offices; and

(5) training to key personnel of other-state/local agencies.

Radiological assistance in the form of monitoring, liason with appropriate authorities, and recommendations for area security and cleanup are provided by the Agency. The contamination guides used by the Agency are in Table III of the Protective Action Guides contained in Appendix XI. All Agency peronnel will be maintained at an operation-ready level of training. Part of this training will be provided through cooperation of the NRC in Las Vegas, Nevada.

The Annex C Nuclear Accident or Incident Control Plan presently being revised by the State Civil Defense Preparedness Agency (DCPA) is included in Appendix XI. This plan addresses both transportation accidents and off-site releases from fixed facilities. It requires that the State Police first notify DCPA which in turn notifies the Radiation

Control Agency. It is the responsiblity of the Agency to advise the DCPA the extent of the hazard to the public health and safety and recommend protective actions as necessary. All licensees will be given copies of the plan and instructed in propoer reporting of incidents which occur outside of their facility.

[FR Doc. 79-20067 Filed 6-28-79; 8:45 am]
BILLING CODE 7590-01-M

THE PRESIDENT'S ADVISORY COMMITTEE FOR WOMEN

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the President's Advisory Committee for Women.

DATE: July 11 and 12, 1979.

TIME: 9 a.m.-5 p.m. (both days)

PLACE: Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210; Room—Conference Room S-4215 A, B, and C.

PURPOSE: This is the regular meeting of the President's Advisory Committee for Women.

The agenda for the meeting will include the following:

1. Closed Business Meeting—(9-15:15 a.m. 7/11).
2. Overview of Program—(open to the public).
3. Subcommittee Meetings—(open to the public).
4. General Session—(open to the public).
5. Subcommittee Reports—(open to the public).
6. Closing Session.

The reason for not publishing this notice within the 15-day period prior to the meeting is due to the need to acquire adequate space for the meeting. The next meeting of the Committee will be held September 12, 13, and 14.

Sarita Gattis Schotta,

Executive Director.

June 26, 1979.

[FR Doc. 79-20289 Filed 6-28-79; 8:45 am]
BILLING CODE 4510-23-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15946; File No. SR-Amex-79-8]

American Stock Exchange, Inc., Self-Regulatory Organization; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on June 8, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Amex's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. proposes to amend Rule 140 regarding U.S. Government Securities Dealers as set forth below. (Italics indicate words to be added.)

Rule 140

. . . . Commentary

.03 The term "actively traded" in paragraph (a)(i), when used in reference to trading in Government National Mortgage Association securities ("GNMAs"), shall refer only to current production GNMA coupons which meet the good delivery standards of the Mortgage-Backed Securities Dealers' Association. "Current production" GNMA coupons are those bearing the current GNMA coupon rate, which is tied to the FHA and VA mortgage ceiling rate.

.04 All transactions in GNMA securities shall be cleared by the parties to the trade on an ex-clearing basis and shall be settled in Fed Funds regular way, except that if the regular way settlement day would fall within the first ten days of a month, delivery shall be made on the next business day following the 10th of the month. The good delivery standards adopted and adhered to by the Mortgage-Backed Securities Dealers' Association, as amended from time to time, are incorporated by reference herein and shall be applicable to all GNMA transactions executed on the floor of the Exchange. If there is to be any variation from these standards, it must be agreed to by the parties at the time of the trade.

Amex's Statement of Basis and Purpose

The basis and purpose of the foregoing rule change is as follows:

In 1975 the Amex established a program for the trading of U.S. Government and Federal agency securities ("U.S. Government securities") on the floor of the exchange in odd-lot quantities.[1] Trading was begun in a limited number of U.S. Government bonds and notes admitted to dealings and assigned to designated "Government Securities Dealers". It has since expanded to include trading in Treasury bills, Federal Home Loan Bank bonds, Federal Farm Credit issues, and Federal National Mortgage Association debentures.

The Exchange proposes to add Government National Mortgage Association securities ("GNMAs") to its U.S. Government odd-lot program. Under the proposal, all outstanding GNMA coupons will be listed for trading.[2] The Exchange's U.S. Government Securities Dealers will be required to maintain bid and offer quotations on all current production GNMA coupons which meet the good delivery standards of the Mortgage-Backed Securities Dealers' Association, with all other coupons being traded on a "subject to availability" basis.

Trades will be cleared on an ex-clearing basis and will be settled in Fed Funds on a normal five-day delivery basis (i.e., regular way), except that if a trade should settle in the first ten days of a month, delivery will be made on the next business day following the 10th of the month. This exception, which conforms with practice in the over-the-counter dealer market is necessary because a part of each GNMA "pool" is amortized monthly and the exact value of a certificate cannot be determined until this "amortization factor" is published by GNMA on or before the 10th of each month.

Rule 140 obligates a Government Securities Dealer to maintain, insofar as reasonably practicable, continuous, fair and orderly markets in those actively traded Government securities admitted to trading on the Exchange. As Government dealers will be required under the Exchange's proposal to make a market only in current production GNMA coupons, a commentary is being added to Rule 140 stating that, in regard to GNMAs, "actively traded" refers only to current production coupons.

As mentioned above, it is proposed that all odd-lot GNMA trades be cleared on an ex-clearing basis. Article X, Section 2 of the Exchange Constitution authorizes such ex-clearing. However, an additional commentary will be added to Rule 140 making it mandatory to clear GNMA trades on an ex-clearing basis.

The balance of the new commentary to Rule 140 (i) accommodates the delay in the normal five-day delivery routine that may be occasioned as a result of the amortization feature in GNMAs, by requiring that trades settle regular way, except for those settling in the first ten days of a month, which must be settled

[1] Amex filing under Rule 17a-8 by letter dated December 12, 1974, approved by Commission on January 31, 1975.

[2] GNMAs are issued in minimum denominations of $25,000, but are usually traded in $1 million "pools". Therefore, GNMA trading in denominations from $25,000 to the $1 million required to form a "pool" are generally considered to constitute "odd-lots". Rule 120 specifies the unit of trading for Government securities on the Exchange as the minimum denomination in which such securities are issued.

on the next business day following the 10th of the month; and (ii) incorporates by reference the good delivery standards of the Mortgage-Backed Securities Dealers' Association.

The proposed amendments will enable the Exchange to add GNMA securities to its existing U.S. Government odd-lot program, consistent with Section 6(b) of the Act in general and Section 6(b)(1) in particular in regards to the development of a new market which will generate additional revenues to enable the Exchange to more effectively administer and regulate its markets.

Comments Received From Members, Participants or Others on Proposed Rule Change

Exchange representatives have conferred informally with many of the major GNMA dealers and have received a positive response from a substantial majority of these firms to the proposal to initiate odd-lot trading of GNMA securities. No formal comments were solicited.

Burden on Competition

The Amex has determined that no burden on competition will be imposed by the proposed rule change.

On or before August 3, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer periods to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 20, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

June 25, 1979.

[FR Doc. 79-20189 Filed 6-28-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 6082; 18-42]

Hewett Johnson Swanson & Barbee Retirement Plan; Filing of Application

June 21, 1979

Notice is hereby given that Hewett Johnson Swanson & Barbee (the "Applicant"), 4700 First International Building, Dallas, TX 75270, a law firm organized as a partnership under the laws of the State of Texas, has, on March 5, 1979, filed an application for exemption from the registration requirements of the Securities Act of 1933 ("Act") for participations or interests issued in connection with the Hewett Johnson Swanson & Barbee Retirement Plan (the "Plan"). All interested persons are referred to that document, which is on file with the Commission, for the facts and representations contained therein which are summarized below.

I. Introduction

Applicant states that Applicant has adopted the Plan to provide retirement, disability, and death benefits for its partners and employees. Applicant states that because the Plan covers persons (in this case, Applicant's partners) who are employees within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954 (the "Code"), the Plan is excepted from the exemption provided by Section 3(a)(2) of the Act for interests or participations in employee benefit plans of certain employers. Section 3(a)(2) of the Act provides, however, that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. Description of the Plan

Applicant states that the Plan is an employee benefit plan which was adopted on September 30, 1975, to be effective as of October 1, 1974, and amended effective October 1, 1977. Applicant further states that the Plan is qualified under Section 401(a) of the Code. The Plan covers all partners, associate attorneys and non-lawyer employees of Applicant, provided that the participant has first completed three years of service. As of September 30, 1978, the close of the Plan's last fiscal year, 17 partners, 7 associates, and 17 non-lawyer employees of the Applicant were eligible to participate in the Plan. The amendment to the Plan effective October 1, 1977, allows partners of Applicant otherwise eligible to participate in the Plan to elect not to have contributions made to the Plan on their behalf and not to participate in the Plan in a given fiscal year of the Plan. As of the date of the application, three partners have elected not to participate in the Plan in the current fiscal year.

The Applicant contributes to the Plan each year an amount equal to 7.5% of the first $100,000 of each eligible employee's salary to the Plan. Effective for the current Plan fiscal year and for subsequent fiscal years, such amount is subject to certain reductions relating to Social Security taxes and self employment taxes paid or to be paid by eligible employees. The Applicant's contribution to the Plan on behalf of each partner participating in the Plan who is also a participant in a similar plan of another unincorporated business, when added to contributions to such other plans on behalf of such a partner participant, may not exceed $7,500 and must be prorated between all plans in which such partner participates. Employees participating in the Plan may elect to contribute annually to their own accounts in the Plan amounts not exceeding 10% of their compensation (as defined by the Plan) in the year of the contribution. Owner-Employee participants (as defined in the Plan) may not make voluntary contributions in any year in which the Applicant makes Plan contributions only on behalf of Owner-Employees. The combined voluntary contributions of any Owner-Employee under the Plan and other similar plans in which such Owner-Employee participates may not exceed $2,500.

All contributions are paid to a trustee which receives and administers contributions to the Plan for the benefit of Plan participants. The trustee is First National Bank in Dallas. The Plan is administered by a committee which is presently composed of five partners of Applicant and the Legal Administrator of Applicant. The Committee is responsible for acquiring, managing and

disposing of the Plan's assets and to resolve disputes concerning the interpretation of the Plan. In addition, the Committee directs the trustee to make payments out of the Plan's assets. The Committee pursuant to the Trust Agreement appointed Trevor Stewart Burton & Jacobsen, Inc., a registered investment adviser under the Investment Advisers Act of 1940, as the Investment Manager to provide investment management services to the Committee and to act as the Committee's agent in purchasing, selling, and otherwise dealing in securities for the Plan's account, delegating to the Investment Manager the Committee' discretion over the Plan's investment decisions.

III. Discussion

Applicant states that if the partnership were a corporation, interests and participantions in the Plan would be exempt under Section 3(a)(2) of the Act. Applicant submits that merely because Applicant is unincorporated is no reason for subjecting such interests and participations to the registration requirements of the Act. Applicant further submits that the intent of Congress in excluding from the exemption plans in which self-employed persons were participants was to prevent the sale without registration of interests in prepackaged plans offered by financial institutions to self-employed persons lacking the sophistication to protect themselves and their employees, and that the provision permitting the Commission to grant exemption upon application was included in Section 3(a)(2) of the Act to make available an exemption for partnership plans where the plan and the entity involved are comparable to corporate plans exempted by Section 3(a)(2).

Applicant states that the Plan covers partners and employees of a single firm and is not a uniform prototype plan of a type designed to be marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons. Applicant represents that it has not distributed and does not intend to distribute any type of promotional material relating to the Plan (other than such material as Applicant is required under ERISA to distribute to participants or to employees) and has not made and does not intend to make any solicitation of voluntary contributions under the Plan. Applicant makes available to Plan participants for inspection, upon request and without charge, copies of the Plan and all documents relating to it.

Applicant states that it is engaged in furnishing legal services of a type which necessarily involves financially sophisticated and complex matters and, for that reason as well as the extensive administrative control over the Plan maintained by the Partnership, is able to represent adequately its interests and the interests of its employees who are participants in the Plan.

Applicant concludes that for the foregoing reasons, granting the requested exemptive order would be appropriate in the public interest, consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than July 16, 1979, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commision, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following July 16, 1979, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-20192 Filed 6-28-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 6083; 18-46]

Lord, Day & Lord Retirement Plan for Attorneys; Filing of Application

June 21, 1979.

Notice is hereby given that Lord, Day & Lord (the "Applicant"), 25 Broadway, New York, NY 10004, a law firm organized as a partnership under the laws of the State of New York, has, on March 26, 1979, filed an application for exemption from the registration requirements of the Securities Act of 1933 (the "Act") for interests or participations issued in connection with the Lord, Day & Lord Retirement Plan for Attorneys (the "Plan"). All interested persons are referred to that document, which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

I. Description and Administration of the Plan

The Plan covers Applicant's legal staff, of whom 91 attorneys were eligible to and did participate in the Plan during the last completed Plan year. Members of the legal staff are eligible to participate in the Plan if they are at least 25 years of age and have completed one year of service with Applicant. Applicant states that the Plan is of the type commonly referred to as a "Keogh" plan, which covers persons (in this case, Applicant's partners) who are employees within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954 (the "Code"), and therefore is excepted from the exemption provided by Section 3(a)(2) of the Act for interests or participations in certain employee benefit plans of corporate employers. Section 3(a)(2) provides, however, that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1), if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the Act.

Applicant states that the Plan was originally established on October 1, 1973 and was amended and restated in its entirety, effective as of January 1, 1975, in order to comply with the Employee Retirement Income Security Act of 1974

("ERISA"). The Internal Revenue Service has issued a ruling to the effect that the Plan, as so amended and restated, is a qualified plan under Section 401(a) of the Code. The Plan is an "employee pension benefit plan" subject to regulation by the Department of Labor under ERISA and is subject to the fiduciary standards and to the full reporting and disclosure requirements of ERISA. Applicant contributes to the Plan on behalf of participants out of its net earnings in amounts determined by a formula set forth in the Plan. Under the Plan, participants may make voluntary contributions to the Plan in amounts up to 10% of their compensation, subject to certain limits set forth therein.

Applicant states that Bankers Trust Company is the trustee (the "Trustee") for the Plan under an amended trust agreement (the "Trust Agreement"). Under the Trust Agreement the Trustee has the power in its sole discretion (subject to periodic review by the Plan's Retirement Committee) to invest and reinvest Plan assets in any permitted investments as provided therein.

II. Discussion

Applicant states that if its partnership were a corporation, interests or participations in the Plan would be exempt from registration under the Act pursuant to Section 3(a)(2). Applicant submits that merely because Applicant is unincorporated is no reason for subjecting such interests or participations to the registration requirements of the Act. Applicant further submits that the intent of Congress in excluding from the exemption plans in which self-employed persons are participants was to prevent the sale without registration of interests or participants in prepackaged plans offered by financial institutions to self-employed persons who might lack the sophistication to protect themselves and their employees, and that the provision permitting the Commission to grant exemptions upon application was included in Section 3(a)(2) to make available an exemption for interests or participations in partnership plans where the interests and participations are comparable to those in corporate plans exempted by Section 3(a)(2).

Applicant states that the Plan covers partners and employees of a single firm and is not a uniform proto-type plan of a type designed to be marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons.

Applicant represents that it has not distributed and does not intend to distribute any type of promotional material relating to the Plan (other than such material as Applicant is required under ERISA to distribute to participants or to employees) and has not made and does not intend to make any solicitation of voluntary contributions under the Plan. Applicant makes available to Plan participants summary annual reports concerning the Plan.

Applicant states that, given its experience in dealing with sophisticated financial matters in the course of furnishing legal services to its clients and its administrative control over the Plan, it is able to represent adequately both its own interests and the interests of participants in the Plan.

Applicant concludes that for the foregoing reasons, granting the requested exemptive order would be appropriate in the public interest, consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than July 17, 1979 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication shall be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following July 17, 1979, unless the Commission thereafter orders a hearing, upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-20191 Filed 6-28-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21111 (70-6324)]

National Fuel Gas Co., and National Fuel Gas Distribution Corp.; Proposed Issuance and Sale at Competitive Bidding of Sinking Fund Debentures by Holding Company and Loan to Subsidiary

June 20, 1979.

In the matter of National Fuel Gas Company, 30 Rockefeller Plaza, New York, New York 10020, and National Fuel Gas Distribution Corporation, 10 Lafayette Square, Buffalo, New York 14203.

Notice is hereby given that National Fuel Gas Company ("National"), a registered holding company, and its wholly owned subsidiary company, National Fuel Gas Distribution Corporation ("Distribution Corporation") have filed an application declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 23, 42, 43, 45 and 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

National proposes to issue and sell at competitive bidding to the public in August 1979 not to exceed $40,000,000 principal amount of its ——% Sinking Fund Debentures, Series due 1999 ("Debentures"). The price paid to National exclusive of accrued interest, if any, shall be not less than 99%, nor more than 102% of the principal amount thereof. The Debentures will be issued under an indenture dated as of October 15, 1974, as heretofore supplemented, and as it will be supplemented by a proposed Second Supplemental Indenture thereto.

The proposed Second Supplemental Indenture will provide that none of the Debentures shall be redeemed prior to the 1st day of August 1984, if such redemption is for the purpose or in anticipation of refunding the Debentures through the use directly or indirectly of funds borrowed by National at an effective interest cost to the Company (calculated in accordance with generally

acceptable financial practice) of less than the effective interest cost of the Debentures. Otherwise, the Debentures will be redeemable in whole or in part, at any time or times, at the option of National, on 30 days notice, upon payment of the applicable percentage of the principal amount so redeemed, together in each case with interest accrued thereon to the redemption date. A sinking fund will be provided to redeem $2,650,000 of the Debentures on or before August 1 of each year, commencing with the year 1985 to and including the year 1998. The balance of the Debentures will be redeemed on or before August 1, 1999.

From the proceeds of the sale of the Debentures, National proposes to prepay a $4,500,000 short-term unsecured note held by Chase Manhattan Bank, N.A. ("Chase") and described more fully in this Commission's order dated March 26, 1979 (HCAR No. 20974), and National also proposes to lend $35,500,000 to Distribution Corporation in exchange for long-term unsecured notes issued by Distribution Corporation. Such notes will be dated as of the date of issue, will bear interest payable semiannually at the effective interest cost of the Debentures rounded to the next highest multiple of 1/10 of 1%, will mature serially, one year in advance of the related sinking fund obligation for the Debentures, and will be prepayable at any time, in whole or in part, without penalty or premium. Distribution Corporation proposes to use the proceeds from the sale of such notes to prepay a $14,000,000 short-term unsecured note held by National as described more fully in this Commission's order dated May 9, 1978 (HCAR No. 20540), and National will then use such $14,000,000 to prepay an equal amount of its short-term notes held by Chase; Distribution Corporation proposes to use the balance of the loan ($21,500,000) for its 1979 construction program.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. The Public Service Commission of New York and the Pennsylvania Public Utility Commission have jurisdiction over the issuance and sale of certain notes by National Fuel Gas Distribution Corporation. No Federal commission and no other State commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than July 19, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-20136 Filed 6-28-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15943; File No. SR-PSE-79-6]

Pacific Stock Exchange, Inc., Self-Regulatory Organization; Proposed Rule Change

June 21, 1979.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on May 22, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Pacific Stock Exchange, Inc., Statement of the Terms of Substance of the Proposed Rule Change[1]

The Pacific Stock Exchange Incorporated ("PSE") hereby requests to amend Options Floor Procedure Advice G-3 as follows (brackets indicate deletions, italics indicate new language):

PSE Options Floor Procedure Advice G-3; Trade Comparison Procedures

Section 23 of Rule VI requires clearing members to promptly verify and reconcile [contract] *compared* and uncompared trade lists in accordance with procedures established by the Exchange from time to time. The unique Trade Comparison System that has been developed by the exchange for use on the Options Trading Floor will, if properly employed, ensure mutually satisfactory comparison of all transactions in the afternoon of each trading day.

The great majority of trades can be routinely compared during the course of the trading session, but appropriate provisions must exist for exceptions arising from unusual volume or similar considerations.

Accordingly, all executing members must be available for the settlement of uncompared trades for an appropriate period of time following the close of trading, either in person or through a designated representative empowered to negotiate settlement of any dispute in his name and for his account.

Unless the Exchange determines otherwise due to extenuating circumstances, this time period will normally be the longer of one hour following distribution of the Preliminary Compared and Uncompared Trade Reports, or whenever all out-trades have been resolved by the respective members. *For purposes of complying with this provision, all executing members or their representatives shall be required to provide a record of attendance during this period for use by the Exchange in monitoring compliance with the comparison procedures. To accomplish this monitoring function, Exchange provided time cards must be stamped and signed by an authorized representative at the time Preliminary Compared and Uncompared Trade Reports are distributed and upon completion of trade checking procedures. The authorized representative must be physically present on the trading floor during this time.*

The Options Floor Trading Committee has determined that there will be a fine of *from* $100.00 *to $5,000.00* for failure to comply with these procedures *(except*

[1] The PSE has informed the Commission that, prior to the imposition of a fine pursuant to this rule, members will be afforded an opportunity for a hearing in accordance with the provisions of Section 6(d)(1) of the Securities Exchange Act of 1934. The PSE has also informed the Commission that it will file with the Commission an amendment to this rule, which will set forth specifically the disciplinary procedures to be followed in imposing a fine, as required by Section 6(b)(7) of the Securities Exchange Act of 1934.

for time-stamp violations, when the amount will be determined by the Options Floor Trading Committee upon recommendation from the Operations Advisory Subcommittee). Subsequent violations of these procedures may be cause for higher fines or other disciplinary actions.

While there may be occasional instances when a trade must remain uncompared overnight, and be resolved in conformance with Section 27 of Rule VI, any member or member organization who or which shall be responsible for an undue number of such occurrences will be subject to disciplinary action by the Options Floor Trading Committee.

Pacific Stock Exchange, Inc., Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to assure that members or their authorized representatives are present at trade checking sessions.

The proposed rule change promotes just and equitable principles of trade and fosters greater accuracy in the trade comparison process and therefore assures that trading in securities listed on the Pacific Stock Exchange will be facilitated.

Comments have neither been solicited nor received from members on the proposed rule change.

The proposed rule change imposes no burden upon competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 20, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

June 21, 1979.

[FR Doc. 79-20103 Filed 6-28-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15947; File No. SR-PSE-79-9]

Pacific Stock Exchange, Inc., Self-Regulatory Organization; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), (the "Act"), notice is hereby given that on June 4, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange, Incorporated ("PSE"), hereby requests to amend Rule I, Sections 3(b) and 3(e) as follows (italics indicate additions and brackets indicate deletions):

Rule I—Dealings Upon the Exchange Listing

Sec. 3(b). All applications for admitting securities to the list shall be in the form prescribed by the Board. In order for the securities of any class to be considered for listing, the issuer shall have *equal voting rights per share for shareholders in each class of Common Stock, and;*

Common Stock

* * * * *

5. Stockholder approval be obtained for:

(a) Options or remuneration plans substantially affecting rights of shareholders;

(b) *A transaction to which the company is a party which results in* [C]change in control of company; and

(c) Acquisitions:

(1) Direct or indirect, from a director, officer, or substantial security holder;

(2) Potential issuance of a security resulting in a 20% increase of the outstanding Common Stock; or

(3) Consideration paid has fair value of 20% market value of outstanding Common Stock.

Warrants

* * * * *

5. The issuer has a class of equity security held by 500 or more persons.

Preferred Stock and Similar Issues

* * * * *

6. The issuer has a class of equity security held by 500 or more persons.

7. The issuer has total assets exceeding $1,000,000.

Bonds

* * * * *

5. The issuer has a class of equity security held by 500 or more persons.

6. The issuer has total assets exceeding $1,000,000.

The above standards are general guidelines for eligibility. However, the Exchange may give more weight to certain of these standards than others and judge the qualification on the merits of each applicant.

Delisting Standards

Sec. 3(e). *The Exchange does not rate or evaluate any security dealt in on the Exchange. In making a determination concerning listing and delisting it acts normally upon information furnished it by the issuer, and it does not verify this information from independent sources or gather independent information about the issuers whose securities are dealt in on the Exchange. As a matter of policy,* [T]the securities of a company will be subject to suspension and/or withdrawal from listing and registration as a listed issue if any or all of the following conditions [develop] *are found by the Exchange to exist:*

Common Stock

* * * * *

5. Total assets are less than $1,000,000.

6. Sustained loss so that financial condition becomes so impaired that it is questionable to the Exchange whether the company can continue operations and/or meet its obligations as they mature.

Preferred Stock and Similar Issues

* * * * *

4. The issuer does not have a class of equity security held by 500 or more persons.

5. The issuer does not have total assets of at least $1,000,000.

Bonds

* * * * *

2. The issuer does not have a class of equity security held by 500 or more persons.

3. The issuer does not have total assets of at least $1,000,000.

Warrants

1. The issuer does not have a class of equity security held by 500 or more persons.

2. The issuer does not have total assets of at least $1,000,000.

Purpose of the Proposed Rule Change

PSE states that the purpose of the proposed rule change is to bring the exchange's listing and delisting requirements into conformity with various state securities laws which may enable issuers of securities listed on the PSE to avail themselves of certain exemptions from registration under state securities laws.

Statutory Basis for the Proposed Rule Change

The proposed rule change is intended to foster cooperation and coordination with persons engaged in regulating and facilitating transactions in securities and to protect investors and the public interest by promulgating listing standards which may result in the elimination of duplicate regulation without sacrificing the benefits of regulation. Accordingly, PSE cites Section 6(b)(5) of the Act as the statutory basis for this proposed rule change.

Comments Received From Members, Participants and Others on the Proposed Rule Change

PSE states that comments have neither been solicited nor received on the proposed rule change.

Burden on Competition

PSE states that the proposed rule change will impose no burden upon competition.

On or before August 3, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 20, 1979.

For the Commission by the Division of Market Regulation, Pursuant to delegated authority.

George A. Fitzsimmons

Secretary.

June 25, 1979.

[FR Doc. 79-20190 Filed 6-28-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21109; 70-5648]

Public Service Co. of Oklahoma and Transok Pipe Line Co.; Proposed Extension of Authorization To Make Loans From Parent Company to Subsidiary Pipeline Company

June 20, 1979.

Notice is hereby given that Public Service Company of Oklahoma ("PSO"), P.O. Box 201, Tulsa, Oklahoma 74102, an electric utility subsidiary of Central and South West Corporation ("CSW"), a registered holding company, and Transok Pipe Line Company ("Transok"), P.O. Box 3008, Tulsa, Oklahoma 74101, a subsidiary pipeline company of PSO, have filed a post-effective amendment to their application-declaration, previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act, and Rules 43 and 45 promulgated thereunder, as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as amended by the post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By an order issued November 17, 1977, (HCAR No. 20260), PSO was authorized to make short term loans to Transok in an aggregate principal amount outstanding at any one time not to exceed $21,000,000, such loans to mature not later than June 30, 1979.

PSO and Transok in this post-effective amendment propose that the Commission (i) extend the authorization for short-term borrowings to Transok by PSO through December 31, 1980, (ii) increase the aggregate limitation on such borrowings to $35,500,000 and (iii) amend the interest rate applicable to such borrowings.

PSO and Transok state that the short-term loans will be used to finance Transok's continuing construction program, to add to Transok's general working funds and, if necessary, to retire Transok's First Mortgage Pipe Line Bonds, due November 1, 1980.

The interest rate currently applicable on any one day to Transok's outstanding borrowings from PSO is equal to the daily average interest rate then being paid by PSO for its short-term borrowings. If at any time PSO has no short-term borrowings outstanding, the loans bear interest at the prime rate for commercial loans then in effect at the First National Bank and Trust Company of Tulsa. The prime rate at the First Natonal Bank and Trust Company of Tulsa has not been representative of PSO's actual borrowing costs. In order to provide an interest rate more representative of PSO's actual borrowing costs during periods when PSO has no short-term borrowings outstanding, Transok requests that loans to it from PSO during such periods bear interest at the rate published in *The Wall Street Journal* for commercial paper placed directly by a major finance company and having terms most nearly equal to the terms of the loans.

It is stated that the fees and expenses to be incurred in connection with the proposed transaction are estimated at $600, including legal fees of $500. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction with respect to the proposed transaction.

Notice is further given that any interested person may, not later than July 12, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses and proof of service

(by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by the post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons

Secretary.

[FR Doc. 79-20193 Filed 6-28-79; 8:45 am]

BILLING CODE 8010-11-M

[Release No. 10744, (812-4476)]

United Cash Management, Inc.; Filing of Application Pursuant to Section 6(c) of the Act for an Order of Exemption From Rules 2a-4 and 22c-1 Thereunder

June 20, 1979.

In the matter of United Cash Management, Inc., One Crown Center, Kansas City, Missouri 64141.

Notice is hereby given that United Cash Management, Inc. ("Applicant"), an open-end diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on May 17, 1979, and an amendment thereto on June 7, 1979, for an order pursuant to Section 6(c) of the Act exempting Applicant from the provisions of Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to compute its price per share for the purposes of sales and redemptions of its shares to the nearest one cent on a share value of one dollar. In all respects, portfolio securities held will be valued in accordance with the views set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("IC-9786"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it expects to operate as a "money-marker" fund whose investment objective is maximum current income and stability of principal. Its portfolio may, as a matter of fundamental investment policy, be invested only in United States Government or agency obligations, bank obligations and instruments secured by them, commercial paper, certain corporate debt obligations and certain other obligations meeting specified tests and that all of its portfolio obligations must mature in, or have been called for redemption within twelve months from the date of purchase or be subject to repurchase agreements maturing within one year.

Applicant states that it expects that, as a result of rounding its net asset value per share to the nearest $0.01 on a $1.00 price, Applicant's price per share for the purpose of sales and redemptions should remain at $1.00, but that this might not be the case in the absence of such rounding (*i.e.*, if Applicant is required to value its shares at a 1/10 of 1% accuracy under IC-9786).

Applicant represents that it expects that its shareholders will use its shares for investment of cash reserves or temporary cash balances and that the maintenance of a constant net asset value per share will be a crucial factor in their purchase and holding of Applicant's shares. By meeting the conditions set forth below and by valuing its shares to the nearest one cent on a share value of one dollar, Applicant states that it believes that it can maintain a constant value for its shareholders along with full liquidity and a satisfactory yield.

Rule 22c-1 under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security except at a price which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 under the Act provides, as here relevant, that "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets, fair value as determined in good faith by the board of directors of the registered company. In IC-9786, the Commission expressed its view that it is inconsistent with Rule 2a-4 for certain money market funds to "round off" calculations of their net asset value per share to the nearest one cent on a share value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a-4.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act and the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant asserts that the issuance of the requested order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant further asserts that its shareholders who purchase with the expectation of realizing the objective of maximum current income and stability of principal would be unfairly treated if the net asset value of their shares were to deviate from $1.00 per share. Applicant also submits that Applicant's adherence to the conditions set forth below will substantially reduce the likelihood of significant variation from a constant share price and the likelihood of any dilution of the assets and returns of incoming or outgoing shareholders.

Applicant represents that, to the extent necessary, its board of directors will consider the advisability of temporarily suspending the payment of dividends or making a capital gains distribution (if and to the extent that capital gains have not been reflected in prior dividends) to maintain a $1.00 price per share if the net asset value per share declines to a value below $0.997 or rises to a value of above $1.003, respectively. Applicant also represents that in order to attempt to assure the stability of its net asset value per share, it will (so long as it utilizes the method contemplated by the requested order in computing its net asset value per share rather than the method contemplated by IC-9786) also adhere to the following conditions:

(1) Applicant's board or directors, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertakes—as a particular responsibility within its overall duty of care owed to Applicant's shareholders—

to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objectives, that Applicant's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from $1.00;

(2) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and Applicant will not (i) maintain a dollar-weighted average portfolio maturity in excess of 120 days; or (ii) purchase a portfolio security unless it matures, or has been called for redemption, in one year or less, or is subject to a repurchase agreement so maturing, or is subject to a guarantee due within one year. In the case of a security called for redemption in one year or less, the risk that such redemption will not take place shall have been determined by Applicant's investment adviser to be minimal. In the case of a security subject to a repurchase agreement, such repurchase agreement shall be with a financial institution believed by Applicant's investment adviser to present minimal credit risks. In the case of a security subject to a guarantee, the risk that the guarantee will not be timely paid shall have been determined by Applicant's investment adviser to be minimal.

(3) Applicant will invest only in (i) obligations issued or guaranteed by the U.S. Government or its agencies or instrumentalities; (ii) time deposits, certificates of deposit, bankers' acceptances and other bank obligations (or instruments secured by such obligations) provided that the issuing bank has at least $1,000,000,000 in assets and is subject to regulation by the United States Government (including foreign branches of such banks); (iii) commercial paper rated A-1 or A-2 by Standard & Poor's Corporation ("S&P") or Prime-1 or Prime-2 by Moody's Investors Service, Inc. ("MIS"), or if not rated, issued by a corporation in whose debt obligations Applicant may invest; (iv) corporate debt obligations if they are rated at least A by S&P or MIS; and (v) obligations other than those listed in (i) through (iv) only if such other obligation is guaranteed as to principal and interest by either a bank in whose obligations Applicant may invest or a corporation in whose commercial paper Applicant may invest.

Notice is further given that any interested person may, not later than July 16, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-20137 Filed 6-28-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15940]

National Securities Clearing Corp.

June 20, 1979.

In a letter dated March 15, 1979, to National Securities Clearing Corporation ("NSCC") (Securities Exchange Act Release No. 15640), the Commission requested that NSCC submit written statements on its views and arguments concerning the two issues remanded for further study and explication by the United States Court of Appeals for the District of Columbia Circuit in the *Bradford* case.[1] Those issues were NSCC's use of the pricing policy known as geographic price mutualization and NSCC's selection, without competitive bidding, of the Securities Industry Automation Corporation as facilities manager of its consolidated system.

On April 20, 1979, the Commission received a letter from NSCC containing a report on one of those issues, geographic price mutualization. That letter was published as Securities Exchange Act Release No. 15760 (April 24, 1979). On June 15, 1979, the Commission received another letter from NSCC containing its report on the competitive bidding issue. As discussed in Securities Exchange Act Release No. 15640 (March 14, 1979), the Commission urges interested persons to examine and comment upon NSCC's reports.

Comments should be sent to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and should refer to File No. 600-15. The comment period expires July 27, 1979.[2]

The text of NSCC's letter containing its report on the competitive bidding issue follows:

June 14, 1979.

Mr. George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549.

Re: *File No. 600-15.*

Dear Sir: National Securities Clearing Corporation ("NSCC") submits this letter in response to the questions raised by the Commission in Securities Exchange Act Release No. 15640 and in the accompanying letter to NSCC regarding NSCC's selection, without competitive bidding, of the Securities Industry Automation Corporation ("SIAC") as facilities manager for NSCC's consolidated system.

Introduction

In *Bradford National Clearing Corporation et al. v. Securities and Exchange Commission et al.*, Nos. 77-1199 and 77-1547 (D.C. Cir., Sept. 19, 1978), the Court of Appeals for the District of Columbia Circuit remanded the issue of selection of SIAC without competitive bidding to the Commission with instructions "to consider whether the SIAC contract has anticompetitive impacts, and, if so, whether they are justifiable in terms of the overall balance of benefits and anticompetitive effects that it has otherwise calculated in a salutary manner" (Op., p. 57). The Court did not make any determination as to whether competitive bidding should or should not be employed by NSCC. Indeed, it stated that it did not find the Commission's decision not to require competitive bidding to be inherently unsupportable (Op., p. 55). Rather, it asked the Commission only to examine the competitive ramifications of competitive bidding and weigh them against the other goals of importance under Section 17A of the Securities Exchange Act.

NSCC believes that the two-pronged analysis sought by the Court of Appeals yields the following conclusions. First, as discussed fully below, competitive bidding is not likely to promote competition in any meaningful way, because, among other things, of the necessarily infrequent occasions on which such bidding could be allowed consistent with the continued safe

[1] *Bradford National Clearing Corporation et al. v. Securities and Exchange Commission et al.*, 590 F.2d 1085 (D.C. Cir. 1978).

[2] The comment period on these two issues was extended to July 27, 1979 by Securities Exchange Act Release No. 15882 (May 30, 1979).

and efficient operation of NSCC's clearance system and because of the absence of appropriate potential bidders. Second, whatever slight pro-competitive effect competitive bidding could possibly be projected as having is far outweighed by the disruptive effects that the imposition of a requirement for competitive bidding would have on the fulfillment of NSCC's plans to complete the consolidation of its system and the unacceptable costs and risks that would occur on any transition at this stage to a new securities processor having no experience with the operation of NSCC's clearance system.

In light of these conclusions, NSCC believes that the method by which it conducts its securities processing operations is in the first instance a decision that should be made by NSCC itself, on the basis of its informed judgment and experience with the operation of its clearance processing system. Whether such operations are conducted in whole or in part by NSCC itself, or are delegated in whole or in part to a facilities manager, is a decision that NSCC through its user Board of Directors should be permitted to make, under appropriate oversight by the Commission. So too, if NSCC chooses to use a facilities manager for any portion of its operations, it should be NSCC's decision how that facilities manager is to be selected, whether by competitive bidding, a negotiated contract, or any method embodying elements of both approaches.

These basic beliefs, rooted in the essentially technical and operational considerations underlying any decision about the way in which clearance processing is to be conducted, are the source of NSCC's position on the issue of competitive bidding. Competitive bidding may, under certain circumstances, be an appropriate method for selecting a facilities manager to conduct at least a part of NSCC's securities processing functions. It was not, however, appropriate when SIAC was originally selected as facilities manager for the combined NSCC system, it is not necessary now and it should not be mandated as a legal requirement to be imposed inflexibly without regard to the needs and desires of NSCC's participants at any specific time. The choice to use competitive bidding, in short, should be made by NSCC's user Board, subject to review by the Commission in the exercise of its broad responsibilities of statutory oversight; it should not be imposed as a requirement of law.

The Commission Correctly Approved NSCC's Original Selection of SIAC Without Competitive Bidding

A. SIAC could best assure a safe, efficient transition to a consolidated system.

At the time of NSCC's creation, SIAC offered the best means of making a smooth, safe transition to a consolidated system for clearance of both listed and OTC transactions. SIAC was already providing safe and efficient clearance processing services on a cost basis for approximately 85 percent of the total volume of cleared securities that would be handled in the future combined system. In the context of the initial transition to a combined system, pure price competition between facilities managers was necessarily of less concern than accomplishing the transition safely and with minimal disruption and expense to participants, particularly given the enormous potential magnitude of such expense in the event of any breakdown occurring during the conversion process. SIAC, which was and is a cost-based service agency to the securities industry, met the paramount needs for safety and efficiency better than any other theoretical alternative.

The fact that SIAC, like NSCC, has a user Board drawn from the same participant base as NSCC's Board assured responsiveness to the needs of NSCC's participants during this transition and afterward. SIAC's user-controlled non-profit status means that it can employ an innovation that increases it own costs while reducing by a greater amount the back office clearing costs of NSCC's participants—since both NSCC and SIAC are non-profit organizations run for the benefit of their users, they each have an incentive to adopt any innovation that yields net participant savings. Conversely, SIAC had no incentive, as would a privately owned facilities manager whose ultimate responsibility and loyalty is to its own stockholders, to sacrifice considerations of safety and efficiency in order to increase or preserve its own revenue base, a danger which would have been particularly great where a privately owned processor was employed on a fixed fee basis.

Moreover, at the time it was selected, SIAC was experienced in operating SCC's CNS system, which was superior to the NCC system run by Bradford National Corporation and which, unlike the NCC system, provided for same-day turnaroud. Since the SCC system would be retained as the basic means of processing in the consolidated NSCC system, SIAC's experience with that system made its selection as facilities manager for the combined system particularly appropriate.

B. *No other potential qualified bidder then existed.*

The only entity other than SIAC to express a desire to bid for the NSCC facilities management contract was Bradford. Although Bradford's performance as NCC facilities manager had not yet registered the drastic decline in quality that was later to occur,[3] it did not appear that Bradford had either the resources or the ability to run the combined system with suitable safety and efficiency. Under these circumstances, NSCC would have taken an unjustifiable and unnecessary risk in entrusting its facilities management contract to the processor of 15 percent of its then current volume, when the processor of 85 percent of its volume stood ready and willing to take on this function.

[3] This decline was itself confirmation of the correctness of NSCC's original choice.

Retention of SIAC Continues to be Appropriate at this Time.

At the present time, SIAC continues to provide NSCC and its participants with a high level of service at significantly reduced costs. Under these circumstances, there is no reason to require NSCC at present to reopen its facilities management arrangements. On the contrary, a change in facilities manager at this time would impose unnecessary transition costs and risks on NSCC and its participants without regard to the changing operations needs of the system. Such a change at this time would also impede NSCC's progress toward consolidating its sytem and expanding access to the national clearance and settlement system in fulfillment of the goals of the 1975 Amendments.

The current advantages of retaining SIAC are numerous.

(i) *SIAC is a recognized industry resource.*

SIAC is a recognized industry resource, which not only serves NSCC, but also provides securities processing services to the New York and American Stock Exchanges, ancillary services to regional clearing corporations, and processing services to Options Clearing Corporation. SIAC is also directly involved in the implementation of the national market system through the development of new systems for the New York and American Stock Exchanges and industry-wide systems such as ITS. Its close involvement with these systems is of significant benefit to NSCC in seeing to it that developments in the trading area and in clearing procedures are properly synchronized with one another.

The broad range of SIAC's activities, and the experience in securities processing that it derives from these activities, also gives a unique depth to SIAC's ability to serve NSCC. In particular, this depth has given SIAC a "back-up" capacity that has enabled NSCC to handle significant increases in volume efficiently and safely.

(ii) *Because SIAC provides a high quality of service, there is no justification for incurring the costs of transition to a new facilities manager at this time.*

Any replacement of one facilities manager by another necessarily involves transition costs and risks. Acceptance of these costs and risks can be justified if they are outweighed by demonstrable benefits to be achieved by the transition. But NSCC and the securities industry should not be compelled to take on these costs and risks solely to promote the theoretical benefits which others have contended may flow from having competitive bidding. As long as SIAC continued to provide a high level of service, the smooth functioning of NSCC's clearance operations should not be needlessly disrupted.

(iii) *NSCC's present need is to complete the full consolidation of its system, not to change facilities managers.*

The most immediate challenge that currently faces NSCC is to complete the full consolidation of its system to achieve the expanded access goals of the national clearance and settlement system. Thus, in completing the move to Phase II operations,

NSCC must expand its branch network, perfect its rules, work with other clearing agencies in the interface and other areas, and generally consolidate its operations. A change to a new facilities manager, with the attendant transition costs and risks and the attendant diversion of NSCC's management resources, would thus at this time be particularly unnecessary and inappropriate.

(iv) *The present SIAC contract gives NSCC great flexibility in changing its facilities management arrangements in the future.*

The contract between NSCC and SIAC is designed to give NSCC maximum flexibility in changing its facilities management arrangements if retention of SIAC becomes inappropriate. As the Commission noted in its order granting NSCC's registration (Exchange Act Release No. 13163, pp. 101–103), the SIAC contract includes a buy-out provision permitting NSCC to replace SIAC unilaterally at any time after the second year. The Commission also noted that the contract with SIAC gave NSCC expanded rights to monitor SIAC's performance and cost allocations. The SIAC contract also provides that in the event NSCC does exercise its right of termination, SIAC's must use its best efforts to facilitate the absorption by NSCC or by SIAC's successor of the SIAC personnel previously used by SIAC in its clearance processing operation for NSCC, thus facilitating a smooth transition to a new processor after SIAC's termination. This feature of the contract gives NSCC further freedom to terminate SIAC if circumstances make such termination appropriate.

The total effect of these provisions is to give NSCC complete flexibility to alter its facilities management arrangements in response to changed circumstances. The decision to exercise these rights, however, should remain with NSCC's user Board; it should not be required to change facilities managers, despite satisfactory performance by SIAC, simply to afford an opportunity for competitive bidding.

Any Future Decision by NSCC To Use Competitive Bidding Should Be Made in Response to the Needs and Desires of NSCC's Participants and the Operational Needs of NSCC's System, and Not Because Competitive Bidding Has Been Mandated

NSCC does not rule out the possibility that at some future time competitive bidding could be appropriately used to select a facilities manager for some or all securities processing functions currently performed by SIAC. But any decision to use competitive bidding must be made as a result of the exercise of the informed judgment of NSCC's user Board, which is familiar with the daily operational details of NSCC's clearance system, and not as a result of a legal mandate imposed without regard to changing circumstances or operational realities. Since, as discussed more fully below, the absence of competitive bidding cannot be shown to have significant anti-competitive effects, decisions as to its use should be left to NSCC.

These principles furnish the underpinnings of NSCC's answers to the specific questions posed by the Commission. While competitive bidding may be appropriate under certain circumstances, it is plainly not so uniformly desirable or advantageous as to make its use a legal or operational necessity. On the contrary, the following answers to the questions raised by the Commission support NSCC's position that any use of competitive bidding should be discretionary, to be undertake only on the basis of an informed decision by NSCC's user Board after all relevant factors have been weighed.

Question 1(a) and (b) (Exchange Act Release No. 15640)

NSCC is not aware of any existing potential qualified bidder for the NSCC facilities management contract at this time.

There is no evidence of the existence at this time of an entity that is qualified, using its own resources, to take on the responsibility of processing clearance for NSCC in a manner that is safe, efficient and responsive to participants' needs. Indeed, the only entity other than SIAC to have ever expressed an interest in acting as NSCC's facilities manager was Bradford and as the Commission is well aware, Bradford's argument for competitive bidding was largely a stalking horse for its desire to retain its lucrative contractual position as processor for the old NCC.

It is, of course, possible to imagine a hypothetical bidder which would simply assimilate SIAC's present personnel and hardware after a successful bid. A change of this sort, however, would be only a change in management, which would be pointless at this time.

The time, expense and effort involved in holding a bidding procedure that would result merely in changing the nameplate on the door of SIAC's facility cannot presently be justified.

Question 1(c) (Exchange Act Release No. 15640)

It would be undesirable for NSCC to make frequent changes in facilities managers, regardless of the means of selection employed.

NSCC could not function effectively if it were required to make frequent changes in its facilities manager. Such changes would impose significant costs, resulting both from NSCC's obligation to buy out the manager being replaced and from the increased administrative costs that would be entailed by the selection of a new manager and the supervision of the transition from one manager to the other. Such changes would also create substantial risks of disruption of services to participants during the changeover periods. Thus, assuming continued satisfactory performance by an incumbent facilities manager, there would be no benefit, and substantial unnecessary costs, in frequent turnover of facilities managers, regardless of the means of selection employed.

Question 2(a) (Exchange Act Release No. 15640)

Competitive bidding for the NSCC facilities management contract would not necessarily reduce costs to participants.

The economic rationale for competition is that it promotes efficiency and thereby reduces costs for the ultimate consumers of the goods or services being offered by competing entities. Competitive bidding for the NSCC facilities management contract, however, would not necessarily produce significant savings for NSCC participants, the ultimate consumers of clearance processing services. A low bidder working on a fixed price or costplus basis would have little incentive to incorporate innovations that would result in participant savings, unless the innovation also happened to reduce the processor's own costs or increase its revenues. NSCC would also have less influence with such a profit-making entity to effect allocation of resources to generate participant savings than it now has with SIAC as an industry controlled, non-profit service agency. It is problematic whether an "invisible hand" would operate in the context of securities processing to transmute a private facilities manager's quest for greater revenue into benefits to the brokerage community.

In addition, NSCC's past experience with Bradford as a private facilities manager suggests that the effect of employing such an entity may well be to increase participants' costs incurred in connection with the replacement of one manager by another. Just as Bradford strenuously resisted being replaced, and thereby caused NSCC and its participants to incur both direct costs of litigation and settlement and indirect costs through diminished service during the period when replacement was being sought, so might a future private organization in Bradford's position likewise force NSCC to incur unnecessary replacement costs.

Question 2(d) (Exchange Act Release No. 15640)

Competitive bidding for the NSCC facilities management contract would not increase competition among facilities managers.

Competitive bidding would not significantly increase competition among securities processors, since it would merely be the means of selecting a single processor for the term of the contract. Moreover, as suggested in the response to Question 1(c), the NSCC facilities management contract must necessarily be a long-term contract in order to minimize disruptions and transition costs that would attend frequent shifts in facilities manager. The infrequent intervals at which bidding could occur make it highly unlikely that the possibility of such bidding would encourage meaningful competition.

This conclusion is supported by the experience of the clearing industry to date, where "competitive bidding", in the sense of two or more qualified competitors submitting bids to do identical jobs according to identical specifications, with the low bidder winning the contract, has not played a significant role. Thus, contrary to what the Court of Appeals erroneously assumed in the *Bradford* case (Op., p. 18, n. 14, p. 57 n. 45), the facilities management agreement entered into between NCC and Bradford in 1974 was *not* awarded through competitive bidding, nor did Bradford "underbid" SIAC for that contract as the Court stated. The testimony

before the Commission at the June 1976 hearings on NSCC's registration shows that when NCC decided to turn to an outside facilities manager in 1974 after a period of serious clearing losses, it traded off a guarantee against loss, which Bradford offered, against the possibility offered by SIAC's cost-based proposal of greater participant savings in times of healthy securities markets and higher trading volume (Transcript of June 1976 hearings, pp. 83–86). It was Bradford's guarantee of a minimum payment to NCC, regardless of the volume of cleared securities, that led NCC to award the contract to Bradford, and not a "lower bid" in the usual sense of the word. In fact, since trading volume increased after 1974, NCC and later NSCC ended up foregoing substantial savings (which would have been passed on to their participants), and encountered less than satisfactory service, by choosing Bradford rather than SIAC.[4]

This is not to say that the potential for competition by another entity may not have a salutary effect on the performance of an incumbent facilities manager. But under these circumstances, it is the possibility of replacment that provides the spur to efficient performance, rather than competitive bidding *per se* as the particular means by which replacement might be effected. As discussed above (pp. 5–6), NSCC already possesses the power to terminate its present facilities manager unilaterally, and would expect to retain such flexibility in any succeeding facilities management agreement.

Questions 2(b) and (c) (Exchange Act Release No. 15640)

Competitive bidding would not promote competition among broker-dealers or among clearing agencies.

If competitive bidding did increase competition among securities processors, it might be argued that some of the savings that might arguably flow from such competition might be passed on to brokers or clearing agencies. Since there is no meaningful connection between competitive bidding and competition among securities processors, however, it is equally apparent that no benefit to brokers or clearing agencies can be expected to result from competitive bidding for the NSCC facilities management contract.

Moreover, even if savings were reasonably to be expected from competitive bidding, no immediately aparent connection between such savings and broker-dealer competition can be shown, since such savings would presumably be passed on proportionately to all brokers who are members of NSCC.

Question 2(e) (Exchange Act Release No. 15640)

Competitive bidding would tend to work against the goals of protection of funds and securities in the clearance and settlement process.

Competitive bidding tends, by and large, to be ill-suited to the structure of the clearing industry and the nature of securities processing. First, the complexity of securities processing poses practical problems in generating specifications that would adequately cover all of the manifold tasks that a facilities manager for a clearing agency must perform. Second, and more important, the inevitable tendency of competitive bidding to emphasize price as a determinative consideration works against the paramount systemic goals of safety and service quality. A competitive bidder, particularly one with a fixed price contract, would have every economic incentive to sacrifice quality to profit-making, to the possible detriment of the safe functioning of the national clearance and settlement system. Finally, a whole host of non-price related factors should go into the selection of a facilities manager, which a competitive bidding procedure would inevitably downplay. Such intangibles as ability to establish good working relationships between a facilities manager and participants' operational personnel and experience in securities processing would tend to be given insufficient weight in a selection process based on the lowest bid.

Question 2(f) (Exchange Act Release No. 15640)

Competitive bidding is neither required by nor likely to further the objectives of Section 17A of the Securities Exchange Act of 1934.

A. *The 1975 Amendments place competition behind other more significant concerns.*

The 1975 Amendments to the Securities Exchange Act make competition a concern of lower priority than other goals that may be best achieved in the absence of competitive bidding for the NSCC facilities management contract. The relevant statutory goals that selection of a securities processor must achieve are prompt and accurate clearance and settlement processing. § 17A(a)(1)(A). Competition, by contrast, is only a factor to be considered by the Commission in implementing the statutory objectives. § 17A(a)(2). And while competition among securities processors may be within the broad regulatory purview of the Commission in overseeing the evolution of the national clearance and settlement system, the lack of any express reference to it in the 1975 Amendments underscores the extent to which it must give way before the more significant congressional concerns for safe and efficient handling of securities when the Commission performs the weighing required by the remand of the Court of Appeals.

B. *Competitive bidding is not mandated even by the antitrust laws, which emphasize competition far more than the 1975 Amendments.*

It has been consistently held, as a matter of law, that failure by an individual contracting party to permit competitive bidding is not anticompetitive conduct within the meaning or scope of the antitrust laws.[5] To the extent that competition is a statutory concern among the broad range of other factors and goals which the Commission must evaluate in carrying out its responsibilities under Section 17A of the Exchange Act, competitive bidding for NSCC's facilities management contract has little, if any, legal relevance to this concern.

Question 3 (Exchange Act Release No. 15640)

Clearing agencies should be permitted to internationalize all or part of their processing operations, if such a decision appears appropriate from a business standpoint.

Competitive bidding may under certain conditions be an appropriate means of selecting the entity responsible for actually conducting the securities processing operations of a clearing agency. NSCC wishes to emphasize again, however, that the decision to use it, like the decision to change facilities managers itself, should be left to the informed judgment of NSCC and its fellow clearing agencies and not mandated as a requirement of law.

Nothing said or implied by the Court of Appeals in the *Bradford* case would preclude NSCC from conducting securities processing in-house. All clearing agencies internalized their securities processing operations prior to 1972,[6] and the SIAC contract explicitly recognizes such a possibility by providing for the absorption by NSCC itself of SIAC's personnel if NSCC decides to terminate SIAC and internalize the operations hitherto performed by SIAC.

The use of a facilities manager by a clearing agency is a convenience, and not a requirement of law or public policy. The decision to take all or any part of processing in-house, would also be a matter determined by the clearing agency itself, in response to the needs and desire of its users.

Question 1 (Letter to NSCC dated March 15, 1979)

If NSCC were to let its facilities management contract for bidding, it anticipates that the contract would be essentially similar to its current contract with SIAC, except as discussed in response to Question 2 below.

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[4] The other example of competitive bidding relied upon by the Court of Appeals (Op., p. 18) was the selection of Bradford by Pacific Clearing Corporation ("PCC"). This experiment does not appear to have been a success, since we understand that subsequently PCC replaced Bradford with SIAC.

[5] *See, e.g. Sitkin Smelting & Refining Co.* v. *FMC Corp.*, 575 F. 2d 440 (3rd Cir. 1978), *cert. denied* 00 S. Ct. 191; *Scranton Construction Co.* v. *Litton Industries Leasing Corp.*, 494 F. 2d 778, (5th Cir. 1974); *Parmalee Transportation Co.* v. *Keeshin*, 186 F. Supp. 533, 543 (N.D. Ill. 1960), *aff'd* 292 F. 2d 794 (7th Cir.), *cert. denied*, 368 U.S. 944 (1961). As these courts have declared, "[T]he Sherman Act is [not] a lowest-responsible bidder statute", 575 F. 2d at 448. The antitrust laws under which these cases were decided are not directly applicable to NSCC's situation as a registered clearing agency under the supervision and jurisdiction of the Commission. Their holdings that competitive bidding is unnecessary are nonetheless highly relevent to the Commission's present inquiry, since their rationale is that there is no legal connection between an individual's decision to use competitive bidding in selecting other parties with which to deal and the preservation of the economic competition safeguarded by the antitrust laws.

[6] Our understanding is that all registered clearing agencies currently handle securities processing in-house, with the exception of NSCC, PSD and PCC (and the latter two entities only utilize a facilities manager for data processing activities).

Question 2 (Letter to NSCC dated March 15, 1979)

If NSCC were required [7] to let the contract to a profitmaking entity not owned by the securities industry, it would change the contract along the lines suggested by the preceding discussion of the potential risks of competitive bidding. NSCC would consider internalizing everything except data processing, since it might not be able to rely on a private facilities manager to have the incentive to be responsive to membership needs or to innovate in ways that do not produce increased revenues for the facilities manager. Under these circumstances, NSCC would be inclined to set the facilities manager's fee on a cost-plus basis as opposed to a purely fixed fee arrangement, since the latter might invite the facilities manager to disregard safety and efficiency in an effort to increase revenues by cutting costs.

Question 3 (Letter to NSCC dated March 15, 1979)

NSCC has not considered bringing the work currently done by SIAC in-house, but might do so in the future in appropriate circumstances.

Question 4 (Letter to NSCC Dated March 15, 1979)

If the Commission were to make what NSCC believes would be an incorrect decision to require competitive bidding for NSCC's facilities management contract, it would take at least six (6) months, after such decision became final, for NSCC to prepare a concrete proposal for carrying out such bidding. After specifications for bidding were put out, further time would be required for the preparation of bids, analysis of bids received, decision thereon, and conversion to any new manager, if one were selected, as a result of the bidding. Although NSCC would attempt to minimize these time periods, it could not realistically be expected to accomplish the transition process without significant lead time.

Conclusion

NSCC believes that its choice of the method by which it conducts its clearance processing operations is essentially an NSCC user Board decision, to be carried out in response to the needs and desires of its participants within the framework of the statutory priorities set by the 1975 Amendments. Whether such operations are conducted in-house or by a facilities manager, and how the facilities manager is selected, are questions that necessarily depend upon a broad range of considerations that must be carefully weighed and might lead to different conclusions under different circumstances. These questions cannot be answered categorically by requiring competitive bidding, or any other means of selection, as a legal mandate.

Very truly yours,

Jack Nelson.

[7] NSCC does not believe that an order requiring regular competitive bidding would be tolerated by its participants. NSCC also doubts that such an order could be sustained upon review.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-20135 Filed 6-28-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15942; File No. 4-273]

Program for Allocation of Regulatory Responsiblities Pursuant to Rule 17d-2; Filing of Amendment to the NASD/CSE Plan

In Securities Exhange Act Release No. 15191 (September 26, 1978),[1] the Commission approved for a period of 270 days ("approval period") the plan between the National Association of Securities Dealers, Inc. (the "NASD") and the Cincinnati Stock Exchange (the "CSE") allocating regulatory responsibilites. The Commission conditioned its further consideration of this plan on the submission of certain amendments to the original filings as well as certain supplemental information. The Commission required these amendments and supplementary materials to be filed within 180 days from the date of its Order. In Release No. 15722 [2] the CSE received an extension of 60 days from the day of final approval of its proposed rule package in which to file those materials.[3]

The NASD and the CSE have filed an amendment to their allocation plan. In brief, the amendment states that the NASD will assume inspection, examination and enforcement responsibility ("regulatory responsibilities") for all dual members which are or shall become designated to the CSE or NASD pursuant to the provision of SEC Rule 17d-1 under the Securities Exchange Act of 1934.

The CSE will retain full responsibility for marketplace regulation and market surveillance for the CSE floor and the CSE Multiple Dealer Trading System. In addition, the amendment adds a provision to the allocation plan which provides that the CSE will supply the NASD with any information learned by it which reflects adversely on the financial condition of dual members or indicated possible violations by dual members with applicable laws, rules, or regulations.

In order to assist the Commission in determining whether to approve this plan and to relieve the party not designated to fulfill the specific responsibilities, interested persons are invited to submit written data, views and agruments concerning the submission within thirty (30) days from the date of publication of this notice in the Federal Register. Persons wishing to comment should file six (6) copies thereof with the Secretary of the Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. 4-273.

By the Commission.

George A. Fitzsimmons,

Secretary.

June 21, 1979.

[FR Doc. 79-20138 Filed 6-28-79; 8:45 am]

BILLING CODE 8010-01-M

[1] 43 FR 46093 (October 5, 1978).

[2] Securities Exchange Act Release No. 15722 (April 12, 1979), 44 FR 23616 April 20, 1979).

[3] File No. SR-CSE-78-4. Securities Exchange Act Release No. 15544 (January 30, 1979), 44 FR 7852 (February 7, 1979).

INTERSTATE COMMERCE COMMISSION

Motor Carrier Temporary Authority Applications

Correction

In FR Doc. 79-12716 appearing at page 24208 in the issue for Tuesday, April 24, 1979 on page 24212 in column two, paragraph three, line eight "Manchester, IN" should appear as "North Manchester, IN."

BILLING CODE 1505-01-M

Motor Carrier Temporary Authority Applications

Correction

In FR Doc. 79-14327 appearing at page 27000 in the issue for Tuesday, May 8, 1979 on page 27007 in column three, eighteenth line from the bottom "NC" should appear between "MI and NJ."

BILLING CODE 1505-01-M

[Decisions Volume No. 52]

Permanent Authority Applications, Decision-Notice

In FR Doc. 79-14238 appearing at page 27027 in the issue for Tuesday, May 8, 1979, on page 27032, the first column, in MC 141212 (Sub-2F), in the 11th line, "IM" should read "IN".

BILLING CODE 1505-01-M

[Volume 19]

Petitions, Applications, Finance Matters (Including Temporary Authorities), Alternate Route Deviations, and Intrastate Applications

Corrections

In FR Doc. 79-18075, appearing in the issue of Monday, June 11, 1979, at page 33529, make the following corrections:

(1) On page 33532, in the middle column, the first paragraph, begin the line with "MC-F-13974F".

(2) On page 33533, in the first column, the first paragraph, insert "'MC-F-14016F" at the beginning of the line and on the same page, the same column, the last paragraph, insert "MC-F-14017F" at the beginning of the line.

BILLING CODE 1505-01-M

[ICC Order No. P-23]

Atchison, Topeka & Santa Fe Railway Co.; Passenger Train Operation

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between New Orleans, Louisiana, and Los Angeles, California. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP track between Houston, Texas, and El Paso, Texas, is temporarily out of service because of a derailment. An alternate route is available via The Atchison, Topeka and Santa Fe Railway Company.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, (a) Pursuant to the authority vested in me by order of the Commission served March 6, 1978, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562 (c)), The Atchison, Topeka and Santa Fe Railway Company (ATSF) is directed to operate trains of the National Railroad Passenger Transportation Company at Houston, Texas, and El Paso, Texas.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exists between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(d) *Effective date.* This order shall become effective 6:30 p.m., MDT, June 16, 1979.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., MDT, June 17, 1979, unless otherwise modified changed, or suspended by order of this Commission.

This order shall be served upon The Atchison, Topeka and Santa Fe Railway Company and upon the National Railroad Passenger Corporation (Amtrak), and that it be filed with the Director, Office of the Federal Register.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-20245 Filed 6-28-79; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 241; Rule 19; Exemption 167, Amdt. No. 167]

Chicago, Rock Island & Pacific Railroad Co.; Exemption Under Mandatory Car Service Rules

Upon further consideration of Exemption No. 167 issued May 31, 1979.

It is ordered, That, under authority vested in me by Car Service Rule 19, Exemption No. 167 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 is amended to expire June 30, 1979.

This amendment shall become effective 11:59 p.m., June 19, 1979.

Issued at Washington, D.C., June 19, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-20244 Filed 6-28-79; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. 42 Under Service Order No. 1344]

Burlington Northern, Inc.; Rerouting Traffic

In the opinion of Joel E. Burns, Agent, Burlington Northern Inc., is unable to transport promptly all traffic offered for movement to, from, or via points between Huron, South Dakota, and Watertown, South Dakota, not including Watertown, because of track conditions.

It is ordered, (a) *Rerouting traffic.* Burlington Northern Inc., being unable to transport promptly all traffic offered for movement to, from, or via points between Huron, South Dakota, and watertown, South Dakota, not including Watertown, because of track conditions, that line and its connections are authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to the order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided for under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this

order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 4:00 p.m., June 12, 1979.

(g) *Expiration date.* This order shall expire at 11:59 p.m., August 12, 1979, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., June 12, 1979.
Interstate Commerce Commission.
Joel E. Burns,
Agent.

[FR Doc. 79-20243 Filed 6-28-79; 8:45 am]
BILLING CODE 7035-01-M

[I.C.C. Order No. 41 Under Service Order No. 1344]

Atchison, Topeka and Santa Fe Railway Co.; Rerouting of Traffic

In the opinion of Joel E. Burns, Agent, the Atchison, Topeka and Santa Fe Railway Company is unable to transport promptly all traffic offered for movement over its lines between Ada, Oklahoma, and Shawnee, Oklahoma, because of bridge damage.

It is ordered, (a) *Rerouting traffic.* The Atchison, Topeka and Santa Fe Railway Company being unable to transport promptly all traffic offered for movement over its lines between Ada, Oklahoma, and Shawnee, Oklahoma, because of bridge damage, that line and its connections are authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the orgininal routing. The billing covering all such cars rerouted shall carry a reference to the order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided for under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangments now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 4 p.m., June 11, 1979.

(g) *Expiration date.* This order shall expire at 11:59 p.m., July 15, 1979, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Rairoads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., June 11, 1979.
Interstate Commerce Commission.
Joel E. Burns,
Agent.

[FR Doc. 79-20246 Filed 6-28-79; 8:45 a.m.]
BILLING CODE 7035-01-M

[Service Order No. 1301; Section (a)(4), Exception No. 3, Amdt. No. 1]

Chicago, Rock Island & Pacific Railroad Co.

Upon further consideration of Exception No. 3 and good cause appearing therefor:

It is ordered: Exception No. 3 to Corrected Second Revised Service Order No. 1301 is amended to: *Expire June 30, 1979.*

Issued at Washington, D.C., June 19, 1979.
Joel E. Burns,
Director, Bureau of Operations.

[FR Doc. 79-20248 Filed 6-28-79; 8:45 am]
BILLING CODE 7035-01-M

[Service Order No. 1344; I.C.C. Order No. 43]

All Railroads; Rerouting Traffic

In the opinion of Joel E. Burns, Agent, the Chicago and North Western Transportation Company is unable to transport promptly all traffic offered for movement over its lines between Albia, Iowa, and Oskaloosa, Iowa, because of washouts.

It is ordered, (a) *Rerouting traffic.* The Chicago and North Western Transportation Company, being unable to transport promptly all traffic offered for movement over its lines between Albia, Iowa, and Oskaloosa, Iowa, because of washouts, is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided for under this order.

(d) Inasuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of

transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 10:00 a.m., June 13, 1979.

(g) *Expiration date.* This order shall expire at 11:59 p.m., December 15, 1979, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., June 13, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-20249 Filed 6-28-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

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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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9 a.m. Wednesday, June 27, 1979.

PLACE: Commission Conference Room; No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20606.

STATUS: Open to the public:

MATTERS TO BE CONSIDERED:

1. Proposed Resolution to establish Pilot Project in which EEOC will conduct investigations of selected equal employment Opportunity complaints filed against certain Federal agencies.

2. Transfer of Age Discrimination in Employment Act and Equal Pay Act litigation functions.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required that this meeting be held and that no earlier announcement was possible.

IN FAVOR OF HOLDING MEETING: Eleanor Holmes Norton, Chair, Daniel E. Leach, Vice Chair, Ethel Bent Walsh, Commissioner, Armando M. Rodriguez, Commissioner, J. Clay Smith, Jr., Commissioner.

CONTACT PERSON FOR MORE INFORMATION: Marie D. Wilson, Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued June 26, 1979.

[S-1279-79 Filed 6-27-79; 10:54 am]

BILLING CODE 6570-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. Tuesday, July 3, 1979.

PLACE: Commission Conference Room, No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open to the public:

1. Proposed Guidelines on Religious Accommodation.

2. Proposed Policy Statement on Hazardous Substances.

3. Proposed Non-Competitive Contract for Advice and Consultation on Special Examining Unit Operation of the Personnel Division.

4. Report on Court Decision in *EEOC* v. *St. Louis Diecasting Corporation*

5. Report on Commission operations by the Executive Director.

Closed to the public:

Litigation Authorization; General Counsel Recommendations.

NOTE: Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Marie D. Wilson, Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued June 26, 1979.

[S-1287-79 Filed 6-27-79; 2:15 pm]

BILLING CODE 6570-06-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Monday, June 25, 1979, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), and concurred in by Mr. H. Joe Selby, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required the withdrawal of the following matters from the agenda for consideration at the meeting, on less than seven days' notice to the public:

Memorandum and resolution proposing the final adoption of an amendment to Part 329 of the Corporation's rules and regulations, entitled "Interest on Deposits," to exempt nondeposit obligations of $100,000 or more from restrictions which apply to deposits of insured nonmember banks.

Memorandum and resolution proposing the final adoption of a new Part 346 of the Corporation's rules and regulations, to be entitled "Foreign Banks," and the amendment of Part 330 of the Corporation's rules and regulations, entitled "Clarification and Definition of Deposit Insurance Coverage," in order to implement the International Banking Act of 1978.

Request of The Western New York Savings Bank, Buffalo, New York, for an exemption from the provisions of Part 329 of the Corporation's rules and regulations, entitled "Interest on Deposits," with respect to certain mortgage-backed notes.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: June 25, 1979.

Federal Deposit Insurance Corporation.

Hannah R. Gardiner,

Assistant Secretary.

[S-1282-79 Filed 6-27-79; 10:54 am]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Changes in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 10:30 a.m. on Monday, June 25, 1979, the Corporation's Board of Directors voted, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required the withdrawal of the following matters from the agenda for consideration at the meeting, on less than seven days' notice to the public:

Notice of acquisition of control involving The Dill State Bank, Dill City, Oklahoma.

A recommendation with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal

proceedings against certain insured banks or officers or directors thereof.

The Board also determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: June 25, 1979.

Federal Deposit Insurance Corporation.

Hannah R. Gardiner,

Assistant Secretary.

[S-1283-79 Filed 6-27-79; 10:54 am]

BILLING CODE 6714-01-M

5

FEDERAL ELECTION COMMISSION.

"FEDERAL REGISTER NO." FR-S-1232.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 28, 1979, at 10 a.m.

CHANGE IN MEETING: The following items have been added to the open portion of the meeting—

Discussion of AO 1979-29, Ronald D. Eastman, General Counsel DNC.
Contract with NTEU.
Time-in-Grade Policy.

The following item has been cancelled:

Threshold certification procedures.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, Telephone: 202-523-4065.

Marjorie W. Emmons,

Secretary to the Commission.

[S-1288-79 Filed 6-27-79; 3:53 pm]

BILLING CODE 6715-01-M

6

FEDERAL ELECTION COMMISSION.

"FEDERAL REGISTER" NO. FR-S-1232.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 28, 1979, at 10 a.m.

CHANGE IN MEETING: The following item has been added to the open portion of the meeting—

Threshold Certification Procedures.

The following item has been cancelled:

Thresholds for review of Presidential disclosure reports.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, Telephone: 202-523-4065.

Marjorie W. Emmons,

Secretary to the Commission.

[S-1277-79 Filed 6-27-79; 10:54 am]

BILLING CODE 6715-01-M

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FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 22, 1979, 44 FR 36583.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: June 27, 1979, 10 a.m.

CHANGE IN THE MEETING: Addition of the following item to the closed session:

3. Shipping Act Amendments of 1979 (Pub. L. 96-25).

[S-1285-79 Filed 6-27-79; 11:50 am]

BILLING CODE 6730-01-M

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FEDERAL MARITIME COMMISSION.

TIME AND DATE: June 28, 1979, 10 a.m.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED: LEGISLATIVE PROPOSALS.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.

[S-1286-79 Filed 6-27-79; 11:50 am]

BILLING CODE 6730-01-M

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POSTAL RATE COMMISSION.

TIME AND DATE: 10:30 a.m., Friday, July 6, 1979.

PLACE: Conference Room, Room 500, 2000 L St., N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Office reorganization.

[Closed pursuant to 39 U.S.C. 552b(c)(2)(6).]

CONTACT PERSON FOR MORE INFORMATION: Ned Callan, Information Officer, Postal Rate Commission, Room 500, 2000 L Street, N.W., Washington, D.C. 20268 (202) 254-5614.

[S-1284-79 Filed 6-27-79; 10:54 am]

BILLING CODE 7715-01-M

Federal Register

Friday
June 29, 1979

Part II

Department of the Treasury

Fiscal Service, Bureau of Government Financial Operations

Circular 570; 1979 Revision; Surety Companies Acceptable on Federal Bonds

4810-35-190

DEPARTMENT OF THE TREASURY

FISCAL SERVICE, BUREAU OF GOVERNMENT FINANCIAL OPERATIONS

(Dept. Circular 570; 1979 Rev.)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective: July 1, 1979

This circular is published annually, as of July 1, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of this circular may be obtained from: Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226. Telephone: (202) 634-5978. Interim changes in the circular are published in the FEDERAL REGISTER as they occur.

The following companies have complied with the law and the regulations of the Treasury Department and are acceptable as sureties and reinsurers on Federal bonds, to the extent and with respect to the localities indicated.

Dario A. Pagliai

Commissioner
Bureau of Government
Financial Operations

COMPANIES HOLDING CERTIFICATES OF AUTHORITY UNDER SECTIONS 6 TO 13 OF TITLE 6 OF THE UNITED STATES CODE AS ACCEPTABLE SURETIES ON FEDERAL BONDS, INCLUDING REINSURANCE (See Note a/)

AID Insurance Company (Mutual). BUSINESS ADDRESS: 701 Fifth Avenue, Des Moines, Iowa 50309. UNDERWRITING LIMITATION b/: $5,824,000. SURETY LICENSES c/: Ariz., Ark., Cal., Colo., D.C., Idaho, Ill., Ind., Iowa, Kans., Minn., Mo., Mont., Nebr., N. Mex., N. Dak., Okla., Oreg., S. Dak., Tex., Utah, Wash., Wis., Wyo. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/: Ariz., Cal., Colo., D.C., Idaho, Ill., Kans., Minn., Nebr., N. Dak., Okla., Oreg., S. Dak., Utah, Wis., Wyo.

AIU Insurance Company. BUSINESS ADDRESS: 70 Pine Street, New York, N.Y. 10005. UNDERWRITING LIMITATION b/: $1,010,000. SURETY LICENSES c/: All except C.Z., Del., Guam, Hawaii, Puerto Rico, Virgin Islands. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: All except sAla., C.Z., nFla., Puerto Rico, Wyo.

Accredited Surety and Casualty Company, Inc. BUSINESS ADDRESS: 918 South Orange Avenue, Orlando, Fla. 32806. UNDERWRITING LIMITATION b/: $174,000. SURETY LICENSES c/: Ala., Fla., Ga., Ind., La., Miss., Va. INCORPORATED IN: Fla. FEDERAL PROCESS AGENTS d/: Ala., D.C., Ga., Ind., La., Md., eMich., sMiss., esN.Y., S.C., Va.

The Aetna Casualty and Surety Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, Conn. 06156. UNDERWRITING LIMITATION b/: $102,991,000. SURETY LICENSES c/: All. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/: All.

Aetna Casualty & Surety Company of Illinois. BUSINESS ADDRESS: 230 West Monroe Street, Chicago, Ill. 60606. UNDERWRITING LIMITATION b/: $8,837,000. SURETY LICENSES c/: Ariz., Ark., Del., D.C., Ga., Idaho, Ill., Ind., Iowa, Ky., Mich., Miss., Mo., Mont., Okla., Oreg., S.C., S. Dak., Tex., Utah, Wash., W. Va., Wis. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/: Ark., Del., D.C., Ga., Ind., Iowa, Ky., Mich., Miss., Mo., Mont., Utah, Wash., W. Va., Wis.

Aetna Fire Underwriters Insurance Company. BUSINESS ADDRESS: 55 Elm Street, Hartford, Conn. 06115. UNDERWRITING LIMITATION b/: $919,000. SURETY LICENSES c/: All except C.Z., Guam, Oreg., Puerto Rico, Virgin Islands. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Virgin Islands.

Aetna Insurance Company. BUSINESS ADDRESS: 55 Elm Street, Hartford, Conn. 06115. UNDERWRITING LIMITATION b/: $29,759,000. SURETY LICENSES c/: All except C.Z. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/: All except C.Z., Virgin Islands.

Aetna Life and Casualty Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, Conn. 06156. UNDERWRITING LIMITATION b/: $172,078,000. SURETY LICENSES c/: Conn., D.C. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/: D.C.

Aetna Reinsurance Company. BUSINESS ADDRESS: 55 Elm Street, Hartford, Conn. 06115. UNDERWRITING LIMITATION b/: $1,784,000. SURETY LICENSES c/: All except Ala., C.Z., Guam, Hawaii, Ill., Ind., La., Ohio, Puerto Rico, Tex., Virgin Islands, W. Va. INCORPORATED IN: Del. FEDERAL PROCESS AGENTS d/: D.C.

Alaska Pacific Assurance Company. BUSINESS ADDRESS: 4041 "B" Street, Anchorage, Alaska 99503. UNDERWRITING LIMITATION b/: $1,220,000. SURETY LICENSES c/: Alaska, D.C., Idaho. INCORPORATED IN: Alaska. FEDERAL PROCESS AGENTS d/: Alaska, D.C., Idaho.

Allegheny Mutual Casualty Company. BUSINESS ADDRESS: 485 Chestnut Street, Meadville, Pa. 16335. UNDERWRITING LIMITATION b/: $151,000. SURETY LICENSES c/: Alaska, D.C., Fla., Ill., Ind., La., Md., Mich., N.J., Ohio, Pa., Tenn., Tex., Wis. INCORPORATED IN: Pa. FEDERAL PROCESS AGENTS d/: sAla., D.C., nsFla., nsGa., nIll., Ind., La., Md., Mich., N.J., esN.Y., Ohio, S.C., wTenn., wsTex., eVa., Wis.

Allianz Insurance Company. BUSINESS ADDRESS: Post Office Box 54897, Terminal Annex, Los Angeles, Cal. 90054. UNDERWRITING LIMITATION b/: $2,943,000. SURETY LICENSES c/: All except C.Z., Guam, Okla., Puerto Rico. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: D.C.

Allied Fidelity Insurance Company. BUSINESS ADDRESS: P.O. Box 20112, Indianapolis, Ind. 46226. UNDERWRITING LIMITATION b/: $175,000. SURETY LICENSES c/: All except C.Z., D.C., Guam, Hawaii, Me., Md., Mich., N.J., N.Y., N.C., Pa., Puerto Rico, R.I., S. Dak., Vt., Virgin Islands. INCORPORATED IN: Ind. FEDERAL PROCESS AGENTS d/: Alaska, Ariz., Cal., Colo., Conn., D.C., msFla., Ga., Idaho, Kans., Ky., meLa., Mass., Minn., sMiss., Mo., Mont., Okla., Oreg., Tenn., sTex., eVa., wWis.

Allstate Insurance Company. BUSINESS ADDRESS: Allstate Plaza, Northbrook, Ill. 60062. UNDERWRITING LIMITATION b/: $169,353,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Puerto Rico, Virgin Islands.

American Agricultural Insurance Co. BUSINESS ADDRESS: 225 Touhy Avenue, Park Ridge, Ill. 60068. UNDERWRITING LIMITATION b/: $3,177,000. SURETY LICENSES c/: Ariz., Colo., Fla., Ga., Idaho, Ill., Ind., Iowa, Mo., N. Mex., N.C., N. Dak., Oreg., Pa., S.C., Tex., Utah, Va., Wash., Wis. (Reinsurance only in Kans., Mass., N.Y.) INCORPORATED IN: Ind. FEDERAL PROCESS AGENTS d/: D.C.

American Automobile Insurance Company. BUSINESS ADDRESS: 3333 California Street, San Francisco, Calif. 94119. UNDERWRITING LIMITATION b/: $7,321,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: Mo. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Puerto Rico, Virgin Islands.

American Bonding Company. BUSINESS ADDRESS: 8601 Beverly Boulevard, Los Angeles, Cal. 90048. UNDERWRITING LIMITATION b/: $139,000. SURETY LICENSES c/: Alaska, Ariz., Ark., Cal., Colo., D.C., Idaho, Iowa, Kans., Miss., Mo., Mont., Nebr., Nev., N. Mex., Okla., Oreg., Tex., Utah, Wash. INCORPORATED IN: Nebr. FEDERAL PROCESS AGENTS d/: ceCal., D.C.

American Casualty Company of Reading, Pennsylvania. BUSINESS ADDRESS: CNA Plaza, Chicago, Ill. 60685. UNDERWRITING LIMITATION b/: $5,151,000. SURETY LICENSES c/: All except C.Z., Guam, Virgin Islands. INCORPORATED IN: Pa. FEDERAL PROCESS AGENTS d/: All except C.Z., mFla., Guam, nwN.Y., mN.C., eOkla., Puerto Rico, S. Dak., sTex., Virgin Islands, Wyo.

American Credit Indemnity Company of New York. BUSINESS ADDRESS: 300 St. Paul Place, Baltimore, Md. 21202. UNDERWRITING LIMITATION b/: $3,891,000. SURETY LICENSES c/: All except Alaska, C.Z., Guam, Hawaii, Nev., N. Dak., Puerto Rico, Virgin Islands, Wyo. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: D.C.

The American Druggists' Insurance Company. BUSINESS ADDRESS: 800 American Building, Cincinnati, Ohio 45202. UNDERWRITING LIMITATION b/: $518,000. SURETY LICENSES c/: Ala., Ark., Cal., Colo., Fla., Ga., Ill., Ind., Iowa, Kans., Ky., La., Me., Md., Mich., Minn., Miss., Mo., N.Y., N.C., Ohio, Okla., Oreg., Pa., S.C., Tenn., Tex., Va., Wash., Wis. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/: nsAla., Ark., Colo., D.C., msFla., nGa., Ill., Ind., Kans., Ky., weLa., Md., eMich., Minn., sMiss., Mo., N.J., eN.Y., mN.C., Okla., wePa., S.C., S. Dak., mTenn., mTex., eVa., wWash., eWis.

American Economy Insurance Company. BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, Ind. 46207. UNDERWRITING LIMITATION b/: $7,527,000. SURETY LICENSES c/: All except C.Z., Conn., Guam, N.J., Puerto Rico, Virgin Islands. INCORPORATED IN: Ind. FEDERAL PROCESS AGENTS d/: All except C.Z., Conn., Guam, Kans., N.J., Puerto Rico, Virgin Islands.

American Employers' Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, Mass. 02108. UNDERWRITING LIMITATION b/: $5,987,000. SURETY LICENSES c/: All except Guam, Puerto Rico. INCORPORATED IN: Mass. FEDERAL PROCESS AGENTS d/: All except Guam.

American Fidelity Company. BUSINESS ADDRESS: Post Office Box 960, Manchester, N.H. 03105. UNDERWRITING LIMITATION b/: $543,000. SURETY LICENSES c/: Alaska, Conn., Iowa, Me., Mass., Miss., Nebr., N.H., N. Dak., R.I., S.C., Utah, Vt. INCORPORATED IN: Vt. FEDERAL PROCESS AGENTS d/: All except C.Z., Puerto Rico.

American Fidelity Fire Insurance Company. BUSINESS ADDRESS: 100 Crossways Park West, Woodbury, N.Y. 11797. UNDERWRITING LIMITATION b/: $378,000. SURETY LICENSES c/: All except C.Z., Colo., Guam, Hawaii, Mo., Nebr., N.H. Virgin Islands. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: Alaska, Ariz., Ark., ncsCal., C.Z., D.C., sFla., Ga., Hawaii, Idaho, Ill., Iowa, Ky., weLa., Md., Mass., Mich., Minn., Miss., wMo., Nev., N. Mex., wsN.Y., N.C., Ohio, nwOkla., Oreg., nePa., R.I., Tenn., Tex., Va., Wash., eWis.

American Fire and Casualty Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, Ohio 45012. UNDERWRITING LIMITATION b/: $1,163,000. SURETY LICENSES c/: Ala., Ark., Colo., D.C., Fla., Ga., Kans., Ky., La., Md., Miss., Mo., N.C., Okla., S.C., Tenn., Tex., Va, INCORPORATED IN: Fla. FEDERAL PROCESS AGENTS d/: Ala., Ark., Colo., D.C., Ga., Kans., Ky., La., Md., Miss., Mo., N.C., Okla., S.C., Tenn., Tex., Va.

American General Fire and Casualty Company. BUSINESS ADDRESS: Post Office Box 1502, Houston, Tex. 77001. UNDERWRITING LIMITATION b/: $2,047,000. SURETY LICENSES c/: Ark., La., N. Mex., Okla., Tex. INCORPORATED IN: Tex. FEDERAL PROCESS AGENTS d/: D.C., weLa., N. Mex., Okla.

American General Insurance Company. BUSINESS ADDRESS: Post Office Box 3247, Houston, Tex. 77001. UNDERWRITING LIMITATION b/: $32,492,000. SURETY LICENSES c/: Mich., Pa., Tex. INCORPORATED IN: Tex. FEDERAL PROCESS AGENTS d/: All except Guam.

American Guarantee and Liability Insurance Company. BUSINESS ADDRESS: 111 West Jackson Boulevard, Chicago, Ill. 60604. UNDERWRITING LIMITATION b/: $1,670,000. SURETY LICENSES c/: All except Ala., C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: Alaska, Cal., Conn., D.C., nFla., nsGa., nsIll., nInd., Me., Md., Mass., eMich., Minn., Mo., N.H., N.J., N. Mex., Ohio, Pa., nswTex., Vt.

American Home Assurance Company. BUSINESS ADDRESS: 70 Pine Street, New York, N.Y. 10005. UNDERWRITING LIMITATION b/: $12,467,000. SURETY LICENSES c/: All except C.Z. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: All except C.Z., Puerto Rico.

American Indemnity Company. BUSINESS ADDRESS: Post Office Box 1259, Galveston, Tex. 77553. UNDERWRITING LIMITATION b/: $2,090,000. SURETY LICENSES c/: Ala., Cal., Colo., D.C., Fla., Ga., Ill., Ind., Iowa, Kans., Ky., La., Miss., Mo., Mont., Nebr., N. Mex., N.C., Ohio, Okla., S.C., Tenn., Tex., Wis., Wyo. INCORPORATED IN: Tex. FEDERAL PROCESS AGENTS d/: D.C., msFla., eIll., eMo., wTenn.

The American Insurance Company. BUSINESS ADDRESS: 3333 California Street, San Francisco, Cal. 94119. UNDERWRITING LIMITATION b/: $15,558,000. SURETY LICENSES c/: All except C.Z., Virgin Islands. INCORPORATED IN: N.J. FEDERAL PROCESS AGENTS d/: All except C.Z., Virgin Islands.

American Manufacturers Mutual Insurance Company. BUSINESS ADDRESS: Long Grove, Ill. 60049. UNDERWRITING LIMITATION b/: $4,802,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Puerto Rico, Virgin Islands.

American Motorists Insurance Company. BUSINESS ADDRESS: Long Grove, Ill. 60049 UNDERWRITING LIMITATION b/: $9,334,000. SURETY LICENSES c/: All except C.Z., Del., Guam, Virgin Islands. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/: All except C.Z., Del., Guam, Virgin Islands.

American Mutual Liability Insurance Company. BUSINESS ADDRESS: Wakefield, Mass. 01880. UNDERWRITING LIMITATION b/: $5,295,000. SURETY LICENSES c/: All except C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands. INCORPORATED IN: Mass. FEDERAL PROCESS AGENTS d/: D.C., Mass.

American National Fire Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, Ohio 45202. UNDERWRITING LIMITATION b/: $944,000. SURETY LICENSES c/: All except C.Z. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: All except C.Z., sW. Va.

American Re-Insurance Company. BUSINESS ADDRESS: One Liberty Plaza, 91 Liberty Street, New York, N.Y. 10006. UNDERWRITING LIMITATION b/: $14,068,000. SURETY LICENSES c/: All except Guam, Virgin Islands. INCORPORATED IN: Del. FEDERAL PROCESS AGENTS d/: All except Guam, N.Y.

American Southern Insurance Company. BUSINESS ADDRESS: Post Office Box 7369, Station C, Atlanta, Ga. 30357. UNDERWRITING LIMITATION b/: $373,000. SURETY LICENSES c/: Fla., Ga., S.C. INCORPORATED IN: Ga. FEDERAL PROCESS AGENTS d/: D.C., Fla., S.C.

American States Insurance Company. BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, Ind. 46207. UNDERWRITING LIMITATION b/: $17,749.000. SURETY LICENSES c/: All except C.Z., Conn., Guam, N.Y., Puerto Rico, Virgin Islands. INCORPORATED IN: Ind. FEDERAL PROCESS AGENTS d/: All except C.Z., Conn., Guam, N.Y., Puerto Rico, Virgin Islands.

Amwest Surety Insurance Company. BUSINESS ADDRESS: 10960 Wilshire Boulevard, Los Angeles, Cal. 90024. UNDERWRITING LIMITATION b/: $61,000. SURETY LICENSES c/: Cal. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: D.C.

Arkwright-Boston Manufacturers Mutual Insurance Company. BUSINESS ADDRESS: 225 Wyman Street, Waltham, Mass. 02154. UNDERWRITING LIMITATION b/: $23,641,000. SURETY LICENSES c/: Cal., Colo., Conn., D.C., Ill., Ind., Iowa, Md., Mass., Mich., Minn., Mo., Nebr., Nev., N.H., N.J., N.Y., N.C., Ohio, R.I., Utah, Vt., Wash., Wyo. INCORPORATED IN: Mass. FEDERAL PROCESS AGENTS d/: D.C., nOhio.

Associated Indemnity Corporation. BUSINESS ADDRESS: 3333 California Street, San Francisco, Cal. 94119. UNDERWRITING LIMITATION b/: $1,728,000. SURETY LICENSES c/: All except C.Z., Guam, Virgin Islands. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Virgin Islands.

Atlantic Insurance Company. BUSINESS ADDRESS: Post Office Box 1771, Dallas, Tex. 75221. UNDERWRITING LIMITATION b/: $1,256,000. SURETY LICENSES c/: All except C.Z., Conn., Del., Guam, Hawaii, Idaho, Iowa, La., Me., Mass., Nebr., N.H., N.J., N.Y., N.Dak., Oreg., Puerto Rico, R.I., Vt., Va., Virgin Islands, Wash., Wis., Wyo. INCORPORATED IN: Tex. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands.

Atlantic Mutual Insurance Company. BUSINESS ADDRESS: Atlantic Building, 45 Wall Street, New York, N.Y. 10005. UNDERWRITING LIMITATION b/: $7,769,000. SURETY LICENSES c/: All except Ala., C.Z., Guam, Hawaii, Virgin Islands. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: Ariz., D.C.

Auto-Owners Insurance Company. BUSINESS ADDRESS: Post Office Box 30660, Lansing, Mich. 48909. UNDERWRITING LIMITATION b/: $16,184,000. SURETY LICENSES c/: Ala., Fla., Ga., Ill., Ind., Iowa, Mich., Minn., Mo., Nebr., N.C., N. Dak., Ohio, S.C., S. Dak., Tenn., Wis. INCORPORATED IN: Mich. FEDERAL PROCESS AGENTS d/: Ala., D.C., nmFla., Ga., Ill., Ind., Iowa, Kans., Ky., Minn., Mo., Nebr., N.C., N. Dak., Ohio, S.C., S. Dak., Tenn., Wis.

The Automobile Insurance Company of Hartford, Connecticut. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, Conn. 06156. UNDERWRITING LIMITATION b/: $3,854,000. SURETY LICENSES c/: All except C.Z., Guam. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Puerto Rico, Vt., Virgin Islands.

Balboa Insurance Company. BUSINESS ADDRESS: Post Office Box 1770, Newport Beach, Cal. 92663. UNDERWRITING LIMITATION b/: $3,435,000. SURETY LICENSES c/: All except C.Z., La., Puerto Rico. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: nAla., Alaska, Ariz., eArk., D.C., nmFla., nGa., Hawaii, Idaho, wKy., La., Mich., Minn., sMiss., Nev., N. Mex., wesN.Y., weN.C., wOkla., Oreg., S.C., S. Dak., mTenn., Utah, eVa., wWash.

Bankers Multiple Line Insurance Company. BUSINESS ADDRESS: 4810 North Kenneth Avenue, Chicago, Ill. 60630. UNDERWRITING LIMITATION b/: $2,135,000. SURETY LICENSES c/: All except C.Z., Del., Guam, Idaho, Kans., La., Me., Oreg., Puerto Rico, S.C., Tenn., Virgin Islands. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/: D.C.

Binford Insurance Company. BUSINESS ADDRESS: 2150 Landmeier Road, Elk Grove Village, Ill. 60007. UNDERWRITING LIMITATION b/: $41,000. SURETY LICENSES c/: N. Mex. INCORPORATED IN: N. Mex. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Puerto Rico, Virgin Islands.

Boston Old Colony Insurance Company. BUSINESS ADDRESS: 80 Maiden Lane, New York, N.Y. 10038. UNDERWRITING LIMITATION b/: $689,000. SURETY LICENSES c/: All except C.Z., Guam. INCORPORATED IN: Mass. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam.

The Buckeye Union Insurance Company. BUSINESS ADDRESS: Post Office Box 1499, Columbus, Ohio 42216. UNDERWRITING LIMITATION b/: $17,669,000. SURETY LICENSES c/: D.C., Fla., Ill., Ind., Kans., Ky., Mich., Mo., N.Y., Ohio, Pa., Va. W. Va. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/: D.C., Fla., Ill., Ind., Ky., Mich., Mo., N.Y., Pa., Va., W. Va.

Builders Mutual Surety Company. BUSINESS ADDRESS: 1545 Wilshire Boulevard, Los Angeles, Cal. 90017. UNDERWRITING LIMITATION b/: $53,000. SURETY LICENSES c/: Cal. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: D.C.

The Camden Fire Insurance Association. BUSINESS ADDRESS: General Building, 414 Walnut Street, Philadelphia, Pa. 19106. UNDERWRITING LIMITATION b/: $9,218,000. SURETY LICENSES c/: All except Ark., C.Z., Del., Ga., Guam, Hawaii, Idaho, La., Me., Miss., Mont., Nebr., N.H., Oreg., Puerto Rico, S. Dak., Tenn., Tex., Virgin Islands, Wash. (Fidelity only in Ala., S.C.) INCORPORATED IN: N.J. FEDERAL PROCESS AGENTS d/: D.C.

Centennial Insurance Company. BUSINESS ADDRESS: Atlantic Building, 45 Wall Street, New York, N.Y. 10005. UNDERWRITING LIMITATION b/: $2,494,000. SURETY LICENSES c/: All except Ala., C.Z., Guam, Virgin Islands. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: Ariz., D.C.

Central Mutual Insurance Company. BUSINESS ADDRESS: 800 South Washington Street, Van Wert, Ohio 45891. UNDERWRITING LIMITATION b/: $4,243,000. SURETY LICENSES c/: All except Ark., C.Z., Guam, N. Dak., Oreg., Puerto Rico, S. Dak. Virgin Islands, Wis. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/: D.C.

Century Indemnity Company. BUSINESS ADDRESS: 55 Elm Street, Hartford, Conn. 06115. UNDERWRITING LIMITATION b/: $767,000. SURETY LICENSES c/: All except C.Z., Guam, Hawaii, Oreg., Puerto Rico, Virgin Islands. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Virgin Islands.

The Charter Oak Fire Insurance Company. BUSINESS ADDRESS: One Tower Square, Hartford, Conn. 06115. UNDERWRITING LIMITATION b/: $4,971,000. SURETY LICENSES c/: All except C.Z., Guam, Virgin Islands. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam.

The Cincinnati Insurance Company. BUSINESS ADDRESS: Post Office Box 14567, Cincinnati, Ohio 45214. UNDERWRITING LIMITATION b/: $5,081,000. SURETY LICENSES c/: Ala., Ariz., Fla., Ga., Ill., Ind., Ky., Mich., Miss., N.C., Ohio, Pa., S.C., Tenn., Tex., Va., Wis. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/: nAla., D.C., sFla., nGa., sInd., Ky.

Colonial Surety Company. BUSINESS ADDRESS: 9 Parkway Center, Pittsburgh, Pa. 15220. UNDERWRITING LIMITATION b/: $285,000. SURETY LICENSES c/: Del., N.J., Pa. INCORPORATED IN: Pa. FEDERAL PROCESS AGENTS d/: D.C.

Commercial Insurance Company of Newark, N.J. BUSINESS ADDRESS: 80 Maiden Lane, New York, N.Y. 10038. UNDERWRITING LIMITATION b/: $3,422,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: N.J. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Puerto Rico, Virgin Islands.

Commercial Union Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, Mass. 02108. UNDERWRITING LIMITATION b/: $17,821,000. SURETY LICENSES c/: All except C.Z., Guam. INCORPORATED IN: Mass. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam.

Compass Insurance Company. BUSINESS ADDRESS: 703 Curtis Street, Middletown, Ohio 45043. UNDERWRITING LIMITATION b/: $617,000. SURETY LICENSES c/: Ala., Alaska, Ariz., Ark., Cal., Colo., Del., D.C., Fla., Ga., Idaho, Ill., Iowa, Ky., La., Mich., Minn., Miss., Mo., Mont., Nebr., N.H., N. Mex., N.Y., N. Dak., Okla., Oreg., Puerto Rico, S.C., S. Dak., Tenn., Tex., Utah, Vt., Va., Wash., Wis., Wyo. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: D.C.

The Connecticut Indemnity Company. BUSINESS ADDRESS: 1000 Asylum Avenue, Hartford, Conn. 06105. UNDERWRITING LIMITATION b/: $964,000. SURETY LICENSES c/: All except C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/: All except sAla., Alaska, C.Z., Guam, Hawaii, eIll., nInd., N. Dak., Okla., mPa., Puerto Rico, Tenn., Virgin Islands.

Consolidated Insurance Company. BUSINESS ADDRESS: 115 North Pennsylvania Street, Indianapolis, Ind. 46204. UNDERWRITING LIMITATION b/: $697,000. SURETY LICENSES c/: Fla., Idaho, Ill., Ind., Ky., Mich., Ohio, Wash., Wis. INCORPORATED IN: Ind. FEDERAL PROCESS AGENTS d/: D.C., Fla., Idaho, Ill., Ky., Mich., Ohio, Wash., Wis.

Continental Casualty Company. BUSINESS ADDRESS: CNA Plaza, Chicago, Ill. 60685. UNDERWRITING LIMITATION b/: $51,438,000. SURETY LICENSES c/: All except Guam. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/: All except C.Z., mFla., Guam, nwN.Y., mN.C., eOkla., Puerto Rico, S. Dak., sTex., Virgin Islands.

The Continental Insurance Company. BUSINESS ADDRESS: 80 Maiden Lane, New York, N.Y. 10038. UNDERWRITING LIMITATION b/: $15,180,000. SURETY LICENSES c/: All. INCORPORATED IN: N.H. FEDERAL PROCESS AGENTS d/: All.

Continental Reinsurance Corporation. BUSINESS ADDRESS: 80 Maiden Lane, New York, N.Y. 10038. UNDERWRITING LIMITATION b/: $7,780,000. SURETY LICENSES c/: Alaska, Ariz., Ark., Cal., Colo., D.C., Fla., Hawaii, Idaho, Ill., Ind., Iowa, Mich., Mont., Nev., N.J., N. Mex., N.Y., N.C., Okla., Oreg., Tex., Utah, Va., Wash., Wyo. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: Alaska, Ariz., Ark., Colo., D.C., Fla., Hawaii, Idaho, Ill., Ind., Iowa, Mich., Mont., Nev., N.J., N. Mex., N.Y., N.C., Ohio, Okla., Oreg., Tex., Utah, Va., Wash., Wyo.

Continental Surety and Fidelity Insurance Company. BUSINESS ADDRESS: P.O. Box 730, Littleton, Colo. 80120. UNDERWRITING LIMITATION b/: $41,000. SURETY LICENSES c/: Colo. INCORPORATED IN: Colo. FEDERAL PROCESS AGENTS d/: D.C.

Continental Western Insurance Company. BUSINESS ADDRESS: Box 1594, Des Moines, Iowa 50306. UNDERWRITING LIMITATION b/: $1,963,000. SURETY LICENSES c/: Ariz., Ark., Colo., Idaho, Ill., Ind., Iowa, Kans., Ky., Mich., Minn., Mo., Mont., Nebr., Nev., N. Mex., N. Dak., Okla., S. Dak., Utah, Wis., Wyo. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/: Ariz., Ark., Colo., D.C., Idaho, Ill., Ind., Kans., Ky., Mich., Minn., Mo., Mont., Nebr., Nev., N. Mex., N. Dak., Okla., S. Dak., Utah, Wis., Wyo.

Cornhusker Casualty Company. BUSINESS ADDRESS: 105 North 31st Avenue, Omaha, Nebr. 68131. UNDERWRITING LIMITATION b/: $1,209,000. SURETY LICENSES c/: Colo., Iowa, Nebr., S. Dak., Wyo. INCORPORATED IN: Nebr. FEDERAL PROCESS AGENTS d/: D.C., Nebr.

Cotton Belt Insurance Company, Inc. BUSINESS ADDRESS: Post Office Box 29405, New Orleans, La. 70189. UNDERWRITING LIMITATION b/: $152,000. SURETY LICENSES c/: Ala., Ark., Cal., Colo., Del., Fla., Idaho, Ky., La., Miss., Mo., N. Mex., Okla., Oreg., Tenn., Tex., Wash. INCORPORATED IN: Tenn. FEDERAL PROCESS AGENTS d/: eArk., D.C., sFla., nwGa., La., eN.C., S.C., nswTex., Utah.

Cotton States Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 2214, Atlanta, Ga. 30301. UNDERWRITING LIMITATION b/· $1,689,000. SURETY LICENSES c/· Ala., Fla., Ga., N.C., S.C. INCORPORATED IN: Ga. FEDERAL PROCESS AGENTS d/· Ala., D.C., Fla., eVa.

Covenant Mutual Insurance Company. BUSINESS ADDRESS: 95 Woodland Street, Hartford, Conn. 06105. UNDERWRITING LIMITATION b/· $1,162,000. SURETY LICENSES c/· Ariz., Cal., Conn., N.H., Oreg., Wash. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/· Cal., D.C.

Cumis Insurance Society, Inc. BUSINESS ADDRESS: Post Office Box 1084, Madison, Wis. 53701. UNDERWRITING LIMITATION b/· $2,190,000. SURETY LICENSES c/· All except C.Z., Guam, Virgin Islands. INCORPORATED IN: Wis. FEDERAL PROCESS AGENTS d/· D.C.

Dependable Insurance Company, Inc. BUSINESS ADDRESS: Post Office Box 10169, Jacksonville, Fla. 32207. UNDERWRITING LIMITATION b/· $582,000. SURETY LICENSES c/· Ala., Ariz., Ark., D.C., Fla., Ga., Ky., La., Md., Miss., N. Mex., N.C., Oreg., S.C., Tenn., Tex., Va., Wash. INCORPORATED IN: Fla. FEDERAL PROCESS AGENTS d/· mAla., D.C., Md., eN.C., S.C. eVa.

Drake Insurance Company of New York. BUSINESS ADDRESS: 6 Commerce Drive, Cranford, N.J. 07016. UNDERWRITING LIMITATION b/· $803,000. SURETY LICENSES c/· All except Ala., C.Z., Conn., Del., Fla., Guam, Hawaii, Ind., Ky., Me., Nebr., N.H., N.J., Oreg., Pa., Puerto Rico, Vt. Virgin Islands, Wis., Wyo. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/· D.C.

Empire Fire and Marine Insurance Company. BUSINESS ADDRESS: 1624 Douglas Street, Omaha, Nebr. 68102. UNDERWRITING LIMITATION b/· $1,284,000. SURETY LICENSES c/· All except Ark., Cal., C.Z., Conn., Del., D.C., Guam, La., Me., Md., Mass., N.H., N.J., N.Y., Oreg., Pa., Puerto Rico, R.I., Tenn., Va., Virgin Islands, W. Va. INCORPORATED IN: Nebr. FEDERAL PROCESS AGENTS d/· D.C.

The Employers' Fire Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, Mass. 02108. UNDERWRITING LIMITATION b/· $2,242,000. SURETY LICENSES c/· All except C.Z., Guam, Puerto Rico. INCORPORATED IN: Mass. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam.

Employers Mutual Casualty Company. BUSINESS ADDRESS: Post Office Box 712, Des Moines, Iowa 50303. UNDERWRITING LIMITATION b/· $5,260,000. SURETY LICENSES c/· All except Ala., C.Z., Guam, La., Puerto Rico, Virgin Islands. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/· Ariz., Colo., Conn., D.C., Ill., Ind., Kans., Mass., Mich., Minn., Miss., Mo., Nebr., N.H., N.C., N. Dak., Okla., Pa., R.I., S.C., S. Dak., Tenn., Tex., Vt., Va., Wis.

Employers Mutual Liability Insurance Company of Wisconsin. BUSINESS ADDRESS: 2000 Westwood Drive, Wausau, Wis. 54401. UNDERWRITING LIMITATION b/· $23,421,000. SURETY LICENSES c/· All except C.Z., Guam, Virgin Islands. INCORPORATED IN: Wis. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam, Puerto Rico, Virgin Islands.

Employers Reinsurance Corporation. BUSINESS ADDRESS: Post Office Box 2088, Kansas City, Mo. 64142. UNDERWRITING LIMITATION b/· $13,481,000. SURETY LICENSES c/· All except C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands. INCORPORATED IN: Mo. FEDERAL PROCESS AGENTS d/· All except Guam.

Equitable General Insurance Company. BUSINESS ADDRESS: One Equitable General Place, Fort Worth, Tex. 76151. UNDERWRITING LIMITATION b/· $3,214,000. SURETY LICENSES c/· All except C.Z., Conn., Del., Guam, Hawaii, Puerto Rico, S.C., Virgin Islands. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/· All except C.Z., Conn., Del., Guam, Hawaii, Puerto Rico, S.C., Virgin Islands.

Farmers Alliance Mutual Insurance Company. BUSINESS ADDRESS: 1122 North Main Street, McPherson, Kans. 67460. UNDERWRITING LIMITATION b/· $1,691,000. SURETY LICENSES c/· Ariz., Ark., Cal., Colo., Idaho, Ill., Iowa, Kans., Md., Mass., Mich., Minn., Mo., Mont., Nebr., N.H., N.J., N. Mex., N.Y., N.C., N. Dak., Ohio, Okla., Oreg., S.C., S. Dak., Tex., Vt., Wash. INCORPORATED IN: Kans. FEDERAL PROCESS AGENTS d/· Colo., D.C., Iowa, Mo., Nebr., N. Mex., N. Dak., Okla., S. Dak., Tex.

Farmland Mutual Insurance Company. BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, Iowa 50315. UNDERWRITING LIMITATION b/· $1,511,000. SURETY LICENSES c/· Ark., Colo., Ill., Iowa, Kans., Ky., Minn., Mo., Nebr., N. Dak., Okla., S. Dak., Tex., Wyo. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/· Colo., D.C., Ill., Kans., Okla., S. Dak., Wyo.

Federal Insurance Company. BUSINESS ADDRESS: 51 John F. Kennedy Parkway, Short Hills, N.J. 07078. UNDERWRITING LIMITATION b/· $23,873,000. SURETY LICENSES c/· All. INCORPORATED IN: N.J. FEDERAL PROCESS AGENTS d/· All.

Federated Mutual Insurance Company. BUSINESS ADDRESS: 129 East Broadway, Owatonna, Minn. 55060. UNDERWRITING LIMITATION b/· $9,448,000. SURETY LICENSES c/· All except Alaska, C.Z., Del., Guam, Hawaii, Me., Puerto Rico, Virgin Islands. INCORPORATED IN: Minn. FEDERAL PROCESS AGENTS d/· Ala., Ariz., Ark., Colo., D.C., Fla., Ga., Idaho, Ill., Ind., Iowa, Kans., Ky., Mich., Miss., Mo., Mont., Nebr., N. Mex., N.C., N. Dak., Okla., Oreg., S.C., S. Dak., Tenn., Utah, Va., Wash., W. Va., Wis., Wyo.

The Fidelity and Casualty Company of New York. BUSINESS ADDRESS: 80 Maiden Lane, New York, N.Y. 10038. UNDERWRITING LIMITATION b/· $6,308,000. SURETY LICENSES c/· All except Guam, Virgin Islands. INCORPORATED IN: N.H. FEDERAL PROCESS AGENTS d/· All except Guam, Virgin Islands.

Fidelity and Deposit Company. BUSINESS ADDRESS: Charles and Lexington Streets, Baltimore, Md. 21203. UNDERWRITING LIMITATION b/· $214,000. SURETY LICENSES c/· Md., Tex. INCORPORATED IN: Md. FEDERAL PROCESS AGENTS d/· D.C., Tex.

Fidelity and Deposit Company of Maryland. BUSINESS ADDRESS: Charles and Lexington Streets, Baltimore, Md. 21203. UNDERWRITING LIMITATION b/· $6,049,000. SURETY LICENSES c/· All except Guam. INCORPORATED IN: Md. FEDERAL PROCESS AGENTS d/· All except Guam.

Financial Indemnity Company. BUSINESS ADDRESS: P.O. Box 7754, Burbank, Cal. 91510. UNDERWRITING LIMITATION b/· $708,000. SURETY LICENSES c/· Ala., Ariz., Cal., Colo., Fla., Idaho, Ind., Mo., Mont., Nev., N. Mex., Oreg., Tex., Utah, Wash. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/· Ariz., Colo., D.C., mFla., Mo., Oreg., Wash.

Fireman's Fund Insurance Company. BUSINESS ADDRESS: 3333 California Street, San Francisco, Cal. 94119. UNDERWRITING LIMITATION b/· $60,257,000. SURETY LICENSES c/· All except C.Z. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/· All except C.Z.

Firemen's Insurance Company of Newark, New Jersey. BUSINESS ADDRESS: 80 Maiden Lane, New York, N.Y. 10038. UNDERWRITING LIMITATION b/· $31,740,000. SURETY LICENSES c/· All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: N.J. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam, Puerto Rico, Virgin Islands.

First Financial Insurance Company. BUSINESS ADDRESS: 222 West Adams Street, Chicago, Ill. 60606. UNDERWRITING LIMITATION b/· $297,000. SURETY LICENSES c/· Alaska, Ariz., Ark., Colo., Ga., Idaho, Ill., Ind., Iowa, Ky., Md., Miss., Mo., Mont., Nev., N. Mex., N. Dak., S. Dak., Utah, Wash. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/· D.C.

First General Insurance Company. BUSINESS ADDRESS: 1280 West Peachtree Street, N.W., Atlanta, Ga. 30309. UNDERWRITING LIMITATION b/· $268,000. SURETY LICENSES c/· Ariz., Ark., Cal., Colo., Del., D.C., Fla., Ga., Idaho, Ill., Ind., Ky., La., Md. Miss., Mo., N.J., N.C., Pa., R.I., Tex., Utah, Wash. INCORPORATED IN: Ga. FEDERAL PROCESS AGENTS d/· D.C.

First Insurance Company of Hawaii, Ltd. BUSINESS ADDRESS: Post Office Box 2866, Honolulu, Hawaii 96803. UNDERWRITING LIMITATION b/· $1,625,000. SURETY LICENSES c/· Alaska, Ariz., Cal., Colo., Guam, Hawaii, Ill., Ind., La., Minn., Mo., N.Y., Oreg., Utah, Wash. INCORPORATED IN: Hawaii. FEDERAL PROCESS AGENTS d/· D.C.

First National Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, Wash. 98185. UNDERWRITING LIMITATION b/· $3,457,000. SURETY LICENSES c/· All except C.Z., Guam, Hawaii, Me., Puerto Rico, Vt., Virgin Islands. INCORPORATED IN: Wash. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands.

First State Insurance Company. BUSINESS ADDRESS: 60 Batterymarch Street, Boston, Mass. 02110. UNDERWRITING LIMITATION b/· $5,159,000. SURETY LICENSES c/· Del., Mass. INCORPORATED IN: Del. FEDERAL PROCESS AGENTS d/: D.C.

Fremont Indemnity Company. BUSINESS ADDRESS: 1709 West Eighth Street, Los Angeles, Cal. 90017. UNDERWRITING LIMITATION b/· $5,662,000. SURETY LICENSES c/· Alaska, Ariz., Cal., Idaho, Ill., Iowa, Nev., N. Mex., Oreg., Tex., Wash. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/· D.C., wTenn., wWash.

Fritz Insurance Company. BUSINESS ADDRESS: 2150 Landmeier Road, Elk Grove Village, Ill. 60007. UNDERWRITING LIMITATION b/· $41,000. SURETY LICENSES c/· N. Mex. INCORPORATED IN: N. Mex. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam, Puerto Rico, Virgin Islands.

General Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, Wash. 98185. UNDERWRITING LIMITATION b/· $13,728,000. SURETY LICENSES c/· All. INCORPORATED IN: Wash. FEDERAL PROCESS AGENTS d/· All.

General Reinsurance Corporation. BUSINESS ADDRESS: 600 Steamboat Road, Greenwich, Conn. 06830. UNDERWRITING LIMITATION b/· $43,782,000. SURETY LICENSES c/· All except C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands. INCORPORATED IN: Del. FEDERAL PROCESS AGENTS d/· All except nsAla., wArk., esCal., C.Z., nsFla., nsGa., Guam, esIll., nInd., nIowa, eKy., wmLa., wMich., nMiss., wMo., nweN.Y., weN.C., neOkla., nPa., Puerto Rico, wmTenn., weTex., wVa., Virgin Islands, eWash., nW. Va., eWis.

The Glens Falls Insurance Company. BUSINESS ADDRESS: 80 Maiden Lane, New York, N.Y. 10038. UNDERWRITING LIMITATION b/· $1,796,000. SURETY LICENSES c/· All except C.Z., Guam, Virgin Islands. INCORPORATED IN: Del. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam, Virgin Islands.

Global Surety & Insurance Co. BUSINESS ADDRESS: 135 Kiewit Plaza, Omaha, Nebr. 68131. UNDERWRITING LIMITATION b/· $1,653,000. SURETY LICENSES c/· Cal., Mont., Nebr., S. Dak. INCORPORATED IN: Nebr. FEDERAL PROCESS AGENTS d/· D.C.

Globe Indemnity Company. BUSINESS ADDRESS: 150 William Street, New York, N.Y. 10038. UNDERWRITING LIMITATION b/· $9,315,000. SURETY LICENSES c/· All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam, Puerto Rico, Virgin Islands.

Grain Dealers Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 1747, Indianapolis, Ind. 46206. UNDERWRITING LIMITATION b/· $1,282,000. SURETY LICENSES c/· All except Ala., Alaska, C.Z., Conn., Del., D.C., Fla., Guam, Idaho, Me., Md., Mass., Mont., N.H., N.J., N.Y., N. Dak., Pa., Puerto Rico, R.I., Utah, Vt., Virgin Islands, W. Va. INCORPORATED IN: Ind. FEDERAL PROCESS AGENTS d/· Ariz., Ark., nesCal., Colo., D.C., Ga., Hawaii, Ill., Iowa, Kans., Ky. La., Mich., Minn., Mo., Nebr., Nev., N. Mex., N.C., Ohio, Okla., Oreg., S.C., S. Dak., Tenn., Tex., Va., Wash., W. Va., Wis., Wyo.

Granite State Insurance Company. BUSINESS ADDRESS: Post Office Box 960, Manchester, N.H. 03107. UNDERWRITING LIMITATION b/· $512,000. SURETY LICENSES c/· All except C.Z., Conn., Del., Guam, Hawaii, Idaho, Puerto Rico. INCORPORATED IN: N.H. FEDERAL PROCESS AGENTS d/· All except Puerto Rico.

Great American Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, Ohio 45202. UNDERWRITING LIMITATION b/· $25,915,000. SURETY LICENSES c/· All except C.Z. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/· All except C.Z.

Great Northern Insurance Company. BUSINESS ADDRESS: 190 River Road, Summit, N.J. 07901. UNDERWRITING LIMITATION b/· $1,138,000. SURETY LICENSES c/· Ariz., Colo., D.C., Fla., Ga., Ill., Ind., Iowa, Me., Md., Mich., Minn., Miss., Mo., Mont., Nebr., Nev., N. Mex., N.Y., N. Dak., Ohio, Oreg., R.I., S.C., S. Dak., Vt., Va., Wash., Wyo. INCORPORATED IN: Minn. FEDERAL PROCESS AGENTS d/· Ariz., sCal., D.C., Ill., Iowa, wMich., nMiss., Mo., Mont., N. Dak., S. Dak., Wis.

Greater New York Mutual Insurance Company. BUSINESS ADDRESS: 770 Broadway, New York, N.Y. 10003. UNDERWRITING LIMITATION b/· $5,150,000. SURETY LICENSES c/· All except Alaska, Ark., C.Z., Guam, Hawaii, La., Oreg., S.C., Tenn., Virgin Islands. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/· D.C.

Gulf Insurance Company. BUSINESS ADDRESS: Post Office Box 1771, Dallas, Tex. 75221. UNDERWRITING LIMITATION b/· $3,677,000. SURETY LICENSES c/· All except C.Z., Conn., Guam, Idaho, N.J., Puerto Rico, Virgin Islands. INCORPORATED IN: Mo. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands.

The Hamilton Mutual Insurance Company of Cincinnati, Ohio. BUSINESS ADDRESS: 1520 Madison Road, Cincinnati, Ohio UNDERWRITING LIMITATION b/· $382,000. SURETY LICENSES c/· Ind., Ky., Mich., Ohio. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/· D.C.

The Hanover Insurance Company. BUSINESS ADDRESS: 440 Lincoln Street, Worcester, Mass. 01605. UNDERWRITING LIMITATION b/: $10,425,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: N.H. FEDERAL PROCESS AGENTS d/: nAla., eArk., nCal., Conn., Del., D.C., nmFla., Ga., Ill., Ind., wKy., eLa., Me., Md., Mass., Mich., Mo., N.J., nwsN.Y., Ohio, wmPa., R.I., nesTex., eVa., eWis.

Harleysville Mutual Insurance Company. BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, Pa. 19438. UNDERWRITING LIMITATION b/: $6,305,000. SURETY LICENSES c/: Cal., Colo., Del., D.C., Ga., Ill., Ind., Iowa, Kans., Md., Mich., Minn., Miss., Mo., N.J., N. Mex., N.C., Ohio, Okla., Pa., S.C., Tex., Utah, Va., W. Va. INCORPORATED IN: Pa. FEDERAL PROCESS AGENTS d/: Del., D.C., Md., N.J., N.C., sOhio, S.C., Va.

Hartford Accident and Indemnity Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, Conn. 06115. UNDERWRITING LIMITATION b/: $39,583,000. SURETY LICENSES c/: All except Guam. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/: All except mFla., Guam, nLa., Virgin Islands.

Hartford Casualty Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, Conn. 06115. UNDERWRITING LIMITATION b/: $5,074,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: N.J. FEDERAL PROCESS AGENTS d/: All except C.Z., mFla., Guam, nLa., Puerto Rico, Virgin Islands.

Hartford Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, Conn. 06115. UNDERWRITING LIMITATION b/: $87,243,000. SURETY LICENSES c/: All except C.Z. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/: Ariz., Cal., D.C., Guam, Hawaii, weLa., N.Y., Va.

Hawkeye-Security Insurance Company. BUSINESS ADDRESS: 1017 Walnut Street, Des Moines, Iowa 50307. UNDERWRITING LIMITATION b/: $1,912,000. SURETY LICENSES c/: Ariz., Colo., D.C., Idaho, Ill., Ind., Iowa, Kans., Md., Mich., Minn., Mo., Mont., Nebr., Nev., N. Mex., N. Dak., Ohio, S. Dak., Tex., Utah, Va., Wis., Wyo. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/: Colo., D.C., Ill., Ind., Kans., Mich., Nebr., S. Dak., wWis., Wyo.

Heritage Insurance Company of America. BUSINESS ADDRESS: 7366 North Lincoln Avenue, Lincolnwood, Ill. 60646. UNDERWRITING LIMITATION b/: $299,000. SURETY LICENSES c/: Ariz., Ark., Fla., Ga., Ill., Mo., Nev. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/: Ark., D.C., msFla., Mich., Minn., Mo., Nebr., eVa.

Highlands Insurance Company. BUSINESS ADDRESS: 600 Jefferson Street, Houston, Tex. 77002. UNDERWRITING LIMITATION b/: $9,179,000. SURETY LICENSES c/: All except C.Z., Guam, Virgin Islands. INCORPORATED IN: Tex. FEDERAL PROCESS AGENTS d/: All except C.Z., sFla., Guam, Hawaii, eIll., eKy., wmLa., nMiss., N.H., Puerto Rico, Virgin Islands, eWis.

Highlands Underwriters Insurance Company. BUSINESS ADDRESS: 600 Jefferson Street, Houston, Tex. 77002. UNDERWRITING LIMITATION b/: $793,000. SURETY LICENSES c/: Ala., Ariz., Ark., Cal., Fla., La., Miss., N. Mex., Okla., S.C., Tex. INCORPORATED IN: Tex. FEDERAL PROCESS AGENTS d/: D.C.

The Home Indemnity Company. BUSINESS ADDRESS: 59 Maiden Lane, New York, N.Y. 10038. UNDERWRITING LIMITATION b/: $5,405,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: N.H. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Puerto Rico, Virgin Islands.

The Home Insurance Company. BUSINESS ADDRESS: 59 Maiden Lane, New York, N.Y. 10038. UNDERWRITING LIMITATION b/: $28,807,000. SURETY LICENSES c/: All except C.Z., Guam, Virgin Islands. INCORPORATED IN: N.H. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Virgin Islands.

Houston General Insurance Company. BUSINESS ADDRESS: One Equitable General Place, Fort Worth, Tex. 76151. UNDERWRITING LIMITATION b/: $1,154,000. SURETY LICENSES c/: Ala., Ariz., Ark., Cal., Colo., Fla., Ga., Ill., Iowa, Kans., Ky., La., Mich., Miss., Mo., N. Mex., N. Dak., Okla., S.C., S. Dak., Tenn., Tex., Utah. INCORPORATED IN: Tex. FEDERAL PROCESS AGENTS d/: Ala., Ariz., Ark., Cal., Colo., D.C., Fla., Ga., Ill., Iowa, Kans., Ky., La., Mich., Miss., Mo., N. Mex., N. Dak., Okla., S.C., S. Dak., Tenn., Utah.

Hudson Insurance Company. BUSINESS ADDRESS: 280 Park Avenue, New York, N.Y. 10017. UNDERWRITING LIMITATION b/: $1,028,000. SURETY LICENSES c/: D.C., Ind., Iowa, La., Nev., N.H., N.J., N.Y., Ohio, Tenn., Tex., Utah, W. Va. INCORPORATED IN: Del. FEDERAL PROCESS AGENTS d/: D.C.

IGF Insurance Company. BUSINESS ADDRESS: 315 Shops Building, Des Moines, Iowa 50309. UNDERWRITING LIMITATION b/: $244,000. SURETY LICENSES c/: Colo., Iowa, Mo., Mont., N. Dak., S. Dak., INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/: D.C., Mo., Nebr.

INA Reinsurance Company. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, Pa. 19101. UNDERWRITING LIMITATION b/: $8,966,000. SURETY LICENSES c/: All except C.Z., Guam, Me., Virgin Islands. INCORPORATED IN: Del. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, nLa., Mass., ePa., weTex., Virgin Islands.

INA Underwriters Insurance Company. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, Pa. 19101. UNDERWRITING LIMITATION b/: $7,759,000. SURETY LICENSES c/: All. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: All.

Illinois National Insurance Co. BUSINESS ADDRESS: 133 South 4th. Street, Springfield, Ill. 62700. UNDERWRITING LIMITATION b/: $915,000. SURETY LICENSES c/: Alaska, Ill., Ind., Iowa, Ky., Mo., Mont., Nebr., N.Mex., N.Y., N. Dak., Ohio, S. Dak., Tex. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/: All except C.Z., Puerto Rico.

Indemnity Company of California. BUSINESS ADDRESS: 820 North Parton Street, Santa Ana, Cal. 92701. UNDERWRITING LIMITATION b/: $101,000. SURETY LICENSES c/: Cal. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: D. C.

Indemnity Insurance Company of North America. 1* BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, Pa. 19101. UNDERWRITING LIMITATION b/: $2,608,000. SURETY LICENSES c/: All except C.Z., Guam, Virgin Islands. INCORPORATED IN: N. Y. FEDERAL PROCESS AGENTS d/: All except Alaska, C.Z., Guam, Hawaii, Virgin Islands.

Indiana Insurance Company. BUSINESS ADDRESS: 115 North Pennsylvania Street, Indianapolis, Ind. 46204. UNDERWRITING LIMITATION b/: $4,100,000. SURETY LICENSES c/: Fla., Idaho, Ill., Ind., Ky., Mich., Ohio, Wash., Wis. INCORPORATED IN: Ind. FEDERAL PROCESS AGENTS d/: D.C., Fla., Idaho, Ill., Ky., Mich., Ohio, Wash., Wis.

Indiana Lumbermens Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 1985, Indianapolis, Ind. 46206. UNDERWRITING LIMITATION b/· $1,021,000. SURETY LICENSES c/: Ala., Ark., Fla., Ga., Ill., Ind., Iowa, Kans., Ky., La., Mich., Minn., Miss., Mo., N. Mex., N.C., Okla., S.C.,Tenn., Tex., Va., Wis. INCORPORATED IN: Ind. FEDERAL PROCESS AGENTS d/· All except Ala., Ark., Fla., Ga., Ill., Ind., Iowa, Kans., Ky., La., Mich., Minn., Miss., Mo., N.Mex., N.C., Okla., S.C., Tenn., Tex., Va., Wis.

Industrial Indemnity Company. BUSINESS ADDRESS: Post Office Box 3660, San Francisco, Cal. 94120. UNDERWRITING LIMITATION b/· $8,173,000. SURETY LICENSES c/· All except C.Z., Conn., Guam, Puerto Rico, Virgin Islands, W. Va. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/· All except C.Z., Conn., nFla., nGa., Guam, eIll., nIowa, mMa., wMo., sN.Y., Puerto Rico, Virgin Islands, W. Va., wWis.

Inland Insurance Company. BUSINESS ADDRESS: Post Office Box 80468, Lincoln, Nebr. 68501. UNDERWRITING LIMITATION b/· $700,000. SURETY LICENSES c/· Colo., Iowa, Kans., Minn., Nebr., N. Dak., Okla., S. Dak., Wyo. INCORPORATED IN: Nebr. FEDERAL PROCESS AGENTS d/· Ariz., Colo., D.C., Iowa, Kans., Minn., Mont., N. Mex., N. Dak., wOkla., S. Dak., Wyo.

Insurance Company of North America. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, Pa. 19101. UNDERWRITING LIMITATION b/· $52,158,000. SURETY LICENSES c/· All. INCORPORATED IN: Pa. FEDERAL PROCESS AGENTS d/· All.

Insurance Company of the Pacific Coast. BUSINESS ADDRESS: Post Office Box 2175, Newport Beach, Cal. 92663. UNDERWRITING LIMITATION b/· $231,000. SURETY LICENSES c/· Cal. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/· D.C.

The Insurance Company of the State of Pennsylvania. BUSINESS ADDRESS: 70 Pine Street, New York, N.Y. 10005. UNDERWRITING LIMITATION b/· $2,609,000. SURETY LICENSES c/· All except C.Z., Guam, Kans., Puerto Rico, Virgin Islands. INCORPORATED IN: Pa. FEDERAL PROCESS AGENTS d/· D.C.

Insurance Company of the West. BUSINESS ADDRESS: Post Office Box 81063, San Diego, Cal. 92138. UNDERWRITING LIMITATION b/· $785,000. SURETY LICENSES c/· Cal., Nev. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: Ariz., D. C., Nev.

Integon Indemnity Corporation. BUSINESS ADDRESS: Post Office Box 3199, Winston-Salem, N.C. 27102. UNDERWRITING LIMITATION b/· $474,000. SURETY LICENSES c/· Ala., Ariz., Fla., Ga., Iowa, Ky., La., Miss., N.Mex., N.C., Okla., Oreg., S.C., Tenn., Tex., Utah, Va. Wash. INCORPORATED IN: N.C. FEDERAL PROCESS AGENTS d/· D.C., Fla., Ga., wTenn., Va.

Integrity Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 539, Appleton, Wis. 54912. UNDERWRITING LIMITATION b/· $265,000. SURETY LICENSES c/· Minn., Wis. INCORPORATED IN: Wis. FEDERAL PROCESS AGENTS d/: D.C., Minn.

International Fidelity Insurance Company. BUSINESS ADDRESS: 24 Commerce Street, Newark, N.J. 07102. UNDERWRITING LIMITATION b/: $128,000. SURETY LICENSES c/· Alaska, Ariz., Colo., Del., Fla., Idaho, Ill., Ind., La., Md., Mass., Mich., Miss., Mo., Mont., Nev., N.J., N.Mex., N.Y., N.Dak., Okla.,Oreg., Pa., S. Dak., Tex., Utah, Wash., Wyo. INCORPORATED IN: N.J. FEDERAL PROCESS AGENTS d/· sAla., Alaska, Ariz., C.Z., Colo., Del., D.C., Fla., nGa., Idaho, nIll., Ind., nIowa, wKy., La., Md., Mass., Mich., Minn., Miss., eMo., Mont., Nev., seN.Y., eN.C., N. Dak., sOhio, nwOkla., ewPa., Puerto Rico, S.C., S. Dak., wTenn., nswTex., eVa., eWash., eWis., Wyo.

International Insurance Company. BUSINESS ADDRESS: 233 South Wacker Drive, Chicago, Ill. 60606. UNDERWRITING LIMITATION b/· $1,736,000. SURETY LICENSES c/· All except C.Z., Del., Guam, Hawaii, Kans., La., S.C., Virgin Islands. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam, nla.

International Service Insurance Company. BUSINESS ADDRESS: Post Office Box 1040, Fort Worth, Tex. 76101. UNDERWRITING LIMITATION b/· $1,713,000. SURETY LICENSES c/· Alaska, Col., C.Z., Nebr., N. Mex., Tex. INCORPORATED IN: Tex. FEDERAL PROCESS AGENTS d/· D.C.

Investors Insurance Company of America. BUSINESS ADDRESS: 100 Eisenhower Drive, Paramus, N.J. 07652. UNDERWRITING LIMITATION b/· $527,000. SURETY LICENSES c/· Fla., Ga., N.J., N.Y. INCORPORATED IN: N.J. FEDERAL PROCESS AGENTS d/: D.C., esN.Y.

John Deere Insurance Company. BUSINESS ADDRESS: 400 19th. Street, Moline, Ill. 61265. UNDERWRITING LIMITATION b/· $1,726,000. SURETY LICENSES c/· All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/· All except Ala., C.Z., Del., Guam, Idaho, Puerto Rico, Virgin Islands, sW.Va.

The Kansas Bankers Surety Company. BUSINESS ADDRESS: 1110 First National Bank Tower, Topeka, Kans. 66603. UNDERWRITING LIMITATION b/· $135,000. SURETY LICENSES c/· D.C., Kans. INCORPORATED IN: Kans. FEDERAL PROCESS AGENTS d/· D.C.

Kansas City Fire and Marine Insurance Company. BUSINESS ADDRESS: 80 Maiden Lane, New York, N.Y. 10038. UNDERWRITING LIMITATION b/· $936,000. SURETY LICENSES c/· All except C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands. INCORPORATED IN: Mo. FEDERAL PROCESS AGENTS d/· All except C.Z., Del., Guam, Hawaii, Puerto Rico, Virgin Islands.

Lakeland Fire and Casualty Company. BUSINESS ADDRESS: 6700 France Avenue South, Minneapolis, Minn. 55435. UNDERWRITING LIMITATION b/· $202,000. SURETY LICENSES c/: Iowa, Minn., N. Dak. INCORPORATED IN: Minn. FEDERAL PROCESS AGENTS d/· D.C.

Lawyers Surety Corporation. BUSINESS ADDRESS: 1820 Regal Row, Dallas, Tex. 75235. UNDERWRITING LIMITATION b/· $222,000. SURETY LICENSES c/: Ark., D.C., Fla., Ga., Ill., Ky., Miss., Okla., Tenn., Tex. INCORPORATED IN: Tex. FEDERAL PROCESS AGENTS d/· Ark., D.C., Fla., Ga., Ill., Ky., Miss., Okla., Tenn.

Liberty Mutual Insurance Company. BUSINESS ADDRESS: 175 Berkeley Street, Boston, Mass. 02117. UNDERWRITING LIMITATION b/· $63,123,000. SURETY LICENSES c/· All except Guam, Virgin Islands. INCORPORATED IN: Mass. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam,Kans., Puerto Rico, Virgin Islands, sW.Va.

Lumbermens Mutual Casualty Company. BUSINESS ADDRESS: Long Grove, Ill. 60049. UNDERWRITING LIMITATION b/· $46,583,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam, Puerto Rico, Virgin Islands.

MGIC Indemnity Corporation. BUSINESS ADDRESS: Post Office Box 756, Milwaukee, Wis. 53201. UNDERWRITING LIMITATION b/: $4,721,000. SURETY LICENSES c/: All except Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: D.C.

Maine Bonding and Casualty Company. BUSINESS ADDRESS: 400 Congress Street, Portland, Me. 04111. UNDERWRITING LIMITATION b/: $773,000. SURETY LICENSES c/: Me., Mass., N.H., R.I., Vt. INCORPORATED IN: Me. FEDERAL PROCESS AGENTS d/: D.C., Mass., N.H., R.I., Vt.

Maryland Casualty Company. BUSINESS ADDRESS: Post Office Box 1228, Baltimore, Md. 21203. UNDERWRITING LIMITATION b/: $18,142,000. SURETY LICENSES c/: All except Guam, Mass. INCORPORATED IN: Md. FEDERAL PROCESS AGENTS d/: All except Guam.

Massachusetts Bay Insurance Company. BUSINESS ADDRESS: 440 Lincoln Street, Worcester, Mass. 01605. UNDERWRITING LIMITATION b/: $488,000. SURETY LICENSES c/: Ark., Cal., Colo., Conn., D.C., Fla., Ga., Ill., Ind., Iowa, Kans., Me., Md., Mass., Mich., Minn., Miss., Mo., Nebr., N.H., N.J., N.Y., N.C., Ohio, Okla., Pa., R.I., S.C., Tenn., Tex., Vt., Va., Wash., Wis. INCORPORATED IN: Mass. FEDERAL PROCESS AGENTS d/: Colo., D.C., nFla., Ga., Ind., sIowa, Kans., wKy., Me., Md., Mich., N.H., sN.Y., sOhio, Okla., wePa., R.I., S.C., Tenn., Tex., Vt., Wis.

Mead Reinsurance Corporation. 2* BUSINESS ADDRESS: Courthouse Plaza, N.E., Dayton, Ohio 45463. UNDERWRITING LIMITATION b/: $1,014,000. SURETY LICENSES c/: Ala., Ariz., Cal., Colo., Fla., Ga., Idaho, Ill., Ind., Kans., Ky., La., Mich., Minn., Miss., Mo., Nebr., Nev., N.J., N. Mex., N.C., Ohio, Okla. S.C., Tenn., Tex., Utah, Va., Wash., Wis. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/: D.C.

The Mercantile and General Reinsurance Company of America. BUSINESS ADDRESS: 130 John Street, New York, N.Y. 10038. UNDERWRITING LIMITATION b/: $1,070,000. SURETY LICENSES c/: Cal., D.C., Idaho, Iowa, Neb., N.Y., Ohio, Pa., Utah, Wis. (Reinsurance only in Colo., Conn., Fla., Ind., Kans., Md., Mich., N.J., Okla., S.C., Tenn., Tex., Vt., W. Va.) INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: D.C.

Merchants Mutual Bonding Company. BUSINESS ADDRESS: 2100 Grand Avenue, Des Moines, Iowa 50312. UNDERWRITING LIMITATION b/: $156,000. SURETY LICENSES c/: Ariz., Iowa, Kans., Nebr., Okla., S. Dak., Tex. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/: Ariz., Colo., D.C., sFla., Idaho, Ill., Kans., wLa., Minn., Mo., Mont., Nebr., N. Mex., N. Dak., Okla., Oreg., S. Dak., Tex., Wis.

Meritplan Insurance Company. BUSINESS ADDRESS: Post Office Box 1770, Newport Beach, Cal. 92663. UNDERWRITING LIMITATION b/: $684,000. SURETY LICENSES c/: Ariz., Cal., Colo., Del., Fla., Ga., Hawaii, Iowa, Mich., Miss., Mont., Nev., N.Mex., N.Y., Oreg., S.C., Utah, Wash. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: D.C., nTex.

Michigan Millers Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 30060, Lansing, Mich. 48909. UNDERWRITING LIMITATION b/: $2,822,000. SURETY LICENSES c/: All except Ala., Alaska, Ariz., C.Z., Conn., Del., D.C., Ga., Guam, Hawaii, Idaho, Iowa, La., Minn., Mont., Nev., N. Mex., N. Dak., Oreg., Puerto Rico, R.I., S. Dak., Utah, Vt., Virgin Islands, Wash., W. Va., Wis., Wyo. INCORPORATED IN: Mich. FEDERAL PROCESS AGENTS d/: Ark., nsCal., Colo., D.C., Fla., Kans., Ky., Md., Mich., Miss., Mo., Nebr., N.C., Okla., Pa., S.C., Tenn., Tex., Va.

Michigan Mutual Insurance Company. BUSINESS ADDRESS: 28 West Adams Avenue, Detroit, Mich. 48226. UNDERWRITING LIMITATION b/: $5,818,000. SURETY LICENSES c/: All except C.Z., Del., Guam, Hawaii, Oreg., Puerto Rico, Virgin Islands. (Fidelity only in D.C., N. Dak.) INCORPORATED IN: Mich. FEDERAL PROCESS AGENTS d/: D.C.

Mid-Century Insurance Company. BUSINESS ADDRESS: Post Office Box 2478, Terminal Annex, Los Angeles, Cal. 90051. UNDERWRITING LIMITATION b/: $1,896,000. SURETY LICENSES c/: Ariz., Ark., Cal., Colo., Del., Idaho, Ill., Ind., Iowa, Kans., Mich., Minn., Mo., Mont., Nebr., Nev., N. Mex., N. Dak., Ohio, Okla., Oreg., Tex., Utah, Vt., Wash., Wis., Wyo. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: Ariz., Ark., D.C., Idaho, eIll., nIowa, Mich., wMo., weOkla., S.Dak., nweTex., Wash.

Midland Insurance Company. BUSINESS ADDRESS: 160 Water Street, New York, N.Y. 10038. UNDERWRITING LIMITATION b/: $708,000. SURETY LICENSES c/: All except C.Z., Guam, Virgin Islands. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, nIowa, mLa., Me., wMich., nMiss., wN.C., Puerto Rico, Virgin Islands, nW. Va.

Midwestern Casualty & Surety Company. BUSINESS ADDRESS: 7628 Hickman Road, Des Moines, Iowa 50322. UNDERWRITING LIMITATION b/: $105,000. SURETY LICENSES c/: Iowa. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/: D.C. AGENTS d/: D.C.

The Millers Mutual Fire Insurance Company of Texas. BUSINESS ADDRESS: Post Office Box 2269, Fort Worth, Tex. 76113. UNDERWRITING LIMITATION b/: $1,915,000. SURETY LICENSES c/: All except Ala., Alaska, Ariz., Cal., C.Z., Conn., Del., Fla., Ga., Guam, Hawaii, Kans., Ky., Me., Md., Mass., Mich., Nev., N.H., N.Y., N.C., N.Dak., Puerto Rico, R.I., S.C., Tenn., Utah, Vt., Va., Virgin Islands, W. Va. INCORPORATED IN: Tex. FEDERAL PROCESS AGENTS d/: Ark., D.C., La., Mo., N. Mex., Oreg., Wash., Wyo.

Millers' Mutual Insurance Association of Illinois. BUSINESS ADDRESS: 111 East Fourth Street, Alton, Ill. 62002. UNDERWRITING LIMITATION b/: $3,356,000. SURETY LICENSES c/: Ala., Ark., Colo., D.C., Ga., Ill., Ind., Iowa, Kans., La., Minn., Miss., Mo., N.C., S.Dak., Tenn., Wis. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/: Ala., Ark., Colo., D.C., Ind., Iowa, Kans., Minn., Mo., Tenn., Wis.

Millers National Insurance Company. BUSINESS ADDRESS: 29 North Wacker Drive, Chicago, Ill. 60606. UNDERWRITING LIMITATION b/: $702,000. SURETY LICENSES c/: All except Alaska, C.Z., Colo., Conn., Del., Guam, Hawaii, La., Me., Miss., Nev., N.H., Pa., Puerto Rico, R.I., Vt., Wash. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/: All except Alaska, cCal., C.Z., Colo., Conn., Del., Guam, Hawaii, La., Me., Miss., Nev., N.H., Oreg., Puerto Rico, R.I., Vt., eVa., Virgin Islands.

Minnesota Trust Company of Austin. BUSINESS ADDRESS: 209 3rd. Avenue, N.W., Box 463, Austin, Minn. 55912. UNDERWRITING LIMITATION b/: $60,000. SURETY LICENSES c/: Minn. INCORPORATED IN: Minn. FEDERAL PROCESS AGENTS d/: D.C., N. Dak.

Mission Insurance Company. BUSINESS ADDRESS: 2601 Wilshire Boulevard, Los Angeles, Cal. 90057. UNDERWRITING LIMITATION b/: $2,979,000. SURETY LICENSES c/: Ala., Alaska, Ariz., Cal., Colo., Hawaii, Idaho, Ill., Iowa, La., Miss., Mo., Mont., Nev., N. Mex., N.Y., Okla., Oreg., Tex., Wash. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: Ariz., D.C., Idaho, Oreg., wVa.

Morrison Assurance Company, Inc. BUSINESS ADDRESS: 5109 South Lois Avenue, Tampa, Fla. 33681. UNDERWRITING LIMITATION b/: $456,000. SURETY LICENSES c/: Ala., Ark., Fla., Ga., Ky., La., Miss., Mont., N. Mex., Okla., S.C., Tenn., Tex., Utah. INCORPORATED IN: Fla. FEDERAL PROCESS AGENTS d/: Ala., Ark., D.C., Ga., La., Miss., S.C., Tex.

Munich American Reinsurance Company. BUSINESS ADDRESS: 410 Park Avenue, New York, N.Y. 10022. UNDERWRITING LIMITATION b/: $3,043,000. SURETY LICENSES c/: Ark., Cal., Colo., D.C., Ga., Ind., Iowa, Kans., La., N.H., N.J., N.Y., Ohio, Pa., S.C., Tex. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: D.C.

National American Insurance Company of New York. BUSINESS ADDRESS: 1105 Hamilton Street, Allentown, Pa. 18101. UNDERWRITING LIMITATION b/: $1,212,000. SURETY LICENSES c/: All except Ariz., C.Z., Del., Guam, Hawaii, Mo., N. Mex., Puerto Rico, Virgin Islands, Wyo. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: Ala., Ark., Cal., Colo., D.C., Fla., Ga.

National Automobile and Casualty Insurance Company. BUSINESS ADDRESS: Post Office Box 7049, Pasadena, Cal. 91109. UNDERWRITING LIMITATION b/: $591,000. SURETY LICENSES c/: Alaska, Ariz., Cal., Nev., Tex., Wash. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands.

National-Ben Franklin Insurance Company of Illinois. BUSINESS ADDRESS: 360 West Jackson Boulevard, Chicago, Ill. 60606. UNDERWRITING LIMITATION b/: $8,272,000. SURETY LICENSES c/: D.C., Ill., Ind., Iowa, Ky., Minn., N.Y., N.C., N. Dak., Wis. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/: D.C., Ind., Iowa, Ky., Minn., N.Y., N.C., N. Dak., Wis.

National-Ben Franklin Insurance Company of Michigan. BUSINESS ADDRESS: 26500 Northwestern Highway, Southfield, Mich. 48076. UNDERWRITING LIMITATION b/: $2,338,000. SURETY LICENSES c/: Mich. INCORPORATED IN: Mich. FEDERAL PROCESS AGENTS d/: D.C.

National Bonding and Accident Insurance Company. BUSINESS ADDRESS: 4242 Lindell Boulevard, St. Louis, Mo. 63108. UNDERWRITING LIMITATION b/: $331,000. SURETY LICENSES c/: All except C.Z., Guam, Mass., N.C., Puerto Rico, Virgin Islands Wis. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: All except wArk., eCal., C.Z., Guam, nInd., wIa., nMiss., wN.C., neOkla., nPa., Puerto Rico, wWa., Virgin Islands, eWash., nW.Va.

National Fire Insurance Company of Hartford. BUSINESS ADDRESS: CNA Plaza, Chicago, Ill. 60685. UNDERWRITING LIMITATION b/: $10,159,000. SURETY LICENSES c/: All except C.Z., Guam, Virgin Islands. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/: All except C.Z., nFla., Guam, Minn., nwN.Y., nN.C., eOkla., Puerto Rico, S. Dak., sTex., Virgin Islands.

National Grange Mutual Insurance Company. BUSINESS ADDRESS: 55 West Street, Keene, N.H. 03431. UNDERWRITING LIMITATION b/: $2,969,000. SURETY LICENSES c/: Conn., Del., D.C., Ill., Ind., Iowa, Me., Md., Mass., Mich., N.H., N.J., N.Y., Ohio, Pa., R.I., S.C. Tenn., Vt., Va., W. Va., Wis. INCORPORATED IN: N.H. FEDERAL PROCESS AGENTS d/: Conn., Del., D.C., Ill., Ind., Iowa, Me., Md., Mass., Mich., N.J., N.Y., Ohio, Pa., R.I., S.C., Tenn., Vt., Va., W. Va., Wis.

National Indemnity Company. BUSINESS ADDRESS: 3024 Harney Street, Omaha, Nebr. 68131. UNDERWRITING LIMITATION b/: $15,498,000. SURETY LICENSES c/: All except C.Z., Colo., Guam, Hawaii, Mass., Minn., N.J., N.Y., Puerto Rico, Virgin Islands. INCORPORATED IN: Nebr. FEDERAL PROCESS AGENTS d/: D.C.

The National Reinsurance Corporation. BUSINESS ADDRESS: 123 William Street, New York, N.Y. 10038. UNDERWRITING LIMITATION b/: $6,147,000. SURETY LICENSES c/: All except Ala., C.Z., Conn., Fla., Ga., Guam, La., Me., Miss., Mo., N.C., Oreg., S.C., S. Dak., Tenn., Virgin Islands, W. Va. INCORPORATED IN: Del. FEDERAL PROCESS AGENTS d/: D.C.

National Standard Insurance Company. BUSINESS ADDRESS: Post Office Box 1502, Houston, Tex. 77001. UNDERWRITING LIMITATION b/: $428,000. SURETY LICENSES c/: La., N. Mex., Tex. INCORPORATED IN: Tex. FEDERAL PROCESS AGENTS d/: D.C.

National Surety Corporation. BUSINESS ADDRESS: 200 West Monroe Street, Chicago, Ill. 60606. UNDERWRITING LIMITATION b/: $8,841,000. SURETY LICENSES c/: All except Guam, Virgin Islands. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/: All except Guam, Virgin Islands.

National Union Fire Insurance Company of Pittsburgh, Pa. BUSINESS ADDRESS: 70 Pine Street, New York, N.Y. 10005. UNDERWRITING LIMITATION b/: $5,470,000. SURETY LICENSES c/: All except Del. INCORPORATED IN: Pa. FEDERAL PROCESS AGENTS d/: All except C.Z., scIll., Puerto Rico.

Nationwide Mutual Insurance Company. BUSINESS ADDRESS: One Nationwide Plaza, Columbus, Ohio 43216. UNDERWRITING LIMITATION b/: $65,498,000. SURETY LICENSES c/: All. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/: D.C.

New England Reinsurance Corporation. BUSINESS ADDRESS: 60 Batterymarch Street, Boston, Mass. 02110. UNDERWRITING LIMITATION b/: $4,153,000. SURETY LICENSES c/: Ala., Alaska, Ark., Cal., Conn., Del., D.C., Idaho, Ill., Ind., Iowa, Ky., Mass., Minn., Miss., Nev., N.J., N.Y., Ohio, Okla., R.I., Tenn., Wash. (Reinsurance only in Fla., Kans., Mo., N.H., S.C., Tex.) INCORPORATED IN: Mass. FEDERAL PROCESS AGENTS d/: D.C.

New Hampshire Insurance Company. BUSINESS ADDRESS: Post Office Box 960, Manchester, N. H. 03107. UNDERWRITING LIMITATION b/: $11,813,000. SURETY LICENSES c/: All. INCORPORATED IN: N.H. FEDERAL PROCESS AGENTS d/: All.

New York Underwriters Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, Conn. 06115. UNDERWRITING LIMITATION b/: $4,074,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: All except C.Z., nFla., Guam, nIa., Puerto Rico, Virgin Islands.

Newark Insurance Company. BUSINESS ADDRESS: 150 William Street, New York, N.Y. 10038. UNDERWRITING LIMITATION b/: $1,972,000. SURETY LICENSES c/: All except C.Z., Guam, Oreg., Puerto Rico, Virgin Islands. INCORPORATED IN: N.J. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Puerto Rico, Virgin Islands.

Niagara Fire Insurance Company. BUSINESS ADDRESS: 80 Maiden Lane, New York, N.Y. 10038. UNDERWRITING LIMITATION b/: $1,398,000. SURETY LICENSES c/: All except C.Z., Guam. INCORPORATED IN: Del. FEDERAL PROCESS AGENTS d/: All except C.Z., Conn., Guam.

North American Reinsurance Corporation. BUSINESS ADDRESS: 245 Park Avenue, New York, N.Y. 10017. UNDERWRITING LIMITATION b/: $8,811,000. SURETY LICENSES c/: All except C.Z., Guam, Virgin Islands, Wyo. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Virgin Islands.

The North River Insurance Company. BUSINESS ADDRESS: Post Office Box 2387 Morristown, N.J. 07960. UNDERWRITING LIMITATION b/: $6,742,000. SURETY LICENSES c/: All except C.Z., Guam, Virgin Islands. INCORPORATED IN: N.J. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, mLa.

Northbrook Property and Casualty Insurance Company. BUSINESS ADDRESS: Allstate Plaza, Northbrook, Ill. 60062. UNDERWRITING LIMITATION b/: $3,528,000. SURETY LICENSES c/: All except C.Z., Guam, Idaho, Kans., Puerto Rico, Tex., Virgin Islands. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Idaho, Kans., Puerto Rico, Tex., Virgin Islands, eWis.

Northeastern Insurance Company of Hartford. BUSINESS ADDRESS: 1017 Walnut Street, Des Moines, Iowa 50307. UNDERWRITING LIMITATION b/: $2,452,000. SURETY LICENSES c/: Cal., Colo., Conn., Ill., Ind., Iowa, Kans., N.H., N.J., N.Y., Ohio, Pa., Tex., W. Va., Wis. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/: D.C.

The Northern Assurance Company of America. BUSINESS ADDRESS: One Beacon Street, Boston, Mass. 02108. UNDERWRITING LIMITATION b/: $1,255,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico. INCORPORATED IN: Mass. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Virgin Islands.

Northern Insurance Company of New York. BUSINESS ADDRESS: Post Office Box 91, Baltimore, Md. 21203. UNDERWRITING LIMITATION b/: $1,418,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: D.C., La., Me.

Northwestern National Casualty Company. BUSINESS ADDRESS: Post Office Box 2070, Milwaukee, Wis. 53201. UNDERWRITING LIMITATION b/: $437,000. SURETY LICENSES c/: All except Alaska, C.Z., Conn., Guam, Hawaii, Me., Mass., Nev., N.H., N.J., N.Y., Puerto Rico, Vt., Virgin Islands. INCORPORATED IN: Wis. FEDERAL PROCESS AGENTS d/: All except Alaska, C.Z., Conn., Guam, Hawaii, Me., Mass., Nev., N.H., N.J., N.Y., Puerto Rico, Vt., Virgin Islands.

Northwestern National Insurance Company of Milwaukee, Wisconsin. BUSINESS ADDRESS: Post Office Box 2070, Milwaukee, Wis. 53201. UNDERWRITING LIMITATION b/: $4,959,000. SURETY LICENSES c/: All except C.Z., Guam, Virgin Islands. INCORPORATED IN: Wis. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Virgin Islands.

The Ohio Casualty Insurance Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, Ohio 45025. UNDERWRITING LIMITATION b/: $18,844,000. SURETY LICENSES c/: All except C.Z., Guam. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam.

Ohio Farmers Insurance Company. BUSINESS ADDRESS: Westfield Center, Ohio 44251. UNDERWRITING LIMITATION b/: $7,051,000. SURETY LICENSES c/: All except Alaska, C.Z., Conn., Guam, Hawaii, Kans., Puerto Rico, Virgin Islands. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/: All except Alaska, C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands.

Oklahoma Surety Company. BUSINESS ADDRESS: Post Office Box 1409, Tulsa, Okla. 74101. UNDERWRITING LIMITATION b/: $187,000. SURETY LICENSES c/: Okla. INCORPORATED IN: Okla. FEDERAL PROCESS AGENTS d/: D.C.

Old Republic Insurance Company. BUSINESS ADDRESS: Post Office Box 789, Greensburg, Pa. 15601. UNDERWRITING LIMITATION b/: $4,191,000. SURETY LICENSES c/: All except C.Z., Puerto Rico, Virgin Islands. INCORPORATED IN: Pa. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Puerto Rico, Virgin Islands.

The Omaha Indemnity Company. BUSINESS ADDRESS: 3201 Farnam Street, Omaha, Nebr. 68131. UNDERWRITING LIMITATION b/: $614,000. SURETY LICENSES c/: All except La., N.H., N.J. INCORPORATED IN: Wis. FEDERAL PROCESS AGENTS d/: D.C., Nebr., eVa.

Oregon Automobile Insurance Company. BUSINESS ADDRESS: Post Office Box 74, Portland, Oreg. 97207. UNDERWRITING LIMITATION b/: $1,755,000. SURETY LICENSES c/: Idaho, Nev., Oreg., Utah, Wash. INCORPORATED IN: Oreg. FEDERAL PROCESS AGENTS d/: D.C., Idaho, Nev., Utah, Wash.

Pacific Employers Insurance Company. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, Pa. 19101. UNDERWRITING LIMITATION b/: $5,220,000. SURETY LICENSES c/: All. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: All.

Pacific Indemnity Company. BUSINESS ADDRESS: Post Office Box 3099, Los Angeles, Cal. 90051. UNDERWRITING LIMITATION b/: $5,637,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: All except C.Z., Conn., Guam, Me., Mont., N.H., Puerto Rico, Tex., Virgin Islands, Wyo.

Pacific Insurance Company, Limited. BUSINESS ADDRESS: Post Office Box 1140, Honolulu, Hawaii 96807. UNDERWRITING LIMITATION b/: $1,523,000. SURETY LICENSES c/: D.C., Guam, Hawaii. INCORPORATED IN: Hawaii. FEDERAL PROCESS AGENTS d/: D.C., Guam.

Peerless Insurance Company. BUSINESS ADDRESS: 62 Maple Avenue, Keene, N.H. 03431. UNDERWRITING LIMITATION b/: $3,892,000. SURETY LICENSES c/: All except C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands. INCORPORATED IN: N.H. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands.

Pekin Insurance Company. BUSINESS ADDRESS: 2505 Court Street, Pekin, Ill. 61554. UNDERWRITING LIMITATION b/: $498,000. SURETY LICENSES c/: Ill., Ind., Iowa. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/: D.C., Ind., Iowa.

Pennsylvania Manufacturers' Association Insurance Company. BUSINESS ADDRESS: 925 Chestnut Street, Philadelphia, Pa. 19107. UNDERWRITING LIMITATION b/: $6,603,000. SURETY LICENSES c/: Ariz., Cal., Colo., Del., D.C., Fla., Ga., Idaho, Ill., Ind., Iowa, Ky., La., Md., Mass., Mich., N.J., N.Y., N.C., Ohio, Pa., S.C., Tex., Va., Wash., W. Va. INCORPORATED IN: Pa. FEDERAL PROCESS AGENTS d/: Del., D.C., Md., N.J.

Pennsylvania Millers Mutual Insurance Company. BUSINESS ADDRESS: 15 Public Square, Wilkes-Barre, Pa. 18773. UNDERWRITING LIMITATION b/· $1,619,000. SURETY LICENSES c/: Ark., Conn., D.C., Fla., Ga., Ind., Kans., Ky., Me., Md., Mass., Miss., Mo., N.H., N.J., N.Y., N.C., N. Dak., Pa., R.I., S.C., Tenn., Vt., Va. INCORPORATED IN: Pa. FEDERAL PROCESS AGENTS d/· D.C., Ohio, Va.

Pennsylvania National Mutual Casualty Insurance Company. BUSINESS ADDRESS: 1900 Derry Street, Harrisburg, Pa. 17105. UNDERWRITING LIMITATION b/· $5,172,000. SURETY LICENSES c/· All except Cal., C.Z., Conn., Guam, Hawaii, Mass., Nev., N.H., N. Dak., Puerto Rico, Virgin Islands, Wyo. INCORPORATED IN: Pa. FEDERAL PROCESS AGENTS d/· D.C., Kans., Md., Mo., N.J., N.C., Okla., S.C., Tenn., Va.

Phoenix Assurance Company of New York. BUSINESS ADDRESS: 80 Maiden Lane, New York, N.Y. 10033. UNDERWRITING LIMITATION b/· $5,180,000. SURETY LICENSES c/· All except C.Z., Guam, Virgin Islands. INCORPORATED IN: N.H. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam, Virgin Islands.

The Phoenix Insurance Company. BUSINESS ADDRESS: One Tower Square, Hartford, Conn. 06115. UNDERWRITING LIMITATION b/· $20,341,000. SURETY LICENSES c/· All except C.Z., Guam, Puerto Rico. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam.

Potomac Insurance Company. BUSINESS ADDRESS: General Building, 414 Walnut Street, Philadelphia, Pa. 19106. UNDERWRITING LIMITATION b/· $19,338,000. SURETY LICENSES c/· All except Alaska, Ark., C.Z., Del., Guam, Hawaii, Idaho, Me., Mont., Nev., N.H., N. Dak., Puerto Rico, S. Dak., Vt., Virgin Islands. (Fidelity only in Ala., S.C.) INCORPORATED IN: Pa. FEDERAL PROCESS AGENTS d/· All except Ala., Alaska, Ark., C.Z., Del., Guam, Hawaii, Idaho, Me., Mont., Nev., N.H., N. Dak., Oreg., Puerto Rico, S. Dak., Vt., Virgin Islands.

Progressive Casualty Insurance Company. BUSINESS ADDRESS: 6300 Wilson Mills Road, Mayfield Village, Ohio 44143. UNDERWRITING LIMITATION b/· $4,062,000. SURETY LICENSES c/: All except Ariz., C.Z., Conn., Del., D.C., Guam, Hawaii, Ill., Kans., La., Md., Nebr., N.H., N.Y., Pa., Puerto Rico, S.C., Tex., Utah, Va., Virgin Islands, W. Va., Wis. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/· D.C.

The Progressive Mutual Insurance Company. BUSINESS ADDRESS: 6300 Wilson Mills Road, Mayfield Village, Ohio 44143. UNDERWRITING LIMITATION b/· $491,000. SURETY LICENSES c/: N.J., Ohio. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/· D.C.

Protective Insurance Company. BUSINESS ADDRESS: 3100 North Meridian Street, Indianapolis, Ind. 46208. UNDERWRITING LIMITATION b/· $1,997,000. SURETY LICENSES c/· All except C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands. INCORPORATED IN: Ind. FEDERAL PROCESS AGENTS d/· D.C.

Prudential Reinsurance Company. BUSINESS ADDRESS: 213 Washington Street, Post Office Box 908, Newark, N.J. 07101. UNDERWRITING LIMITATION b/· $10,721,000. SURETY LICENSES c/· All except C.Z., Guam, La., Nev., Okla., Puerto Rico, S.C., Va., Virgin Islands, Wyo. (Reinsurance only in N.C., W. Va.) INCORPORATED IN: Del. FEDERAL PROCESS AGENTS d/· D.C.

Public Service Mutual Insurance Company. BUSINESS ADDRESS: 393 Seventh Avenue, New York, N.Y. 10001. UNDERWRITING LIMITATION b/· $3,503,000. SURETY LICENSES c/· Conn., Del., D.C., Fla., Ga., Idaho, Ill., Ind., Iowa, Me., Md., Mass., Mich., Minn., N.H., N.J., N.Y., N.C., Pa., R.I., S.C., Vt., Va., W. Va., Wis. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/· D.C., sFla., N.J., ePa., wTex.

Puerto Rican-American Insurance Company. BUSINESS ADDRESS: Post Office Box S-112, San Juan, Puerto Rico 00902. UNDERWRITING LIMITATION b/· $1,801,000. SURETY LICENSES c/· Puerto Rico, Virgin Islands. INCORPORATED IN: Puerto Rico. FEDERAL PROCESS AGENTS d/· D.C.

Puritan Insurance Company. BUSINESS ADDRESS: Post Office Box 8900, Stamford, Conn. 06904. UNDERWRITING LIMITATION b/· $2,820,000. SURETY LICENSES c/· All except Ala., C.Z., Del., Guam, Virgin Islands. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/· D.C.

Ranger Insurance Company. BUSINESS ADDRESS: Post Office Box 2807, Houston, Tex. 77001. UNDERWRITING LIMITATION b/· $2,401,000. SURETY LICENSES c/· All except C.Z., Colo., Conn., Guam, Hawaii, Ky., Md., Oreg., Puerto Rico, Virgin Islands, Wash., Wis. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/· D.C., sTex.

The Reinsurance Corporation of New York. BUSINESS ADDRESS: 99 John Street, New York, N.Y. 10038. UNDERWRITING LIMITATION b/· $3,393,000. SURETY LICENSES c/· All except C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands. (Co-surety only in Fla., Mass., Va.) INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/· D.C.

Reliance Insurance Company. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, Pa. 19103. UNDERWRITING LIMITATION b/· $27,121,000. SURETY LICENSES c/· All except Guam. INCORPORATED IN: Pa. FEDERAL PROCESS AGENTS d/· All.

Republic-Franklin Insurance Company. BUSINESS ADDRESS: Post Office Box 1438, Columbus, Ohio 43216. UNDERWRITING LIMITATION b/· $267,000. SURETY LICENSES c/· Ohio. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/· D.C.

Republic Insurance Company. BUSINESS ADDRESS: Post Office Box 223000, Dallas, Texas 75222. UNDERWRITING LIMITATION b/· $7,670,000. SURETY LICENSES c/· All except Ala., Alaska, C.Z., Fla., Guam, Hawaii, Me., Mass., Mont., N.H., N. Dak., R.I., S. Dak., Vt., Virgin Islands. INCORPORATED IN: Tex. FEDERAL PROCESS AGENTS d/· D.C., sN.Y.

Royal Globe Insurance Company. BUSINESS ADDRESS: 150 William Street, New York, N.Y. 10038. UNDERWRITING LIMITATION b/· $11,725,000. SURETY LICENSES c/· All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam, Puerto Rico, Virgin Islands.

Royal Indemnity Company. BUSINESS ADDRESS: 150 William Street, New York, N.Y. 10038. UNDERWRITING LIMITATION b/· $7,010,000. SURETY LICENSES c/· All except Puerto Rico, Virgin Islands. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam, Puerto Rico, Virgin Islands.

S & H Insurance Company. BUSINESS ADDRESS: 2049 Century Park East, Suite 2200, Los Angeles, Cal. 90067. UNDERWRITING LIMITATION b/: $725,000. SURETY LICENSES c/: Ariz., Cal. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: D.C. Hawaii.

SAFECO Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, Wash. 98185. UNDERWRITING LIMITATION b/: $18,165,000. SURETY LICENSES c/: All except C.Z., Puerto Rico, Virgin Islands. INCORPORATED IN: Wash. FEDERAL PROCESS AGENTS d/: All except C.Z., Puerto Rico, Vt., Virgin Islands.

SAFECO National Insurance Company. BUSINESS ADDRESS: SAFECO Plaza, Seattle, Wash. 98185. UNDERWRITING LIMITATION b/: $1,205,000. SURETY LICENSES c/: Mo., N.Y. INCORPORATED IN: Mo. FEDERAL PROCESS AGENTS d/: D.C., N.Y.

St. Paul Fire and Marine Insurance Company. BUSINESS ADDRESS: 385 Washington Street, St. Paul, Minn. 55102. UNDERWRITING LIMITATION b/: $39,987,000. SURETY LICENSES c/: All except C.Z., Guam. INCORPORATED IN: Minn. FEDERAL PROCESS AGENTS d/: All except C.Z.

Seaboard Surety Company. BUSINESS ADDRESS: 90 William Street, New York, N.Y. 10038. UNDERWRITING LIMITATION b/: $3,340,000. SURETY LICENSES c/: All. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: All.

Security Insurance Company of Hartford. BUSINESS ADDRESS: 1000 Asylum Avenue, Hartford, Conn. 06105. UNDERWRITING LIMITATION b/: $3,567,000. SURETY LICENSES c/: All except C.Z., Mass., Puerto Rico, Virgin Islands. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/: All except sAla., Alaska, C.Z., Guam, Hawaii, eIll., nInd., N. Dak., Okla., mPa., Puerto Rico, Tenn., Virgin Islands.

Security National Insurance Company. BUSINESS ADDRESS: Post Office Box 225028, Dallas, Tex. 75265. UNDERWRITING LIMITATION b/: $554,000. SURETY LICENSES c/: Ark., Cal., Colo., Fla., Ga., Ill., Ind., Kans., Ky., N. Mex., Ohio, Okla., Oreg., Tex., Wash., Wis., Wyo. INCORPORATED IN: Tex. FEDERAL PROCESS AGENTS d/: Ala., Ark., Cal., Colo., D.C., Fla., Ga., Ill., Ind., Kans., Ky., Minn., N. Mex., N. Dak., Ohio, Okla., Oreg., S. Dak., Wash., Wis., Wyo.

Select Insurance Company. BUSINESS ADDRESS: Post Office Box 1771, Dallas, Tex. 75221. UNDERWRITING LIMITATION b/: $677,000. SURETY LICENSES c/: All except Ariz., C.Z., Conn., Del., Guam, Hawaii, La., Me., Md., Mass., N.H., N.J., N.Y., N. Dak., Pa., Puerto Rico, R.I., Tenn., Utah, Va., Virgin Islands. INCORPORATED IN: Tex. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands.

Selected Risks Insurance Company. BUSINESS ADDRESS: Wantage Avenue, Branchville, N.J. 07826. UNDERWRITING LIMITATION b/: $3,795,000. SURETY LICENSES c/: Del., D.C., Md., N.J., Pa., Va. INCORPORATED IN: N.J. FEDERAL PROCESS AGENTS d/: Del., D.C., Md., Pa., Va.

Sentry Indemnity Company. BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, Wis. 54481. UNDERWRITING LIMITATION b/: $550,000. SURETY LICENSES c/: All except Alaska, C.Z., Conn., Del., D.C., Guam, Hawaii, Me., Mass., Mich., Nebr., N.H., N.J., N.Y., Pa., Puerto Rico, R.I., Vt., Va., Virgin Islands, W. Va. INCORPORATED IN: Wis. FEDERAL PROCESS AGENTS d/: Ariz., Cal., Conn., D.C., msFla., Ga., eLa., wWash.

Sentry Insurance a Mutual Company. BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, Wis. 54481. UNDERWRITING LIMITATION b/: $5,183,000. SURETY LICENSES c/: All except C.Z., Guam, Virgin Islands. INCORPORATED IN: Wis. FEDERAL PROCESS AGENTS d/: Ariz., Cal., Conn., D.C., msFla., Ga., Ill., eLa., Me., Mass., Mich., Minn., N.H., esN.Y., R.I., sTex., Vt., wWash.

Skandia America Reinsurance Corporation. BUSINESS ADDRESS: 280 Park Avenue, New York, N.Y. 10017. UNDERWRITING LIMITATION b/: $5,364,000. SURETY LICENSES c/: Alaska, Ariz., Ark., Cal., Del., D.C., Ga., Ill., Ind., Iowa, Kans., La., Mich., Miss. Mo., Nebr., Nev., N.H., N.J., N.Y., Ohio, Okla., Pa., Tex., Utah, Wash., W. Va., Wis. INCORPORATED IN: Del. FEDERAL PROCESS AGENTS d/: D.C.

South Carolina Insurance Company. BUSINESS ADDRESS: Post Office Box #1, Columbia, S.C. 29202. UNDERWRITING LIMITATION b/: $3,319,000. SURETY LICENSES c/: Ala., Alaska, Ariz., Cal., Colo., D.C., Fla., Ga., Ill., Ind., Iowa, Kans., Ky., Md., Mich., Minn., Miss., Mo., Mont., Nebr., Nev., N.J., N. Mex., N.Y., N.C., N. Dak., Ohio, Okla., Pa., S.C., S. Dak., Tenn., Tex., Utah, Va., W. Va., Wis., Wyo. (Reinsurance only in Conn.) INCORPORATED IN: S.C. FEDERAL PROCESS AGENTS d/: Ala., D.C., Fla., Ga., N.C., Va.

The Standard Fire Insurance Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, Conn. 06156. UNDERWRITING LIMITATION b/: $7,191,000. SURETY LICENSES c/: All except C.Z., Guam, N.J. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Puerto Rico, Virgin Islands.

State Automobile Mutual Insurance Company. BUSINESS ADDRESS: 518 East Broad Street, Columbus, Ohio 43216. UNDERWRITING LIMITATION b/: $8,107,000. SURETY LICENSES c/: Ala., Fla., Ga., Ill., Ind., Ky., Md., Mich., Miss., Mo., N.J., N.C., Ohio, Pa., S.C., Tenn., Va., W. Va. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/: Ala., D.C., Fla., Ga., Ky., Md., Mich., eMo., N.C., Pa., S.C., Tenn., Va., W. Va.

State Farm Fire and Casualty Company. BUSINESS ADDRESS: 112 East Washington Street, Bloomington, Ill. 61701. UNDERWRITING LIMITATION b/: $64,595,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/: Ariz., cCal., Colo., D.C., nGa., Md., Minn., nMiss., Mont., N.J., eN.Y ewOkla., wmPa., sTex.

State Surety Company. BUSINESS ADDRESS: 645 Insurance Exchange Building, Des Moines, Iowa 50309. UNDERWRITING LIMITATION b/: $265,000. SURETY LICENSES c/: Ariz., Colo., D.C., Iowa, Kans., Minn., Mo., Mont., Nebr., N. Dak., Okla., S. Dak., Wis., Wyo. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/: Ariz., Colo., D.C., Kans., Minn., Mo., Mont., Nebr., N. Dak., Okla., S. Dak., Wis., Wyo.

Surety Company of the Pacific. BUSINESS ADDRESS: Post Office Box 2105, Santa Monica, Cal. 90406. UNDERWRITING LIMITATION b/: $105,000. SURETY LICENSES c/: Cal. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: D.C.

Surety Insurance Company of California. BUSINESS ADDRESS: 2250 West Whittier Boulevard, La Habra, Cal. 90631. UNDERWRITING LIMITATION b/: $104,000. SURETY LICENSES c/: Ala., Alaska, Ariz., Ark., Cal., Colo., Ga., Kans., Miss., Mo., N. Mex., Okla., Oreg., Tex., Wash. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: nsAla., Alaska, Ariz., Ark., Colo., D.C., nsGa., Hawaii, Kans., sMiss., Mo., N. Mex., Okla., Tex., wWash.

Transamerica Insurance Company. BUSINESS ADDRESS: 1150 South Olive Street, Los Angeles, Cal. 90015. UNDERWRITING LIMITATION b/: $15,144,000. SURETY LICENSES c/: All except C.Z., Puerto Rico, Virgin Islands. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: All except Alaska., C.Z., nN.C., Puerto Rico, Virgin Islands.

Transcontinental Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, Ill. 60685. UNDERWRITING LIMITATION b/: $2,459,000. SURETY LICENSES c/: All except C.Z., Guam, Hawaii, Virgin Islands. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: All except C.Z., nFla., Guam, Minn., nN.C., eOkla., Puerto Rico, S. Dak., sTex., Virgin Islands.

Transport Indemnity Company. BUSINESS ADDRESS: 3670 Wilshire Boulevard, Los Angeles, Cal. 90010. UNDERWRITING LIMITATION b/: $1,587,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/: Ala., wArk., Conn., sFla., nsGa., Hawaii, eIll., Ind., nIowa, wKy., neLa., eMich., Minn., nMiss., Mo., wnN.C., nOhio, Okla., wnPa., S.C., neTenn., nesTex., Vt., Va., nW.Va., eWis.

Transportation Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, Ill. 60685. UNDERWRITING LIMITATION b/: $1,326,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: Ill. FEDERAL PROCESS AGENTS d/: All except C.Z., nFla., Guam, Minn., nwN.Y., nN.C., eOkla., Puerto Rico, S. Dak., sTex., Virgin Islands.

The Travelers Indemnity Company. BUSINESS ADDRESS: One Tower Square, Hartford, Conn. 06115. UNDERWRITING LIMITATION b/: $86,568,000. SURETY LICENSES c/: All. INCORPORATED IN: Conn. FEDERAL PROCESS AGENTS d/: All except Guam.

The Travelers Indemnity Company of Rhode Island. BUSINESS ADDRESS: One Tower Square, Hartford, Conn. 06115. UNDERWRITING LIMITATION b/: $6,458,000. SURETY LICENSES c/: All except C.Z., Guam. INCORPORATED IN: R.I. FEDERAL PROCESS AGENTS d/: All except Conn., Guam.

Trinity Universal Insurance Company. BUSINESS ADDRESS: Post Office Box 225028, Dallas, Tex. 75265. UNDERWRITING LIMITATION b/: $7,366,000. SURETY LICENSES c/: Ala., Ariz., Ark., Cal., Colo., Fla., Ga., Idaho, Ill., Ind., Iowa, Kans., Ky., La., Mich., Miss., Mo., Nebr., N. Mex., (Reinsurance only in N.Y.), Ohio, Okla., Oreg., Tex., Wash., Wis., Wyo. INCORPORATED IN: Tex. FEDERAL PROCESS AGENTS d/: All except Alaska, C.Z., Conn., Del., Guam, Hawaii, Me., Md., Mass., Mont., Nev., N.H., N.J., N.C., Pa., Puerto Rico, R.I., S.C., Tenn., Utah, Vt., Va., Virgin Islands, W. Va.

Trinity Universal Insurance Company of Kansas, Inc. BUSINESS ADDRESS: Post Office Box 225028, Dallas, Tex. 75265. UNDERWRITING LIMITATION b/: $309,000. SURETY LICENSES c/: Ala., Ariz., Colo., Kans., La., Ohio, Okla., Tex. INCORPORATED IN: Kans. FEDERAL PROCESS AGENTS d/: Ala., Ariz., Colo., D.C., Ga., Kans., La., Minn., Nebr., N. Dak., Ohio, Okla., Oreg., S. Dak., Tex.

Tri-State Insurance Company. BUSINESS ADDRESS: Post Office Box 3269, Tulsa, Okla. 74102. UNDERWRITING LIMITATION b/: $696,000. SURETY LICENSES c/: Ala., Ariz., Ark., Colo., Fla., Ga., Idaho, Ill., Ind., Iowa, Kans., Ky., La., Minn., Miss., Mo., Mont., Nebr., N. Mex., N. Dak., Okla., S. Dak., Tenn., Tex., Utah, Wash., Wyo. INCORPORATED IN: Okla. FEDERAL PROCESS AGENTS d/: Ala., Ariz., Ark., Colo., D.C., Fla., Ga., Ill., Ind., Iowa, Kans., Ky., La., Minn., Miss., Mo., Mont., Nebr., N. Mex., N. Dak., S. Dak., Tenn., Tex., Utah, Wash., Wyo.

Twin City Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, Conn. 06115. UNDERWRITING LIMITATION b/: $1,601,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: Minn. FEDERAL PROCESS AGENTS d/: scCal., Conn., D.C., weLa.

United Fire & Casualty Company. BUSINESS ADDRESS: Post Office Box 4909, Cedar Rapids, Iowa 52407. UNDERWRITING LIMITATION b/: $1,331,000. SURETY LICENSES c/: Ariz., Colo., Ill., Ind., Iowa, Kans., Minn., Mo., Mont., Nebr., N.Y., N. Dak., S.C., S. Dak., Utah, Wis., Wyo. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/: Colo., D.C., Ill., Kans., Minn., Mo., Nebr., N. Dak., S. Dak., Wis., Wyo.

United Pacific Insurance Company. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, Pa. 19103. UNDERWRITING LIMITATION b/: $5,017,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: Wash. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Puerto Rico, Virgin Islands.

United States Fidelity and Guaranty Company. BUSINESS ADDRESS: 100 Light Street, Post Office Box 1133, Baltimore, Md. 21203. UNDERWRITING LIMITATION b/: $59,520,000. SURETY LICENSES c/: All except Guam, Virgin Islands. INCORPORATED IN: Md. FEDERAL PROCESS AGENTS d/: All except Guam, Virgin Islands.

United States Fire Insurance Company. BUSINESS ADDRESS: Post Office Box 2387, Morristown, N.J. 07960. UNDERWRITING LIMITATION b/: $14,295,000. SURETY LICENSES c/: All except C.Z., Guam. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, nLa.

Universal Surety Company. BUSINESS ADDRESS: Post Office Box 80468, Lincoln, Nebr. 68501. UNDERWRITING LIMITATION b/: $408,000. SURETY LICENSES c/: Ariz., Colo., Ill., Iowa, Kans., Minn., Mo., Mont., Nebr., N. Mex., N. Dak., Ohio, Okla., S. Dak., Utah, Wash., Wis., Wyo. INCORPORATED IN: Nebr. FEDERAL PROCESS AGENTS d/: Ariz., Colo., D.C., nIll., Iowa, Kans., Minn., Mo., Mont., N. Mex., N. Dak., nOhio, wOkla., S. Dak., Utah, wWis., Wyo.

Universal Underwriters Insurance Company. BUSINESS ADDRESS: 5115 Oak Street, Kansas City, Mo. 64112. UNDERWRITING LIMITATION b/: $7,582,000. SURETY LICENSES c/: All except C.Z., Guam, Puerto Rico, Virgin Islands. INCORPORATED IN: Mo. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Puerto Rico, Virgin Islands.

Utica Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 530, Utica, N.Y. 13503. UNDERWRITING LIMITATION b/: $6,158,000. SURETY LICENSES c/: All except C.Z., Guam, Virgin Islands. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/: nceCal., Conn., Del., D.C., Fla., Ga., nsIll., sInd., Ky., Md., Mass., Mich., sMiss., Mo., N.H., N.J., N.C., Ohio, Pa., R.I., S.C., Tenn., Tex., Vt., Va., sW. Va.

Valley Forge Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, Ill. 60685. UNDERWRITING LIMITATION b/: $1,819,000. SURETY LICENSES c/: All except Alaska, C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands. INCORPORATED IN: Pa. FEDERAL PROCESS AGENTS d/: All except C.Z., nFla., Guam, nwN.Y., nN.C., eOkla., Puerto Rico, S. Dak., sTex., Virgin Islands.

Van Tol Surety Company, Incorporated. BUSINESS ADDRESS: 501 Eighth Street, Brookings, S. Dak. 57006. UNDERWRITING LIMITATION b/: $103,000. SURETY LICENSES c/: S. Dak. INCORPORATED IN: S. Dak. FEDERAL PROCESS AGENTS d/: D.C.

Vigilant Insurance Company. BUSINESS ADDRESS: 100 William Street, New York, N.Y. 10038. UNDERWRITING LIMITATION b/: $3,608,000. SURETY LICENSES c/· All except Ala., Alaska, C.Z., Guam, Hawaii, Puerto Rico. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/· All except Guam, Hawaii, Puerto Rico, Virgin Islands.

Washington International Insurance Company. BUSINESS ADDRESS: 650 N. Second Avenue, Phoenix, Arizona 85003. UNDERWRITING LIMITATION b/· $165,000. SURETY LICENSES c/· Ariz. INCORPORATED IN: Ariz. FEDERAL PROCESS AGENTS d/: All except C.Z., Guam, Puerto Rico, Virgin Islands.

West American Insurance Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, Ohio 45026. UNDERWRITING LIMITATION b/· $10,656,000. SURETY LICENSES c/· All except Alaska, C.Z., Conn., Guam, Hawaii, Me., Mass., Mont., N.H., Puerto Rico, R.I., Vt., Virgin Islands, W. Va. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/· Ala., Colo., D.C., nsFla., Ga., Ill., Ind., Iowa, Kans., Ky., eLa., Md., Mich., Minn., Mo., Nev., N. Mex., N. Dak., Ohio, nOkla., Oreg., Pa., mTenn., Tex., Utah, Va., Wash., Wis. Wyo.

Westchester Fire Insurance Company. BUSINESS ADDRESS: Post Office Box 2387, Morristown, N.J. 07960. UNDERWRITING LIMITATION b/· $6,693,000. SURETY LICENSES c/· All except C.Z., Guam, Virgin Islands. INCORPORATED IN: N.Y. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam, mLa.

The Western Casualty and Surety Company. BUSINESS ADDRESS: 14 East First Street, Fort Scott, Kans. 66701. UNDERWRITING LIMITATION b/· $13,269,000. SURETY LICENSES c/· All except C.Z., Conn., Guam, Hawaii, Me., Mass., N.H., N.Y., Puerto Rico, Vt., Va., Virgin Islands. INCORPORATED IN: Kans. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam, Puerto Rico, Virgin Islands.

The Western Fire Insurance Company. BUSINESS ADDRESS: 14 East First Street, Fort Scott, Kans. 66701. UNDERWRITING LIMITATION b/· $8,275,000. SURETY LICENSES c/· All except Ala., C.Z., Conn., Del., D.C., Ga., Guam, Hawaii, Idaho, La., Me., Md., Mass. Mont., N.H., N.J., Oreg. Puerto Rico, S.C., Vt., Virgin Islands. INCORPORATED IN: Kans. FEDERAL PROCESS AGENTS d/· All except C.Z., Guam, Puerto Rico, Virgin Islands.

Western National Assurance Company. BUSINESS ADDRESS: 5350 West 78th Street, Minneapolis, Minn. 55435. UNDERWRITING LIMITATION b/· $267,000. SURETY LICENSES c/· All except Alaska, Ariz., Cal., Colo., D.C., Hawaii, Idaho, Ind., Minn., Mont., Nev., Oreg., Utah, Wash. INCORPORATED IN: Wash. FEDERAL PROCESS AGENTS d/· D.C.

Western Surety Company. BUSINESS ADDRESS: 908 West Avenue, North, Sioux Falls, S. Dak. 57101. UNDERWRITING LIMITATION b/· $1,834,000.. SURETY LICENSES c/· All except Alaska, C.Z., Guam, Hawaii, N.Y., Puerto Rico, Virgin Islands. INCORPORATED IN: S. Dak. FEDERAL PROCESS AGENTS d/· All except Alaska, C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands.

Westfield Insurance Company. BUSINESS ADDRESS: Westfield Center, Ohio 44251. UNDERWRITING LIMITATION b/· $2,953,000. SURETY LICENSES c/· All except Alaska, C.Z., Conn., Fla., Guam, Hawaii, Me., Puerto Rico, Virgin Islands. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/· All except Alaska, C.Z., Guam, Hawaii, Puerto Rico, Virgin Islands.

Wilshire Insurance Company. BUSINESS ADDRESS: 5670 S. Syracuse Circle, Suite 500, Englewood, Colo. 80111. UNDERWRITING LIMITATION b/· $702,000. SURETY LICENSES c/· Ariz. Cal., Colo., Hawaii, Idaho, Iowa, Kans., Mont., Nebr., N. Mex., Oreg., S. Dak., Utah, Wash. INCORPORATED IN: Cal. FEDERAL PROCESS AGENTS d/· Ariz., Colo., D.C., Hawaii, Idaho, Iowa, Mont., Nev., N. Mex., Oreg., S. Dak., Wash.

Wolverine Insurance Company. BUSINESS ADDRESS: 70 West Michigan Avenue, Battle Creek, Mich. 49016. UNDERWRITING LIMITATION b/· $5,128,000. SURETY LICENSES c/· Ark., Cal., Ill., Ind., Iowa, Kans., Mich., Minn., Ohio, S. Dak. INCORPORATED IN: Mich. FEDERAL PROCESS AGENTS d/· Ark., Cal., D.C., Ill., Ind., Iowa, Kans., Minn., Ohio, S. Dak.

* See footnotes at end of table.

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES
UNDER SECTION 223.3(b) of TREASURY CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 (See Note (e))

Alliance Assurance Company, Limited, London, England. BUSINESS ADDRESS (U.S. Office): 100 William Street, New York, N.Y. 10038. UNDERWRITING LIMITATION b/· $1,300,000. FEDERAL PROCESS AGENTS: D.C.

The Canadian Indemnity Company, Winnipeg, Manitoba, Canada. BUSINESS ADDRESS (U.S. Office): 675 South Park View Street, Los Angeles, Cal. 90057. UNDERWRITING LIMITATION b/· $498,000. FEDERAL PROCESS AGENTS: D.C.

General Accident Fire and Life Assurance Corporation, Limited, Perth, Scotland. BUSINESS ADDRESS (U.S. Office): Fourth and Walnut Streets, Philadelphia, Pa. 19106. UNDERWRITING LIMITATION b/· $42,782,000. FEDERAL PROCESS AGENTS: D.C.

The London Assurance, London, England. BUSINESS ADDRESS (U.S. Office): 100 William Street, New York, N.Y. 10033. UNDERWRITING LIMITATION b/· $1,850,000. FEDERAL PROCESS AGENTS: D.C.

Munich Reinsurance Company, Munich, Germany. BUSINESS ADDRESS (U.S. Office): 410 Park Avenue, New York, N.Y. 10022 UNDERWRITING LIMITATION b/· $3,032,000. FEDERAL PROCESS AGENTS: D.C.

N.V. The Netherlands Insurance Company, Est. 1845, The Hague, Holland. BUSINESS ADDRESS (U.S. Office): 62 Maple Avenue, Keene, N.H. 03431. UNDERWRITING LIMITATION b/· $666,000. FEDERAL PROCESS AGENTS: D.C.

Rochdale Insurance Company. BUSINESS ADDRESS: 99 John Street, New York, N.Y. 10033. UNDERWRITING LIMITATION b/· $501,000. FEDERAL PROCESS AGENTS: D.C.

The Sea Insurance Company, Limited, London, England. BUSINESS ADDRESS (U.S. Office): 190 River Road, Summit, N.J. 0790 UNDERWRITING LIMITATION b/· $892,000. FEDERAL PROCESS AGENTS: D.C.

Sun Insurance Office, Limited, London, England. BUSINESS ADDRESS (U.S. Office): 190 River Road, Summit, N.J. 07901. UNDERWRITING LIMITATION b/· $1,905,000. FEDERAL PROCESS AGENTS: D.C.

Swiss Reinsurance Company, Zurich, Switzerland. BUSINESS ADDRESS (U.S. Office): 245 Park Avenue, New York, N.Y. 10017. UNDERWRITING LIMITATION b/· $9,676,000. FEDERAL PROCESS AGENTS: D.C.

"Winterthur" Swiss Insurance Company, Winterthur, Switzerland. BUSINESS ADDRESS (U.S. Office): One World Trade Center, Suite 8015, New York, N.Y. 10048. UNDERWRITING LIMITATION b/· $4,201,000. FEDERAL PROCESS AGENTS: D.C.

Zurich Insurance Company, Zurich, Switzerland. BUSINESS ADDRESS (U.S. Office): 111 West Jackson Boulevard, Chicago, Ill. 60604. UNDERWRITING LIMITATION b/· $11,555,000. FEDERAL PROCESS AGENTS: D.C.

FOOTNOTES

1* The Stuyvesant Insurance Company, Philadelphia, Pa. — changed its name to Indemnity Insurance Company of North America (See Federal Register of April 17, 1979, pg. 22867)

2* Mid-States Insurance Company, Chicago, Illinois — changed its name to Mead Reinsurance Corporation (See Federal Register of June 4, 1979, pg. 32066)

NOTES

(a) All certificates of authority expire June 30, and are renewable July 1, annually. Companies holding certificates of authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) Treasury requirements do not limit the penal sum of bonds which surety companies may execute. The net retention, however, cannot exceed the underwriting limitation, and excess risks must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). When excess risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a Treasury reinsurance form to be filed with the bond or within 45 days thereafter. Risks in excess of the limit fixed herein must be reported for the quarter in which they are executed. In protecting such excess, the rating in force on the date of the execution of the risk will govern absolutely. This limit applies until a new rating is established by the Treasury Department.

(c) A surety company must be licensed in the State or other area in which it executes (signs) a bond, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed (28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5(b)). The term "other area" includes the Canal Zone, District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(d) Process agents are required in the following districts: Where principal resides; where the obligation is to be performed; and in the District of Columbia where the bond is returnable or filed. No process agent is required in the State or other area wherein the company is incorporated (31 CFR Section 224.2). Letters "n, s, e, m, c, and w" preceding names of States indicate respectively the Northern, Southern, Eastern, Middle, Central, and Western judicial districts of States indicated. If letters do not precede names of States, process agents have been appointed in all judicial districts of such States.

(e) Companies holding certificates of authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

[FR Doc. 79-19665 Filed 6-28-79; 8:45 am]
BILLING CODE 4810-35-190-C

Federal Register

Friday
June 29, 1979

Part III

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138), and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 224–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Construction Wage Determinations, Washington, D.C. 20210. The cause for utilizing the rulemaking procedure prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

New General Wage Determination Decisions

South Carolina	SC79–1102

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

Alaska:	
AK79–5105	Feb. 9, 1979.
Arizona:	
AZ79–5104	Mar. 9, 1979.
Arkansas:	
AR79–4052	Mar. 30, 1979.
Connecticut:	
CT79–2010; CT79–2011	Apr. 6, 1979.
District of Columbia:	
DC78–3098	Dec. 15, 1978.
Florida:	
FL78–1064	Aug. 4, 1978.
Idaho:	
ID79–5112	May 25, 1979.
Kansas:	
MO79–4065	June 1, 1979.
Michigan	
MI79–2012; MI79–2013; MI79–2014; MI79–2015; MI79–2016; MI79–2017; MI79–2019	May 4, 1979.
MI79–2020	June 1, 1979.
Missouri:	
MO79–4059	Mar. 30, 1979.
MO79–4065	June 1, 1979.
Nevada:	
NV78–5102	Mar. 9, 1979.
North Dakota:	
ND78–5125	Sept. 22, 1978.
Oklahoma:	
OK78–4093	Sept. 15, 1978.
Pennsylvania:	
PA78–3045	May 12, 1978.
PA79–3009	May 4, 1979.
Tennessee:	
TN78–1060	July 7, 1978.
TN78–1090; TN78–1091	Oct. 20, 1978.
Virginia:	
DC78–3098	Dec. 15, 1978.
Washington:	
WA78–5103	June 16, 1978.
West Virginia:	
WV77–3083	Sept. 30, 1977.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedas Decision numbers are in parentheses following the numbers of the decisions being superseded.

California:	
CA78-5006 (CA79-5124); CA78-5007 (CA79-5125)	Jan. 27, 1978.
Nevada:	
NV78-5129 (NV79-5114)	Oct. 27, 1978.
South Carolina:	
SC78-1039 (SC79-1100)	Apr. 14, 1978.
Tennessee:	
TN78-1058 (TN79-1104)	July 7, 1978.

Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C. this 22nd day of June 1979.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

NEW DECISION

STATE: South Carolina COUNTIES: See below*
DECISION NUMBER: SC79-1102 DATE: Date of Publication
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and garden type apartments up to and including 4 stories

*Abbeville, Greenwood, Laurens, McCormick, Newberry, & Saluda

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING MECHANICS	$4 89				
BRICKLAYERS	6.00				
CARPENTERS	4 92				
CEMENT MASONS	6 00				
DRYWALL FINISHERS	5.50				
DRYWALL HANGERS	5 00				
ELECTRICIANS	5.02				
INSULATION INSTALLER	4.00				
LABORERS	3.00				
PAINTERS, Brush	4.55				
PLUMBERS & PIPEFITTERS	5 50				
ROOFERS	5.00				
SHEET METAL WORKERS	4 00				
SOFT FLOOR LAYERS	4 26				
TILE SETTERS	5.00				
TRUCK DRIVERS	3.00				
POWER EQUIPMENT OPERATORS:					
Backhoes	4.09				
Bulldozers	4 45				
Draglines	3 50				
Loaders	4 33				
Mechanics	4.88				
Motor graders	4 33				
Pan • scrapers	4 25				
Rollers	3.75				
Tractor, farm type	3.88				

Decision No. AK79-5105 - Mod. #2 MODIFICATIONS P. 1
(44 FR 8476 - February 9, 1979)
Statewide, Alaska

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
Change:					
Asbestos Workers	$21 50	65	1 30		10
Glaziers:					
Areas 2 and 3	18 07	90	1 00		10
Plumbers; Steamfitters:					
Areas 3	17 35	1 00	2 70		20
Roofers:					
Area 1	17 50	1 40	3 00		05
Areas 2 and 3	17.20	1.40	3.00		.05
DECISION #AZ79-5104 - Mod. #1					
(44 FR 13215 - March 9, 1979)					
Pima County, Arizona					
Change:					
Elevator Constructors	$13 85	895	69	a	03
Elevator Constructors' Helpers	9 695	895	69	a	03
Elevator Constructors' Helpers (Prob)	6 925				
Glaziers	11 34	85	30		01
Marble Setters; Terrazzo Workers; Tile Setters	9 27	90	85		
Plasterers' Tenders	9 51	92	98		10
Omit:					
Asbestos Workers	11 94	.50	1 20		02
Lathers:					
Zone A: 0-30 miles from Tucson	10 88	50	40		
Zone B: 30-40 miles from Tucson	11 38	50	40		
Zone C: 40-50 miles from Tucson	11 63	.50	40		
Zone D: Area outside Zone C	12 38	50	40		
Add:					
Asbestos Workers:					
Zone 1: Area lying within 15 miles radius from the City Hall in Tucson	12 84	82	1 30		03
Zone 2: Area lying beyond the limits of Zone 1 and within 30 miles radius from the City Hall in Tucson	13 44	82	1 30		03
Zone 3: Area lying beyond the limits of Zone 2 and within 40 miles radius from the City Hall in Tucson	13 64	82	1.30		.03
Zone 4: Area lying beyond the limits of Zone 3 and within 50 miles radius from the City Hall in Tucson	14 09	82	1 30		03

DECISION #AZ79-5104 (Cont'd):

Add (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asbestos Workers (Cont'd):					
Zone 5: Area lying beyond the limits of Zone 4, within the union's jurisdiction	$16 09	82	$1 30		03
Lathers:					
North of a line crossing the state drawn through Ajo, Randolph, and Springerville	12 49	75			06
South of a line crossing the state drawn through Ajo, Randolph, and Springerville:					
Zone A: 0-30 miles from Tucson	10 88	50	40		
Zone B: 30-40 miles from Tucson	11 38	50	40		
Zone C: 40-50 miles from Tucson	11 63	50	40		
Zone D: Area outside of Zone C	12 38	50	40		
Mason Tender	9 05	92	98		04

DECISION NO. AR79-4052 - Mod. #1
(44 FR 19103 - March 30, 1979)
Pulaski County, Arkansas

CHANGE:

PAINTERS:					
Painters, paperhangers and steam cleaners, sheet rock finishers and wall cover hangers	$ 8 75		40		02
Spray gun operators and sand blasterers	9 35		40		02
All skelton steel and all work on stages, structural steel over 30 feet high	9 00		40		02
PLUMBERS & PIPEFITTERS:					
Within 10 mile radius of Pulaski County Courthouse	11 65	60	75		05
Over 10 miles from Pulaski County Courthouse	11 95	60	75		05

DECISION NO. CT79-2010 - MOD #5
(44 FR 20913 - April 6, 1979)
Fairfield, Litchfield & Windham Counties, Connecticut

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CHANGE:					
BOILERMAKERS	$12 30	1 15	10%		02
ELECTRICIANS:					
Fairfield Co : Norwalk (E of Five Mile River), Weston, Westport					
Building Construction	11 13	1 08	3%+ 45	6%	½%
IRONWORKERS:					
Ornamental; Reinforcing, Structural and Precaste Concrete Erection	12 90	90	1 45	1	08
PAINTERS:					
Fairfield Co : Greenwich					
Brush; Structural Steel; Paperhangers; Tapers	10 00	20	75	30	
Spray	15 00	20	75	30	
Fairfield Co : Darien, Stamford New Canaan, Norwalk, Weston, Westport & Wilton					
Brush	10 00	50	75	30	01
Roller, Paperhangers, Tapers, Epoxy	10 50	50	75	30	01
PLUMBERS & STEAMFITTERS:					
Fairfield Co : Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford & Trumbull	11 54	75	70	4%	01
Fairfield Co : Greenwich	11 05	75	85		02

DECISION NO. CT79-2011 - MOD #5
(44 FR 20921 - April 6, 1979)
Hartford, Middlesex, New Haven, New London & Tolland Counties, Connecticut

CHANGE:

BOILERMAKERS	$12 30	1 15	10%		02

DECISION NO. CT79-2011 - MOD #5 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CHANGE:					
ELECTRICIANS:					
Hartford Co : Hartland, New Haven Co : Beacon Falls, Middlebury, Naugatuck, Oxford, Prospect, Seymour, Southbury, Waterbury & Wolcott	$11 10	1 22	3%+ 60	h	1/8%
IRONWORKERS:					
Ornamental; Reinforcing; Structural and Precast Concrete Erection	12 90	90	1 45		08
LATHERS:					
Hartford Co : Bristol, Southington New Haven Cheshire Meriden, Middlebury, Naugatuck Oxford Prospect, Southbury, Waterbury and Wolcott	10 60	50	50		01
PAINTERS:					
New Haven Co : Ansonia, Beacon Falls, Derby Oxford & Seymour					
Brush	11 50	50	90	q	01
Hand Roller; Paperhangers	12 00	50	90	q	01
Structural Steel; Epoxy Polyester	12 50	50	90	q	01
Spray	15 50	50	90	q	01
SHEET METAL WORKERS	12 05	70	86		05

DECISION NO. DC78-3098 - Mod. # 8
(43 FR 58723 - December 15, 1978)
District of Columbia; Maryland - Montgomery & Prince George's Counties, and D C Training School; Virginia - Independent City of Alexandria & Arlington

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINES:					
All Counties					
BUILDING CONSTRUCTION:					
Excluding Alexandria, Virginia					
Ironworkers:					
Structural, Ornamental and chain link fence	$11 55	82	1 15		07
PAVING AND INCIDENTIAL GRADING: (District of Columbia Only) except paving project where the grading is incidential to the paving:					
Asphalt Shoveler	7 55	32	35		
Asphalt Raker	7,75	32	35		
Asphalt Tamper	7 65	32	35		
Cement Masons	8 00	32	35		
Concrete Saw Operators	7 75	32	35		
Concrete Shoveler	7 65	32	35		
Form Setter	8 00	32	35		
Laborers:					
Laborers	7 50	32	35		
Jackhammer	7 70	32	35		
Hand Burner Operator	7 65	32	35		
Power Equipment Operators:					
Concrete Spreader Operator, Finishing Machine, Roller, (rough), Compressor, Rubber - tired Loader (1½ cu yds , or less), Asphalt Plant Mixer	7 75	27	35		
Loader Operator Tracks (2½ cu yds or less), Burner Planner, Bulldozer, Mechanic or Welder, Rubber Tired Loader (over 1½ cu yds)	7 95	27	35		
Asphalt Spreader, Hydraulic Backhoe (½ cu yd., or less) Asphalt Plant Engineer, Asphalt Roller Operator, Concrete Breaker (machine)	8 00	27	35		

DECISION NO. DC78-3098 - Mod. # 8, (Cont'd.)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Crane Operator, Concrete Paving Operator	8 15	27	35		
Shovel Operator	8 25	27	35		
Gradall Operator (1½ cu yds or less), Motor Grader, Operator Tracks (over 2½ cu yds)	8 90	27	35		
G-1000 Gradall Operator (over 1½ cu yds)	9 15	27	35		
Power Broom, Oiler	7 65	27	35		
Sand Setter	8 00	27	35		
Truck Drivers:					
Truck Drivers (standard)	7 50	27	35		
Tandem	7 62	27	35		
Tractor trailer (capable of moving heavy equipment)	8 00	27	35		

DECISION NO. FL78-1064 - Mod. #3 (43 FR 34661 - August 4, 1978)					
Brevard and Volusia (excluding Cape Canaveral, Kennedy Space Flight Center, Patrick Air Force Base, and Melabar Radar Site), Hillsborough, Indian River, Manatee, Martin, Orange, Osceola, Pinellas, Polk, St Lucie, Sarasota, and Seminole Counties, Florida					
Add:					
Martin, Orange, and Osceola Counties, Florida					

DECISION #ID79-5112 - Mod. #1 (44 FR 30570 - May 25, 1979) Statewide Idaho	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Changes:					
Carpenters:					
Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the northern boundary of Township #29 north), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties:					
Carpenters	$12 34	83	90		075
Piledrivermen; Sawfilers; Stationary power woodworking tool operator; Floor layer; Floor Finisher; Floor Sander	12 49	83	90		075
Carpenters (burned, charred, creosoted or similarly treated material); Boom Man	12 59	83	90		075
Millwrights and Machine Erectors	12 84	83	90		075
Piledriver (creosoted material)	12 74	83	90		075
Remaining Counties and Idaho County (south of the northern boundary of Township #29 North):					
Zone 1:					
Carpenters; Floor Layers; Shinglers; Drywall Applicator and Installer	10 65	.85	80	70	10
Saw Filer; Piledriverman; Bridgeman and Wharf Builders	10 82	85	80	70	10
Millwrights; Machine Erectors; Piledriverman's boom man	10 94	85	80	70	10
Zone 2:					
Carpenters; Floor Layers; Shinglers; Drywall Applicator and Installer	$11 90	85	80	70	10
Saw Filer; Piledriverman; Bridge and Wharf Builders	12 07	85	.80	70	10
Millwrights; Machine Erectors; Piledriverman's boom man	12 19	85	80	70	.10
Cement Masons:					
Remaining Counties and Idaho County (south of 46th Parallel):					

MODIFICATIONS P 8

Decision #ID79-5112 (Cont'd.)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Zone 1:					
Cement Masons	10 17	94	65	1 05	15
Power trowel; Power grinder; Gunnite and composition floor layer	10 37	94	65	1 05	15
Zone 2:					
Cement Masons	11 42	94	65	1 05	15
Power trowel; Power grinder; Gunnite and composition floor layer	11 62	94	65	1 05	15
Ironworkers:					
Ornamental; Reinforcing; Structural:					
Remaining Counties and those portions of Adams, Idaho, Valley and Washington Counties located south of the Weiser-Gibbonsville Line	12 04	75	1 35		02
Laborers:					
Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties:					
Building Construction:					
Group 1	$10 20	82	$1 00		05
Group 2	10 45	82	1 00		05
Group 3	10 70	82	1 00		05
Group 4	10 95	82	1 00		05
Group 5-A	10 90	82	1 00		05
Group 5-B	11 10	82	1 00		05
Group 5-C	11 35	82	1.00		05
Group 5-D	11 40	82	1 00		05
Heavy and Highway Construction:					
Zone 1:					
Group 1	10 20	82	1 00		05
Group 2	10 45	82	1 00		05
Group 3	10 70	82	1 00		05
Group 4	10 95	82	1 00		05
Group 5-A	10 90	82	1 00		05
Group 5-B	11 10	82	1 00		05
Group 5-C	11 35	82	1 00		05
Group 5-D	11 40	82	1 00		05
Zone 2:					
Group 1	10 90	82	1 00		05
Group 2	11 15	82	1 00		05
Group 3	11 40	82	1 00		05
Group 4	11 65	82	1 00		05
Group 5-A	11 60	82	1 00		05
Group 5-B	11 80	82	1 00		05
Group 5-C	12 05	82	1 00		05
Group 5-D	12 10	82	1 00		05

MODIFICATIONS P 9

DECISION #ID79-5112 (Cont'd):

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Zone 3:					
Group 1	$11 15	82	$1 00		05
Group 2	11 40	82	1 00		05
Group 3	11 65	82	1 00		05
Group 4	11 90	82	1 00		05
Group 5-A	11 85	82	1 00		05
Group 5-B	12 05	82	1 00		05
Group 5-C	12 30	82	1 00		05
Group 5-D	12 35	82	1 00		05
Zone 4:					
Group 1	11 60	82	1 00		05
Group 2	11 85	82	1 00		05
Group 3	12 10	82	1 00		05
Group 4	12 35	82	1 00		05
Group 5-A	12 30	82	1 00		05
Group 5-B	12 50	82	1 00		05
Group 5-C	12 75	82	1 00		05
Group 5-D	12 80	82	1 00		05
Zone 5:					
Group 1	12 10	82	1 00		05
Group 2	12 35	82	1 00		05
Group 3	12 60	82	1 00		05
Group 4	12 85	82	1 00		05
Group 5-A	12 80	82	1 00		05
Group 5-B	13 00	82	1 00		05
Group 5-C	13 25	82	1 00		05
Group 5-D	13 30	82	1 00		05
Remaining Counties and Idaho County (south of the 46th Parallel):					
Zone 1:					
Group 1	8 56	80	1 37	50	10
Group 2	8 66	80	1 37	50	10
Group 3	8.76	80	1 37	50	10
Group 4	8 86	80	1 37	50	10
Group 5	8 91	80	1 37	50	10
Group 6	9 16	80	1 37	50	10
Group 7	9 41	80	1 37	50	10
Group 8	8 71	80	1 37	50	10
Group 9	8 86	80	1 37	50	10
Group 10	9 16	80	1 37	50	10
Zone 2:					
Group 1	$9 81	80	$1 37	50	10
Group 2	9 91	80	1 37	50	10
Group 3	10 01	80	1 37	50	10
Group 4	10 11	80	1 37	50	10
Group 5	10 16	80	1 37	50	10
Group 6	10 41	80	1 37	50	10
Group 7	10 66	80	1 37	50	10
Group 8	9 96	80	1 37	50	10
Group 9	10 11	80	1 37	50	10
Group 10	10 41	80	1 37	50	10

Decision #ID79-5112 (Cont'd.)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Painters:					
Ada, Adams, Boise, Canyon, Elmore (except Mt Home AFB), Gem, Gooding (western third of County including City of Bliss), Idaho County (south of the 46th Parallel), Owyhee, Payette, Valley and Washington Counties:					
Painters and Tapers	10 54	56	40		
Elmore County (Mt Home AFB):					
Painters and Tapers	11 54	56	40		
Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Camas, Caribou, Cassia, Clark, Custer, Franklin, Fremont, Gooding County (except the City of Bliss and western third of County), Jefferson, Jerome, Lemhi, Lincoln, Madison, Minidoka, Oneida, Power, Teton and Twin Falls Counties:					
Brush; Roller, Perfataper	9 96	62	50		005
Structural Steel; Swing Stage; Spray	10 41	62	50		005
Plasterers' Tenders:					
Benewah, Bonner, Boundary, Clearwater, Idaho County (north of 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties	$10 75	82	$1 00		05
Power Equipment Operators:					
Remaining Counties and Idaho County (south of the 46th Parallel):					
Zone 1:					
Group 1	9 96	1 13	1 22		10
Group 2	10 12	1 13	1 22		10
Group 3	10 49	1 13	1 22		10
Group 4	10 80	1 13	1 22		10
Group 5	10 97	1 13	1 22		10
Group 6	11 15	1 13	1 22		10
Group 7	11 51	1 13	1 22		10
Group 8	11 74	1 13	1 22		10
Group 9	11 97	1 13	1 22		10
Group 10	12 21	1 13	1 22		10

Decision #ID79-5112 (Cont'd.)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Zone 2:					
Group 1	11 21	1 13	1 22		10
Group 2	11 37	1 13	1 22		10
Group 3	11 74	1 13	1 22		10
Group 4	12 05	1 13	1 22		10
Group 5	12 22	1 13	1 22		10
Group 6	12 40	1 13	1 22		10
Group 7	12 76	1 13	1 22		10
Group 8	12 99	1 13	1 22		10
Group 9	13 22	1 13	1 22		10
Group 10	13 46	1 13	1 22		10
Sheet Metal Workers:					
Remaining Counties	12 88	68	72		21
Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Madison, Oneida, Power and Teton Counties	12 63	95	69		10
Soft Floor Layers:					
Ada, Adams, Boise, Canyon, Elmore, Gem, Gooding County (western third of County including City of Bliss), Idaho County (south of the 46th Parallel), Owyhee, Payette, Valley and Washington Counties	$8 26	49	10		.10
Truck Drivers: (See attached)					

TRUCK DRIVERS

Benewah, Bonner, Boundary, Clearwater, Idaho County (North of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties

Group No.	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5
1	$ 11 39	$ 12 09	$ 12 34	$ 12 79	$ 13 29
2	11 43	12 13	12 38	12 83	13 33
3	11 49	12 19	12 44	12 89	13 39
4	11 58	12 28	12 53	12 98	13 48
5	11 79	12 49	12 74	13 19	13 69
6	11 83	12 53	12 78	13 23	13 73
7	11 89	12 59	12 84	13 29	13 79
8	11 93	12 63	12 88	13 33	13 83
9	12 04	12 74	12 99	13 44	13 94
10	12.08	12 78	13 03	13 48	13 98
11	12 39	13 09	13 34	13 79	14 29
12	12 53	13 23	13 48	13 93	14 43
13	12 69	13.39	13 64	14 09	14 59
14	12 85	13 53	13 78	14 23	14 73

FRINGE BENEFITS:

Health and Welfare	$ 1 12
Pensions	1.19

Definitions of ZONES:

Zone 1: Area within a 15 mile radius from the center of the Cities listed below

Zone 2: Area within 15-30 mile radius from the center of the Cities listed below

Zone 3: Area within 30-45 mile radius from the center of the Cities listed below

Zone 4: Area within 45-90 mile radius from the center of the Cities listed below

Zone 5: Area over 90 mile radius from the center of the Cities listed below

Spokane Coeur d'Alene Lewiston

Remaining Counties and Idaho County (south of the 46th Parallel):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Zone 1:					
Group 1	$9 59	.95	$1 12	.60	10
Group 2	9 65	.95	1 12	.60	10
Group 3	9.71	.95	1 12	.60	10
Group 4	9.77	.95	1 12	.60	10
Group 5	9 82	.95	1 12	60	10
Group 6	10 08	.95	1 12	.60	10
Group 7	10 14	.95	1 12	60	10
Group 8	10 20	.95	1 12	.60	10
Group 9	10 31	.95	1 12	.60	10
Group 10	10 37	.95	1 12	.60	10
Group 11	10 43	.95	1 12	60	10
Group 12	10 49	.95	1 12	.60	10
Group 13:					
Class A	9 97	.95	1 12	60	10
Class B	10 18	.95	1 12	60	10
Class C	10 31	.95	1 12	.60	10
Class D	10 49	.95	1 12	60	10
Class E	10 60	.95	1 12	60	10
Class F	10 72	.95	1 12	60	10
Class G	11 00	.95	1 12	60	10
Class H	11 23	.95	1 12	60	10
Class I	11 46	.95	1 12	60	10
Group 14	10 88	.95	1 12	60	10
Zone 2:					
Group 1	$10 84	95	$1 12	60	10
Group 2	10 90	95	1 12	60	10
Group 3	10 96	95	1 12	60	10
Group 4	11 02	95	1 12	60	10
Group 5	11 07	95	1 12	60	10
Group 6	11 33	95	1 12	60	10
Group 7	11 39	95	1 12	60	10

Decision #ID79-5112 (Cont'd.)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ZONE 2 Continued:					
Group 8	11.45	.95	1 12	60	10
Group 9	11 56	.95	1 12	60	10
Group 10	11 62	.95	1 12	60	10
Group 11	11.68	95	1 12	60	10
Group 12	11.74	.95	1 12	60	10
Group 13:					
Class A	11.22	.95	1 12	60	10
Class B	11.43	.95	1 12	60	10
Class C	11.56	.95	1 12	60	10
Class D	11.74	.95	1 12	60	.10
Class E	11.85	.95	1 12	60	10
Class F	11.97	.95	1 12	60	10
Class F	12.25	.95	1 12	60	10
Glass H	12.48	.95	1 12	60	10
Class I	12 71	95	1 12	60	10
Group 14	12 13	95	1 12	60	10
DECISION #MO79-4065 - Mod. #1 (44 FR 33329 - June 1, 1979) Cass, Clay, Jackson, Platte, Ray, Henry, Johnson & Lafayette Counties, Missouri; Johnson & Wyandotte Counties, Kansas					
Change:					
Truck Drivers:					
Site Preparation and Grading, Heavy and Highway Construction					
Zone 1					
Group I	$9 99	75	1 25	75	
Group II	10 19	75	1 25	75	
Group III	10.50	75	1 25	75	
Group IV	10 65	75	1 25	75	
Group V	9 765	.75	1 25	75	
DECISION NO. MI79-2012 - MDD #1 (44 FR 26435 - May 4 1979) Alcona Alpena, Charlevoix Emmet Grand Traverse Leelanau, Mason, Montmorency, Muskegon; Oceana, Oscoda & Presque Isle Counties, Michigan					

MODIFICATIONS P. 14

DECISION No. MI79-2012 Cont'd.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CHANGE:					
BRICKLAYERS:					
Muskegon & Oceana Counties					
Bricklayers & Stonemasons	$10 795	80	75		
Plasterers	11 18	70	75		03
Remaining Counties					
Bricklayers; Stonemasons; Plasterers & Marble Masons	10 68	75	25		02
Terrazzo & Tile Workers	10 12	75	25		02
CARPENTERS:					
Mason, Muskegon & Oceana Cos					
Carpenters	11 30	60	80		04
Millwrights	13 30	60	80		05
Piledrivermen	11 70	60	80		04
CEMENT MASONS:					
Muskegon & Oceana Counties	9 30	70	75		02
Remaining Counties	10 23	75	25		02
ELECTRICIANS:					
Muskegon, Oceana & The Remainder of Mason Counties	12 46	50	3%+ 35		03
IRONWORKERS:					
Alcona, Alpena, Montmorency, Oscoda & Presque Isle Cos Reinforcing	11 94	98+ 25	15%	15%	07
PAINTERS:					
Alcona & Oscoda Counties:					
Brush	10 15	55	80		02
Spray	11 00	55	80		02
Mason County	9 75				
PLUMBERS & STEAMFITTERS:					
Remaining Counties	12 40	75	50		03
ROOFERS:					
Mason, Muskegon & Oceana Cos:	9 95	67		20	01
ADD:					
TRUCK DRIVERS:					
Muskegon & Oceana Cos	7 06	a21 00			
DECISION NO. MI79-2013 - MOD #1 (44 FR 26435 - May 4, 1979) Alger, Baraga, Chippewa, Dickinson, Gogebic, Houghton, Keweenaw, Mackinac, Marquette & Ontonagon Counties, Michigan					
CHANGE:					
ELECTRICIANS:					
Dickinson County:					
Contracts $50,000 or more & all Industrial Work	$12 56	.50	3%		.5%
Contracts less than $50,000	11 19	50	3%		.5%
Chippewa & Mackinac Cos	10 90	.50	3%+1.00		15 00p/y
Gogebic County	12 13	4%	7%	11%	1%

MODIFICATIONS P. 15

Decision No. MI79-2013 Cont'd.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Remainder of Counties:					
Contracts $45,000 & over	11 29	50	3%+1 00		½ of 1%
Contracts up to $45,000	8 50	50	3%+1.00		½ of 1%
PLUMBERS & STEAMFITTERS	11 81	70	70	1 00	02
SHEET METAL WORKERS	10 58	70+ 11	88	1 50	05
DECISION NO. MI79-2014 - MOD #1 (44 FR 26442 - May 4, 1979) Marquette County, Michigan					
CHANGE:					
ELECTRICIANS	$ 8 95	45	3%		½ of 1%
PLUMBERS & STEAMFITTERS	11 81	70	70	1 00	02
SHEET METAL WORKERS	10.58	.70+.11	.88	1.50	.05
DECISION NO. MI79-2015 - MOD #1 (44 FR 26443 - May 4, 1979) Allegan, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson & Kalamazoo Counties, Michigan					
CHANGE:					
BRICKLAYERS & STONEMASONS					
Allegan County (Allegan, Cheshire, Gun Plain, Martin, Otsego, Trowbridge, Valley & Watson Townships) & Kalamazoo County	$11 41	1 15	35		09
CARPENTERS:					
Remaining Counties & The Remainder of Berrien & Eaton Counties	11 30	60	80		04
CEMENT MASONS:					
Kalamazoo County; Calhoun Co; Allegan Co , (Twps of Allegan, Cheshire, Gun Plain, Martin, Otsego, Trowbridge, Valley & Watson)	10 77	1 15	35		02
ELECTRICIANS:					
Allegan County (Laketon, Fillmore, Leighton Townships)	11 95	50	3%+ 35		02
Allegan County (Remainder) & Kalamazoo County	12 88	50	9½%		01
Calhoun County & Sunfield, Vermontville, Kalamo, Bellevue, Eaton & Brookfield Townships in Eaton County	13 01	50	6%		01
Jackson County	11 97	4%+ 50	3%+ 70	10%	.09
Remainder of Ingham County	12 61	4%+ 50	3%+ 70	10%	.09

MODIFICATIONS P 16

Decision No. MI79-2015 Cont'd.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
PAINTERS:					
Calhoun County					
Brush & Roller	10 35		25		
Clinton, Eaton & Ingham Cos					
Brush-Rollers & Tapers	12 00	50	40		0025
Structural Steel	12 40	50	40		0025
Spray & Sandblasting	12 75	.50	40		0025
Jackson County					
Brush & Roller	12 10	1 01	1 35	1 15	50 00p/y
Spray	12 60	1 01	1 35	1 15	50 00p/y
Drywall Taper	12 35	1 01	1 35	1 15	50 00p/y
CHANGE:					
PLASTERERS:					
Remainder of Allegan County & Remainder of Counties	$11 18	70	75		03
PLUMBERS:					
Clinton & Ingham Counties & Sunfield, Roxand, Oneida, Roxand, Oneida, Delta & Windsor Townships in Eaton County	$13.11	75	1 25		
SHEET METAL WORKERS:					
Remaining Counties	12.54	1 00	1 33		07
SOFT FLOOR LAYERS:					
Allegan, Berrien (except Chickaming, New Buffalo & 3 Oaks Twps) Calhoun, Kalamazoo Counties & Bellevue, Vermontville, Kalamo & Walton Twps in Eaton County	9.45	60	80		01
DECISION NO. MI79-2016 - MOD #1 (44 FR 26450 - May 4 1979) Bay, Genesee, Huron Iosco, Lapeer, Saginaw, St Clair Sanilac, Shiawassee & Tuscola Counties, Michigan					

MODIFICATIONS P. 17

Decision No. MI79-2016 Cont'd.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CHANGE:					
BRICKLAYERS:					
St. Clair & Sanilac Counties					
Bricklayers & Stonemasons	$12 85	1 30	1 10		
CARPENTERS:					
Sanilac (except the west 5 miles) & St. Clair Counties					
Carpenters & Piledrivermen	12 78	1 00	11%	11%	04
Remainder of Counties & the west 5 miles of Sanilac County					
Carpenters & Piledrivermen	11 99	60	80		02
CEMENT MASONS:					
St. Clair & Sanilac Counties	12 25	1.30	1 10		
ELECTRICIANS:					
Bay Co; & Southern ½ of Iosco County	13 55	50	3%+ 50		½ of 1%
Genesee, Lapeer & Shiawassee Counties	12 65	50	3%+1 50		02
Saginaw & Tuscola Counties	13 65		3%+1 25		½ of 1%
IRONWORKERS:					
Reinforcing	11 94	98+ 25	15%	15%	09
PAINTERS:					
Bay & Iosco Cos; Huron (West of M-53) Cos & the Twps of Akron, Almer, Columbia, Elkland, Ellington, Elmwood, Fairgrove, Gilford, Novesta & Wisner in Tuscola County:					
Commercial	10 15	55	80		02
Industrial	10 95	55	80		02
Spray	11 00	55	80		02
Western ½ of Shiawassee Co	12 00	50	40		0025
Huron (East of Hwy, 53) St. Clair & Sanilac Cos:					
Commercial & Industrial					
Brush	13 03	55	70		01
Open Steel & Spray	13 58	55	70		01
CHANGE:					
PLASTERERS:					
St. Clair & Sanilac Counties	$11 97	1 30	1 10		
PLUMBERS & STEAMFITTERS:					
Saginaw & S ½ of Tuscola (including Carco Washjamerga & South of the Lapeer County line) Counties	$11 73	1 09	1 29	1 25	02
TRUCK DRIVERS:					
Huron, St. Clair & Sanilac					
Pole Trailers, Low Boys, Straddle Carriers Double Bottoms & Special Load Permit Drivers	11 30	a32 50	a37 00		
Semi-Drivers	11.20	a32 50	a37 00		
All Other Drivers	11 05	a32 50	a37.00		

DECISION NO. MI79-2017 - MOD #1 MODIFICATIONS P. 18

(44 FR 26455 - May 4, 1979)
Genesee, Lapeer, Saginaw, St Clair & Shiawassee Counties, Michigan

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr.
CHANGE:					
BRICKLAYERS:					
St. Clair County	$ 9 75	1 30	1 10		
CEMENT MASONS:					
St. Clair County	9 09	1 30	1 10		
IRONWORKERS:					
Reinforcing	11 94	.98+ 25	15%	15%	09

DECISION NO. MI79-2019 - MOD #1
(44 FR 26457 - May 4, 1979)
Macomb, Monroe, Oakland, Washtenaw & Wayne Counties, Michigan

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr.
CHANGE:					
BRICKLAYERS & STONEMASONS:					
Remainder of Counties & East of Hwy. #23 in Monroe County	$13 15	1 00	8%+ 30	11%	05
CARPENTERS & PILEDRIVERMEN:					
Remainder of Counties	12 78	1 00	11%	11%	04
CEMENT MASONS:					
Remainder of Counties & North of Hwy. #151 in Monroe County	13 29	1 00	11%		02
ELECTRICIANS:					
Washtenaw County	12 61	.50+4%	3%+ 70	10%	09
Remainder of Counties:					
Building & Residential	14 40	1 65	3%+1 20		05
IRONWORKERS:					
Remainder of Counties Reinforcing	11.94	.98+.25	15%	15%	07
LABORERS: (BUILDING-HEAVY & RESIDENTIAL)					
Monroe County:					
Construction Laborer & Carpenters Helper	10 97	.65	35	90	04
Mortar Mixer, Mason & Plaster Tender, Cement Mason Tender & Tool Operator	11 17	65	35	90	04
CHANGE:					
MILLWRIGHTS:					
Remainder of Counties	$12 50	1 00	13%	23%	06
PAINTERS:					
Brush & Roller	12 10	1 01	1 35	1 15	50 00p/y
Spray	12 60	1 01	1 35	1 15	50 00p/y
Drywall Tapers	12 35	1 01	1 35	1 15	50 00p/y
PLUMBERS & STEAMFITTERS:					
Washtenaw County	12.53	1 20	80		.10
ROOFERS:					
Remainder of Counties:					
Composition	12 51	.95	1 00	1 20	
Slate	13 51	95	1 00	1 20	

MODIFICATIONS P. 19

Decision No. MI79-2019 Cont'd.

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
TRUCK DRIVERS: (BUILDING, HEAVY & RESIDENTIAL CONSTRUCTION)					
Pole Trailers; Low Boys; Straddle Carrier; Double Bottoms & Special Load Permits	11 30	a32 50	a37 00		
Semi-Drivers	11 20	a32 50	a37 00		
All Other Truck Drivers	11 05	a32 50	a37 00		
LANDSCAPE LABORERS:					
Class "A"	7 21				
Class "B"	5.46				

DECISION #MI79-2020 - MOD. #1
(44 FR 31842 - June 1, 1979)
Statewide; Michigan

CHANGE:

Line Construction:
ZONE 2
Remainder of the State

LINE CONSTRUCTION:
ZONE II
Remainder of the State

LC-ZONE II

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Lineman; Technician	$11 85	45	3%	5%+a	5%
Cable Splicer	12 32	45	3%	5%+a	5%
Combination Digger Operator; Tractor Operator Groundman;					
1st 6 Months	8 55	45	3%	5%+a	5%
Over 6 Months	9 24	45	3%	5%+a	5%
Light Equipment Operator Groundman; Distribution Line Truck Driver Operator:					
1st 6 Months	7 43	45	3%	5%+a	5%
Over 6 Months	8 11	45	3%	5%+a	5%
Combination Winch Truck Driver Groundman:					
1st 6 Months	6 77	45	3%	5%+a	5%
Over 6 Months	7 74	45	3%	5%+a	5%
Combination Truck Driver Groundman	6 55	45	3%	5%+a	5%

FOOTNOTES:

a. 7 Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day after Thanksgiving Day; and Christmas Day

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
DECISION #MO79-4059 - Mod. #1 (44 FR 19111 - March 30, 1979) Description of Work and Location: Heavy and Highway Construction Missouri					
Change: Truck Drivers Zone 2					
Group 1	$9 99	75	1 25	75	
Group 2	10 19	75	1 25	75	
Group 3	10 50	75	1 25	75	
Group 4	10 65	75	1 25	75	
Group 5	9.765	.75	1.25	.75	
DECISION #NV78-5102 - Mod. #1 (44 FR 13221 - March 9, 1979) Clark County (does not include the Nevada Test Site), Nevada					
Change: Supersedeas Decision No NV78-5102 dated March 9, 1979, in 44 FR 13221 to read: Supersedeas Decision No NV79-5102					
Change:					
Lathers	$11 10	.80	$1 00	$1 20	16
Roofers	15 05	80			
Soft Floor Layers	13 87	65			15
Terrazzo Workers, Tile Setters	12 97	90	60		06
DECISION NO. ND78-5125 - Mod #1 (43 FR 43222 - Sept 22, 1978) Statewide North Dakota					
CHANGE: Electricians:					
Cass and Grand Forks Counties	$10 65	40	3%	6%	1½%
Burleigh and Ward Counties	10 60	40	3% + 80	6%	1½%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
DECISION NO. OK78-4093 - Mod. #1 (43 FR 41363 - September 15, 1978) Atoka, Bryan, Choctaw, Haskell, Latimer, McCurtain, Pittsburg, and Pushmataha Counties, Oklahoma					
OMIT THE FOLLOWING COUNTY: Coal County					
DECISION NO. PA78-3045 - Mod. # 9 (43 FR 20714 - May 12, 1978) Lackawanna, Susquehanna, Wayne, and Wyoming Counties, Pennsylvania					
Change:					
Bricklayers & Stonemasons: Susquehanna and Wyoming Cos	$11 15	85	75		
Cement masons: Wyoming, Wayne, Susquehanna Counties, Scranton in Lackawanna County	12 05				
Electricians: Lackawanna, Susquehanna, and Wayne County	10 90	75	3%+ 50	1 00	10
Wyoming County East of Susquehanna River	10 90	.75	3%+ 50	1 00	10
Painters: Brush & Roller	9 50		1 20		
Spray	11 00		1 20		
Steel	10 50		1 20		
Plasterers	12 13				
Pile driver men	11 52	2 48	1 40	a	13
Pipefitters	12 34	65	95		05
Plumbers	11 89	80	1 25		05
Roofers: Composition, and Kettleman	11 32		1 13		

DECISION NO. PA79-3009 - Mod #2
(44 FR 26518 - May 4, 1979)
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
BRICKLAYERS:					
Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominantly residential use:	9 98	77	1 05		02
Zone 1					
New Residential: Under 4 stories	10 98	77	1 05		02
All other work:					
Zone 1	11 73	1 10	1.15		02
CARPENTERS:					
Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominantly residential use:	9 67	2 48	1 40		13
CEMENT MASONS:					
Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominantly residential use:	9 00	2 09	2 20		
DRYWALL FINISHERS					
Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominantly residential use	9 50	1 69	.75		03
ELECTRICIANS:					
Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominantly residential use	-	-	-		

DECISION NO. PA79-3009 - Mod. #2

ELECTRICIANS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Zone 1	12 74	76	3%+ 76		
Zone 2	11 87	71	3%+ 83		06
Zone 3	9 75	46	3%+ 58		.15
ELECTRICIANS					
Zone 1					
Commercial	13 45	81	3%+ 81		1-3/4%
IRONWORKERS:					
Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominantly residential use:					
Zone 1	11.62	1 14	1 36		04
LABORERS:					
Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominantly residential use:					
Class I	8.55	.90	.65		
Class II	8.65	90	.65		
Class III	8 70	90	.65		
Class IV	8 85	90	65		
Class V	8.95	.90	65		
Class VI	8 49	.90	.65		
LATHER:					
Zone 1	10 55		60		
MILLWRIGHTS	11 17	2 48	1 40		12
PAINTERS:					
Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominantly residential use					
Zone 1	10 00	1 225	60		

DECISION No. PA79-3009 - Mod. #2 MODIFICATIONS P 24

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
PAINTERS: (CONT'D)					
All other work					
Zone 1					
Brush	11 295	1 225	60		05
Spray, Steel, Swing	11 72	1 225	60		05
Roller	11 295	1 225	60		05
Zone 3					
Brush	9 75	75	80		
Steel & Spray	10 80	75	80		
Roller	9 75	75	80		
Zone 4					
Brush	11 24	1 30	1 15		
Steel	11 99	1 30	1 15		
PILEDRIVERMEN	11 52	2 48	1 40		13
PAPERHANGERS:					
Rehabilitation work to include demolition, repair, and alteration on any existing structure of not more than four (4) stories which is intended for predominantly residential use	10 89	95	60		03
PLASTERERS:					
Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominantly residential use:					
Zone 1	9.49	93			01
PLUMBERS:					
Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominantly residential use:					
Zone 1	12 13	81	1 30		14
All other work					
Zone 1	13 13	85	1 40		14
SOFT FLOOR LAYERS:					
Rehabilitation work to include demolition repair, and alteration on any existing					
SOFT FLOOR LAYERS: (CONT'D)					
structure of not more than four (4) stories which is intended for predominantly residential use	8 58	2 18	1 40		13
STEAMFITTERS					
Zone 1	13 16	80	1 45		11

DECISION No. PA79-3009 - Mod. #2 Cont'd. MODIFICATIONS P 25

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
TILE SETTERS:					
Rehabilitation work to include demolition repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominantly residential use	10 25	1.25	.40		
DECISION NO. TN78-1060 - Mod. #3 (43 FR 29467 - July 7, 1978) Davidson County, Tennessee					
CHANGE:					
Asbestos workers	$12 10	65	75		.05
Electricians	11 40	55	3% + 25		¼ of 1%
Elevator Constructors:					
Mechanics	9 355	895	56	4%+a+b	025
Helpers	6 55	895	56	4%+a+b	025
DECISION NO. TN78-1091 - Mod. #3 (43 FR 49207 - October 20, 1978) Shelby County, Tennessee					
CHANGE:					
Asbestos workers	$11 80	65	1 00		05
Bricklayers & Stone masons	11 85	63	30		10
Carpenters, Piledrivermen, & Soft floor layers	10 05	65	60		065
Elevator Constructors:					
Mechanics	10 56	895	69	4%+a+b	03
Helpers	7 39	895	69	4%+a+b	03
Laborers:					
Group A	7 185	30	40		05
Group B	7 285	30	40		05
Group C	7 335	30	40		05
Group D	7 535	30	40		05
Group E	7 735	30	40		05
Group F	7 95	35	40		05
Millwrights	11 00	77	40		12
Painters:					
Commercial	10 05	55	50		075
Industrial, Spray, & Sandblasting	10 30	55	50		075
Plasterers	11 40				01
Power Equipment Operators:					
Class A	10 025	50	50		20
Class B	9 595	50	50		20
Class C	8 895	50	50		20
Class D	8 495	50	50		20
Roofers	10 00		25		03

DECISION NO. TN78-1090 - Mod. #2
(43 FR 49205 - October 20, 1978)
All of Knox & Monroe Counties, and that portion of Anderson & Roane Counties which comprise the Oak Ridge Energy Research & Development Administration site, Tennessee

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asbestos workers	$10 75	45	70		02
Bricklayers, Stone masons, Marble masons, Tile setters, & Terrazzo workers	10 76		60		
Carpenters & Soft floor layers	8 95	57	58		02
Cement masons	8 86				
Elevator Constructors:					
Mechanics	9 26	895	69	4%+a+b	03
Helpers	6 48	895	69	4%+a+b	03
Ironworkers:					
Reinforcing	9 56	50	50		02
Structural, Ornamental, & Fence erectors	9 70	50	50		02
Laborers:					
Construction laborers;	6 24	30	33		01
Form setter and stripper, pipelayer, asphalt raker, jackhammer, air tool, vibrator, chain saw, barco tamp operators, mortar mixer, plasterer tender, all power driven tool operators, hod carrier, power buggy, yarner, potman, snakeman, grademan, and flagman;	6 39	30	33		01
Acetylen burner	6 42	30	33		01
Wagon drill operator	6 54	30	33		01
Powderman	6 74	30	33		01
Nozzleman; concrete gun op	6 94	30	33		01
Caisson hole man	7 04	30	33		01
Millwrights	9 68	57	58		02
Piledrivermen	9 20	57	58		02
Sheet metal workers:					
Knox County	10 93	68	77		08
Remaining Counties	11.43	.68	.77		.08

DECISION NO. WA78-5103 - Mod.#2
(43 FR 26271 - June 16, 1978)
Clallam, King, Kitsap, Pierce Snohomish, and Thurston Counties, Washington

CHANGE:

Plumbers:					
Clallam, King, Kitsap, Pierce Snohomish, and Thurston Cos	$9 05	85	30	37	11

DECISION #WV77-3083 - Mod. #9
(42 FR 53172 - September 30, 1977)
Statewide, West Virginia

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Omit:					
All classifications, areas, and wage rates for Piledrivermen on Highway Construction					
Powdermen from Group 2 for Laborers on Heavy and Highway Construction					
Add:					
Powdermen to Group 1 for Laborers on Heavy and Highway Construction					
Piledrivermen - Highway Construction:					
Area 1: Brooke, Hancock Marshall Monongalia, Ohio, and Wetzel Counties	10 60	5%	10%		1%
Area 2: All remaining Counties	9 93	80	35		05
Change:					
Cement Masons:					
Heavy Construction	10 69	50			
Highway Construction	10 50	50			
Carpenters:					
Highway Construction:					
All Counties	9 61	80	35		05
Heavy Construction					
All Counties	9 79	80	35		05
Electricians					
Area 3:					
Wiremen	10 95	,50	3%+ 52	2 02	03
Cable Splicers	12 045	50	3%+ 52	2 02	03
Area 4:					
Wiremen	12 60	50	3%+ 35	1 00	04
Cable Splicers	12 85	50	3%+ 35	1 00	04
Area 6:					
Contracts under $12,000:					
Wiremen	6 15	50	3%+1 02	1 52	02
Contracts $12,000 or more:					
Wiremen	11 35	50	3%+1 02	1 52	02
Cable Splicers	11 50	50	3%+1 02	1 52	02
Area 7:					
Wiremen	11 10	50	3%+1 25	1 50	04
Cable Splicers	11 35	50	3%+1 25	1 50	04
Ironworkers:					
Area 2	11 93	80	1 15		03
Area 5	10 55	80	85		03

DECISION #WV77-3083 - Mod. #9

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr.
Laborers:					
Highway Construction:					
Group 1	9 39	50	50		:05
Group 2	8 98	50	50		05
Group 3	8 66	50	50		05
Group 4	8 34	50	50		05
Group 5	8 04	50	50		05
Group 6	7 58	50	50		.05
Heavy Construction:					
Group 1	9 56	50	50		05
Group 2	9 14	50	50		05
Group 3	8 84	50	50		05
Group 4	8 51	50	50		05
Group 5	8 27	50	50		05
Group 6	7 77	50	50		05
Line Construction:					
Area 3:					
Linemen & Equipment Operators	11 65	60	3%+1 25	1 52	½%
Cable Splicers	12 82	60	3%+1 25	1 52	½%
Groundmen	9 32	60	3%+1 25	1 52	½%
Area 4:					
Linemen & Equipment Operators	10 95	50	3%+ 52	2 02	½%
Cable Splicers	12 045	50	3%+ 52	2 02	½%
Groundmen and Truck Drivers	8 76	50	3%+ 52	2 02	½%
Area 5:					
Linemen & Equipment Operators	12 60	50	3%+ 35	1 00	04
Cable Splicers	12 85	50	3%+ 35	1 00	04
Groundmen	10 08	50	3%+ 35	1 00	04
Area 7:					
Linemen & Equipment Operators	11 35	50	3%+1 02	1 52	½%
Cable Splicers	12 485	50	3%+1 02	1 52	½%
Groundmen & Truck Drivers	9 08	50	3%+1 02	1 52	½%
Piledrivermen:					
Heavy Construction:					
Area 1	10 12	80	35		05
Area 2	10 12	80	35		05

DECISION #WV77-3083 - Mod. #9

POWER EQUIPMENT OPERATORS: Highway Construction:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Group 1	10 48	90	60		10
Group 2	9 65	90	60		10
Group 3	8 91	90	60		10
Group 4	8 67	90	60		10
Group 5	8 34	90	60		10
Group 6	8 02	90	60		10
Group 7	9 24	90	60		10

All classifications performing tunneling and underground work shall receive an additional 25¢ per hour

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS ON HIGHWAY CONSTRUCTION

GROUP 1 - Cranes derricks, tower cranes all shovels, drag lines clamshells, backhoes, cableways derricks (2 drums or more), dredge, sideboom tractors and similar equipment having a reach from the top of the boom to the ground of 150 feet, or a capacity of 3 cubic yards and/or a lift capacity of 50 tons End-loaders and concrete mixing plants of 4 cubic yards capacity or over Hoist with 18,000 pound line pull or over, tug, tow or work boat above 25 horsepower engine Transloader Capacities to be based on manufacturer's specifications Master Mechanic

GROUP 2 - Crane, derrick boat, drag-line grade-all, hoist (two drums or more), mechanic (heavy) mixer plant (two or more mixers including batch control) paver (dual drums), pile driver shovel, coredrill operator trencher (20' or over) truck crane backhoe hi-lift (1-1/2 cubic yards or over), dozer with ripper (when dozer is D-8 class or larger) double hitched equipment bulldozer with roller, standard gauge locomotive concrete pump controlled fine grade machine slip form paver operator, dozer with sloper and log loader

GROUP 3 - Fork lift, self-propelled concrete spreader, concrete finishing machine bulldozer, derrick (single drum) single drum paver, trencher (under 20) motor grader, air tugger, rubertired scraper self-loading tractor pan Ross Carrier A" Frame multiple concrete saw asphalt paver hydraulic post driver, base paver rotary drill lead greaser on grease truck or service island snake or push tractor horizontal road boring machine conductor of locomotive tie distributor, track lining machine ballast tamper anchor application machine, ribbon rail puller, ballast regulator auto sled, turn table, hi-lift (under 1-1/2 cubic yards) hoist (single drum) -

GROUP 4 - Concrete mixer (single drum) one cubic yard or over, tireman, asphalt batch plant, concrete batch plant, crushing plant screening and washing plant, form subgrader, power form handling equipment, burlap and curing machine form grader, bull float, portable concrete saw, roller and compactor, bar and joint installing machine and power broom

GROUP 5 - High pressure firemen

GROUP 6 - Air compressor, concrete mixer (under one cubic yard), conveyor-belt or bucket, light plant, narrow gauge locomotive, welding machine, low pressure fireman, mechanic's helper, oiler, deckhand, screed man, spreader box man farm tractor, joint sealer and pump, steam jenny and brakeman of locomotive

GROUP 7 - Group 6 operators when one (1) or more 600 CFM compressors or one (1) or more pumps 4" or larger, or more than one (1) air compressor, conveyor-belt or bucket, light plant, welding machine, and pumps

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Power Equipment Operators: Heavy Construction:					
Group 1	10 63	90	60		.10
Group 2	9.83	90	60		10
Group 3	9.09	90	60		10
Group 4	8.85	.90	.60		.10
Group 5	8 52	90	60		10
Group 6	8 20	90	60		10
Group 7	9 41	.90	.60		10

ALL classifications performing tunneling and underground work shall receive an additional 25¢ per hour

CLASSIFICATION DEFINITION FOR POWER EQUIPMENT OPERATORS ON HEAVY CONSTRUCTION

GROUP 1 - Cranes, derricks, tower cranes, all shovels, draglines clamshells, backhoes, cableways derricks (2 drums or more), dredge, sideboom tractors and similar equipment having a reach from the top of the boom to the ground of 150 feet, or a capacity of 3 cubic yards and/or a lift capacity of 50 tons End-loaders and concrete mixing plants of 4 cubic yards capacity or over Hoist with 18 000 pound line pull or over tug, tow or work boat above 25 horsepower engine Transloader Capacities to be based on manufacturer's specifications Master Mechanic

GROUP 2 - Crane derrick boat, dragline, grade-all, hoist (two drums or more) mechanic (heavy), mixer plant (two or more mixers including batch control) paver (dual drums), pile driver, shovel coredrill operator trencher (20" or over), truck crane backhoe hi-lift (1-1/2 cubic yards or over) dozer with ripper (when dozer is D-8 class or larger), double hitched equipment, bulldozer with roller, standard gauge locomotive, concrete pump controlled fine grade machine, slip form paver operator, dozer with sloper and log loader

GROUP 3 - Fork lift, self-propelled concrete spreader, concret finishing machine, Bulldozer, derrick (single drum), hi-lift (under 1-1/2 cubic yards), hoist (single drum), single drum paver, trencher (under 20"), motor grader air tugger rubbertired scraper, self-loading tractor pan, Ross Carrier, "A" Frame multiple concrete saw, asphalt paver, hydraulic post driver base paver, rotary drill, lead greaser on grease truck or service island, snake or push tractor, horizontal road boring machine, conductor or locomotive, tie distributor, track lining machine, ballast tamper, anchor application machine ribbon rail puller, ballast regulator, auto sled, turn table

GROUP 4 - Concrete mixer (single drum) one cubic yard or over, tireman, asphalt batch plant, concrete batch plant, crushing plant, screening and washing plant, form subgrader, power form handling equipment, burlap and curing machine, form grader, bull float portable concrete saw, roller and compactor, bar and joint installing machine and power broom

GROUP 5 - High pressure fireman

GROUP 6 - Air compressor, concrete mixer (under one cubic yard), conveyor-belt or bucket, light plant, narrow gauge locomotive, welding machine, low pressure fireman, mechanic's helper, oiler, deckhand, screed man spreader box man, farm tractor, joint sealer and pump, steam jenny and brakeman of locomotive

GROUP 7 - Group 6 operators when operating on (1) or more 600 CFM compressors or one (1) or more pumps 4" or larger or more than one (1) air compressor conveyor-belt or bucket, light plant, welding machine, and pumps

DECISION #WV77-3083 - Mod. #9

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr.
Truck Drivers:					
Heavy Construction					
Area 1: All counties except Grant, Hampshire, Hardy, Mineral, Morgan and Pendelton					
Group 1	8 41	e	f		
Group 2	8 58	e	f		
Group 3	8 82	e	f		
Group 4	9 16	e	f		
Group 5	9 24	e	f		
Group 6	9 42	e	f		
Group 7	9 62	e	f		
Group 8	9 66	e	f		
Area 2: Grant, Hampshire Hardy Mineral, Morgan, and Pendleton Counties:					
Group 1	8 41	1 00	67		
Group 2	8 58	1 00	67		
Group 3	8 82	1 00	67		
Group 4	9 16	1 00	67		
Group 5	9 24	1 00	67		
Group 6	9 42	1 00	67		
Group 7	9 62	1 00	67		
Group 8	9 66	1 00	67		
Truck Drivers:					
Highway Construction:					
Area 1: All counties except Grant Hampshire Hardy, Mineral, Morgan & Pendleton					
Group 1	8 21	e	f		
Group 2	8 37	e	f		
Group 3	8 61	e	f		
Group 4	8 97	e	f		
Group 5	9 03	e	f		
Group 6	9 21	e	f		
Group 7	9 36	e	f		
Group 8	9 45	e	f		
Area 2: Grant, Hampshire Hardy, Mineral Morgan & Pendleton Counties:					
Group 1	8 21	1 00	67		
Group 2	8 37	1 00	67		
Group 3	8 61	1 00	67		
Group 4	8 97	1 00	67		
Group 5	9 03	1 00	67		
Group 6	9 21	1 00	67		
Group 7	9 36	1 00	67		
Group 8	9 45	1 00	67		

All truck driver classifications performing tunneling and underground work shall receive an additional 25¢ per hour

CLASSIFICATION DEFINITIONS FOR TRUCK DRIVERS ON HIGHWAY & HEAVY CONSTRUCTION

GROUP 1 - Warehouse, yardmen truck helper, pick-ups station wagons, panel trucks, team 2-up

GROUP 2 - Single axle trucks used as dump, supply fuel, water van flatbody, monorail distributor, (other than bituminous distributors) and including towed single units - material checkers, material receivers, team 4-up greasers tiremen and mechanic helpers (trucks)

GROUP 3 - Tandem axle trucks used as dump, supply, fuel water, van, flatbody, monorail and including towed single units, truck tractors used in combination with dump, van, tank, flatbed, low platform, or pole trailers, bituminous distributors, agitator or mixer trucks (up to and including 5 c y)

GROUP 4 - Agitator or mixer trucks over 5 c y and less than 12 c y , rubber-tired tractors (towing or pushing), drag drivers and tag alongs

GROUP 5 - Tri-axle trucks used as dump, supply, fuel, water van, flatbed, monorail and including towed single units agitator or mixer trucks (over 12 c y to 20 c y)

GROUP 6 - Mobile metered mixer, agitator or mixer trucks (over 20 c y), off highway rear dump trucks to 75 tons

GROUP 7 - "A" frame operator

GROUP 8 - Off highway rear dump - over 75 tons

FOOTNOTES:

e Employer contributes $110 00 per month per employee

f Employer contributes $73 67 per month per employee

SUPERSEDEAS DECISION

STATE: California COUNTY: San Diego
DECISION NUMBER: CA79-5124 DATE : Date of Publication
Supersedeas Decision No CA78-5006 dated January 27, 1978, in 43 FR 3859
DESCRIPTION OF WORK: Building Projects (does not include single family homes and garden type apartments up to and including 4 stories), heavy and highway construction and dredging

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ASBESTOS WORKERS	$ 14 45	$ 1 05	$ 1 37		06
BOILERMAKERS	14 36	1 075	1 00	1 00	03
BRICKLAYERS; Stonemasons	12 09	1 03	1 34		12
BRICK, BLOCK and STONEMASONS' TENDERS	10 57	77	2 05		
CARPENTERS:					
Carpenters	12 01	71	1 20	80	07
Piledrivermen	12 14	71	1 20	80	07
Millwrights; Pneumatic Nailer; Hardwood Floorlayers	12 26	71	1 20	80	07
CEMENT MASONS:					
Cement Masons	8 81	88	1 66	1 36	07
Color Work; Composition, Mastic or Epoxy; Finishing Machine; Curb Machine	9 11	88	1 66	1 36	07
DRYWALL INSTALLERS	13 30	71	1 20	90	07
ELECTRICIANS:					
Electricians	15 33	70	3%+1 71		09
Cable Splicers	15 63	:70	3%+1 71		09
ELEVATOR CONSTRUCTORS	16.37	895	69	a	03
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	895	69	a	03
ELEVATOR CONSTRUCTORS' HELPERS (PROG.)	50%JR				
GLAZIERS	12 10	95	1 30		
IRONWORKERS:					
Fence Erectors	11 11	1 29	2 47	1 65	07
Reinforcing	12 00	1 29	2.47	1 65	07
Ornamental; Structural	12 00	1.29	2.47	1.65	07
IRRIGATION And LAWN SPRINKLERS	10 45	10%	16%	13%	1%
LATHERS:					
Northern portion of San Diego County from center of City of Del Mar	12 50	75	1 00	50	05
Remainder of County	12 06	85	1 00	70	02
LINE CONSTRUCTION:					
Groundman	12 03	70	3%+1 71		02
Linemen	15 62	70	3%+1 71		02
Cable Splicers	15 92	70	3%+1 71		02
MARBLE SETTERS	12 69	81	1 17		08
MARBLE SETTERS' HELPERS	9 74	81	1 00		08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
PAINTERS:					
Brush, Paint Burner	$ 12 37	$ 1 23	$ 1 38	75	07
Brush (swing stage), Spray	12 62	1 23	1 38	75	07
Paperhanger, Spray (swing stage)	12 87	1 23	1 38	75	07
Sandblaster; Sandblaster (swing stage); Iron, steel and bridge painters (swing stage); Iron, steel and bridge painter, Spray (swing stage)	13 37	1 23	1 38	75	07
Iron, steel and bridge painter (groundwork); Iron, steel and bridge painters, Spray (groundwork); Riggers, climbing steel; Brush, climbing steel and bridge; Spray, climbing steel and bridge	13 12	1 23	1 38	75	07
Steeplejack	14 02	1 23	1 38	75	07
PARKING LOT WORK And/Or HIGHWAY MARKERS:					
Traffic delineating device applicator	10 12	.85	45	b	
Wheel stop installer; Traffic surface sandblaster; Striper	9 73	85	45	b	
Helper (traffic surface sandblaster; Wheel stop installer; Striper)	7 43	85	.45	b	
SLURRY SEAL OPERATION:					
Mixer Operator	9 73	85	45	b	
Squeege Man	8 54	:85	45	b	
Applicator Operator	8 54	85	45	b	
Shuttleman	8 54	85	45	b	
Top Man	7 00	85	.45	b	
PLASTERERS	11 46	65	1 75		.07
PLASTERERS' TENDERS	10 61	.77	2.05	1.00	
PLUMBERS; Steamfitters	13 12	10%	15%	13%	2%
ROOFERS	12 79	80	1 05	1 00	
SHEET METAL WORKERS	13 96	1 04	2 24		01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SOFT FLOOR LAYERS	$ 11 47	76	$ 1 15		09
SPRINKLER FITTERS	15 52	75	1 05		08
TERRAZZO WORKERS	12 69	81	1 17		08
TILE SETTERS	12 69	81	1 17		08
TERRAZZO and TILE HELPERS	9 74	81	1 00		08
RIGGERS; WELDERS - Receive rate prescribed for craft performing operation to which rigging or welding is incidental					

FOOTNOTES:

a Employer contributes 8% of basic hourly rate for 5 years' service and 6% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit 6 Paid Holidays: A through F

b Employer contributes $ 23 per hour to Holiday Fund plus $ 20 per hour to Vacation Fund for the first year of employment, 1 year by less than 5 years $ 40 per hour to Vacation Fund, 5 years but less than 10 years $ 60 per hour to Vacation Fund, over 10 years $ 80 per hour to Vacation Fund

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

LABORERS:

Group 1	$ 8 95	77	$ 2 05	$ 1 00	13
Group 2	9 25	77	2 05	1 00	13
Group 3	9 45	77	2 05	1 00	13
Group 4	9 70	77	2 05	1 00	13

LABORERS

Group 1: Laborer (general construction); Boring Machine Helper; Caulker; Cesspool Digger and Installer; Chucktender (except tunnels); Concrete Curer (impervious membrane and form oiler); Concrete Water curing, Cutting Torch Operator (demolition); Driller's Helper (caisson) including Bellowers, Dri Pak-it Machine, Concrete Cutting Torch, Dry packing of concrete, plugging, filling of Shee Bolt Holes, Fine Grader on highways, streets and airport paving (sewer and drainage lines when employed); Plagmen; Gas and Oil Pipeline Laborer; Guinea Chaser; Jet Man; Landscape Gardener and Nursery Man; Laser Beam in connection with Laborers work; Packing Rod Steel and Pans; Pipelayer's Backup Man; Coating, Grouting, Making of Joints; Sealing, Caulking, Diapering and including Rubber Gasket Joints, Pointing; Railroad work Laborer; Rigging and Signaling, Riprap Stonepaver; Sandblaster (Pot Tender); Scaler, Septic Tank Digger and Installer (Loadman); Tank Scaler and Cleaner, Tool Shed Checker; Watchman; Window Cleaner; Fence Erector (Class 3); Rebound Man (gunite industry); Housemover Journeyman

Group 2: Asphalt Raker; Ironer; Spreader; Buggymobile Man; Cement Dumper (on 1 yard or larger mixers and handling bulk cement); Concrete Saw Man (excluding tractor type); Roto-scraper; Chipping Hammper; Concrete Core Cutter and Form Blower; Concrete Grinder and Sander; Cribber; Shorer; Lagging and Trench Bracing; Hand-guided Lagging Hammer; Driller; All power Drills, including Jackhammer, whether Core, Diamond, Wagon, Track Multiple Unit, and all types of Mechanical Drills without regard to the form of motive power; Driller (all other where drilling is for use of explosives); Gas and Oil Pipeline Wrapper (Pot Tender and Form Man); Gas and Oil Pipeline Wrapper (6 inch pipe and over); Operator and Tenders of pneumatic, gas and electric tools; Concrete Pumps; Vibrating Machines; Multi-plate Impact Wrench and similar mechanical tools not separately classified herein; Pipelayer (performing all services in the laying and installation of pipe from the point of receiving pipe until completion of the operation, including any and all forms of tubular material, whether Pipe, Metallic or Non-metallic, Conduit and any other stationary type of tubular device used for the conveying of substance or element, whether water, sewage, solid, gas, air or other products what-so-ever and without regard to the nature of material from which the tubular material is fabricated; Powderman; Blasters' Helpers; Prefabricated Manhole Installer; Rock Slinger; Sandblaster and Waterblaster (Nozzleman); Scaler (using Bos'n Chair, Safety Belt); Steel Headerboard Man; Tree Climber, using mechanical tools; Welding in connection with Laborer's work; Fence Erector (Class 2); Gun Man (gunite industry)

Group 3: Fence Erector (Class 1); Nozzleman and Rod Man (gunite industry)

Group 4: Powderman; Blasters (licensed) - all work of loading holes, placing and blasting all powder and explosives of whatever type regardless of method used for such loading and placing

TUNNEL LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Group 1	$ 9 45	77	$ 2 05	$ 1 00	13
Group 2	9 25	77	2 05	1 00	13
Group 3	9 70	77	2.05	1 00	13

TUNNEL LABORERS

Group 1: Blasters; Drillers; Powdermen; Cherry Pickerman; Grout Gunmen; Kemper and other pneumatic Concrete Placer Operator; Miners in short dry tunnels under streets, highways and similar places; Miners (tunnel hand or machine); Powderman Helper (tunnel work); Steel Form Raisers and Setters; Timbermen; Retimbermen - wood or steel

Group 2: Bull Gang Muckers (Trackman); Chucktender; Cabletender; Concrete Crew (includes Rodders and Spreaders); Dumpmen; Grout Crew; Helper for Steel Form Raisers and Setters; Muckers (Laborers) in short dry tunnels, under streets, highways and similar places; Nipper; Swamper (Breakman and Switchman) on tunnel work; Vibratormen; Jackhammer; Pneumatic tools (except Driller); Multi-plate Impact Wrench

Group 3: Powdermen (licensed) - Primer House (tunnel work); Shaft and Raise Miner; Shifters; Watchmen

POWER EQUIPMENT OPERATORS:					
Group 1	$ 12.05	$ 1 10	$ 2 30	70	04
Group 2	12.33	1.10	2 30	.70	04
Group 3	12 62	1 10	2.30	70	04
Group 4	12 76	1 10	2 30	.70	04
Group 5	12 98	1 10	2 30	70	04
Group 6	13 09	1.10	2 30	70	04
Group 7	13 21	1 10	2 30	70	04
Group 8	13 38	1.10	2 30	70	04
Group 9	13 51	1 10	2 30	.70	04

POWER EQUIPMENT OPERATORS (Cont'd)

Group 1: Brakeman; Compressor Operator; Engineer Oiler; Generator; Heavy Duty Repairman Helper; Pump; Signalman; Switchman; Deckhand (dredge); Ditchwitch; Elevator Operator (inside); Forklift (under 5 tons);

Group 2: Compressor (600 C F.M or larger); Concrete Mixer (skip type); Conveyor; Fireman; Hydrostatic Pump; Oiler Crusher (Asphalt or Concrete Plant); Plant Operator; Generator, Pump or Compressor; Rotary Drill Helper (oilfield); Skiploader - wheel type up to 3/4 yd without attachments; Soils Field Technician; Tar Pot Fireman; Temporary Heating Plant; Trenching Machine Oiler; Truck Crane Oiler; Concrete Pump Oiler (truck mounted); Deckmate (dredge)

Group 3: Ford Ferguson (with dragtype attachments); Helicopter Radioman (ground); Power Concrete Curing Machine; Power driven Jumbo Form Setter; Stationary Pipe Wrapping and Cleaning Machine; Gradall Oiler; Surge Tank and Weight Master (Hot Plant); Trencher Oiler (foundations); Truck Crane Oiler

Group 4: Asphalt Plant Fireman; Boring Machine; Chip Spreading Machine; Concrete Pump Operator; Dinkey Locomotive or Motorman (10 ton); Helicopter Hoist; Highline Cableway Signalman; Power Sweeper; Trenching Machine (up to 6 ft); Concrete Pump Operator, truck mounted; Rodman and Chainman; Helicopter Radioman; Watch Engineer (dredge)

Group 5: A-frame Winch Truck Operator; Asphalt Plant or Concrete Batch Plant Operator (where commercial power is not used, no less than one Generator Operator is required); Asphalt Spreading Machine Operator (Spreader Bar and similar); Bit Sharpener; Boxman or Mixerman (asphalt or concrete); Concrete Joint Machine Operator (canal and similar type); Concrete Planer Operator; Derrickman (oilfield type); Drilling Machine Operator (including water wells); Equipment Greaser (Mobile and Grease Rack); Forklift Operator (over 5 ton capacity); Hydro-hammer - Aero Stomper; Hydrographic Seeder Machine Operator (straw, pulp or seed); Instrumentman; Machine Tool Operator; Maggiannis Internal Full Slab Vibrator; Mechanical Finisher Operator (Concrete-Clary-Johnson-Bidwell or similar); Pavement Breaker Operator (truck mounted, oiler required); Road Oil Mixing Machine Operator; Roller Operator; Ross Carrier Operator (jobsite); Self-propelled Tar Pipelining Machine Operator; Skiploader Operator (wheel or track type over 3/4 yd up to and including 1½ yds); Skiploader - Ford Ferguson up to 3/4 yd with drag attachments; Slip Form Pump Operator (power driven hydraulic lifting device for concrete forms); Screed Operator; Stinger Crane (Austin-Western or similar type); Traveling Pipe Wrapping, Cleaning and Banding Machine Operator; Truck type Loader; Tugger Hoist (1 drum)

Group 6: Asphalt or Concrete Plant Engineer; Asphalt or Concrete Spreading Operator (tamping or finishing); Asphalt Paving Machine Operator (Barber Greene or similar type); Automatic Curb Machine; Belt Splicer or Vulcanizer; BHL Lima Road Pactor; Wagner Pactor or similar Operator; Bridge Crane Operator; Bridge type Unloader and Turntable Operator; Cast-in-place Laying Machine; Combination Mixer and Compressor Operator (gunite work); Concrete Mixer and Compressor Operator (gunite work); Concrete Mixer Operator - paving (oiler required); Crane Operator (up to and including 25 ton capacity) (oiler required) (Long Boom pay applicable); Crushing Plant Operator (oiler required) (where commercial power is not used, no less than one Generator Operator is required); Deck Engine Operator; Drill Doctor; Elevating Grade Operator; Gradall Operator (oiler required); Grade Checker; Grouting Machine Operator; Guard Rail Post Driver Operator; Heavy Duty Repairman; Hoist Operator (single drum - Buck Hoist - Chicago Boom and similar type); Hoist Operator (2 or 3 drum); Kolman Belt Loader and similar type (when two or more are working together an additional employee shall be required); LeTourneau Blob Compactor or similar type; Lift Mobile Operator (oiler required); Lift Slab Machine Operator (Vagtborg and similar types); Material Hoist Operator (1 drum); Mucking Machine Operator (1/4 yd) (oiler required); (rubber tired, rail or track type); Pile Diver Operator (oiler required); Pneumatic Concrete Placing Machine Operator (Hackley-Presswell or similar type); Pneumatic Heading Shield (tunnel); Pumpcrete Gun Operator; Polar Gantry Crane Operator; Rotary Drill Operator (excluding Caisson type) (oiler required); Rubber-tired Earth Moving Equipment Operator (single engine - Caterpillar, Euclid, Athey Wagon - water pulls and similar types with any and all attachments up to 50 cu yds struck); Rubber-tired Scraper Operator (self-loading paddle wheel type - John Deere 104 and similar single unit); Skiploader Operator (wheel or track type, over 1½ yds up to and including 6½ yds); Stinger Crane (Austin-Western-Pettibone or similar type) (over 5 tons); Surface Heaters and Planer Operator; Tractor Compressor Drill Combination Operator; Tractor Operator (Bull Dozer, Tamper, Scraper, and Push Tractor, single engine); Trenching Machine Operator (over 6 ft depth capacity - manufacturers rating) (oiler required); Tunnel Locomotive Operator (10 to 30 tons); Universal Equipment Operator (Shovel, Backhoe, Dragline, Clamshell, up to and including 1 cu yd M R C) (oiler required) (Long Boom pay applicable); Welder (general)

Group 7: Automatic Lineau Tension Machine (two Operators required); Crane Operator (over 25 tons, up to and including 100 ton M R C) (Long Boom pay applicable) (oiler required); Derrick Barge Operator (oiler required, up to 100 tons) (over 100 tons, Fireman or Oiler required); Dual Drum Mixer (oiler required); Hoist Operator (2 or 3 drum with boom attachment); Hoist Operator (Stiff Leg, Guy Derrick or similar type up to 100 ton capacity) (Oiler required, Long Boom pay applicable); Loader Operator (Athey, Euclid, Sierra or similar type); Monorail Locomotive Operator (diesel, gas or electric); Motor Patrol - Blade Operator; Multiple Engine Tractor Operator (Euclid and similar type, except Quad 9 Cat); Party Chief; Pre-stressed Wrapping Machine Operator (two Operators required); Rubber-tired Earth Moving Equipment Operator (multiple engine, Euclid, Caterpillar and similar type up to 50 cu yds struck); Tractor Loader Operator (Crawler and wheel type over 6½ yds); Tractor Operator (boom attachments) (over 40 ft boom, oiler required); Tower Crane Operator (two Operators required); Tower Crane Repairman; Universal Equipment Operator (Shovel, Backhoe, Dragline, Clamshell, over 1 cu yd M R C); Welder - certified; Welder-Heavy Duty Repairman Combination; Woods Mixer Operator and other similar Pugmill Equipment

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
POWER EQUIPMENT OPERATORS DREDGING (Hydraulic Suction Dredge)					
LEVERMAN	$ 11 60	95	$ 2 00	50	04
WATCH ENGINEER; Welder	11 02	95	2 00	50	04
DECKMATE	10 54	95	2 00	50	04
WINCHMAN (Stern Winch or Dredge)	10 47	95	2 00	50	04
BARGEMAN; Deckhand; Fireman; Oiler; Leveehand	9 93	95	2 00	50	04
(Clamshell Dredges)					
LEVERMAN	11 60	95	2 00	50	04
WATCH ENGINEERS	11 02	95	2 00	50	04
DECKMATE	10 54	95	2 00	50	04
BARGEMATE	10 47	95	2 00	50	04
BARGEMAN; Deckhand; Fireman; Oiler	9 93	95	2 00	50	04

Group 8: Auto Grader Operator (one Grade Checker and one additional employee required); Automatic Slip Form Operator (Grade Checker and one additional employee required); Crane Operator (over 100 tons, two Operators required, Long Boom pay applicable); Leverman (dredge); Mass Excavator Operator (two or more Operators and Oiler required, less than 750 cu yds); Mechanical Finishing Machine Operator; Mobile Form Traveler Operator; Motor Patrol Operator (multi-engine); Pipe Mobile Machine Operator (two Operators required); Rubber-tired earth moving equipment Operator (multi-engine, Euclid Caterpillar and similar type over 50 cu yds struck); Rubber-tired Scraper Operator (pushing one another without Push Cat, Push Pull - $ 50 per hour additional to base rate); Rubber-tired Self Loading Scraper Operator (paddle wheel - Auger type Self Loading, 2 or more units); Polar Crane Operator; Tandem Equipment Operator (2 units only); Tandem Tractor Operator (Quad 9 or similar type); Tunnel Mole Boring Machine Operator

Group 9: Canal Liner or Trimmer Operators (not less than four (4) employees required - Oiler, Welder - Mechanic and Grade Checker); Helicopter Pilot; Highling Cableway Operator; Remote Controlled Earth Moving Equipment Operator (no one Operator shall operate more than two pieces of earth moving equipment at one time) ($1 00 per hour additional to base rate); Wheel Excavator Operator (over 750 cu yds per hour, two Operators and One Oiler and two Heavy Duty Repairmen required)

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Group 1	$ 9 40	$ 1 05	$ 1 30	$ 1 00	10
Group 2	9 60	1 05	1 30	1 00	10
Group 3	9 80	1 05	1 30	1 00	10
Group 4	10 00	1 05	1 30	1 00	10
Group 5	12 00	1 05	1 30	1 00	10
Group 6	9 10	1 05	1 30	1 00	10

TRUCK DRIVERS

Group 1: 2 axle Dumps; 2 axle Flatbed; Bunkerman; Concrete Pumping; Industrual Lift; Truck Repairman Helper; Welder Helper; Warehouseman; Forklift under 15,000 lbs

Group 2: 3 axle Dump; 3 axle Flatbed; 2 axle Water Trucks; Erosin Control Nozzleman; Dumpcrete, less than 6½ yds ; Forklift 15,000 lbs and over; Prell; Pipeline working Truck Driver; Road Oil Spreader; Cement Distributor or Slurry Driver; Bootman; Ross Carrier

Group 3: Off-road Dump, under 35 tons; 4 axle but less than 7 axle; Lowbed and Trailer; Transit Mix, under 8 yds ; 3 axle Water Trucks; Erosin Control; Grout Mixer; Dumpcrete 6½ yds and over; Dumpsters; DW 10's, 20's and over; Fuel Truck and Dynamite; Winch, 2 axle; Truck Greaser

Group 4: Off-road Dump, 35 tons and over; 7 axle or more; Transit Mix, 8 yds and over; A-frame or Swedish Cranes; Tireman; Water Pull Tankers; Welders; Winch Truck, 3 axle or more

Group 5: Truck Repairman

Group 6: Traffic Control, also Swampers and Helpers and Pickups

SUPERSEDEAS DECISION

STATE: California COUNTY: San Diego
DECISION NUMBER: CA79-5125 DATE : Date of Publication
Supersedes Decision No CA78-5007 dated January 27, 1978, in 43 FR 3863
DESCRIPTION OF WORK: Residential Projects consisting of single family homes and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ASBESTOS WORKERS	$ 14 45	$ 1 05	$ 1 37		06
BOILERMAKERS	14 36	1 075	1 00	1 00	03
BRICKLAYERS; Stonemasons	12 09	1 03	1 34		12
BRICK, BLOCK and STONEMASONS' TENDERS	10 57	77	2 05		
CARPENTERS:					
Carpenters	12 01	71	1.20	80	07
Piledrivermen	12 14	71	1 20	80	07
Millwrights; Pneumatic Nailer; Hardwood Floorlayers	12 26	71	1 20	80	.07
CEMENT MASONS:					
Cement Masons	8 81	88	1 66	1 36	07
Color Work; Composition, Mastic or Epoxy, Finishing Machine; Curb Machine	9 11	88	1 66	1 36	07
DRYWALL INSTALLERS	13 30	71	1 20	90	07
ELECTRICIANS:					
Electricians	15 33	70	3%+1 71		02
Cable Splicers	15 63	70	3%+1 71		02
ELEVATOR CONSTRUCTORS	16 37	895	69	a	03
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	896	69	a	03
ELEVATOR CONSTRUCTORS' HELPERS (PROD)	50%JR				
GLAZIERS	12 10	95	1 30		
IRONWORKERS:					
Fence Erectors	11 11	1 29	2 47	1 65	07
Reinforcing	12 00	1 29	2 47	1 65	07
Ornamental; Structural	12 00	1.29	2 47	1 65	.07
IRRIGATION and LAWN SPRINKLERS	10 45	10%	16%	13%	3/4%
LATHERS:					
Northern portion of San Diego County from center of City of Del Mar	12 50	75	1 10	50	05
Remainder of County	12 06	85	1 00	70	02
MARBLE SETTERS	12 69	81	1 17		08
MARBLE SETTERS' HELPERS	9 74	81	1 00		08
PAINTERS:					
Brush	12 37	1 23	1 38	75	07
Spray; Swing Stage, Brush	12 62	1 23	1 38	75	07
Paperhangers; Spray, Swing Stage	12 87	1 23	1 38	75	07

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr.
PLASTERERS	$ 11 46	65	$ 1 75		07
PLASTERERS' TENDERS	10 61	77	2 05	50	
PLUMBERS; Steamfitters	13 12	10%	16%	13%	2%
ROOFERS	12 79	80	1 05	1 00	
SHEET METAL WORKERS	13 96	1 04	2 24		01
SOFT FLOOR LAYERS	11 47	76	1 15		09
SPRINKLER FITTERS	15 52	75	1 05		08
TERRAZZO WORKERS	12 69	81	1 17		08
TILE SETTERS	12 69	81	1 17		08
TERRAZZO & TILE SETTERS HELPERS	9 74	81	1 00		08
RIGGERS; WELDERS - Receive rate prescribed for craft performing operation to which rigging or welding is incidental					
FOOTNOTES:					
a Employer contributes 8% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit 6 Paid Holidays: A through F					
PAID HOLIDAYS:					
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day					
LABORERS:					
Group 1	$ 8 95	77	$ 2 05	$ 1 00	13
Group 2	9 25	77	2 05	1 00	13
Group 3	9 45	77	2 05	1 00	13
Group 4	9 70	77	2 05	1 00	13

LABORERS

Group 1: Laborer (general construction); Boring Machine Helper; Caulker; Cesspool Digger and Installer; Chucktender (except tunnels); Concrete Curer (impervious membrane and form oiler); Concrete Water curing, Cutting Torch Operator (demolition); Driller's Helper (caisson) including Bellowers, Dri Pak-it Machine, Concrete Cutting Torch Dry packing of concrete plugging, filling of Shee Bolt Holes, Fine Grader on highways, streets and airport paving (sewer and drainage lines when employed); Flagmen; Gas and Oil Pipeline Laborer; Guinea Chaser; Jet Man; Landscape Gardener and Nursery Man; Laser Beam in connection with Laborers work; Packing Rod Steel and Pans; Pilelayer's Backup Man; Coating Grouting, Making of Joints; Sealing, Caulking, Diapering and including Rubber Gasket Joints, Painting; Railroad work Laborer; Rigging and Signaling, Riprap Stonepaver; Sandblaster (Pot Tender); Scaler Septic Tank Digger and Installer (Leadman); Tank Scaler and Cleaner, Tool Shed Checker; Watchman; Window Cleaner; Fence Erector (Class 3); Rebound Man (gunite industry); Housemover Journeyman

Group 2: Asphalt Raker; Ironer; Spreader; Buggymobile Man; Cement Dumper (on 1 yard or larger mixers and handling bulk cement); Concrete Saw Man (excluding tractor type); Roto-scraper; Chipping Hammper; Concrete Core Cutter and Form Blower; Concrete Grinder and Sander; Cribber; Shorer; Lagging and Trench Bracing; Hand-guided Lagging Hammer; Driller; All power Drills including Jackhammer, whether Core Diamond, Wagon, Track Multiple Unit, and all types of Mechanical Drills without regard to the form of motive power; Driller (all other where drilling is for use of explosives); Gas and Oil Pipeline Wrapper (Pot Tender and Form Man); Gas and Oil Pipeline Wrapper (6 inch pipe and over); Operator and Tenders of pneumatic, gas and electric tools; Concrete Pumps; Vibrating Machines; Multi-plate Impact Wrench and similar mechanical tools not separately classified herein; Pipelayer (performing all services in the laying and installation of pipe from the point of receiving pipe until completion of the operation, including any and all forms of tubular material, whether Pipe, Metallic or Non-metallic, Conduit and any other stationary type of tubular device used for the conveying of substance or element, whether water, sewage, solid, gas, air or other products what-so-ever and without regard to the nature of material from which the tubular material is fabricated; Powderman; Blasters' Helpers; Prefabricated Manhole Installer; Rock Slinger; Sandblaster and Waterblaster (Nozzleman); Scaler (using Bos'n Chair, Safety Belt); Steel Headerboard Man; Tree Climber, using mechanical tools; Welding in connection with Laborer's work; Fence Erector (Class 2); Gun Man (gunite industry)

Group 3: Fence Erector (Class 1); Nozzleman and Rod Man (gunite industry)

Group 4: Powderman; Blasters (licensed) - all work of loading holes, placing and blasting all powder and explosives of whatever type regardless of method used for such loading and placing

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
POWER EQUIPMENT OPERATORS:					
Group 1	$ 12 05	$ 1 10	$ 2 30	70	04
Group 2	12 33	1 10	2 30	70	04
Group 3	12 62	1 10	2 30	70	04
Group 4	12 76	1 10	2 30	70	04
Group 5	12 98	1 10	2 30	70	04
Group 6	13 09	1 10	2 30	70	04
Group 7	13 21	1 10	2 30	70	04
Group 8	13 38	1 10	2 30	70	04
Group 9	13 51	1 10	2 30	70	04

POWER EQUIPMENT OPERATORS (Cont'd)

Group 1: Brakeman; Compressor Operator; Engineer Oiler; Generator; Heavy Duty Repairman Helper; Pump; Signalman; Switchman; Deckhand (dredge); Ditchwitch; Elevator Operator (inside); Forklift (under 5 tons);

Group 2: Compressor (600 C F.M or larger); Concrete Mixer (skip type); Conveyor; Fireman; Hydrostatic Pump; Oiler Crusher (Asphalt or Concrete Plant); Plant Operator; Generator, Pump or Compressor; Rotary Drill Helper (oilfield); Skiploader - wheel type up to 3/4 yd without attachments; Soils Field Technician; Tar Pot Fireman; Temporary Heating Plant; Trenching Machine Oiler; Truck Crane Oiler; Concrete Pump Oiler (truck mounted); Deckmate (dredge)

Group 3: Ford Ferguson (with dragtype attachments); Helicopter Radioman (ground); Power Concrete Curing Machine; Power driven Jumbo Form Setter; Stationary Pipe Wrapping and Cleaning Machine; Gradall Oiler; Surge Tank and Weight Master (Hot Plant); Trencher Oiler (foundations); Truck Crane Oiler

Group 4: Asphalt Plant Fireman; Boring Machine; Chip Spreading Machine; Concrete Pump Operator; Dinkey Locomotive or Motorman (10 ton); Helicopter Hoist; Highline Cableway Signalman; Power Sweeper; Trenching Machine (up to 6 ft); Concrete Pump Operator, truck mounted; Rodman and Chainman; Helicopter Radioman; Watch Engineer (dredge)

Group 5: A-frame Winch Truck Operator; Asphalt Plant or Concrete Batch Plant Operator (where commercial power is not used, no less than one Generator Operator is required); Asphalt Spreading Machine Operator (Spreader Bar and similar); Bit Sharpener; Boxman or Mixerman (asphalt or concrete); Concrete Joint Machine Operator (canal and similar type); Concrete Planer Operator; Derrickman (oilfield type); Drilling Machine Operator (including water wells); Equipment Greaser (Mobile and Grease Rack); Forklift Operator (over 5 ton capacity); Hydro-hammer - Aero Stomper; Hydrographic Seeder Machine Operator (straw, pulp or seed); Instrumentman; Machine Tool Operator; Magginnis Internal Full Slab Vibrator; Mechanical Finisher Operator (Concrete-Clary-Johnson-Bidwell or similar); Pavement Breaker Operator (truck mounted, oiler required); Road Oil Mixing Machine Operator; Roller Operator; Ross Carrier Operator (jobsite); Self-propelled Tar Pipelining Machine Operator; Skiploader Operator (wheel or track type over 3/4 yd. up to and including 1½ yds); Skiploader - Ford Ferguson up to 3/4 yd with drag attachments; Slip Form Pump Operator (power driven hydraulic lifting device for concrete forms); Screed Operator; Stinger Crane (Austin-Western or similar type); Traveling Pipe Wrapping, Cleaning and Bending Machine Operator; Truck type Loader; Tugger Hoist (1 drum)

POWER EQUIPMENT OPERATORS (Cont'd)

Group 6: Asphalt or Concrete Plant Engineer; Asphalt or Concrete Spreading Operator (tamping or finishing); Asphalt Paving Machine Operator (Barber Greene or similar type); Automatic Curb Machine; Belt Splicer or Vulcanizer; BHL Lima Road Pactor; Wagner Pactor or similar Operator; Bridge Crane Operator; Bridge type Unloader and Turntable Operator; Cast-in-place Laying Machine; Combination Mixer and Compressor Operator (gunite work); Concrete Mixer and Compressor Operator (gunite work); Concrete Mixer Operator - paving (oiler required); Crane Operator (up to and including 25 ton capacity) (oiler required) (Long Boom pay applicable); Crushing Plant Operator (oiler required) (where commercial power is not used, no less than one Generator Operator is required); Deck Engine Operator; Drill Doctor; Elevating Grade Operator; Gradall Operator (oiler required); Grade Checker; Grouting Machine Operator; Guard Rail Post Driver Operator; Heavy Duty Repairman; Hoist Operator (single drum - Buck Hoist - Chicago Boom and similar type); Hoist Operator (2 or 3 drum); Kolman Belt Loader and similar type (when two or more are working together an additional employee shall be required); LeTourneau Blob Compactor or similar type; Lift Mobile Operator (oiler required); Lift Slab Machine Operator (Vagtborg and similar types); Material Hoist Operator (1 drum); Mucking Machine Operator (1/4 yd) (oiler required); (rubber tired, rail or track type); Pile Diver Operator (oiler required); Pneumatic Concrete Placing Machine Operator (Hackley-Presswell or similar type); Pneumatic Heading Shield (tunnel); Pumpcrete Gun Operator; Polar Gantry Crane Operator; Rotary Drill Operator (excluding Caisson type) (oiler required); Rubber-tired Earth Moving Equipment Operator (single engine - Caterpillar, Euclid, Athey Wagon - water pulls and similar types with any and all attachments up to 50 cu yds struck); Rubber-tired Scraper Operator (self-loading paddle wheel type - John Deere 104 and similar single unit); Skiploader Operator (wheel or track type, over 1½ yds up to and including 6½ yds); Stinger Crane (Austin-Western-Pettibone or similar type) (over 5 tons); Surface Heaters and Planer Operator; Tractor Compressor Drill Combination Operator; Tractor Operator (Bull Dozer, Tamper, Scraper, and Push Tractor, single engine); Trenching Machine Operator (over 6 ft depth capacity - manufacturers rating) (oiler required); Tunnel Locomotive Operator (10 to 30 tons); Universal Equipment Operator (Shovel, Backhoe, Dragline, Clamshell, up to and including 1 cu yd H R C) (oiler required) (Long Boom pay applicable); Welder (general)

POWER EQUIPMENT OPERATORS (Cont'd)

Group 7: Automatic Lineau Tension Machine (two Operators required); Crane Operator (over 25 tons, up to and including 100 ton M R C) (Long Boom pay applicable) (oiler required); Derrick Barge Operator (oiler required, up to 100 tons) (over 100 tons, Fireman or Oiler required); Dual Drum Mixer (oiler required); Hoist Operator (2 or 3 drum with boom attachment); Hoist Operator (Stiff Leg, Guy Derrick or similar type up to 100 ton capacity) (Oiler required, Long Boom pay applicable); Loader Operator (Athey, Euclid, Sierra or similar type); Monorail Locomotive Operator (diesel, gas or electric); Motor Patrol - Blade Operator; Multiple Engine Tractor Operator (Euclid and similar type, except Quad 9 Cat); Party Chief; Pre-stressed Wrapping Machine Operator (two Operators required); Rubber-tired Earth Moving Equipment Operator (multiple engine, Euclid, Caterpillar and similar type up to 50 cu yds struck); Tractor Loader Operator (Crawler and wheel type over 6½ yds); Tractor Operator (boom attachments) (over 40 ft boom, oiler required); Tower Crane Operator (two Operators required); Tower Crane Repairman; Universal Equipment Operator (Shovel, Backhoe, Dragline, Clamshell, over 1 cu yd M R C.); Welder - certified; Welder-Heavy Duty Repairman Combination; Woods Mixer Operator and other similar Pugmill Equipment

Group 8: Auto Grader Operator (one Grade Checker and one additional employee required); Automatic Slip Form Operator (Grade Checker and one additional employee required); Crane Operator (over 100 tons, two Operators required, Long Boom pay applicable); Leverman (dredge); Mass Excavator Operator (two or more Operators and Oiler required, less than 750 cu yds); Mechanical Finishing Machine Operator; Mobile Form Traveler Operator; Motor Patrol Operator (multi-engine); Pipe Mobile Machine Operator (two Operators required); Rubber-tired earth moving equipment Operator (multi-engine, Euclid, Caterpillar and similar type over 50 cu yds struck); Rubber-tired Scraper Operator (pushing one another without Push Cat, Push Pull - $ 50 per hour additional to base rate); Rubber-tired Self Loading Scraper Operator (paddle wheel - Auger type Self Loading, 2 or more units); Polar Crane Operator; Tandem Equipment Operator (2 units only); Tandem Tractor Operator (Quad 9 or similar type); Tunnel Mole Boring Machine Operator

Group 9: Canal Liner or Trimmer Operators (not less than four (4) employees required - Oiler, Welder - Mechanic and Grade Checker); Helicopter Pilot; Highling Cableway Operator; Remote Controlled Earth Moving Equipment Operator (no one Operator shall operate more than two pieces of earth moving equipment at one time) ($1 00 per hour additional to base rate); Wheel Excavator Operator (over 750 cu yds per hour, two Operators and One Oiler and two Heavy Duty Repairmen required)

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Group 1	$ 9 40	$ 1 05	$ 1 30	$ 1 00	10
Group 2	9 60	1 05	1 30	1 00	10
Group 3	9 80	1 05	1 30	1 00	10
Group 4	10 00	1 05	1 30	1 00	10
Group 5	12 00	1 05	1 30	1 00	10
Group 6	9 10	1 05	1 30	1 00	10

TRUCK DRIVERS

Group 1: 2 axle Dumps; 2 axle Flatbed; Bunkerman; Concrete Pumping; Industrual Lift; Truck Repairman Helper; Welder Helper; Warehouseman; Forklift under 15,000 lbs

Group 2: 3 axle Dump; 3 axle Flatbed; 2 axle Water Trucks; Erosin Control Nozzleman; Dumpcrete, less than 6½ yds ; Forklift 15,000 lbs and over; Prell; Pipeline working Truck Driver; Road Oil Spreader; Cement Distributor or Slurry Driver; Bootman; Ross Carrier

Group 3: Off-road Dump, under 35 tons; 4 axle but less than 7 axle; Low-bed and Trailer; Transit Mix, under 8 yds ; 3 axle Water Trucks; Erosin Control; Grout Mixer; Dumpcrete 6½ yds and over; Dumpsters; DW 10's, 20's and over; Fuel Truck and Dynamite; Winch, 2 axle; Truck Greaser

Group 4: Off-road Dump, 35 tons and over; 7 axle or more; Transit Mix, 8 yds and over; A-frame or Swedish Cranes; Tireman; Water Pull Tankers; Welders; Winch Truck, 3 axle or more

Group 5: Truck Repairman

Group 6: Traffic Control, also Swampers and Helpers and Pickups

SUPERSEDEAS DECISION

STATE: Nevada COUNTY: Washoe
DECISION NUMBER: NV79-5114 DATE : Date of Publication
Supersedes Decision No NV78-5129 dated October 27, 1978, in 43 FR 50344
DESCRIPTION OF WORK: Residential Projects consisting of single family homes and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ASBESTOS WORKERS	$ 13 00	$1 02	$ 1 20		07
BOILERMAKERS	14 36	1 075	1 00	1 00	03
BRICKLAYERS; Stonemasons	12 60	95	60		01
BRICK HOD CARRIERS:					
Zone 1: 0-35 miles from Courthouse in Reno, Nevada	9 60	50	90		05
Zone 2: 35-75 miles from Courthouse in Reno, Nevada	10.50	50	90		05
CARPENTERS	11 20	85	1 41	1 00	10
CEMENT MASONS:					
Lake Tahoe Area:					
Cement Masons	10 80	70	1 00	1 35	05
Mastic, Magnesite and all Composition Masons	11 05	70	1 00	1 35	05
Troweling Machine; Grinder Operator and Kelly Float	11 30	70	1 00	1 35	05
Remainder of Washoe County:					
Cement Masons	9 35	70	1 00	1 35	05
Mastic, Magnesite and all Composition Masons	9 60	70	1 00	1 35	05
Troweling Machine; Grinder Operator and Kelly Float	9 85	70	1 00	1 35	05
DRYWALL INSTALLERS	10 90	70	1 36	1 00	05
ELECTRICIANS:					
Washoe County, does not include Lake Tahoe Area:					
Electricians; Technicians	14 83	99	3%+1 27		08
Cable Splicers	16 31	.99	3%+1:27		08
Lake Tahoe Area:					
Electricians; Technicians	15 83	99	3%+1 27		08
Cable Splicers	17 31	99	3%+1 27		08
ELEVATOR CONSTRUCTORS	16 37	895	69	a	03
ELEVATOR CONSTRUCTORS' HELPERS	11 46	895	69	a	03
ELEVATOR CONSTRUCTORS' HELPERS (PROB)	8 185				
GLAZIERS	11 22	58	1 50	1 25	
IRONWORKERS:					
Fence Erectors	11 11	1 29	2 57	1 65	07
Ornamental; Reinforcing; Structural	12 00	1 29	2 57	1 65	07
MARBLE MASONS	11 85	95	60		01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
PAINTERS:					
Brush and Roller	$ 14 43	70	75		02
Brush-swing stage, up to 40 ft ; Brush-steel; Sandblaster	14 70	70	75		02
Spray; Taper; Paperhangers	14 95	70	75		02
Spray-swing stage up to 40 ft ; Spray-steel	15 20	70	75		.02
PLASTER HOD CARRIERS:					
Plaster Hod Carriers serving Plasterers	11 70	95	1 20		
Plaster Hod Carriers working on any type of gun	12 30	95	1 20		
PLASTERERS	11 22	70	1 00		03
PLUMBERS; Steamfitters	12 74	1 13	1 00	1 95	20
ROOFERS	13 92	85	1 00		05
SHEET METAL WORKERS:					
Residential construction not over 3 stories in height, where each individual family apartment is individually conditioned by a separate and independent unit or system	8 98	1 04	2 13		05
All other residential construction	11 22	1 04	2 13		
SOFT FLOOR LAYERS	12 64	70	20		
SPRINKLER FITTERS	15 50	75	1 05		08
TERRAZZO WORKERS: TILE SETTERS	11 85	95	60		01

FOOTNOTE:
a Employer contributes 8% basic hourly rate for over 5 years service and 6% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit Seven Paid Holidays: A through G

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Friday after Thanksgiving Day; G-Christmas Day

LABORERS

Zone 1: In Washoe County, the area within 5 road miles of the following communities - Carson City, Lovelock; also area within 10 road miles of Reno, Nevada; also Washoe Valley between Reno, Nevada, and Carson City, Nevada, but not including any area further than the foot of the mountains to the east or west side of Washoe Valley; Also the area of Stead Air Force Base:

LABORERS CONTINUED

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ZONE 1 (Cont'd)					
Group 1	$ 8 40	95	$ 1 20		10
Group 2	8 50	95	1 20		10
Group 3	8 65	95	1 20		10
Group 4	8 90	95	1 20		10
Group 5	9 20	95	1 20		10
Group 6-A	9 20	95	1.20		10
Group 6-B	8 90	95	1/20		10
Group 6-C	8 55	95	1 20		10
Zone 2: Area outside of Zone 1 and not more than 20 road miles from the communities named in Zone 1:					
Group 1	9 00	95	1 20		10
Group 2	9 10	95	1 20		10
Group 3	9 25	95	1 20		10
Group 4	9 50	95	1 20		10
Group 5	9 80	95	1 20		10
Group 6-A	9 80	95	1 20		10
Group 6-B	9 50	95	1 20		10
Group 6-C	9 15	95	1 20		10
Zone 3: Area over 20 and not more than 40 road miles from the communities named in Zone 1:					
Group 1	$ 9 20	95	$ 1 20		10
Group 2	9 30	95	1 20		10
Group 3	9 45	95	1 20		10
Group 4	9 70	95	1 20		10
Group 5	10 00	95	1 20		10
Group 6-A	10 00	95	1 20		10
Group 6-B	9 70	95	1 20		10
Group 6-C	9 35	95	1 20		10
Zone 4: Area over 40 road miles from the communities named in Zone 1:					
Group 1	9 90	95	1 20		10
Group 2	10 00	95	1 20		10
Group 3	10 15	95	1 20		10
Group 4	10 40	95	1 20		10
Group 5	10 70	95	1 20		10
Group 6-A	10 70	95	1 20		10
Group 6-B	10 40	95	1 20		10
Group 6-C	10 05	95	1 20		10

LABORERS

Group 1: All cleanup work of debris, grounds, and buildings including Brushloader and windows and tile; Dumpman or Spotter (other than asphalt); General Laborer; Gardeners and Landscape Laborers; Limber, Brushloader and Piler; Flagman

Group 2: Choker Setter or Rigger (clearing work only); Pittsburgh Chipper and similar type Brush Shredders; Concrete Worker (wet or dry) - all concrete work not listed in Group 3; Crusher or Grizzly Tender; Guinea Chaser (Stakeman); Panel Forms (wood or metal) - handling, cleaning and stripping of; Loading and unloading, carrying and handling of all rods and materials for use in reinforcing concrete; Railroad Trackmen (maintenance, repair or builders); Sloper; Semi-skilled Wreckers (salvaging of building materials other than those listed in Group 3); Greasing Dowels

Group 3: Asphalt Workers (Ironers, Shoveler, Cutting Machine); Buggymobile; Chainsaw, faller, logloader and bucker; Compactor (all types); Concrete Mixer under 1/2 yards; Concrete Pan Work (breadpan type), (handling, cleaning, stripping); Concrete Saw, Shipping, Grinding, Sanding, Vibrator; Cribbing, Shoring, Lagging, Trench Jacking, hand-guided Lagging Hammer; Curbing or Divider Machine; Curb Setter (precast or cut); Ditching Machine (hand-guided); Drillers' Helper, Chuck Tender; Form Raiser, Slip Forms; Grouting of concrete walls, windows and door jams; Headerboardman; Jackhammer, Pavement Breaker, Air Spade; Mastic Workers (wet or dry); Pipe Wrapper, Kettleman, Potman, and Men applying asphalt, creosote and similar type materials; All power tools (air, gas or electric) not listed in Group 5); Pipejacking; Posthole Digger (air, gas or electric); Post Driver; Riprap-stonepaver and Rock Slinger, including placing of sack concrete wet or dry; Rototiller; Rigging and Signaling in connection with Laborers' work; Sandblaster, Potman, Gunman or Nozzleman; Vibra-screed; Skilled Wrecker (removing and salvaging of sash, windows, doors, plumbing and electrical fixtures

Group 4: Burning and Welding in connection with Laborers' work; Joy Drill Model TWM-2A, Gardner Denver Model DN 143 and similar type drills; Track Drillers, Diamond Core Drillers, Wagon Drillers, Mechanical Drillers on multiple units; High Scalers; Concrete Pump; Heavy Duty Vibrator with stinger 5" diameter or over; Pipelayer, Caulker and Bander; Pipelayer - waterline, sewerline, gasline or conduit; Asphalt Rakers

Group 5: Blasters and Powdermen, all work of loading, placing and blasting of all powder and explosives of any type, regardless of method used for such loading and placing

Group 6-A: Nozzleman

Group 6-B: Gunman, Materialman

Group 6-C: Reboundman

POWER EQUIPMENT OPERATORS: (Except Piledriving and Steel Erection)	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr Tr
	Area 1	Area 2				
Group 1-A	$ 9 68	$10 83	$ 1 98	$ 2 35	$ 1 17	10
Group 2	10 08	11 23	1 98	2 35	1 17	10
Group 3	10 29	11 44	1 98	2 35	1 17	10
Group 4	10 85	12 00	1 98	2 35	1 17	10
Group 5	11 08	12 23	1 98	2 35	1 17	10
Group 6	11 21	12 36	1 98	2 35	1 17	10
Group 7	11.39	12 54	1 98	2 35	1 17	10
Group 8	11 81	12 96	1 98	2 35	1 17	10
Group 9	12 04	13 19	1 98	2.35	1 17	10
Group 10	12 29	13 44	1 98	2 35	1 17	10
Group 10-A	12 42	13 57	1 98	2 35	1 17	10
Group 11	12 60	13 75	1 98	2 35	1 17	10
Group 11-A	13 77	14 92	1 98	2 35	1 17	10

SEE AREA DEFINITIONS" Following TRUCK DRIVERS

POWER EQUIPMENT OPERATORS
(Except Piledriving and Steel Erection)

Group 1-A: Assistant to Engineer, including Brakeman, Deckhand, Fireman, Oiler, Partsman (heavy duty repair shops parts room when needed), Switchman, Tar pot Fireman; Boiler Tender

Group 2: Compressor; Material Loader and/or Conveyor (handling building materials); Pump; Tar Pot Fireman (power agitated)

Group 3: Box Operator (Bunker); Concrete Curing Machines (streets, highways, airports, canals); Conveyor Belt (tunnel); Engineer Generating Plant (500 H W); Fireman, Hot Plant, Hydraulic Monitor; Lubrication and Service Engineer (mobile and grease rack); Mixer Box Operator (concrete plant); Motorman; Rotomist; Screedman (except Asphaltic or concrete paving); Oiler (truck crane); Rodman or Chainman; Bobcat or similar loader, 1/4 cu yd or less

Group 4: Ballast Jack Tamper; Ballast Regulator; Ballast Tamper Multi-prupose; Boxman (asphalt plant); Concrete Mixer, Skip type; Dinky; Fork Lift (construction job site); Ross Carrier; Skip Loader (under 1 cu yd); Tie Spacer; Line Master

Group 5: Concrete Mixer (over 1 cu yd); Concrete Pumps or Pumpcrete Guns; Elevator and Material Hoist (1 drum); Screedman (Barber-Greene and similar) (asphaltic or concrete paving); Shuttle Car; Signalman

POWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection)

Group 6: Boom Truck or Dual Purpose "A Frame Truck; B L.H. Lima Road Pactor or similar; Chip Box Spreader (Flaherty type or similar); Concrete Batch Plant (wet or dry); Concrete Saws (highways, streets, airports, canals); Highline Cableway Signalman; Locomotive (over 30 tons); Maginnis International Full Slab Vibrator (airports, highways, canals, warehouses); Mechanical Burn, Curb and/or Curb Gutter Machine (concrete or asphalt); Power Jumbo (setting slip forms, etc , in tunnels); Roller (except asphalt); Self-propelled Compactor (single engine); Slip Form Pump (power driven by hydraulic, electric, air, gas, etc , lifting device for concrete forms); Stationary Pipe Wrapping, Cleaning and Bending Machine; Pavement Breaker or Tamper (with or without compressor combination); Pavement Breaker, truck mounted, with compressor combination; Small Rubber-tired Tractors; Self-propelled Tape Machine; Auger type drilling equipment up to and including 30 ft depth digging capacity m r c

Group 7: Compressor (over 2); Concrete Conveyor; Concrete Conveyor or Concrete Pump, truck or equipment mounted (boom length to apply); Crusher Plant Engineer; Deck Engineer; Drilling and Boring Machinery, vertical and horizontal (not to apply to waterliners, wagon drills or jackhammers); Generators; Grade Setters; Grade Checker; Kolman Loader; Material Hoist (2 or more drums); Mechanical Finishers or Spreader Machine (asphalt, Barber-Greene and similar); Mine or Shaft Hoist; Pipe Bending Machines (Pipelines only); Pipe Cleaning Machines (tractor propelled and supported); Pipe wrapping Machines (tractor propelled and supported); Portable Crushing and Screening Plants; Pumps (over 2); Refrigeration Plant; Self-propelled Boom type lifting device (center mount) (10 ton capacity or less); Slusher; Soil Tester (certified); Surface Heater and Planer; Trenching Machine (maximum digging capacity 3 ft depth); Truck type loader; Welding Machines (gasoline or diesel); Roller (asphalt); Instrument Man; Auger type drilling equipment over 30 ft depth capacity m r c

Group 8: Asphalt Plant Engineer; Car Passer; Cast-in-place Pipe Laying Machine; Combination Slusher and Motor; Dozer; Concrete Batch Plant (multiple units); Elevating Grader; Grooving and Grinding Machine (highways); Heavy Duty Repairman and/or Welder; Ken-seal; Loader (up to and including 2½ cu yds); Mechanical Trench Shield; Mixermobile; Push Cats; Road Oil Mixing Machine; Wood-mixer (and other similar pugmill equipment); Rubber-tired Earthmoving equipment (up to and including 35 cu yds struck" m r c) (Euclids, T-Pulls, DW's 10, 20, 21 and similar); Self-propelled Compactor with Dozer; Sheepfoot; Small Tractor (with boom); Soil Stabilizer (P & H or equal); Timber Skidder (rubber tire) or similar equipment; Tractor; Tractor drawn scraper; Tractor mounted Compressor Drill Combination; Trenching Machine (over 3ft depth); Tri-batch Paver; Tunnel Badger or Tunnel Boring Mahcine; Tunnel Mole Boring Machine; Vermeer T-600 B Rock Cutter

Group 9: Canal Finger Drain Digger; Chicago Boom; Combination Backhoe and Loader (up to and including 3/8 yds); Combination Mixer and Compressor (gunnite); Lull Hi-lift (20 ft or over); Mucking Machine; Tractor with boom (D-6 or larger); Track Laying type Earth Moving Machine (single engine with tandem scrapers); Sub-grader (Gurries or other types)

POWER EQUIPMENT OPERATORS (Cont d)
(Except Piledriving and Steel Erection)

Group 10: Boom type Backfilling Machine; Bridge Crane; Cary-lift or similar; Chemical Grouting Machine; Derricks; Derrick Barges (except excavation work); Euclid Loader and similar types; Heavy Duty Rotary Drill Rigs; Lift-slab (Vagtborg and similar types); Loader (over 2½ cu yds up to and including 4 cu yds.); Locomotive (over 100 tons) (single or multiple units); Multiple Engine Earth Moving Machines (Euclid Dozers etc); Pre-stress Wire Wrapping Machine; Rubber-tired Scraper, self-loading; Self-propelled Reservoir-debris equipment floating (200 HP and over); Shuttle Car (Re-claim Station); Single Engine Scraper (over 35 cu yds); Train Loading Station; Vacuum Cooling Plant; Whirley Crane (up to and including 25 tons); Trenching Machine; Multi-engine with sloping attachments (JEFFCO or similar); Chief of Party

Group 10-A: Backhoe (up to and including 1 cu yd hydraulic); Backhoe (up to and including 1 cu yd cable); Cranes (not over 25 tons) (hammerhead and Gantry); Grade-alls (up to and including 1 cu yd); Motor Patrol; Power Shovels, Clamshells, Draglines, Cranes (up to and including 1 cu yd); Rubber-tired Scraper, self-loading (twin engine); Self-propelled Boom-type Lifting Device (center mount) (over 10 tons); CMI dual lane auto-grader SP30 or similar

Group 11: Automatic Asphalt or Concrete Slip Form Paver; Automatic Railroad Car Dumper; Canal Finger Drain Backfiller; Canal Trimmer; Cranes (over 25 tons); Highline Cableway Operator; Loader (over 4 yds up to and including 12 cu yds); Multi-engine Earthmoving Equipment (up to and including 75 cu yds struck m r c); Power Shovels, Clamshells, Draglines, Backhoes Gradeall (over 1 yd and up to and including 7 cu yds m r c); Self-propelled Compactor (with multiple propulsion power units); Single Engine rubber-tired Earth-moving Machine (with tandem scraper); Slip Form Paver (concrete or asphalt); Tandem Cats and Scrapers; Tower Crane Mobile; Universal Liebher and Tower Cranes (and similar types); Wheel Excavator (up to and including 750 cu yds per hour); Whirley Cranes (over 25 tons); Euclid Loader when controlled from the Pullcat

Group 11-A: Band Wagons (in conjunction with wheel excavators); Loaders (over 12 cu yds); Multi-engine Earth-moving Equipment (over 75 cu yds "struck" m r c); Operator of Helicopter (when used in construction work); Power Shovels and Draglines (over 7 cu yds m r c.); Remote-controlled Earth-moving Equipment; Wheel Excavator (over 750 cu yds per hour)

POWER EQUIPMENT OPERATORS (Cont'd) Steel Erection	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Group 1	$ 10 19	$ 1 98	$ 2 35	$1 17	10
Group 2	10 60	1 98	2 35	1 17	10
Group 3	11 69	1 98	2 35	1 17	10
Group 4	11 84	1 98	2 35	1 17	10
Group 4-A	12 15	1 98	2 35	1 17	10
Group 5	12 67	1 98	2 35	1 17	10
Group 6	13 11	1 98	2 35	1 17	10
Group 6-A	13 72	1 98	2 35	1 17	10
Group 7	14 81	1 98	2 35	1 17	10

POWER EQUIPMENT OPERATORS (Cont'd)
Steel Erection

Group 1: Oiler

Group 2: Compressor Operator; Generator, gasoline or diesel-driven (100 K W or over); Truck Crane Oiler

Group 3: Compressors Generators and/or Welding Machines or Combination (2 to 6) (Structural steel or tank erection only)

Group 4: Heavy Duty Repairman; Tractor Operator

Group 4-A: Combination Heavy-duty Repairman-Welder

Group 5: Boom Truck or Dual Purpose A-frame Truck; Boom Cat; Chicago Boom; Crawler Cranes and Truck Cranes (15 ton m r c or less); Self-propelled Boom-type Lifting Device (center mount) (10 ton capacity or less m r c); Single Drum Hoist; Tugger Hoist

Group 6: Crawler Cranes and Truck Cranes (over 15 tons m r c); Derricks; Gantry Rider (or similar equipment); Highline Cableway; Self-propelled boom-type Lifting Device (center mount) (over 10 tons); Tower Cranes Mobile; Universal Liebher and Tower Cranes (and similar types); Two or more drum Hoist

Group 6-A: Cranes (over 125 tons)

Group 7: Operator of Helicopter

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
POWER EQUIPMENT OPERATORS (Cont'd)					
Piledriving					
Group 1	$ 9 68	$ 1 98	$ 2 35	$1 17	10
Group 1-A	10 05	1 98	2 35	1 17	10
Group 1-B	10 28	1 98	2 35	1 17	10
Group 2-A	10 28	1 98	2 35	1 17	10
Group 2-B	11 10	1 98	2 35	1 17	10
Group 3	11 42	1 98	2 35	1 17	10
Group 3-A	11 86	1 98	2 35	1 17	10
Group 4	12 43	1 98	2 35	1 17	10
Group 5	12 61	1 98	2 35	1 17	10
Group 6	13 77	1 98	2 35	1 17	10

POWER EQUIPMENT OPERATORS (Cont'd)
Piledriving

Group 1: Fireman; Oilman; Deckhand

Group 1-A: Compressor Operator

Group 1-B: Truck Crane Oiler

Group 2-A: Operator of Tugger Hoist (hoisting material only)

Group 2-B: Compressor Operator (over 2); Generator Operator; Pump Operator (over 2); Welding Machine Operator (powered other than by electricity)

Group 3: Deck Engineer; Fork Lift Operator; A-Frames; Self-propelled boom-type Lifting Device (center mount) (10 ton capacity or less m r c)

Group 3-A: Heavy Duty Repairman and/or Welder

Group 4: Operating Engineer in lieu of Assistant to Engineer tending Boiler or Compressor attached to Crane Piledriver; Operator of Piledriving Rigs, Skid or Floating and Derrick Barges; Operator of diesel or gasoline powered Crane Piledriver (without boiler) (up to and including 1 cu yd rating); Self-propelled boom-type Lifting Device (center mount) (Over 10 tons); Truck Crane Operator (up to and including 25 tons)

Group 5: Operator of diesel or gasoline powered Crane Piledriver (without boiler) (over 1 cu yd rating); Operator of Crane (with steam, flash boiler, pump or compressor attached); Operator of steam powered crawler, or Universal type driver (Raymond or similar type); Truck Crane Operator (over 25 tons) (hoisting material or performing piledriving work)

Group 6: Cranes (over 12 tons)

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr Tr
	AREA 1	AREA 2				
DUMP (single or multiple units including semis, double and transfer units; Dumpcrete and bulk cement Spreaders:						
Under 4 yards	$ 9 75	$10 90	95	91		05
4 yds and under 8 yds	9.95	11 10	95	91		05
8 yds and under 18 yds	10.15	11 30	95	91		05
18 yds and under 35 yds	10 30	11 45	95	91		05
35 yds and under 60 yds	10 55	11 70	95	91		05
60 yds and under 75 yds	10 70	11 85	95	91		05
75 yds and under 100 yds	10 85	12 00	95	91		05
100 yds and over	11 00	12 15	95	91		05
TRANSIT MIX:						
Under 8 yards	10 15	11 30	95	91		05
8 yds and including 12 yds	10 25	11 40	95	91		05
Over 12 yards	10 45	11 66	95	91		05
WATER TRUCKS & Jetting Trucks:						
Up to 2,500 gallons	9 95	11 10	95	91		05
2,500 gals and over	10 15	11 30	95	91		05
DW 20's and 21's and other similar Cat type; Terra Cobra, LeTourneau Pulls, Tournerocker, Euclid and similar type equipment when pulling Aqua/Pak; Water tank trailers, fuel and/or grease tank, or other misc trailers (except as defined under dump trucks)	10 40	11 55	95	91		05
FLATRACK; Industrial Lift with Mechanical Tailgate:						
Single unit - 2 axle	9 95	11 10	95	91		05
Single unit - 3 axle	10 05	11 20	95	91		05

TRUCK DRIVERS (Cont'd)	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr Tr
	AREA 1	AREA 2				
BUS AND MANHAUL DRIVERS, Single unit; Pickup:						
Up to 18,000 pounds	$ 9 80	$10 95	95	91		05
18,000 pounds and over	9 90	11 05	95	91		05
WINCH TRUCKS, A-Frame:						
Under 18,000 pounds	9.90	11 05	95	91		05
18,000 pounds and over	10 00	11 15	95	91		05
HEAVY DUTY TRANSPORT (highbed); Heavy Duty transport (gooseneck lowbed); Tiltbed or flatbed pull trailers	10 30	11 45	95	91		05
BOOTMAN, combination; Bootman and Road Oiler	10.20	11 35	95	91		05
ROAD OIL TRUCKS OR BOOTMEN; Fuel Drivers; Fuel Man and Fuel Island Man	9 90	11 05	95	91		05
HELICOPTER PILOT (when transporting men or materials)	10 70	11 85	95	91		05
LIFT JITNEYS And FORK LIFTS	10 00	11 15	95	91		05
WAREHOUSE CLERK	9 95	11 10	95	91		05
TIRE REPAIRMAN	10 15	11 30	95	91		05
TRUCK REPAIRMAN	10 45	11 60	95	91		05
TRUCK DRIVERS See AREA DEFINITION following this page						

AREA DEFINITIONS
Power Equipment Operators and Truck Drivers
WASHOE COUNTY

AREA 1: All of Northern Nevada within the following lines:

Commencing at the N W corner of Township 22N, Range 18E, Mount Diablo Baseline and Meridian at the California-Nevada border;
Thence Easterly to the N E corner of Township 22N, Range 22E;
Thence Southerly to the N E corner of Township 20N Range 22E;
Thence Easterly to the N W corner of Township 20N Range 26E;
Thence Northerly to the N W corner of Township 22N, Range 26E;
Thence Easterly to the N W corner of Township 22N, Range 26E;
Thence Northerly to the N W corner of Township 30N, Range 29E;
Thence Easterly to the N E corner of Township 30N, Range 33E;
Thence Southerly to the S E corner of Township 24N, Range 33E;
Thence Westerly to the S E corner of Township 24N, Range 31E;
Thence Southerly to the S E corner of Township 16N, Range 31E;
Thence Westerly to the S E corner of Township 24N, Range 31E;
Thence Southerly to the S E corner of Township 16N, Range 31E;
Thence Westerly to the S E corner of Township 24N, Range 31E;
Thence Southerly to the S E corner of Township 15N, Range 30E;
Thence Westerly to the S E corner of Township 15N, Range 27E;
Thence Southerly to the S E corner of Township 14N, Range 27E;
Thence Westerly to the S E corner of Township 14N Range 23E;
Thence Southerly to the S E corner of Township 13N Range 23E;
Thence Westerly to the S E corner of Township 13N, Range 22E;
Thence Southerly to the N E corner of Township 10N, Range 22E;
Thence Easterly to the N E corner of Township 10N, Range 23E;
Thence Southerly along the Easterly line of Range 23E to the intersection of the California-Nevada Border;
Thence North-Westerly, then Northerly following the California-Nevada Border to the point of beginning

AREA 1 also includes that portion of Northern Nevada included within the following line:

Commencing at the S W corner of Township 37N, Range 52E;
Thence Easterly to the S E corner of Township 37N, Range 52E;
Thence Northerly to the N E corner of Township 37N, Range 52E;
Thence Easterly to the N E corner of Township 37n, Range 58E;
Thence Southerly to the S W corner of Township 37N, Range 58E;
Thence Easterly to the S E corner of Township 37N, Range 58E;
Thence Southerly to the N E corner of Township 31N Range 58E;
Thence Westerly to the N W corner of Township 31N, Range 58E;
Thence Southerly to the S W corner of Township 31N Range 58E;
Thence Westerly to the S E corner of Township 31N Range 52E;
Thence Northerly to the N E corner of Township 31N, Range 52E;
Thence Westerly to the S E corner of Township 32N, Range 51E;
Thence Northerly to the point of beginning

AREA 2: All areas not included within Area 1 as defined above

SUPERSEDEAS DECISION

STATE: South Carolina COUNTIES: Lexington & Richland
DECISION NUMBER: SC-79 1100 DATE: Date of Publication
Supersedes Decision No SC78-1039 dated April 14, 1978 in 43 FR 16109
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asbestos Workers	6 50				
Bricklayers	6 25				
Carpenters	5 96				
Cement Masons	5 00				
Electricians	8 45	55	3%+ 40		½ of 1%
Elevator Constructors	7 425				
Ironworkers	6 95				
Laborers:					
Unskilled	3 00				
Mason Tenders	3 25				
Lathers	5 50				
Painters, brush	4 76				
Plasterers	6 00				
Plumbers & Fitters	7 00				
Roofers	3 50				
Sheet Metal Workers	7 50				
Sprinkler Fitters	8 25	.75	1 05		08
Tile Setters	5 50				
Truck Drivers	3 50				
Welders - rate for craft					
POWER EQUIPMENT OPERATORS:					
Backhoes	4 34				
Bulldozers	4 59				
Cranes, derricks, draglines	5 21				
Front End Loaders	3 95				
Motor Graders	3 50				
Pan Operators	4 00				
Rollers	3 38				

SUPERSEDEAS DECISION

STATE: TENNESSEE COUNTIES: *SEE BELOW
DECISION NUMBER: TN79-1104 DATE: DATE OF PUBLICATION
Supersedes Decision TN78-1058, dated July 7 1978, in 43 FR 29464
DESCRIPTION OF WORK: BUILDING PROJECTS (does not include single family homes and garden type apartments up to and including 4 stories), and HEAVY PROJECTS
*COUNTIES: Hamilton (Building and Heavy Projects); Marion, Polk, and Rhea (Building Projects ONLY)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
ASBESTOS WORKERS	$10 75	45	70		02
BOILERMAKERS	10 70	1 05	1 10		02
BRICKLAYERS & STONE MASONS:					
Polk County	9 20				
All other Counties	11 55	.55	30		
CARPENTERS, CARPET LAYERS, & FLOOR LAYERS	9.58	55	60		08
CEMENT MASONS:					
Polk County	9 20				
All other Counties	9 00				
ELECTRICIANS:					
Wiremen	10 70	70	10%		1%
Cable splicers	10 95	70	10%		1%
ELEVATOR CONSTRUCTORS:					
Mechanics	9 99	895	69	1%+a+b	03
Helpers	6 99	895	69	1%+a+b	03
GLAZIERS	8 81			1%	
IRONWORKERS	9 76	70	65		1%
LATHERS	10 25				
LINE CONSTRUCTION:					
Linemen & Operators of hole digging equipment tractor with winch	10 70	.70	10%		½ of 1%
Cable splicers	10 95	70	10%		½ of 1%
Truck without winch	9 34	70	10%		½ of 1%
Groundmen	7 80	70	10%		½ of 1%
MARBLE, TERRAZZO, & TILE WORKERS (All Counties except Polk)	11 55	55	30		
MILLWRIGHTS	10 03	55	60		08
PAINTERS:					
Painters	8 75	45	40		
Paperhanging, wall covering, & drywall finishing	9 00	45	40		
Sandblasting	9 25	45	40		
Painters - tanks, steel towers, stacks, bridges, pumping stations	9 00	45	40		
PILEDRIVERMEN	9 705	55	60		08

DECISION NO TN79-1104

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
PLASTERERS:					
Polk County	$ 9 20				
All other Counties	9 35				
PLUMBERS & PIPEFITTERS	11.00	45	.50	c	08
ROOFERS:					
Composition, damp & water-proofers	10 05		10		05
Kettlemen	9 45		10		05
Slate & tile	10 25		10		05
SHEET METAL WORKERS:					
Hamilton County	10 93	68	84		08
All other Counties	11 43	68	84		08
SPRINKLER FITTERS	10 80	75	1 05		08
TRUCK DRIVERS:					
Trucks - up to 3 tons	6 96	5375	45		
" - 3 to 5 tons	7 11	5375	45		
" - 5 to 7 tons	7 26	5375	45		
" - with special equipment	7 46	5375	45		
WELDERS - Rate for craft					

FOOTNOTES:

a Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day

b Employer contributes 4% of the basic hourly rate of employers with 5 years or more service, or 2% of the basic hourly rate of employees with 6 month to 5 years service as Vacation Pay Credit

c One Paid Holiday: Labor Day

DECISION NO TN79-1104

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
GROUP A	$ 7 00	25	30		
GROUP B	7 10	25	30		
GROUP C	7 20	25	30		
GROUP D	7 30	25	30		
GROUP E	7 35	25	30		
GROUP F	7 65	25	30		
GROUP G	7 70	25	30		
GROUP H	7 40	25	30		
GROUP I	7 55	25	30		
GROUP J	7.80	25	30		

GROUP A: Concrete laborers, general laborers, carpenter tenders, window and floor cleaners, and flagman on road and street crossings form strippers, handling of rope to clam bucket, grout men, laborers working on demolition work handling, cleaning, and pulling of nails from materials

GROUP B: Powder man helpers, vibrator operators, tenders to all trowel trades and terrazzo work, carrying reinforced steel, operating motorized wheel barrows doping and painting of pipe, railroad track laborers, air spade operators, snake men on pipe work

GROUP C: Sanitary and storm pipe layers or any other pipe outside of foundation, grade checker, yarner and pot man, steel form setters mortar mixers by hand or machine, power saw operators, jackhammer operator, pavement breaker operator, air tool operators; regular air tamp operators, wacker tamp operator chipping hammer operator, hand operated ditching machine operator, concrete grinder, floor sweeping machine operator concrete buffer and grinder power operator, concrete pumping machine operator

GROUP D: Asphalt raker, wagon drill operator, sand blasting, track drill operator, concrete saw operator, using cutting torch or burner on demoliton work, flagging of rigs

GROUP E: Barco tamp operator and specially designed tamp operator, black top or concrete curbing machine operator

GROUP F: Powderman motorized post hole digger operator and terrazzo machine grinder

GROUP G: Pneumatic concrete gun operator and nozzleman

FREE AIR SHAFTS AND TUNNELS

GROUP H: Tunnel laborers

GROUP I: Chuck Tender; Top lander on shaft work

GROUP J: Tunnel laborer, including men required to go down in pier hole drilled by machines

DECISION NO. TN79-1104

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
GROUP A	$ 9 70	35	35		10
GROUP B	8 90	35	35		10
GROUP C	8 30	35	35		10
GROUP D	8 00	35	35		10

GROUP A: Backhoes; cableways; ross carrier; clamshells; cranes; derricks; draglines; turnapulls; pans; scrapers; scoops; head tower machines; end-loaders; locomotives (over 20 tons); shovels; dozers; fork-lifts (over 8' lift); core drills; foundation drills; graders; mechanics; welders; winch truck with A-Frame; skimmer scoops; locomotive cranes; overhead cranes; skid rigs; piledrivers; side boom tractors; euclid loaders; derrick boat; dredge boats; hoist (any size handling steel or stone); engines used in connection with hoists material; mucking-machines; cherrypickers; tower cranes; skylift; gradall

GROUP B: Tractors; farm type tractors (with attachments); central compressor plants; elevators (used for hoisting building materials); central mixing plants; hoist; (not handling steel or stone); pump-crete machine; concrete pumps; backfillers (other than cranes); tracmobile; crushing plant; elevating graders; earth augers; forklifts; (8' lift or under); paving machines (Blacktop/concrete); boat operator or engineer (30 tons or over); blacktop rollers; switchman; locomotive (under 20 tons); maintainers

GROUP C: Asphalt plant; barber-green type loader; engine tender (other than steam) mixers (over 2 bags, not to include central plants); pumps (not more than 3); scrifiers; spreader box (bituminous); asphalt mixers; portable compressors (not more than 3); roller; sub-grader machine; tractors (farm type without attachments); cable head tower engineman; dredge booster pump; boat operator or engineers (under 30 tons); finishing machine; fireman & oiler (Combination); motor crane oiler & driver; welding machines (not more than 3); heaters (stationary or portable, not more than 5); compressors (portable, not more than 3); greaser; or fuel truck

GROUP D: Air compressor (1 portable); fireman; portable crushers; welding machine (1); conveyors; pump (1); oiler; heater (1)

BILLING CODE 4510-27-C

[FR Doc. 79-19918 Filed 6-28-79; 8:45 am]

Friday
June 29, 1979

Part IV

Department of Health, Education, and Welfare

Office of Education

Proposed Regulations for the Law-Related Education Program

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 161g]

Proposed Regulations for the Law-Related Education Program

AGENCY: Office of Education, HEW.

ACTION: Proposed Regulations.

SUMMARY: The Commissioner of Education is required by law to publish regulations for programs authorized by Congress. The Commissioner proposes, therefore, to issue regulations to implement the Law-Related Education Act of 1978. Please note that the Congress has not appropriated funds to operate this program in Fiscal Year 1979 and the President's budget does not request funds for Fiscal Year 1980. The proposed regulations govern grant and contract awards to encourage State educational agencies (SEAs), local educational agencies (LEAs), and other public and nonprofit private agencies, organizations, and institutions to provide law-related education programs.

DATES: Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulations on or before August 28, 1979. A public meeting on the proposed regulations will be held in each of the ten regional office cities on August 12, 1979. The time for these meetings is—9 a.m.–12 Noon; 1 p.m.–5 p.m.; 7 p.m.–9 p.m.

ADDRESS: Written comments should be addressed to Steven Y. Winnick, U.S. Office of Education, Room 4091, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

The locations of the public meetings are—

Region I—Boston; Boston School Dept., Administration Building, Boston Committee Hearing Rm., 26 Court Street, Boston, Massachusetts.

Region II—New York; Hearing Room E, Room 2222, 26 Federal Plaza, New York, New York.

Region III—Philadelphia; University City Holiday Inn, 36th & Chestnut Street, Philadelphia, Pennsylvania.

Region IV—Atlanta; Regional Office Building, 101 Mariette Towers Bldg., Suite 2221, Atlanta, Georgia.

Region V—Chicago; Center for Urban Education, 160 West Wendell Street, (1050 North Wells), Chicago, Illinois 60601.

Region VI—Dallas; William Travis Elementary School, 3001 McKinney Street, Dallas, Texas 75204.

Region VII—Kansas City; Federal Office Bldg., 601 East 12th Street, Room 140, Kansas City, Missouri.

Region VIII—Denver; George Washington High School, 655 South Monaco Street, Denver, Colorado.

Region IX—San Francisco; Federal Office Building, Room 209, 50 United Nations Plaza, San Francisco, California.

Region X—Seattle; Ingram High School, Little Theater, 1819 North 135th Street, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Steven Y. Winnick, telephone (202) 245–8953.

FOR INFORMATION ON REGIONAL HEARINGS CONTACT: The appropriate Regional Commissioner for Educational Programs listed below:

Region I, Boston, Dr. Thomas J. Burns, (617) 223–7500.

Region II, New York, Dr. william D. Green, (212) 264–4370

Region III, Philadelphia, Dr. Albert C. Crambert, (215) 596–1001

Region IV, Atlanta, Dr. William L. Lewis, (404) 221–2063.

Region V, Chicago, Dr. Juliette Noone Lester, (312) 353–5215.

Region VI, Dallas, Mr. Edward J. Baca, (214) 767–3626.

Region VII, Kansas City, Dr. Harold Blackburn, (816) 374–2276.

Region VIII, Denver, Dr. John Runkel, (303) 837–3544.

Region IX, San Francisco, Dr. Caroline Gillin, (415) 556–4920.

Region X, Seattle, Mr. Allen Apodaca, (206) 442–0460.

SUPPLEMENTARY INFORMATION:

A. Background

The Law-Related Education Act of 1978 is enacted as Part G of Title III of the Elementary and Secondary Education Act.

The Law-Related Education Act is a new authorization to fund discretionary grants or contracts supporting law-related education activities. It defines "law-related education" to mean education to equip nonlawyers with knowledge and skills pertaining to the law, the legal process, and the legal system and the fundamental principles and values on which these are based. The purpose is to enable children, youth, and adults to be more informed and effective citizens.

The Act is premised on congressional findings that—

(1) There is a lack of understanding of how our system of law and legal institutions works;

(2) That understanding is essential in developing faith and appreciation in our democratic system of government and in preparing youth to be knowledgeable, responsible citizens; and

(3) There is an urgent need for federal involvement to encourage and support the development of law-related education programs.

Under the Act, the Commissioner is authorized to fund a long list of law-related education activities, including awareness activities, program support, materials and methods development, pilot and demonstration projects, dissemination, clearinghouse activities, technical assistance, training, research and evaluation, involvement of law-related organizations, and youth internships.

These regulations are needed—

(1) To clarify the scope of law-related education as defined in the statute;

(2) To establish the types of activities eligible for support;

(3) To establish priorities for types of activities;

(4) To indicate criteria governing the selection of grantees; and

(5) To establish project requirements necessary to carry out the program's purposes.

B. Findings of the Study Group on Law-Related Education

In November, 1977, the Commissioner of Education appointed the Study Group on Law-Related Education. In its final report submitted to the Commissioner in September, 1978, the Study Group noted the following:

(1) There is a serious lack of understanding among youth and adults about law and the legal system. This lack impairs their ability to function effectively as citizens in a complex society and endangers our democratic system of government and our system of justice.

(2) While there is a diversity of highly regarded programs and materials, particularly at the secondary school level, meaningful law-related education is provided to no more than about 10 percent of the Nation's elementary and secondary school students. (S. Rept. No. 95–856, 95th Cong., 2nd Sess. 41 (1978))

(3) In most school systems law-related education is not a basic part of the regular school curriculum. Many educators are not aware of law-related education programs and the potential value of these programs in—

(a) Providing education that responds directly to the functional needs of youth and adult citizens—and, therefore, to the central purposes of public education;

(b) Attracting the interest of students and teachers and motivating students—including students in urban high schools with serious academic problems;

(c) Helping students to understand the values and principles that form the foundation for our systems of government and justice; and

(d) Addressing the problem of troubled youth by:

—providing opportunities for youth participation in the legal and governmental system and in school governance;

—involving law-related and community resources in programs to improve the schools; and

—training youth to understand and manage conflicts in human rights and needs and to make reasoned decisions.

(4) Training for teachers, school principals, and other resource persons is critical to the development of high quality law-related education programs.

C. Summary of the Proposed Regulations

Section 161g.10 of the proposed regulations defines law-related education for the purposes of this program. These provisions clarify the definition provided in the statute. Law-related education is defined to mean education to give persons, as part of their general education, understanding and skills pertaining to the law, the legal process, and the legal system, and the fundamental principles and values on which these are based.

Section 161g.10(c) provides an illustrative list of the types of subject matter included within law-related education. Law-related education does not include direct training for careers in law. It also does not include programs designed exclusively or primarily to provide information to persons preparing for or working in a particular profession on a specific law or set of laws that affect that profession. For example, law-related education does not include training for social workers or police on laws that affect them or their clients.

The proposed regulations established four grant categories:

(1) Program initiation projects (§ 161g.12) to support the planning and establishment of law-related education programs at the elementary or secondary school levels. These programs could be statewide or involve one or more school districts. The projects would support planning and development of the program, mobilizing and coordinating the support of educational, law-related, and community resources, and awareness, training, and technical assistance activities.

(2) Program implementation projects (§ 161.31) to refine, improve, or expand already established law-related education programs at the elementary or secondary school levels. These programs also could be statewide or involve one or more school districts. Grants would support programs that were previously established either—

(a) Without funding under these regulations; or

(b) With assistance provided under a program initiation project.

Program implementation projects would support training, limited development and adaptation of curriculum and resource materials, technical assistance for teachers and other participants, and activities to strengthen financial and programmatic support for the program.

(3) Technical assistance projects (§ 161g.14) that fund established law-related education programs to provide technical assistance to other organizations initiating elementary or secondary school law-related education programs in other States or school districts.

(4) Innovation projects (§ 161g.15) to fund particularly innovative activities in any area of law-related education authorized under the statute.

Section 161g.20 permits the Commissioner to require preapplications. The decision of whether or not to require preapplications will be made annually by the Commissioner. The Commissioner hopes to make use of preapplications in this program in order to respond to the project plans of applicants before they go to the trouble and expense of preparing full applications.

Sections 161g.30 through 161g.34 indicate how the Commissioner makes award decisions. Sections 161g.31 through 161g.34 describe separate criteria for each of the grant categories.

The remaining sections of the proposed regulations describe grant conditions. These include § 161g.40, concerning participation by private school children; § 161g.41, concerning cost sharing requirements; § 161g.42, concerning allowable costs; and § 161g.43, concerning project duration.

Readers should be aware that the terms "program" and "project" in the proposed regulations have different meanings. The term "project" means the activities described in an application. The applicant requests a grant for the Federal share of the cost of a "project". On the other hand, "program" refers to a program at the State or local level that the "project" establishes, strengthens, or expands. For example, under § 161g.43, a project is approved for up to two years. The Commissioner may at the end of this period award another project—on a competitive basis—to support the same program. Limits on supporting the same program are described in § 161g.41(b). Section 161g.12(b) imposes limits on how long the same program may be supported under the program initiation category.

D. Regulation Issues

The proposed regulations reflect proposed policy decisions that build upon the findings and recommendations of the Study Group on Law-Related Education. These proposed decisions include the following:

(1) *Emphasis on elementary and secondary programs.* The proposed regulations emphasize funding of elementary and secondary school level programs. Three of the four grant areas—program initiation, program implementation, and technical assistance—would be solely at the elementary and secondary school levels. The fourth grant area—innovation—would fund projects at any level of education. This emphasis reflects the judgment that law-related education is most severely needed at the elementary and secondary school levels and that a central objective of the program should be to promote activities to make law-related education a basic part of the elementary and secondary school curriculums. This conforms to the statutory emphasis on preparing youth to be knowledgeable, responsible citizens.

However, the regulations do not restrict eligibility for these projects to SEAs and LEAs. Any public or nonprofit private agency, organization, or institution may apply for these projects. One possibility that applicants may wish to consider is for nonprofit private organizations with strong backgrounds in law-related education to apply jointly with SEAs or LEAs.

(2) *New vs. established programs.* Two of the four grant areas in the proposed regulations have as their primary objective the initiation of new law-related education programs. The aim of program initiation projects would be to plan and establish new programs at the elementary or secondary school levels in a school district, combination of school districts, or State. Technical assistance projects would also have as their goal the establishment of new programs at these levels, but the grants would be made to already established programs to provide technical assistance to other sites.

The purpose of program implementation projects would be to refine, strengthen, or expand already established law-related education programs at the elementary and secondary school levels.

An innovation project could be awarded to either a new program or an established program.

(3) *Distribution of funds among categories.* The proposed regulations would provide for the Commissioner's reserving funds to support projects in all or some of the grant categories. In addition, the Act authorizes the Commissioner to award Contracts. The Commissioner would expect to award contracts for a clearinghouse and for an evaluation of the projects supported by the Act if funds are appropriated.

The proposed regulations do not specify particular amounts or percentages of funds to be reserved for these funding categories. These decisions will be made and announced annually based on the amounts of funds appropriated and on evolving programmatic needs.

However, the Commissioner solicits public comments on what would be an appropriate distribution of funds among these funding categories, as well as on the contents of the proposed regulations. Respondents are asked to consider an appropriate distribution in the light of possible appropriation levels. For example, if $3 to 4 million were appropriated for the program, 20% might be reserved for program initiation ($600,000–$800,000) 40% might be reserved for program implementation ($1.2–1.6 million), 10% might be reserved for technical assistance ($300,000–400,000), 20% might be reserved for innovation ($600,000–800,000), and 10% might be reserved for contract activities ($300,000–400,000). Would these be appropriate distributions? If so, should these percentages change with a different level of appropriation?

(4) *Emphasis on capacity building.* A major issue that the proposed regulations address is how to achieve a national and lasting impact with a small Federal program. The primary strategy adopted in the regulations is to fund projects essentially in the form of seed or incentive grants that are designed to—

(1) Build awareness of law-related education among teachers, school and other educational administrators, and other community resources;

(2) Stimulate financial and programmatic support for law-related education by State and local agencies and organizations; and

(3) Provide training and technical assistance for persons who conduct or support these programs.

Except for the Innovation grant cagetory, all the grant categories have the objective of developing commitment and capacity within a State or local community to sustain and strengthen law-related education programs. In addition to the quality of funded activities and the extent of student gains, one significant measure of the Act's success will be the percentage of funded programs that are sustained and expanded after they are no longer funded under the Act.

Many criteria in the proposed regulations reflect these purposes. In addition, the cost sharing requirements in § 161g.41 reflect the assumptions that particular programs cannot be indefinitely supported under the Act and that it is unrealistic to expect that programs will be sustained after the expiration of Federal funding if the Federal Government has paid for all of the project costs. On the other hand, the cost sharing requirements are flexible, permitting in-kind contributions and funds received under other Federal programs administered at the State level.

Other strategies to secure a national impact include the following:

(1) Funding relatively small awards of high quality in as many States as possible. Section 161g.30(a)(2) provides that the Commissioner, in making award decisions, considers whether funding a project will contribute to the widest possible distribution of law-related education programs in elementary and secondary schools throughout the United States. This particular provision is not intended to reward projects that serve many school districts, schools, or students. Other provisions in the evaluation criteria concern the breadth of a project. Rather, the provision concerns the location of law-related education programs, whether or not funded under the Act.

The proposed regulations do not address the size of awards. Information on this will be provided in the annual notices inviting applications. The Commissioner also welcomes public comments on appropriate award sizes at various appropriation levels.

(2) Provisions in the proposed regulations are designed to build upon what has already been done in the field and the experience of organizations that have developed successful law-related education programs. In particular, the technical assistance projects support established law-related education programs to provide technical assistance to other organizations for the purpose of initiating new programs at other sites.

(3) Evaluation criteria emphasize the involvement of educational and law-related organizations as the recipients of awareness activities and as the providers of programmatic and financial support for projects. There are, therefore, incentives to involve the SEAs, LEAs schools of education, law schools, bar associations, juvenile justice agencies, and other community organizations in coordinated programs. Their interest and active participation will strengthen the funded programs and are likely to lead to the development of other law-related education activities.

(5) *Relationship to other programs; agencies.* Specific criteria in the proposed regulations call on applicants to examine the relationship of law-related education to their overall curriculums and to develop objectives to make law-related education a basic part of those curriculums.

The Commissioner also wishes to encourage applicants to consider how their proposed law-related education activities mesh with other activities for which Federal assistance is sought and whether they should be integrated in joint projects. In particular, the Commissioner hopes to explore possible approaches to facilitating joint funding of high quality projects under both the Act and other OE programs related to citizenship education, such as Consumers' Education, Environmental Education, Alcohol and Drug Abuse Education, the International Understanding Program under Section 603 of the National Defense Education Act, and similar programs. The Commissioner welcomes suggestions from the public on how these goals might be achieved.

In addition, the Commissioner invites comments on how administration of the Act might best complement and be coordinated with law-related education activities conducted by other Federal agencies such as the National Endowment for the Humanities and the Justice Department's Law Enforcement Assistance Administration. Section 161g.30(d) of the proposed regulations provides that (1) the Commissioner may decline to fund an application under the Act if it comes within the priorities or emphases of other Federal agencies; and (2) particular applications may be referred to other Federal agencies for review and possible funding. The Commissioner plans to establish a close working relationship with these agencies in administering the Act.

E. Education Division General Administrative Regulations

These proposed regulations do not contain certain types of requirements. Those requirements are covered in the Education Division's General Administrative Regulations (EDGAR),

which will replace the General Provisions for Office of Education Program Regulations and which have been published as a notice of proposed rulemaking (NPRM).

Anyone wanting to comment on these requirements should do so in response to the EDGAR NPRM, rather than to this NPRM.

The following items applicable to this program are now among those covered generally in EDGAR:

How to apply for a grant.

How grants are made.

Certain conditions that must be met by a grantee.

The administrative responsibilities of a grantee.

The Office of Education's procedures to assure compliance.

F. Citation of Legal Authority

A citation of statutory or other legal authority for each section of the regulations is placed in parentheses on the line following the text of that section.

G. Invitation to Comment

A public meeting on this Notice of Proposed Rulemaking will be held in each of the ten Federal regions. Since we expect to schedule public meetings for several regulations on the same day, at the same place, we need to have an idea of how many persons are interested in speaking about these regulations. If you are interested in making oral comments at a public meeting, we encourage you to call the appropriate Regional Commissioner of Education. He/she will schedule a time for your comments to be given. Persons who do not notify the Regional Commissioner of their intention to make oral comments will be given an opportunity to speak after those who registered. Those persons making presentations will be called upon according to their prearranged schedule, or if not prearranged, in the order of registration.

We expect that comments on these proposed regulations will be heard third on the date of the public meeting.

In addition, interested persons are invited to submit written comments, suggestions, and recommendations regarding the proposed regulations. Comments, suggestions, and recommendations may be sent to the address given at the beginning of this document. All comments received on or before August 28, 1979, will be considered in the development of the final regulation.

All written comments submitted in response to this notice will be available for public inspection, both during and after the comment period, in Room 4091, FOB-6, 400 Maryland Avenue, S.W., Washington, D.C. 20202, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday of each week except on Federal holidays.

(Catalog of Federal Domestic Assistance No. not yet assigned)

Dated: May 21, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

Approved: June 22, 1979.

Hale Champion,

Acting Secretary of health, Education, and Welfare.

PART 161g—LAW RELATED EDUCATION

Subpart A—General

Sec.

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Subpart E—What Conditions Must Be Met By a Grantee?

161g.40 Participation by private school children.
161g.41 Cost sharing requirements.
161g.42 Allowable costs.
161g.43 Project duration.

Authority: Part G of Title III of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561 (20 U.S. 3001-03).

Subpart A—General

§ 161g.1 Purpose of the Law-Related Education Act.

The Law-Related Education Act funds grants or contracts to support the development of law-related education activities by State educational agencies (SEAs), local educational agencies (LEAs), and other public and nonprofit private agencies, organizations, and institutions.

(20 U.S.C. 3001, 3002)

§ 161g.2 Regulations that apply to the Law-Related Education Act.

(a) *Regulations for grants.* The following regulations apply to grants under the Law-Related Education Act:

(1) The Education Division General Administrative Regulations (EDGAR) in part 100a (Direct Grant Programs) and part 100c (Definitions).

(2) The regulations in this part 161g.

(b) *Regulations for procurement contracts.* The regulations in this part do not apply to procurement contracts under the Act. These contracts are subject to—

(1) Federal and HEW procurement regulations in 41 CFR Chapters 1 and 3; and

(2) Requirements and criteria in particular requests for proposals (RFPs) published in Commerce Business Daily.

(20 U.S.C. 1221e-3, 3001, 3002)

§ 161g.3 Eligible parties.

An SEA, LEA, or other public or nonprofit private agency, organization, or institution may apply for a grant. It may apply singly or jointly with another eligible applicant, as provided in §§ 100a.127 through 100a.129 of EDGAR.

(20 U.S.C. 3002(a))

§ 161g.4 Definitions.

(a) As used in these regulations—

"Act" means the Law-Related Education Act of 1978 that is enacted by Pub. L. 95-561 as Part G of Title III of the Elementary and Secondary Education Act of 1965.

(b) The following terms used in these regulations are defined or referenced in part 100c of EDGAR:

Applicant, application, budget, commissioner, contract, elementary school, equipment, grant, grantee, local educational agency (LEA), nonprofit, private, project, public, secondary school, State, and State education agency (SEA).

(20 U.S.C. 1221e-3(a)(1), 3001)

Subpart B—What The Act Is About

§ 161g.10 What is law-related education?

(a) Law-related education means education to give persons, as part of their general education, understanding and skills pertaining to the law, the legal process, and the legal system, and the fundamental principles and values on which these are based.

(b) The purpose of law-related education is to enable non-lawyers, including children, youth, and adults, to be more informed and effective citizens. Law-related education does not include direct training for careers in law. It does not include programs designed exclusively or primarily to provide information to persons preparing for or working in a particular profession on a specific law or set of laws that affect that profession.

(c) Law-related education may include inquiry, experiential learning, and other learning approaches in such subject areas as—

(1) Fundamental legal principles and the values on which they are based;

(2) The Bill or Rights and other constitutional law;

(3) The role and limits of law in a democratic society, both past and present;

(4) Conflict and dispute management;

(5) The role of law in avoiding conficts and disputes;

(6) Development and administration of rules;

(7) The administration of the criminal and civil justice systems, and their strengths and weaknesses;

(8) Systems and codes of "informal laws" that define and shape the behavior of groups and communities;

(9) Issues of authority, freedom, enforcement, and punishment;

(10) Law as a vehicle to illuminate and resolve social and political issues;

(11) Areas of law that affect the daily lives of citizens (e.g., criminal, consumer, labor, education, administrative, environmental, and family law); or

(12) Comparative law that examines law and its role in different societies.

(20 U.S.C. 3001, 3002; S. REP. No. 95-856, 95th Cong. 2nd Session 41-42 (1979))

§ 161g.11 What kinds of projects does the Commissioner support under the Act?

(a) *Types of projects.* The Commissioner reserves funds to support projects in all or some of the following areas:

(1) *Program initiation.* Projects for initial planning and establishment of law-related education programs, as described in § 161g.12.

(2) *Program implementation.* Projects to refine, strengthen, or expand established law-related education programs, as described in § 161.13.

(3) *Technical assistance.* Projects in which established law-related education programs provide technical assistance to help initiate new programs at other sites, as described in § 161g.15.

(4) *Innovation.* Projects to carry out innovative activities in any area of law-related education, as described in § 161g.15.

(b) *Non-duplication of procurements.* The Commissioner does not fund a grant to support activities that duplicate any procurement activities under the Act. For example, if the Commissioner carries out clearinghouse activities in law-related education by means of a procurement contract, the Commissioner does not award a grant for these activities.

(c) *Notice of funding reservations.* In the annual notice of closing date announcement inviting applications under the Act, the Commissioner notifies prospective grant applicants of—

(1) Activities carried out by procurement contracts that are ineligible for grants;

(2) The amount of funds reserved for each of the types of projects; and

(3) Limitations on the size of grants for different types of projects.

(20 U.S.C. 3002)

§ 161g.12 Program initiation projects.

(a) *General.* The Commissioner awards grants under this section to support the planning and establishment of law-related education programs that serve elementary or secondary schools or both in a State, school district, or combination of school districts.

(b) *Limit on program initiation support.* The Commissioner supports a law-related education program under this section for a maximum of two years. A grantee may apply in subsequent years for a program implementation project or another type of project described in these regulations. However, a program initiation grantee that seeks these other grants must compete for them with other applicants.

(c) *Purpose; activities.* (1) A program initiation project supports the establishment of a law-related education program in a State, school district, or combination of school districts where—at the grade levels at which the project is directed—very limited law-related education activities previously were carried out.

(2) The project shall include activities—

(i) To plan and develop the law-related education program;

(ii) To involve in the planning and development of the program school and other educational administrators, and—to the extent practical—bar associations, law schools, schools of education, juvenile justice agencies, and other community organizations;

(iii) To mobilize and coordinate financial and programmatic support for the program by the SEA, LEAs, bar associations, law schools, schools of education, juvenile justice agencies, and other community organizations;

(iv) To implement activities to increase the awareness—about the law-related education subject matter and methodologies—of teachers, school and other educational administrators, and other resource persons who are to conduct or provide support for the program; and

(v) To provide training in the law-related education subject matter and methodologies for these persons. Training may include workshops, symposia, courses, or institutes provided during the school year or in summer programs.

(3) The project may also include activities—

(i) To provide technical asistance for participants to help them implement the law-related education program in elementary and secondary schools and classrooms; and

(ii) To plan, develop and adapt curriculm and resource materials such as curriculm guides, resource publications, and lesson plans. However, the project may not support major development of new curricula.

(20 U.S.C. 3002(d); S. REP. No. 95-856, 95th Cong. 2nd Session 41-42 (1978))

§ 161g.13 Program implementation projects.

(a) *General.* The Commissioner awards grants under this section to carry out any or all of the following activities: refine, strengthen, or expand already established law-related education programs that serve elementary or secondary schools or both in a State, school district, or combination of school districts.

(b) *Activities.* A program implementation project supports—

(1) The planning and implementation of training workshops, symposia, courses, or institutes provided during the school year or in summer programs for teachers, school and other educational administrators, and other persons who serve as resource personnel in the program;

(2) The planning, development, and adaptation of curriculm and resource materials such as curriculm guides, resource publications and lesson plans. However, the project may not support major development of new curricula;

(3) Technical assistance to help participants implement the law-related education program in elementary or secondary schools and classrooms; and

(4) Activities to strengthen financial and programmatic support for the program by the SEA, LEAs, bar associations, law schools, schools of education, juvenile justice agencies, and other community organizations.

(20 U.S.C. 3002(d); S. REP. No. 95-856, 95th Cong. 2nd Session 41-42 (1978))

§ 161g.14 Technical assistance projects.

(a) *General.* The Commissioner awards grants under this section to enable eligible applicants—that administer established law-related education programs—to provide technical assistance to other organizations initiating law-related education programs in elementary or secondary schools or both in other States, school districts, or combinations or school districts.

(b) *Relationship to established program.* Technical assistance may, but need not, be designed to assist recipients in replicating or adapting the established program administered by the grantee.

(c) *Purpose.* The purpose of these projects is to build upon the experience of established programs in initiating law-related education activities in a State, school district, or combination of school districts in which no or very limited law-related education activities previously were carried out at the grade levels and in the communities at which the project is directed.

(d) *Intensive technical assistance.* A grantee shall use at least 80 percent of the project funds to provide intensive, continuing technical assistance to specific locations in planning and establishing a law-related education program. This technical assistance may not be provided to programs funded under this part. Technical assistance to each of these locations shall include, but is not limited to, activities—

(1) To involve teachers, school and other educational administrators, bar associations, law schools, schools of education, juvenile justice agencies, and other community organizations in each program location in planning and developing the law-related education program;

(2) To train these persons in the substance, methodology, and administration of the law-related education program and to provide a basic exposure to a variety of law-related education models, materials, and approaches; and

(3) To provide other technical assistance to enable the recipient of that assistance to continue its law-related education program relatively independently at the end of the project.

(e) *Short-term technical assistance.* A grantee may use the other 20 percent of the project funds to provide short-term technical assistance to help law-related education programs resolve specific problems or needs or to respond to specific requests for information. This may include technical assistance to programs funded under this part.

(20 U.S.C. 3002)

§ 161g.15 Innovation projects.

(a) *General.* The Commissioner awards grants under this section to support particularly innovative activities in any area of law-related education authorized under the "Program Authorized" section of the Act (sec. 347(d)).

(b) *Innovation.* The project shall be innovative in addressing needs that have not been adequately addressed by any law-related education program or in taking a particularly new and exemplary approach that has not been taken by any law-related education program. Examples include programs for adults, preservice teacher preparation, in-depth training for leaders in law-related education, the improvement of evaluation techniques, seminal research, or the strengthening of elementary and secondary curriculum areas (e.g. history, language arts, English, the physical sciences) through law-related education.

(c) *Significance of project.* The project must be of national or regional significance by—

(1) Carrying out activities that are national or regional in scope;

(2) Developing a model program or product that can be used, copied, or adapted by other agencies and institutions in other places; or

(3) Addressing a particularly critical need in law-related education.

(20 U.S.C. 3002(d); S. REP. No. 95-856, 95th Cong. 2nd Session 39, 41-42 (1978))

Subpart C—How to Apply for a Grant.

§ 161g.20 Preapplications.

The Commissioner in an annual notice may require a preapplication. If a preapplication is required, the provisions in §§ 100a.130 through 100a.133 of EDGAR are applicable.

(20 U.S.C. 3002(c))

§ 161g.21 Application requirements.

(a) The Commissioner considers making a grant to an eligible agency, organization, or institution only if it submits an application meeting the requirements under Part 100a, Subpart C of EDGAR and any additional requirements that may be specified in the annual notice of closing date.

(b) An application from an LEA must comply with the requirements in §§ 100a.138 through 100a.141 of EDGAR concerning an open meeting on the application. These requirements implement Section 1006 of the Elementary and Secondary Education Act.

(20 U.S.C. 3002(c))

Subpart D—How Grants Are Made

§ 161g.30 How the Commissioner makes award decisions.

(a) The Commissioner decides whether or not to fund an application within each funding area based on the following factors:

(1) The criteria for evaluating applications in § 161g.31 (program initiation); § 161g.32 (program implementation); § 161g.33 (technical assistance); or § 161g.34 (innovation), as applicable. The maximum possible score for an application is 100 points. The maximum possible score for each criterion reflects the degree of importance assigned to that criterion by the Commissioner and is indicated separately at the end of each full criterion.

(2) Whether funding the proposed project will contribute to the widest possible distribution of law-related education programs in elementary and secondary schools throughout the United States.

(b) The Commissioner does not fund a project that duplicates—in the area served by the project—activities previously funded under the Act.

(c) The Commissioner may decline to fund a project if it comes within the priorities or emphases of other Federal agencies—such as the National Endowment for the Humanities or the Law Enforcement Assistance Administration—that fund aspects of law-related education. The Commissioner may refer to another Federal agency an application that is appropriate for review and possible funding by that agency.

(20 U.S.C. 3001, 3002)

§ 161g.31 Criteria for evaluating applications for program initiation projects.

In evaluating applications for program initiation projects, the Commissioner considers the following:

(a) *EDGAR criteria.* The general criteria in EDGAR §§ 100a.202 through 100a.206. The general criteria comprise 43 possible points. These criteria are weighted as follows:

(1) Plan of operation. (15 points)

(2) Quality of key personnel. (15 points)

(3) Budget and cost effectiveness. (5 points)

(4) Evaluation plan. (5 points)

(5) Adequacy of resources. (3 points)

(b) *Likelihood of sustaining program.* The likelihood that the applicant will develop and sustain a viable law-related education program. In applying this criterion, the Commissioner considers—

(1) The objectives of the project, particularly the proposed design for integrating law-related education as a permanent part of the school curriculum;

(2) The capability and commitment of the applicant to achieve the project objectives;

(3) The interest, roles, and commitment to the project of State, local, and community organizations and groups, such as the SEA and LEA, State or local bar associations, juvenile justice agencies, law schools, schools of education, and community groups;

(4) The participation of these organizations and groups, as well as that of teachers and educational administrators, in planning and managing the project; for example, through participation in a policy-making or advisory board for the project;

(5) How the applicant plans to promote awareness of law-related education and to mobilize community resources to support the program; and

(6) The extent to which there is full-time project staff at the State or local project site. (25 points)

(c) *Quality of the proposed program.* The likely quality of the law-related education program to be developed as a result of the project. In applying this criterion, the Commissioner considers—

(1) The applicant's and the staff's experience in and knowledge of law-related education, or provisions to obtain training and technical assistance from persons or groups experienced in law-related education;

(2) How the project will address a diversity of learning approaches (including, for example, opportunities for youth participation in legal and governmental institutions, or teaching about law through school policies and practices) that are—

(i) Appropriate to the students to whom the program is directed; and

(ii) Designed to address gains not only in students' knowledge, but also in their attitudes and skills, including thinking and reasoning skills; (17 points)

(d) *Need for the proposed program.* (10 points) The need and rationale for the proposed program at the site and grade levels at which it is directed. (10 points)

(e) *Breadth of the proposed program.* The breadth of the law-related education program likely to be developed as a result of the project. In applying this criterion, the Commissioner considers—

(1) The numbers of students, teachers, and schools proposed to be served by the program; and

(2) The extent to which the project will increase the capacity of State or local organizations to offer law-related education at a variety of grade levels and educational settings. (5 points).

(20 U.S.C. 3001, 3002)

§ 161g.32 Criteria for evaluating applications for program implementation projects.

(a) In evaluating applications for program implementation projects, the Commissioner considers the same criteria that are used for program initiation projects, as described in § 161g.31, subject to the following changes in the maximum scores for particular criteria:

(1) The EDGAR criteria referred to in § 161g.31(a) count for a maximum of 40 points; and the quality of key personnel criterion in § 161g.31(a)(2) counts for a maximum of 12 points.

(2) The quality of the proposed program criterion in § 161g.31(c) counts for a maximum of 25 points.

(3) The need for the proposed program criterion in § 161g.31(d) counts for a maximum of 5 points.

(b) In applying the evaluation criteria to an application for a program implementation project, the Commissioner considers both the established law-related education program and how the proposed project will expand or strengthen the established program with reference to the criteria.

(c) In evaluating an application from an applicant that previously received a program initiation grant, the Commissioner places great emphasis on the success of the program initiation project in enabling that applicant to respond to the evaluation criteria.

(20 U.S.C. 3001, 3002)

§ 161g.33 Criteria for evaluating applications for technical assistance projects.

In evaluating applications for technical assistance projects, the Commissioner considers—

(a) *EDGAR criteria.* The general criteria in EDGAR §§ 100a.202 through 100a.206. The general criteria comprise 40 possible points. These criteria are weighted as follows:

(1) Plan of operation. (15 points)

(2)(i) Quality of key personnel. (12 points)

(ii) In applying the quality of key personnel criterion in § 100a.203 of EDGAR, the Commissioner considers the experience of the key personnel on the project staff in working with representatives of educational, legal, juvenile justice, and other community agencies and organizations in a variety of different settings and circumstances in designing, developing, or adapting law-related education programs.

(3) Budget and cost effectiveness. (5 points)

(4) Evaluation plan. (5 points)

(5) Adequacy of resources. (3 points)

(b) *Background of applicant.* The strength of the applicant's background in law-related education. In applying this criterion, the Commissioner considers—

(1) Evidence of success of the applicant's law-related education materials, programs, and approaches;

(2) The applicant's success in obtaining broad-based community involvement in law-related education activities;

(3) The applicant's capacity to provide technical assistance that meets each recipient community's special needs and interests;

(4) The project staff's knowledge and understanding of a variety of law-related education models, materials, and approaches; and

(5) The applicant's prior experience in technical assistance activities. (30 points)

(c) *Quality of the project.* The quality of the proposed technical assistance project. In applying this criterion, the Commissioner considers—

(1) The extent to which the application identifies the communities to receive technical assistance services and documents the commitment of representative educational, law-related, and other organizations in these communities to participate in the project and to implement law-related education activities;

(2) The involvement of these organizations in planning and implementing the technical assistance activities;

(3) The extent to which the proposed technical assistance activities reflect knowledge and understanding of local community needs and interests and are likely to insure sustained law-related education programs after completion of the technical assistance project;

(4) The extent to which recipients of technical assistance are exposed to a variety of law-related education models, materials, and approaches; and

(5) The nature and scope of training provided to recipients of technical assistance. (25 points)

(d) *Breadth of the assisted programs.* The breadth of the law-related education programs likely to be developed with the technical assistance provided under the project. In applying this criterion, the Commissioner considers—

(1) The numbers of students, teachers, and schools likely to be served by these programs; and

(2) The extent to which the project will increase the capacity of assisted State or local organizations to offer law-related education at a variety of grade levels and educational settings. (5 points).

(20 U.S.C. 3001, 3002)

§ 161g.34 Criteria for evaluating applications for innovation projects.

In evaluating applications for innovation grants, the Commissioner considers—

(a) *EDGAR criteria.* The general criteria in EDGAR §§ 100a.202 through 100a.206. The general criteria comprise 40 possible points. The criteria are weighted as follows:

(1) Plan of operation. (10 points)

(2) Quality of key personnel. (10 points)

(3) Budget and cost effectiveness. (5 points)

(4) Evaluation plan. (12 points)

(5) Adequacy of resources. (3 points)

(b) *Importance of need.* The importance of the need addressed by the project.

In applying this criterion, the Commissioner considers the extent to which the project—if successful—contributes to the Act's purposes to expand opportunities for law-related education throughout the United States and to improve the quality of law-related education programs. (22 points)

(c) *Innovativeness.* The innovativeness of the project, as described in § 161g.15(b). (13 points)

(d) *Quality of activities.* Quality of the law-related education activities in the project. In applying this criterion, the Commissioner considers how the project addresses the need for sound scholarship, quality control, and balanced curriculum that does not advocate particular legal or political viewpoints. (12 points)

(e) *Applicant's experience.* The applicant's knowledge of and experience in law-related education. (13 points)

(20 U.S.C. 3001, 3002)

Subpart E—What Conditions Must Be Met By a Grantee?

§ 161g.40 Participation by private school children.

(a) A grant to an SEA or an LEA is subject to the requirements in section 302(b) of the Elementary and Secondary Education Act of 1965, as amended, concerning (1) consultation with private school officials in developing the application and (2) the opportunity for participation by private school children. The requirements are implemented in § 100a.680 and §§ 100b.650 through 100b.663 of EDGAR.

(b) In SEA or LEA projects supporting training or awareness activities, the grantee shall provide to teachers and school administrators of private schools in the area served by the project an opportunity to participate in these activities on a basis comparable to that provided for public school teachers and administrators.

(20 U.S.C. 2942(b))

§ 161g.41 Cost sharing requirements.

(a) *General.* Except for technical assistance projects, grants awarded under this part may not exceed—

(1)(i) 90 percent of the project costs in the first year that a law-related education program is assisted under this part;

(ii) 75 percent of the project costs in the second year that a program is assisted under this part;

(2) If another project is awarded to continue funding for the same program—

(i) 60 percent of the project costs in the third year that a program is assisted under this part; and

(ii) 40 percent of the project costs in the fourth year that a program is assisted under this part.

(b) *Limit in duration.* The Commissioner generally does not fund the same program for more than four years under this part. The Commissioner may waive this limit if the applicant documents exceptional circumstances that warrant continued support. In this event, the Commissioner funds less than 40 percent of the project costs.

(c) *Sources of cost sharing.* The grantee may meet the cost sharing requirement (1) from the sources provided in Part 74 (Administration of Grant), subpart G of this title, or (2) with funds received under another Federal program that is administered by a State agency. It may not meet the cost sharing requirement with other grant or contract funds awarded directly by a Federal agency unless expressly permitted to do so by the authorizing statute for those funds.

(d) *Increasing contribution.* The grantee may not meet the cost sharing requirement in the second or any subsequent year of funding by reducing the scope of the project to avoid increasing its share of the costs.

(e) *Technical assistance projects.* Technical assistance projects are not subject to the cost sharing requirements, but an application for a technical assistance project must document how the applicant will ensure that each location to be assisted will develop financial support for the project and become self-sustaining.

(20 U.S.C. 1221e-3, 3001, 3002; S. REP. No. 95-856, 95th Cong. 2nd Session, 39 (1978))

§ 161g.42 Allowable costs.

Allowable costs under a grant are direct and indirect costs incurred by the grantee in carrying out the approved project, subject to—

(a) The applicable cost principles provided or referenced in §§ 100a.530 through 100a.535 of EDGAR; and

(b) The limitations that—

(1) Construction and other capital costs are unallowable; and

(2) Equipment costs may not exceed five percent of the grant amount.

(20 U.S.C. 1221e-3)

§ 161g.43 Project duration.

The Commissioner approves a project for a period of up to two years. Approval of a project for more than a year and the award of continuation grants within the project period are covered in §§ 100a.250 through 100.254 of EDGAR.

(20 U.S.C. 1221e-3)

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
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CSA	HEW/FDA		CSA	HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator. Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of June 14, 1979, the Urban Mass Transportation Administration and Federal Railroad Administration, Department of Transportation, will publish on the Monday/Thursday schedule.**

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

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31018 5-30-79 / Nondiscrimination on the basis of handicap in programs receiving financial assistance

Rules Going Into Effect Saturday, June 30, 1979

INTERIOR DEPARTMENT

Indian Affairs Bureau—

24837 4-27-79 / Colorado River Indian irrigation project

Rules Going Into Effect Sunday, July 1, 1979

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

30074 5-24-79 / Almonds grown in Calif.; administrative rules

18938 3-30-79 / Milk in the Texas and certain other marketing areas

33391 6-11-79 / Potatoes grown in Colo.

33391 6-11-79 / Potato Research and Promotion Plan

Food and Nutrition Service—

33048 6-8-79 / Determining eligibility for free and reduced price meals and milk and schools

27641 5-11-79 / Food stamp program; income eligibility standards and deductions

33046 6-8-79 / Free milk option in the Special Milk Program

1363 1-5-79 / National School Lunch Program; state prototype free and reduced price policy

DEFENSE DEPARTMENT

Office of the Secretary—

3972 1-19-79 / Certificate of release or discharge from active duty (DD Forum 214/5 series)

ENERGY DEPARTMENT

Economic Regulatory Administration—

32196 6-5-79 / Mandatory petroleum allocation regulations; establishment of special set-aside program for middle distillates

FEDERAL DEPOSIT INSURANCE CORPORATION

32353 6-6-79 / Withdrawal penalties and interest rates

FEDERAL HOME LOAN BANK BOARD

33669 6-12-79 / Revision of savings account rate provisions

32197 6-5-79 / Variable rate mortgage provisions

FEDERAL RESERVE SYSTEM

32646 6-7-79 / Interest on deposits; early withdrawal penalty and maximum rates of interest

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—

12169 3-6-79 / Bottled water; quality standard

12173 3-6-79 / Bottled water; testing requirements

28322 5-15-79 / Dry cream; standard of identity

39101 8-2-77 / Italian cheeses; identity standards (*See also* 42 FR 47192, 9-20-77)

3964 1-19-79 / Nonfat dry milk, lowfat dry milk, dry whole milk, and dry cream; standards of identity; effective 7-1-79

Health Care Financing Administration—

31802 6-1-79 / Limiting reimbursement for provider costs and for services by hospital-based physicians

31641 6-1-79 / Reimbursement for provider costs and services by hospital-based physicians; direct apportionment of malpractice costs

Office of the Secretary—

33768 6-12-79 / Provisions for nondiscrimination on the basis of age in programs or activities receiving Federal financial assistance

INTERSTATE COMMERCE COMMISSION

11551 3-1-79 / Reporting requirements for railroad employees

NATIONAL CREDIT UNION ADMINISTRATION

32357 6-6-79 / Organization and operations of Federal credit unions

32202 6-5-79 / Share accounts and share certificate accounts provisions

NATIONAL SCIENCE FOUNDATION
32699 6-7-79 / Conservation of Antarctic animals and plants
PERSONNEL MANAGEMENT OFFICE
19974 4-3-79 / Post employment conflicts of interest; interim regulations
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Materials Transportation Bureau—
30686 5-29-79 / Matter incorporated by reference
National Highway Traffic Safety Administration—
32416 7-27-79 / Federal motor vehicle safety standards; Lens marking and certification requirements

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Part V—HEW/OE:
Indian Education

Part VI—HEW/OE:
School Assistance in Cases of Certain Disasters

Part VII—Federal Mine Safety and Health Review Commission:
Rules of Procedure

Part VIII—Justice/Prisons Bureau:
Control, Custody, Care Treatment, and Instruction of Inmates

Part IX—Interior/BLM:
Outer Continental Shelf Minerals Leasing and Rights-of-Way Granting Programs

Part X—DOD/Engineers:
Environmental Quality Policy and Procedures

Part XI—Interior/SMRE:
Training Programs for Blasters and Members of Blasting Crews

Part XII—HEW/FDA:
Polychlorinated Biphenyls (PCB's); Reduction of Tolerances

Part XIII—Merit Systems Protection Board:
Organization and Procedure

Part XIV—HEW/OE:
Emergency School Aid

Part XV—HEW/OE:
Community Schools and Comprehensive Community Education Act

Part XVI—HEW/OE:
Financial Assistance to Local and State Agencies to Meet Special Educational Needs

Part XVII-HEW/OE:
Bilingual Education

Part XVIII—DOE/ERA:
Motor Allocation Base Period; Comment Period Changes

Federal Register

Friday
June 29, 1979

Part V

Department of Health, Education, and Welfare

Office of Education

Indian Education Act; Proposed Rulemaking

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Parts 186, 186a, 186b, 186c, and 187]

Indian Education Act

AGENCY: Office of Education, HEW.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Commissioner proposes to revise the regulations for programs authorized by the Indian Education Act ("The Act").

The revisions are proposed because of—

1. Amendments to the Act contained in the Education Amendments of 1978; and

2. The need to clarify existing regulations.

The proposed regulations—

1. Implement the amendments to the Act;

2. Set out provisions for several new programs;

3. Sharpen the distinctions among the various competitive programs;

4. Provide for consistency among similar programs;

5. Tighten selection criteria for competitive programs;

6. Clarify the standards for the development, operation, and evaluation of projects; and

7. Standardize definitions.

DATES: Written comments must be received on or before August 28, 1979. In addition to welcoming written comments, the Office of Education will hold nine public meetings on the proposed regulations. The times for these meetings in each location are—9:00 a.m.–12:00 Noon; 2:00 p.m.–5:00 p.m.; 7:00 p.m.–9:00 p.m.

ADDRESSES: Send comments to Dr. John Tippeconnic, Associate Deputy Commissioner, Office of Indian Education, U.S. Office of Education, 400 Maryland Avenue, S.W., Room 2177, Washington, D.C. 20202. Telephone: (202) 245–8020.

The dates and locations of the meetings are listed below:

August 13, 1979—Tonawanda Indian Community House, Bloomingdale Road (Route 267), Akron, New York 14001.

August 13, 1979—Ben L. Smith High School, 2407 South Holden Road, Greensboro, North Carolina 27407.

August 15, 1979—Minneapolis Regional Native American Center, Gymnasium, 1530 East Franklin Street, Minneapolis, Minnesota 55404.

August 15, 1979—Holiday Inn, Tulsa Civic Center, 17 West 7th Street, Tulsa, Oklahoma 74119.

August 17, 1979—United Tribes Educational Technical Center, 3315 South Airport Road, Bismark, North Dakota 58510.

August 17, 1979—Ramada Inn Airport Resort, 3601 East Van Buren, Phoenix, Arizona 85034.

August 20, 1979—Degonawidah—Quetzalcoatl University, Davis, California 95615 (6 miles West of Davis, CA. on State Road 31).

August 20, 1979—Edgewater Inn, Pier 67, Seattle, Washington 98121.

August 22, 1979—Sheffield House at Anchorage, 720 West 5th Avenue, Anchorage, Alaska 99501.

FOR INFORMATION ON PUBLIC MEETINGS CONTACT: Brian Stacey, (202) 245–8060.

SUPPLEMENTARY INFORMATION:

I. Introduction

These proposed regulations contain five parts covering 14 programs that support a wide variety of activities:

Six programs provide educational benefits directly to pre-school, elementary, and secondary school-age Indian children.

Two programs provide training for persons pursuing careers in Indian education.

Two programs provide education benefits below the college level directly to Indian adults.

Three programs provide for research and development, surveys, and evaluation and dissemination activities related to adult education.

One program provides fellowships for Indian students pursuing degrees in any of six specified fields.

One of the primary purposes of the proposed regulations is to clarify distinctions among the various programs. These distinctions are made in the areas of program purpose, eligibility, authorized activities, and selection criteria.

On the other hand, an equally important reason for the revisions is the need to emphasize similarities among programs and the policies that govern them. Therefore, the proposed regulations introduce a measure of consistency that does not currently exist. For example—

1. Definitions of common terms are consolidated in the new part 186.

2. Selection criteria for similar programs (e.g., Planning, Pilot, and Demonstration Projects or Educational Services) are generally identical throughout all parts, except for differences required by the Act; and

3. Regulations governing the payment of stipends are the same for participants in the Educational Personnel Development programs under Part 186b as those for students supported by the Indian Fellowship Program under Part 187.

Specific changes and issues are noted in the discussions of each part. Various items that are applicable to the Indian Education Act programs are to be covered by the Education Division General Administrative Regulations (EDGAR). The EDGAR will replace the General Provisions for Office of Education Programs. An NPRM for the EDGAR was published on May 4, 1979. Comments on the provisions of the EDGAR should be made in response to the EDGAR NPRM rather than to this NPRM.

Among the items the EDGAR will cover are the following:

(1) How to apply for a grant.

(2) How a grant is made.

(3) Conditions and requirements that apply to grantees.

(4) Compliance procedures used by the Commissioner.

II. General provisions and Appendices

Each part begins with general provisions and ends with an appendix.

A. *General Provisions*

A new Part 186 is proposed. This part contains provisions relating to eligibility, administrative requirements, and definitions that are common to all programs under the Act, except the fellowship programs. Particular attention is called to the following provisions:

1. The proposed regulations authorized continuations grants to support multi-year projects under the Part A entitlement programs. Project periods may be for up to three years.

2. For the competitive programs, the proposed regulations continue to authorize support for projects with projects periods of up to three years. Educational Personnel Development projects, however, may be supported for up to four years, that being the time usually necessary for obtaining a bachelor's degree.

3. The applicability of the Indian preference provision of section 7(b) of the Indian Self-Determination and Education Assistance Act is more fully explained. It should be noted that the applicable definition of "Indian" for the purposes of section 7(b) differs from the definition in the Indian Education Act.

4. A section on "Capacity to Carry Out the Project", similar to the one currently in the Part B regulations, covers all competitive grant programs under the Act. The section lists factors—regardless of the quality of the application—that the Commissioner may consider in determining whether to

fund an application submitted under a competitive program.

5. A section on "Salaries and Wages", currently in the Part B regulations, is made applicable to all grantees under the Act.

B. *Appendices*

The use of appendices in these proposed regulations is new. Each part ends with an Appendix that, primarily, describes the procedures, including the making of assurances, for an applicant to follow in applying for a grant. It is important to note that the appendices will be as legally binding upon applicants and grantees as the other sections of the regulations will be.

III. Part 186a (Part A of the Act)

This part contains regulations for programs, authorized by Part A of the Act, that are designed to meet the special educational and culturally related academic needs of Indian children.

Approximately 90% of the funds under this part are allocated for entitlement grants to LEAs and to support qualifying tribal schools. Eligible applicants do not compete with each other for grants. Rather, the amount of each grant is determined on the basis of a formula that takes into account the number of Indian children enrolled in the schools of the LEA or in the tribal school.

The remainder of the funds under this part is allocated to two discretionary programs—Planning, Pilot, and Demonstration Projects and Indian Controlled Schools. Applicants for these programs compete on the basis of weighted selection criteria spelled out under each program.

A. *Local Educational Agencies—Entitlement Grants (sections 186a.11–186a.61)*

Grants under this program are made on an entitlement basis to LEAs. The following changes in this program were made by the Education Amendments of 1978 and are reflected in the proposed regulations:

1. The scope of the program has been broadened to provide assistance to meet not only the special educational needs of Indian students, but also their culturally related academic needs.

2. Persons acting "in loco parentis" (meaning in place of the parent) are expressly included in the Act among those eligible to serve on parent committees.

3. Parent committees are to participate in formulating policies and procedures for hiring project personnel.

4. Parent committees are required to establish by-laws. A number of revisions to the regulations are proposed to clarify existing provisions. For example, the responsibilities of the LEA and the parent committee are clearly spelled out.

B. *Tribal Schools—Entitlement Grants (sections 186a.81–186a.83)*

The Education Amendments of 1978 added certain tribal schools as qualifying for support under the entitlement program. Most provisions of the LEA—Entitlement Grants Program are applicable to this program except those relating to parent committees.

As of this date, the only qualifying schools are those that are operated under contract with the Bureau of Indian Affairs through the provisions of Pub. L. 93–638, the Indian Self-Determination and Education Assistance Act. Other schools will qualify if they meet standards yet to be established by the Bureau of Indian Affairs under section 1121 of the Education Amendments of 1978.

C. *Indian-Controlled Schools (sections 186a.101–186a.142)*

In the current regulations, this program is referred to as the Non-Local Educational Agencies (or Non-LEA) program. The revised regulations would change the title to the Indian-Controlled Schools program, a title that more accurately describes the eligible applicants and the purpose of the program.

The regulations for this program have been substantially re-written to clarify existing provisions. In addition to the proposed name change, the major revision is that the program has been divided into two parts—one for the establishment of schools and the other for enrichment projects.

The Commissioner believes it unwise to make grants to help create Indian-controlled schools if the continued existence of those schools is dependent on future funding under a competitive program such as this one. Under the first part of this program, therefore, grants will be made on a competitive basis to plan for, develop, and operate the school until base support can be obtained from a contract under Pub. L. 93–638 or through other means, but in no event for more than three years.

The second part of the program would support grants, also on a competitive basis, for projects designed to supplement and enrich the regular school program in Indian-controlled schools.

D. *Demonstration Projects (sections 186a.201–186a.219)*

Although LEAs are eligible applicants for the demonstration program under Part B of the Act, the Act's requirement of priority to applications from Indian tribes, organizations, and institutions hinders LEAs from competing successfully for grants. The Education Amendments of 1978 added the authority for LEAs to conduct the same kinds of demonstration projects under Part A of the Act as are carried out by Indian tribes, Indian organizations, and Indian institutions under Part B of the Act.

The regulations for this program have been written to be consistent with the programs for Planning, Pilot, and Demonstration Projects under Part B and C of the Act. In particular, projects must be designed to develop, test, and demonstrate the effectiveness of an educational method, approach, or tedchnique. In addition, the proposed regulations include a provision authorizing the Commissioner to select annual priority areas.

It is hoped that a major result of this program will be the development of educational approaches based on the culture and heritage of the Indian children served by the participating LEAs.

This program has a provision not contained in the regulations for demonstration programs under Parts B and C of the Act. Under the Part A program, the Commissioner may reserve up to 25 percent of the available funds for demonstration projects that examine the special educational and culturally related academic needs that arise in school districts with high concentrations of Indian students. Comments are particularly invited on the definition of "high concentration" in § 186a.203 of the proposed regulations.

IV. Part 186b (Part B of the Act)

This part contains regulations for programs, authorized by Part B of the Act, that improve educational opportunities for Indian children.

All programs under this part are discretionary. That means that applicants compete on the basis of weighted criteria spelled out under each program. Although State educational agencies (SEAs) and LEAs are among the eligible applicants, the Act requires the Commissioner to give priority to applications from Indian tribes, Indian organizations, and Indian institutions. Under current regulations, the Commissioner automatically awards substantial priority to those applications without regard to their educational merit. The Commissioner proposes to continue this practice, under which it is unlikely that an SEA or LEA will compete successfully for a grant.

Part 186b contains regulations for two programs that directly benefit pre-

school, elementary, and secondary school-age students and two programs for training educational personnel.

A. *Educational Services (sections 186b.11–186b.23)*

The most significant change in this program is the increased emphasis placed on need in the evaluation of applications. Under competitive programs there is always a risk that the neediest applicants will be eliminated from the competitive process simply because they lack the resources to hire experienced proposal writers. Because of this concern—which has been expressed by members of the Indian community and by the National Advisory Council on Indian Education—the selection criteria for projects funded under this program have been revised so that substantially increased weight is placed on such factors as the lack of comparable services, and the educational need of the children who will be served by the project.

B. *Planning, Pilot, and Demonstration Projects (sections 186b.31–186b.42)*

The revised regulations for this program are generally the same as those for the Demonstration Projects program under Part A. Applicants would be expected to include evidence that their projects are likely to serve as models for other communities and would have to include more elaborate plans for evaluation than applicants under the services program. In addition, the proposed regulations include a provision authorizing the Commissioner to select annual priority areas. It is hoped that the revisions will promote the development of new educational approaches based on the culture and heritage of the children involved.

C. *Educational Personnel Development—I (sections 186b.51–186b.64)*

This program was previously restricted to the training of elementary and secondary school educators. The Education Amendments of 1978 expanded the program so that other educators (for example, educators of adults) may also be trained.

The proposed selection criteria for this program reflect a policy decision to place substantial weight on the degree of commitment to Indian education demonstrated by the applicant. This is the only competitive program under this part for which most of the eligible applicants are non-Indian organizations. (Eligible applicants are institutions of higher education or SEAs or LEAs applying jointly with institutions of higher education.)

D. *Educational Personnel Development—II (sections 186b.71–186b.77)*

This program supports the same kinds of training as the Educational Personnel Development—I program discussed in the preceding paragraph. The difference is that eligible applicants include Indian tribes and Indian organizations, in addition to institutions of higher education. The chances of non-Indian institutions of higher education being funded under this program are remote, since the Commissioner gives substantial priority to applications from Indian tribes, Indian organizations, and Indian institutions.

F. *Regional Information Centers*

The Education Amendments of 1978 added authority for Indian Education regional information centers. This authority replaces a program for evaluation, dissemination, and technical assistance that was limited in scope to projects dealing with Indian children. The new centers will provide technical assistance to projects funded under all Parts of the Act. They will conduct research on the educational needs of Indian communities, perform evaluations of and disseminate information on Indian education programs. Since the Commissioner intends to specify the scope of work for each of the centers, the Commissioner will make contracts, rather than grants, for the establishment and operation of the centers, and does not include provisions for the centers in these regulations. A Request for Proposals, containing contract specifications, will be published in the *Commerce Business Daily* or similar informational source.

V. Part 186c (Part C of the Act)

This part contains regulations for five programs, authorized by Part C of the Act, that improve educational opportunities for Indian adults.

All programs under this part are discretionary. That means that applicants compete on the basis of weighted criteria spelled out under each program. Although SEAs and LEAs are among the eligible applicants for some of the programs, it is unlikely, for the reasons described in the discussion of Part 186b, that any of those agencies will compete successfully for a grant.

The major changes in this part are the creation of discrete programs to more closely coincide with the structure of the Act, and the implementation of a service program added by the Education Amendments of 1978. Part 186c, therefore, contains regulations for two programs directly benefitting Indian adults and three programs that provide for research and development, surveys, and evaluation and dissemination activities related to Indian adult education.

A. *Educational Services (sections 186c.11–186c.22)*

This program was added by the Education Amendments of 1978. The regulatory provisions are substantially the same as those for the Educational Services program in Part 186b, except that the target group is Indian adults instead of Indian children.

B. *Planning, Pilot, and Demonstration Projects (sections 186c.31–186c.42)*

The provisions for this program are substantially the same as those for the demonstration programs in parts 186a and 186b, except that the target group is Indian adults instead of Indian children. Emphasis is placed on the development of educational approaches based on the culture and heritage of the adults involved. In addition, the proposed regulations include a provision authorizing the Commissioner to select annual priority areas.

C. *Research and Development Projects (sections 186c.51–186c.63)*

Although grants for research and development projects in adult education have been authorized by the Act since its adoption in 1972, the existing regulations do not make clear distinctions between these kinds of projects and projects that provide direct educational benefits to Indian adults. The proposed regulations set out a separate program for research and development projects. As a result, applications under this program will compete against more appropriate selection criteria and only with other applications for research and development projects.

D. *Surveys (sections 186c.71–186c.82)*

The proposed regulations set out a separate program for survey projects. As a result, applications under this program will compete against selection criteria appropriate for survey projects and only with other applications for survey projects.

E. *Dissemination and Evaluation (sections 186c.91–186c.102)*

The proposed regulations set out a separate program for dissemination and evaluation grants. As a result, applications under this program will compete against criteria that are appropriate for dissemination and evaluation projects and only with other applications for these types of projects.

VI. Part 187—Indian Fellowship Program (Part B, Section 423 of the Act)

A. *Changes mandated by law.* The Education Amendments of 1978 made

several changes to this program, primarily to clarify eligibility provisions that were confusing in the Act as passed in 1972. The proposed regulations, which reflect these changes, now clearly establish the fields of study in which fellowships may be awarded only to graduate students and those in which undergraduate students are also eligible.

Another amendment added education as an eligible field of study and redesignated the fields of forestry and business as natural resources and business administration, respectively. The fields of medicine, law, and engineering are still eligible fields of study.

B. *Policy changes.* The Act also makes eligible those students who are seeking degrees in fields related to the six specified fields. Section 187.4 of the proposed regulations lists the courses of study that the Commissioner proposes to regard as related fields. The list includes fields related to natural resources, engineering, business administration, and medicine. No fields have been listed as being related to law or education.

The selection criteria have been revised somewhat to give increased consideration to the applicant's financial need. It should be noted that this revision would result in applicants having to submit more information than they now do about their financial status.

In addition, new provisions have been added that would require applicants to submit more information than they now do to prove that they are Indian as defined in the Indian Education Act.

Other revisions have been proposed to clarify the financial provisions of a fellowship and to clarify the responsibilities of fellows.

Accordingly, the Commissioner proposes to amend 45 CFR Chapter I, as set forth below:

Dated: May 14, 1979.

Ernest L. Boyer,

Commissioner of Education.

Approved: June 22, 1979.

Hale Champion,

Acting Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance Numbers: 13.534—Indian Education—Grants to Local Educational Agencies; 13.551—Indian Education—Grants to Nonlocal Educational Agencies; 13.535—Indian Education—Special Programs and Projects to Improve Educational Opportunities for Indian Students; 13.536—Indian Education—Special Programs Relating to Indian Adult Education; 13.569—Indian Education—Indian Fellowship Program)

Regulations	Statute
Part 186: General provisions	Indian Education Act, parts A, B, and C, except the Indian fellowship program.
Part 186a	Indian Education Act, part A; Public Law 81-874, title III.
Entitlement—LEA's	Section 303(a).
Entitlement—Tribal schools	Public Law 95-561, section 1146.
Indian controlled schools—I	Section 303(b).
Indian controlled schools—II	Section 303(b).
Demonstration projects	Section 303(c).
Part 186b	Indian Education Act, part B; ESEA section 1005 (formerly 810) and Indian Education Act, section 422.
Educational services	ESEA, section 1005(c)(1), (2).
Planning, pilot, and demonstration projects	ESEA, section 1005(b).
Educational personnel development—I	ESEA, section 1005(d).
Educational personnel development—II	Indian Education Act, section 422.
Part 186c	Indian Education Act, part C; Adult Education Act, section 316 (formerly 314).
Education services	Adult Education Act, section 316(b).
Planning, pilot, and demonstration projects	Adult Education Act, section 316(a)(1), (2).
Research and development	Adult Education Act, section 316(a)(3).
Surveys	Adult Education Act, section 316(a)(4).
Dissemination and evaluation	Adult Education Act, section 316(a)(5).
Part 187: Indian fellowship program	Indian Education Act, part B, section 423.

PART 186—INDIAN EDUCATION ACT

General Provisions

Sec.

186.1 Applicability.
186.2 General Administrative Regulations.
186.3 Definitions.
186.4 Applicability of section 7(b) of the Indian Self-Determination and Education Assistance Act.
186.5 Capacity to carry out the project.
186.6 Continuation awards.
Appendix

Authority: Title IV, Pub. L. 92-318, 86 Stat. 334, as amended (20 U.S.C. 241aa-241ff, 887c-1, 1005, 1211a), unless otherwise noted.

General Provisions

§ 186.1 Applicability.

The regulations in this part apply to all programs conducted under the Indian Education Act (except the Indian Fellowship Program), for which regulations are in Parts 186a, 186b, and 186c of this chapter.

(20 U.S.C. 241aa-241ff, 887c-1, 1005, 1211a)

§ 186.2 General administrative regulations.

(a) The programs under Parts 186a, 186b, and 186c are subject to the Education Division General Administrative Regulations (EDGAR) in Part 100a (Direct Grant Programs) and Part 100c (Definitions), except for—

(1) Sections 100a.108, 100a.110(e), and 100a.114 (insofar as it incorporates § 100a.590(c)), relating to the contents of an application;

(2) Section 100a.125, relating to applications under separate programs;

(3) Sections 100a.202 through 100a.206, relating to selection criteria;

(4) Section 100a.218(c), relating to the selection of projects for funding;

(5) Section 100a.260, relating to allotments and reallotments;

(6) Section 100a.590(c), relating to a grantee's project evaluation; and

(7) Section 100a.680, relating to the participation of children enrolled in private schools.

(b) Sections 100a.230 through 100a.233, relating to procedures to make a grant, do not apply to the Local Educational Agencies—Entitlement Grants program or to the Tribal Schools—Entitlement Grants programs under part 186a.

(c) *How to use regulations.* The "Introduction to Regulations of the Education Division" at the beginning of the EDGAR includes general information to assist applicants in using regulations that apply to Education Division Programs.

(d) *How to apply for funds.* (1) General instructions for applying for assistance under an Education Division program are contained in Part 100a of the EDGAR.

(2) Additional instructions for applying for assistance are contained in the Appendices to Parts 186a, 186b, and 186c.

(20 U.S.C. 241aa-241ff, 887c-1, 1005, 1211a)

§ 186.3 Definitions.

(a) The following terms, used in this part and in Parts 186b, and 186c, are defined in Part 100c:

Applicant
Application
Award
Budget period
Facilities
Fiscal year
Grant period
Minor remodeling
Project
Project period
Public

(b) The following definitions apply to the terms used in this part and in Parts 186a, 186b, and 186c:

"Ancillary educational personnel" means guidance counselors, librarians, and others who assist in meeting the educational needs of Indian students. The term does not include persons in such positions as clerks, cafeteria personnel, or other positions not directly involved in the educational process.

"Demonstration project" or "planning, pilot, and demonstration project" means a project that—

(1) Develops, tests, and demonstrates the effectiveness of an educational method, approach, or technique; and

(2) If successful, will be suitable for replication or adoption by other projects.

"Full-time student" means an individual pursuing a course of study that constitutes a full-time work load in accordance with an institution's established policies.

"Handicapped" person means a mentally retarded, hard-of-hearing, deaf, speech-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health-impaired person or person with specific learing disabilities, who, because of his or her handicap, requires special educational and related services.

"Indian" means any individual who is—

(1) A member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside, or a descendant, in the first or second degree, of any such member;

(2) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(3) An Eskimo or Aleut or other Alaskan Native.

(Indian Education Act, sec. 453(a); 20 U.S.C. 1221h(a))

"Indian institution" means a pre-school, elementary, secondary, or post-secondary school established for the promotion of education of Indians that—

(1) Is controlled by a governing board, the majority of which is Indian; and

(2) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation.

"Indian organization" means an organization that—

(1) Is legally established by tribal charter or in accordance with State law, with appropriate constitution, by-laws, and articles of incorporation;

(2) Has the primary purposes of promoting the educational, economic, or social self-sufficiency of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with sanction or by charter of the governing body of that reservation; and

(5) Is neither an organization or subdivison of, nor under the direct control of, any institution of higher education.

"Indian tribe" means any Federally or State recognized Indian tribe, band, nation, rancheria, pueblo, Alaska Native village, or regional or village corporation as established by the Alaska Native Claims Settlement Act (85 Stat. 688), which exercises the power of self-government.

"Service area" means the geographic area served by a project.

"Stipend" means the allowance paid to a participant in a personnel development project without regard to the participant's dependents, if any.

"Teacher aide" means a person who assists a teacher in the performance of the teacher's professional teaching or administrative duties. The term does not include persons in such positions as clerks, cafeteria personnel, or other positions not directly involved in the educational process.

(20 U.S.C. 241aa–241ff, 887c–1, 1005, 1211a)

§ 186.4 Applicability of section 7(b) of the Indian Self-Determination and Education Assistance Act.

(a) Assistance under this part is subject to section 7(b) of Pub. L. 93–638, the Indian Self-Determination and Education Assistance Act. That section requires that, to the greatest extent feasible, a grantee give preferences and opportunities for training and employment in connection with the administration of the grant to Indians.

(Pub. L. 93–638, sec. 7(b); 20 U.S.C. 450e(b))

(b) For the purposes of this section, an "Indian" is a member of an Indian tribe. An "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Pub. L. 93–638, sec. 4(a), (b); 20 U.S.C. 450b(a), (b))

§ 186.5 Capacity to carry out the project.

In addition to the criteria for rating applications under the discretionary programs in Parts 186a, 186b, and 186c, the Commissioner, in making awards under those programs, considers the applicant's capacity to carry out the project successfully, including such factors as—

(a) The programmatic and financial managment capacity of the applicant;

(b) Past performance by the applicant in carrying out any prior grant under the Indian Education Act or under similar programs, with respect to the grant conditions, programmatic and financial management, attainment of objectives and the governing board's assumption of responsibility;

(c) The adequacy of facilities and other resources, including consideration of any dispute over the availability of those facilities and resources to the applicant; and

(d) Local community factors that may prevent the successful operation of the project.

(20 U.S.C. 241aa–241ff, 887c–1, 1005, 1211a)

§ 186.6 Continuation awards.

(a) Projects funded under Parts 186a, 186b, and 186c may be funded for up to three years, except that projects funded under the Educational Personnel Development programs described in Part 186b may be funded for up to four years.

(b) Additional regulations governing continuation awards are in the EDGAR (45 CFR 100a.251, 100a.253).

(20 U.S.C. 241aa–241ff, 887c–1, 1005, 1211a)

Appendix

1. *Salaries and wages.*

A grantee shall pay salaries and wages to individuals hired for a project assisted under Parts 186a, 186b, or 186c that are at least comparable to the salaries and wages paid in the local area to those with similar jobs.

(20 U.S.C. 241aa–241ff, 887c–1, 1005, 1211a)

2. *Documents and administrative procedures.*

(a) A grantee shall have on file, and submit on requests—

(1) Articles of incorporation, if incorporated;

(2) A constitution, charter or similar document, if not incorporated;

(3) By-laws;

(4) Personnel policies and procedures;

(5) Travel policies;

(6) Organizational charts and administrative manual; and

(7) Job descriptions.

(b) An LEA that is a grantee under Part 186a shall have on file, and submit

on request, the names and addresses of the numbers of the LEA's parent committee, and the by-laws adopted by the parent committee.

(20 U.S.C. 241aa–241ff, 887c–1, 1005, 1211a)

PART 186a—INDIAN ELEMENTARY AND SECONDARY SCHOOL ASSISTANCE ACT

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186a.136 Selection criterion: Project design. (0 to 15 points)
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186a.138 Selection criterion: Budget and cost effectiveness. (0 to 5 points)
186a.139 Selection criterion: Adequacy of resources. (0 to 10 points)
186a.140 Selection criterion: Staff. (0 to 10 points)
186a.141 Selection criterion: Evaluation plan. (0 to 15 points)
186a.142 Selection criterion: Commitment. (0 to 5 points)

Demonstration Projects

General

186a.201 Demonstration Projects.
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186a.211 Application evaluation.
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186a.214 Selection criterion: Parental and community involvement. (0 to 10 points)
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186a.216 Selection criterion: Adequacy of resources. (0 to 5 points)
186a.217 Selection criterion: Staff. (0 to 15 points)
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186a.220 Annual priority areas.

Appendix

Authority: Title IV, Part A, of Pub. L. 92–318, 86 Stat. 334, as amended (20 U.S.C. 241aa–241ff), unless otherwise noted.

General

§ 186a.1 Indian Elementary and Secondary School Assistance Act.

Programs under this part provide assistance for projects to meet the special educational and culturally related academic needs of Indian children.

(Pub. L. 81–874, secs. 302–307; 20 U.S.C. 241aa–241ff)

§ 186a.2 Eligibility.

Eligibility for each program under this part is described in the section on eligibility under the appropriate program heading.

(Pub. L. 81–874, secs. 302–307; 20 U.S.C. 241aa–241ff)

§ 186a.3 Definitions.

(a) The following terms used in this part are defined in section 403 of Pub. L. 81–874.

Child
Commissioner
Elementary school
Equipment
Free public education
Secondary school
State
State educational agency.

(Pub. L. 81–874, sec. 403; 20 U.S.C. 244)

(b) The following definitions apply to the terms in this part:

(1) "The Act" means the Indian Elementary and Secondary School Assistance Act, Title III of Pub. L. 81–874, as added by Part A of Title IV of Pub. L. 92–318 (the Indian Education Act), and as amended.

(Pub. L. 81–874, secs. 302–307; 20 U.S.C. 241aa–241ff)

(2)(i) The term "parent" includes a legal guardian or other individual standing *in loco parentis* (in the place of the parent). Examples of individuals who may stand *in loco parentis* with respect to a child are—

(A) A foster parent of the child; and

(B) A grandparent with whom the child resides.

(ii) In determining whether an individual stands *in loco parentis* with respect to a child, an LEA may consider such factors as—

(A) The current relationship of the child to the natural parent(s);

(B) The length and stability of the relationship between the individual and the child;

(C) Tribal custom;

(D) Applicable State law, whether legislative or judicial; and

(E) Dependency for purposes of State or Federal income tax law.

(Pub. L. 81-874, secs. 305(b)(2)(B), 403(3); 20 U.S.C. 241dd(b)(2)(B), 244(3))

Local Educational Agencies—Entitlement Grants

General

§ 186a.11 Local educational agencies—Entitlement grants.

This program provides financial assistance to local educational agencies to develop and carry out elementary and secondard school programs specially designed to meet the special educational and culturally related academic needs of Indian students.

(Pub. L. 81-874, sec. 302(a); 20 U.S.C. 241aa (a))

§ 186.12 Eligibility.

(a) A local educational agency (LEA) is entitled to receive a grant under the Act if the number of Indian children enrolled in that agency's schools is either—

(1) 10 or more; or

(2) At least half of the total enrollment for that agency.

(b) However, the enrollment requirements of subsection (a) do not apply to—

(1) An LEA in Alaska, California, or Oklahoma that serves Indian children; or

(2) An LEA on, or in proximity to, an Indian reservation.

(Pub. L. 81-874, sec. 303(a); 20 U.S.C. 241bb (a))

§ 186a.13 The parent committee—Selection.

(a) Before developing a project, an applicant shall arrange and publicize the procedures for the selection of a parent committee or the selection of members to open positions on the committee, as appropriate.

(b) Those eligible to select and serve on the committee are—

(1) Parents of Indian children enrolled in the applicant's schools;

(2) Teachers in the applicant's schools; and

(3) Indian secondary school students, if any, enrolled in the applicant's schools.

(c) At least half of the committee members shall be parents. In addition, the committee shall have at least one teacher, and, if any Indian secondary school students are enrolled in the applicant's schools, at least one of those students.

(d) If the Commissioner, in deference to tribal custom, determines that a method of selection other than election, such as sanction by a tribal governor, is appropriate in a particular situation, the Commissioner may, upon written request of the applicant, allow the use of that other method. In all other cases, the committee is elected by those listed in paragraph (b) of this section.

(e) A member of the committee is eligible to serve in any capacity as an officer of the committee.

(f) Membership terms may be multi-year and may be staggered. For example, membership terms may be for three years, with one third of the committee selected each year.

(g) An individual may continue to be a member of the committee only so long as that individual meets the qualifications set out in subsection (b).

(Pub. L. 81-874, sec. 305(b)(2)(B); 20 U.S.C. 241dd(b)(2)(B))

Use of Funds

§ 186a.21 Use of funds—General.

(a) A grantee may use grant funds—

(1) To plan for and take other steps leading to the development of projects specifically designed to meet the special educational or culturally related academic needs, or both, of Indian children, including pilot projects designed to test the effectiveness of plans so developed; and

(2) For the establishment, maintenance, and operation of projects specifically designed to meet the special educational or culturally related academic needs, or both, of Indian children.

(b) A grantee shall use grant funds to supplement, and, to the extent practical, increase the level of State, local, or other Federal funds that would, in the absence of grant funds, be made available by the recipient for the education of Indian children. A grantee may not use grant funds to supplant those State, local, or other Federal funds.

(Pub. L. 81-874, secs. 304, 305(a)(5); 20 U.S.C. 241cc, 241dd(a)(5))

§ 186a.22 Use of funds—Authorized activities.

A grantee may use grant funds for services and activities designed to meet the special educational or culturally related academic needs, or both, of Indian children. Projects may focus on basic skill instruction or other academic areas or on Indian culture as related to academic skills. All projects are encouraged to use culturally-based materials and techniques in program acitivities. Examples of permissible activities include:

(a) Comparative cultural studies projects with emphasis on the contributions of the Indian.

(b) Remedial instruction in basic skill subject areas.

(c) Instruction in tribal heritage and traditions in the context of meeting academic needs and in Indian history and political organization, including current affairs and tribal relationships with local, State and Federal governments.

(d) Accelerated instruction and other activities that provide additional educational opportunities.

(e) Home-school liaison services.

(f) Creative arts such as traditional Indian art, crafts, music, and dance.

(g) Native language arts, including bilingual projects and the teaching and preservation of Indian languages.

(h) Educationally related items that parents cannot afford, such as academic expenses, food, clothing, medical and dental care, and extracurricular activity expenses: *Provided,* That the parent committee and the LEA establish eligibility criteria based on financial need.

(Pub. L. 81-874, sec. 304; 20 U.S.C. 241cc)

Developing a Project

§ 186a.31 Needs assessment.

(a) As the first step in developing a project, an applicant shall conduct a needs assessment to determine the special educational and culturally related academic needs of the Indian children enrolled in its schools.

(b) At a minimum, the applicant shall—

(1) Determine those needs and the number of children having them on the basis of dropout rates, academic achievement levels, standardized test scores, or other appropriate measures;

(2) Rank those needs on a priority basis;

(3) Examine other services that it offers to meet those needs and determine how many Indian children receive those services; and

(4) Determine why those other services are insufficient in either quantity or quality, or both, to meet those needs. This shall include an examination of whether those services are cultrually relevant to Indian children.

(Pub. L. 81-874, sec. 305(b)(2)(A); 20 U.S.C. 241dd(b)(2)(A))

§ 186a.32 Project design.

(a) After a needs assessment is completed, an applicant shall design a project to meet the assessed needs.

(b) In designing the project, the applicant shall seek to include activities, services, and materials that support and build upon the values, heritage, and traditions of the Indian community.

(c) The project design shall include—

(1) Objectives that are—

(i) Sharply defined;

(ii) Stated in measurable terms; and

(iii) Capable of being achieved within the project period;

(2) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(3) An effective plan for administration of the project;

(4) A plan for regular consultation with and involvement of the parent committee and the Indian community in the operation of the project; and

(5) A plan for coordinating the project with other services and activities.

(d) The applicant shall also develop, as part of the project design, an evaluation plan that provides for—

(1) Periodic monitoring of the project's progress;

(2) An objective, quantifiable method to determine if the project meets each of its objectives;

(3) An evaluation of the administration of the project;

(4) The involvement of the parent committee in monitoring and evaluation activities; and

(5) Consultation with parents of Indian children served by the project and with other members of the Indian community.

(e) The evaluation plan shall include provisions for an independent evaluator to—

(1) Assist in monitoring and evaluation activities; and

(2) conduct a final evaluation of the project.

(Pub. L. 81–874, sec. 305(a)(4), (b)(2); 20 U.S.C. 241dd(a)(4), (b)(2))

§ 186a.33 Public hearing.

(a) The applicant shall hold a hearing open to the general public, at which it provides an opportunity for full public discussion of the proposed project.

(b) At the hearing, a representative of the applicant shall—

(1) Describe the various alternatives available under the Act and this program;

(2) Describe the proposed project;

(3) Seek comments and recommendations from those at the hearing; and

(4) Provide a reasonable time for discussion of the proposed project and alternatives to it.

(Pub. L. 81–874, sec. 305(b)(2)(B)(i); 20 U.S.C. 241dd(b)(2)(B)(i))

Grant Awards

§ 186a.41 Approval of applications by the Commissioner.

The Commissioner approves an application for assistance only if the application meets all the requirements of the Act and of this part and if the project for which application is made will substantially increase the educational opportunities of Indian children served by the applicant.

(Pub. L. 81–874, sec. 305(b); 20 U.S.C. 241dd(b))

§ 186a.42 Amount of grant.

The amount of the grant to which an LEA is entitled for any fiscal year is determined on the basis of the formula in section 303(a) of the Act.

(Pub. L. 81–874, sec. 303(a); 20 U.S.C. 241bb(a))

§ 186a.43 Limitation with regard to combined fiscal effort.

(a) No payments under the Act to any LEA for any fiscal year may be made by the Commissioner unless the appropriate SEA finds that the combined fiscal effort of that LEA and the State with respect to the provision of free public education by that LEA for the preceding fiscal year was not less than the combined fiscal effort for that purpose for the second preceding fiscal year.

(b) For the purpose of making the finding described in paragraph (a) of this section, an SEA may compute combined fiscal effort on the basis of either aggregate expenditures or per pupil expenditure. "Aggregate expenditures" means expenditures by the LEA and the State for free public education provided by the LEA, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, and debt service, or any expenditures from funds granted under any Federal program of assistance. "Per pupil expenditure" means aggregate expenditures divided by the number of pupils in average daily attendance at the LEA's schools, as determined in accordance with State law, during the fiscal year for which the computation is made.

(Pub. L. 81–874, sec. 306(b)(2); 20 U.S.C. 241ee(b)(2))

Project Operation

§ 186a.51 Responsibilities of the local educational agency.

It is the responsibility of the LEA to—

(a) Ensure that a parent committee is selected in accordance with § 186a.13;

(b) Consult with, and involve the parent committee in, all phases of the project;

(c) Perform a needs assessment that meets the requirements of § 186.31;

(d) Design a project that meets the requirements of § 186a.32;

(e) Conduct a public hearing in accordance with § 186a.33;

(f) Secure the parent committee's written approval of the project application, applications for continuation awards, and amendments to applications before they are submitted to the Commissioner;

(g) Provide the parent committee with copies of Part 186, this Part 186a, other applicable regulations, the grant award document, and correspondence to or from the Office of Education relating to the project;

(h) Prepare the parent committee to carry out its responsibilities, by, for example, holding workshops on Part 186, this Part 186a, and other applicable regulations;

(i) Hire the project staff after considering any recommendations of the parent committee;

(j) Utilize the best available talents and resources, including persons from the Indian community, in carrying out the project;

(k) Monitor and evaluate the project in accordance with an evaluation plan that meets the requirements of § 186a.31(d);

(l) Make available to the parent committee and the Indian community records relating to the project, except those records that are protected by law from disclosure; and

(m) Ensure that an individual student eligibility form is on file for each student included in the count of Indian students on which the amount of an entitlement is based.

(Pub. L. 81–874, sec. 303–305; 20 U.S.C. 241bb–241dd)

§ 186a.52 Responsibilities of the parent committee.

It is the responsibility of the parent committee to—

(a) Adopt by-laws. These by-laws shall include, at a minimum, provisions on the selection and duties of officers, filling of vacated terms on the committee, the conduct of business meetings, and amending the by-laws;

(b) Participate in the assessment of needs, and the design, operation, and evaluation of the project;

(c) Review and approve in writing the project application, applications for continuation awards, and amendments to applications before they are submitted to the Commissioner;

(d) Review the qualifications of, and make recommendations concerning, applicants for project staff positions; and

(e) Make available to the community copies of its records, such as by-laws, minutes of meetings, and the roster of committee members.

(Pub. L. 81–874, sec. 305(b)(2)(B); 20 U.S.C. 241dd(b)(2)(B))

§ 186a.53 Project staff.

(a) The applicant may not hire for a position on the project staff any member of the parent committee or any member of the immediate family of a parent committee member.

(b) The Commissioner may waive the prohibition in paragraph (a) of this section if—

(1) The applicant is unable to hire another person with adequate qualifications; or

(2) The waiver is necessary to further the purpose of the project.

(Pub. L. 81–874, sec. 305(b)(2); 20 U.S.C. 241dd(b)(2))

Continuation Awards

§ 186a.61 Applications for continuation awards.

(a) *Public hearing.* Before submitting an application for a continuation award, a grantee shall hold a hearing open to the general public, at which it provides an opportunity for full public discussion of all aspects of the project to date and for the remainder of the project period including discussion of such topics as—

(1) The adequacy of other projects and services provided by the applicant to meet the special educational and culturally related academic needs of Indian children; and

(2) How the project has been and will be coordinated with other projects and services to meet the special educational and culturally related academic needs of those children.

(b) *Parent committee approval.* Before a grantee may submit an application for a continuation award, the application must have the written approval of the parent committee.

(Pub. L. 81–874, sec. 305(b)(2)(B); 20 U.S.C. 241dd(b)(2)(B))

Tribal schools—Entitlement grants

§ 186a.81 Tribal Schools—Entitlement Grants.

This program provides financial assistance to develop and carry out elementary and secondary school programs designed to meet the special educational and culturally related academic needs of Indian children.

(Pub. L. 95–561, sec. 1146; 20 U.S.C. 241bb–1)

§ 186a.82 Eligibility.

An Indian tribe or an organization that is controlled or sanctioned by an Indian tribal government and that operates a school for the children of that tribe is eligible to receive a grant on behalf of that school if that school either—

(a) Provides its students an educational program that meets the standards established by the Bureau of Indian Affairs under section 1121 of the Education Amendments of 1978; or

(b) Is operated by that tribe or organization under a contract with the Bureau of Indian Affairs in accordance with the Indian Self-Determination and Education Assistance Act, Pub. L. 93–638.

(Pub. L. 95–561, sec. 1146; 20 U.S.C. 241bb–1)

§ 186a.83 Applicable regulations under the local educational agencies—Entitlement grants program.

Applicants and grantees under this program are subject to the provisions of the following sections of this part, except to the extent that those sections refer to a parent committee:

(a) 186a.21 and 186a.22, relating to the use of funds.

(b) 186a.31 through 186a.33, relating to the development of a project.

(c) 186a.41 and 186a.42, relating to the awards of grants.

(d) 186a.61, relating to continuation awards.

(Pub. L. 95–561, sec. 1146; 20 U.S.C. 241bb–1)

Indian-Controlled Schools

Establishment; General

§ 186a.101 Purpose.

This program provides financial assitance to plan for and establish Indian-controlled schools.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.102 Eligibility.

(a) An Indian tribe or Indian organization, or a local educational agency that will have been a local educational agency for three years or less as of the beginning of the proposed project period, is eligible if—

(1) It plans to establish and operate, or is operating, a school for Indian children that is located on or geographically near one or more reservations; and

(2) The majority of the students who will be or are enrolled at that school—

(i) Live on that reservation or those reservations; or

(ii) Maintain regular economic, cultural, and family ties with that reservation or those reservations.

(b) An applicant that is an LEA is subject to the provisions of those sections of this part relating to the Local Educational Agencies—Entitlement Grants program, except for §§ 186a.21 and 186a.22, relating to the use of funds, and § 186.42, relating to the amount of a grant.

(Pub. L. 81–874, secs. 303(b), 305(b); 20 U.S.C. 241bb(b), 241dd(b))

§ 186a.103 Authorized activities.

Examples of authorized activities are those related to—

(a) Establishing a local educational agency;

(b) Assuming control over and operating a school operated by the Federal Government, the State, a local educational agency, or a private organization;

(c) Establishing a school; and

(d) Seeking financial assistance for the basic operation of a school.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.104 Limitation on assistance.

The Commissioner provides assistance under this program to support the establishment or operation of a particular school for not more than three years.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

Selection Factors

§ 186a.111 Application evaluation.

The Commissioner evaluates an application on the basis of the criteria in §§ 186a.112 through 186a.121. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available is 100.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.112 Selection criterion: Need for the school. (0 to 15 points)

(a) The Commissioner reviews each application to determine the need for the

school that the applicant proposes to operate.

(b) In making this determination, the Commissioner considers—

(1) The educational needs of the Indian children to be served by the school, as indicated by academic achievement levels, dropout rates, standardized test scores, or other appropriate measurements;

(2) The extent to which the schools that those children would stand (if an Indian-controlled school were not available) are inadequate to meet those needs;

(3) The extent to which the school for which assistance is sought will increase the educational opportunities for Indian children; and

(4) Community factors or other reasons that justify the need for an Indian-controlled school.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.113 Selection criterion: Need for financial assistance. (0 to 15 points)

(a) The Commissioner reviews each application to determine the extent to which the applicant needs financial assistance under this program to establish an Indian-controlled school.

(b) In making this determination, the Commissioner considers evidence that the applicant does not have, and is unable to obtain from other sources, the funds necessary to carry out the project.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.114 Selection criterion: Project design. (0 t 15 points)

(a) The Commissioner reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Commissioner looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of children who will participate directly in the project; and

(5) An effective plan for administration of the project.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.115 Selection criterion: Likelihood of success. (0 to 10 points)

(a) The Commissioner reviews each application to determine the likelihood that the project will be successful.

(b) In making this determination, the Commissioner looks for evidence that, by the end of the project period, the applicant will operate and continue to operate the school without further assistance under this program.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.116 Selection criterion: Parental and community involvement. (0 to 10 points)

The Commissioner reviews each application to determine the extent to which parents and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.117 Selection criterion: Budget and cost effectiveness. (0 to 5 points)

(a) The Commissioner reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Commissioner looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.118 Selection criterion: Adequacy of resources. (0 to 5 points)

(a) The Commissioner reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Commissioner looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.119 Selection criterion: Staff. (0 to 10 points)

(a) The Commissioner reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Commissioner considers—

(1) The qualifications and exerience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give perference to Indians in the hiring of project staff; and

(4) The plan for appropriate training for staff and school board members.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.120 Selection criterion: Evaluation plan. (0 to 10 points)

(a) The Commissioner reviews each application to determine the quality of the evaluation plan for the project.

(b) In making this determination, the Commissioner looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.121 Selection criterion: Commitment. (0 to 5 points)

(a) The Commissioner reviews each application to determine the extent to which the applicant is committed to education in general and to the project objectives in particular.

(b) In making this determination, the Commissioner considers—

(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts by the aplicant to improve educational opportunities for Indian students; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

Enrichment Projects

General

§ 186a.131 Purpose.

(a) This program supports enrichment projects designed to meet special educational and culturally related academic needs of Indian children in Indian-controlled elementary and secondary schools.

(b) Examples of projects that may be supported are those that—

(1) Stimulate interest in careers directly related to the manpower needs of the Indian community;

(2) Provide accelerated courses in areas such as mathematics, science, or tribal management;

(3) Introduce a new approach to the teaching of reading;

(4) Stimulate interest in tribal culture and heritage by involving members of the community in instruction;

(5) Are designed to prevent alcoholism and drug abuse;

(6) Provide opportunities for students to become involved in the arts or other extra-curricular activities.

(c) The projects listed in paragraph (b) of this section are examples. Projects must be designed to meet identified needs in the service area.

(Pub. L. 81-874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.132 Eligibility.

(a) An Indian tribe or Indian organization, or a local educational agency that will have been a local educational agency for three years or less as of the beginning of the proposed project period, is eligible if—

(1) It operates a school for Indian children that is located on or geographically near one or more reservations;

(2) The majority of the students enrolled at that school—

(i) Live on that reservation or those reservations; or

(ii) Maintain regular economic, cultural, and family ties with that reservation or those reservations; and

(3) The governing body of that school is composed of a majority of Indians and has full authority to establish policies and to operate the school, including responsibility for and control over—

(i) Operational policies;

(ii) Personnel decisions;

(iii) Academic standards;

(iv) Budgets; and

(v) School facilities.

(b) An applicant that is an LEA is subject to the provisions of the sections of this part relating to the Local Educational Agencies-Entitlement Grants program, except for § 186a.42, relating to the amount of a grant.

(Pub. L. 81-874, secs. 303(b), 305(b); 20 U.S.C. 241bb(b), 241dd(d))

Selection Factors

§ 186a.133 Application evaluation.

The Commissioner evaluates an application on the basis of the criteria in §§ 186a.134 through 186a.142. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available is 100.

(Pub. L. 81-874, sec. 303(b); 20; 20 U.S.C. 241bb(b))

186a.134 Selection criterion: Need. (0 to 20 points)

(a) The Commissioner reviews each application to determine the need for the proposed project.

(b) In making this determination, the Commissioner considers—

(1) The clarity of the statement of the educational needs to be addressed by the project;

(2) How widespread those needs are, as indicated by the number and percentage of Indian children with those needs;

(3) The severity of those needs, as indicated by dropout rates, academic achievement levels, standardized test scords, or other appropriate measures;

(4) A description of the efforts to meet those needs being made by the school and a statement of why those efforts are insufficient; and

(5) An explanation of why the applicant lacks the financial resources necessary to conduct the project.

(Pub. L. 81-874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.135 Selection criterion: Rationale. (0 to 10 points)

(a) The Commissioner reviews each application to determine the soundness of the rationale for the project.

(b) In making this determination, the Commissioner looks for—

(1) A justification of why the applicant has selected the particular needs to be addressed by the project.

(2) A clear description of the educational approach to be used.

(3) A justification of why the applicant has chosen this approach.

(4) Evidence that the approach is likely to be successful with the children who will participate in the project.

§ 186a.136 Selection criterion: Project design. (0 to 15 points)

For the text of this criterion, see § 186a.114.

(Pub. L. 81-874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.137 Selection criterion: Parental and community involvement. (0 to 10 points)

For the text of this criterion, see § 186a.116.

(Pub. L. 81-874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.138 Selection criterion: Budget and cost effectiveness. (0 to 5 points)

For the text of this criterion, see § 186.117.

(Pub. L. 81-874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.139 Selection criterion: Adequacy of resources. (0 to 10 points)

For the text of this critierion, see § 186a.118.

(Pub. L. 81-874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.140 Selection criterion: Staff. (0 to 10 points)

For the text of this criterion, see § 186a.119.

(Pub. L. 81-874, sec. 303(b); 20 U.S.C. 241bb(b))

§ 186a.141 Selection criterion: Evaluation plan. (0 to 15 points)

For the text of this criterion, see § 186a.120.

(Pub. L. 81-874, sec. 303(b); 20 U.S.C. 303(b))

§ 186a.142 Selection criterion: Commitment. (0 to 5 points)

For the text of this criterion, see § 186a.121.

(Pub. L. 81-874, sec. 303(b); 20 U.S.C. 241bb(b))

Demonstration Projects

General

§ 186a.201 Demonstration projects.

(a) This program supports demonstration projects designed to improve educational opportunities for Indian children.

(b) Examples of projects that may be supported are those that—

(1) Test and validate culturally based tests that measure the academic achievement of Indian children;

(2) Test and validate culturally based methods to meet the academic needs of Indian children;

(3) Test and validate culturally based curriculum materials that enhance the cultural identity and academic performance of Indian children;

(4) Improve basic skills;

(5) Employ culturally relevant techniques to lower the dropout rate among Indian children;

(6) Demonstrate culturally based fine arts activities.

(7) Demonstrate techniques that promote the active involvement of Indian parents in the education of their children.

(c) The projects listed in paragraph (b) are examples. Projects must be designed to meet identified needs in the LEA's service area.

(Pub. L. 81–874, sec. 303(c); 20 U.S.C. 241bb(c))

§ 186a.202 Eligibility.

Eligible applicants are LEAs.

(Pub. L. 81–874, sec. 303(c); 20 U.S.C. 241bb(c))

§ 186a.203 Reservation of funds.

(a) The Commissoner may reserve up to 25 percent of the funds appropriated for this program for any fiscal year for the purpose of making grants to LEAs with high concentrations of Indian children to conduct demonstration projects that examine the special educational and culturally related academic needs of Indian children enrolled in the schools of those agencies.

(b) An LEA with a high concentration of Indian children is one in which the number of Indian children enrolled in the schools of that agency is—

(1) At least 300; and

(2) At least 80 percent of the total enrollment for that agency.

(Pub. L. 81–874, sec. 303(c); 20 U.S.C. 241bb(c))

§ 186a.204 Applicable regulations under the Local Educational Agencies—Entitlement Grants program.

(a) Applicants under this program are subject to the provisions of § 186a.13, relating to the selection of a parent committee. However, if the applicant has formed, or is forming, a parent committee under those provisions for the purposes of the Local Educational Agencies—Entitlement Grants program, the applicant may choose to have that committee serve as the parent committee for this program.

(b) Applicants and grantees under this program are subject to the provisions of the following sections of this part:

(1) 186a.31 through 186a.33, relating to the development of a project.

(2) 186a.51 through 186a.53, relating to the operation of the project, except § 186a.51(m), relating to student eligibility forms.

(3) 186a.61, relating to continuation awards.

(Pub. L. 81–874, sec. 303(c); 20 U.S.C. 241bb(c))

Selection Factors

§ 186a.211 Application evaluation.

The Commissioner evaluates an application on the basis of the criteria in §§ 186a.212 through 186a.219. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available is 100.

(Pub. L. 81–874, sec. 303(c); 20 U.S.C. 241bb(c))

§ 186a.212 Selection criterion: Need and rationale. (0 to 20 points)

(a) The Commissioner reviews each application to determine the need for the project and the soundness of the project rationale.

(b) In making this determination, the Commissioner looks for—

(1) An identification and description of the special educational and culturally related academic needs to be addressed;

(2) Evidence that the needs to be addressed are of significant magnitude among Indian children;

(3) A clear statement of the educational approach to be developed, tested, and demonstrated;

(4) Evidence that the planned educational approach is based on the culture and heritage of the children to be involved in the project;

(5) A description of a literature review, site visits, or other appropriate activity that shows that the applicant has made a serious attempt to learn from other projects that addressed similar needs or tried similar approaches; and

(6) Evidence that the project is likely to serve as a model for local educational agencies having similar educational needs.

(Pub. L. 81–874, sec. 303(c); 20 U.S.C. 241bb(c))

§ 186a.213 Selection criterion: Project design. (0 to 15 points)

For the text of this criterion, see § 186a.114(a) and (b)(1) through (b)(5).

(Pub. L. 81–874, sec. 303(c); 20 U.S.C. 241bb(c))

§ 186a.214 Selection crieterion: Parental and community involvement. (0 to 10 points)

For the text of this criterion, see section 186a.116.

(Pub. L. 81874, sec. 303(c); 20 U.S.C. 241bb(c)).

§ 186a.215 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

For the text of this criterion, see § 186a.117.

(Pub. L. 81–874, sec. 303(c); 20 U.S.C. 241bb(c))

§ 186a.216 Selection criterion: Adequacy of resources. (0 to 5 points)

For the text of this criterion, see § 186a.118.

(Pub. L. 81–874, sec. 303(c); 20 U.S.C. 241bb(c))

§ 186a.217 Selection criterion: Staff. (0 to 15 points)

(a) The Commissioner reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Commissioner considers—

(1) the factors in § 186a.119(b)(1) through (3); and

(2) The extent to which the parent committee has been involved in the selection of staff.

(Pub. L. 81–874, sec. 303(c); 20 U.S.C. 241bb(c))

§ 186a.218 Selection criterion: Evaluation design. (0 to 20 points)

(a) The Commissioner reviews each application to determine how well the evaluation will isolate and measure the project's effectiveness in meeting each objective and the impact of the project on the students involved.

(b) In making this determination, the Commissioner considers—

(1) Plans for the use of control groups, pre- and post-testing, or other comparable procedures;

(2) The appropriateness of the instruments to collect data;

(3) The appropriateness of the method for analyzing the data;

(4) The timetable for collecting and analyzing the data and;

(5) Procedures for periodic assessment of the project's progress.

(Pub. L. 81–874, sec. 303(c); 20 U.S.C. 241bb(c))

§ 186a.219 Selection criterion: Commitment. (0 to 5 points)

(a) The Commissioner reviews each application to determine the extent to which the applicant is committed to the education of Indians in general, and to the project objectives in particular.

(b) In making this determination, the Commissioner considers—

(1) The expected use of the applicant's human, physical, and financial resources to support the project; and

(2) Other efforts by the applicant to improve educational opportunities for Indians.

(Pub. L. 81–874, sec. 303(c); 20 U.S.C. 241bb(c))

§ 186a.220 Annual priority areas.

(a) Each year, the Commissioner may select one or more of the types of projects listed in § 186a.201(b) for priority.

(b) The Commissioner publishes the selected priority areas, if any, in the Federal Register.

(c) In addition to the points awarded under §§ 186a.212 through 186a.219, the

Commissioner awards up to 10 points to an application on the basis of the proportion of the proposed project activities that address the priority areas.

(Pub. L. 81-874, sec. 303(c); 20 U.S.C. 241bb(c))

Appendix

1. *Applications under the Local Educational Agencies—Entitlement Grants program.* After the applicant has held the public hearing described in § 186a.33, and given full consideration to comments and recommendations made at the hearing, the applicant shall prepare an application and submit it to the Commissioner. In addition to the information required under applicable provisions of Part 100a of the EDGAR, the applicant shall include in its application each of the following:

(a) A description of the procedures used to nominate and select the parent committee members.

(Pub. L. 81-874, sec. 305(b)(2)(B)(ii); 20 U.S.C. 241dd (b)(2)(B)(ii))

(b) The names, addresses, and telephone numbers of the officers of the parent committee, and the number of parents, teachers, and students on the committee.

(Pub. L. 81-874, sec. 305(b)(2)(B)(ii); 20 U.S.C. 241dd (b)(2)(B)(ii))

(c) A description of the applicant's plan for the ongoing involvement of the parent committee in the operation and evaluation of the project, including procedures for regular consultation with the committee.

(Pub. L. 81-874, sec. 305(b)(2)(C); 20 U.S.C. 241dd (b)(2)(C))

(d) A description of how the needs assessment and ranking process described in § 186a.31 was carried out, including a description of the role played by the parent committee.

(Pub. L. 81-874, sec. 305(a); 20 U.S.C. 241dd(a))

(e) On a form provided by the Commissioner, a description of the special educational and culturally related academic needs of the Indian children enrolled in the applicant's schools, including the number of children who demonstrate those needs, and a list of those needs as ranked by priority.

(Pub. L. 81-874, sec. 305(a); 20 U.S.C. 241dd(a))

(f) A detailed description of the project, including a project design that meets the requirements of section 186a.32, and a statement of the number of children who will participate in the project.

(Pub. L. 81-874, sec. 305(a)(2); 20 U.S.C. 241dd(a)(2))

(g) An assurance that the applicant will administer, or supervise the administration of, the activities and services for which it seeks assistance.

(Pub. L. 81-874, sec. 305(a)(1); 20 U.S.C. 241dd(a)(1))

(h) A description of the applicant's policies and procedures that ensure that funds made available under the Act will be used so as to supplement and, to the extent practical, increase the level of funds (including other Federal funds) that would, in the absence of funds under the Act, be made available by the applicant for the education of Indian children, and in no case so as to supplant those other funds.

(Pub. L. 81-874, sec. 305(a)(5); 20 U.S.C. 241dd(a)(5))

(i) A description of the methods of administration that have been or will be adopted to ensure that the applicant will operate the project properly and efficiently.

(Pub. L. 81-874, sec. 305(a)(2); 20 U.S.C. 241dd(a)(2))

(j) A statement of how the proposed project will be fiscally and administratively coordinated with other projects to meet the special educational and culturally related academic needs, or both, of Indian children.

(Pub. L. 81-874, sec. 305(a); 20 U.S.C. 241dd(a))

(k) A statement of the applicant's fiscal control and fund accounting procedures that ensure proper disbursement of and accounting for funds that the applicant may receive under the Act.

(Pub. L. 81-874, sec. 305(a)(6); 20 U.S.C. 241dd(a)(6))

(l) A description of the procedures, including an appropriate objective measurement of educational achievement, that the applicant will adopt to monitor and evaluate the effectiveness of the proposed project in achieving its objectives. These procedures shall include the involvement of the parent committee and consultation with parents of the Indian children served by the project.

(Pub. L. 81-874, sec. 305(a)(4); 20 U.S.C. 241dd(a)(4))

(m) An assurance that the applicant will keep records that the Commissioner may reasonably require to carry out the Commissioner's functions under the Act, and will allow the Commissioner the access necessary to verify those records.

(Pub. L. 81-874, sec. 305(a)(7); 20 U.S.C. 241dd(a)(7))

(n) In the case of an application for payments for planning, evidence that—

(1) The planning was or will be directly related to projects to be carried out under the Act and has resulted, or is reasonably likely to result in a project that will be carried out under the Act; and

(2) The planning funds are needed because of the innovative nature of the project or because the LEA lacks the resources necessary to plan adequately for projects to be carried out under the Act.

(Pub. L. 81-874, sec. 305(a)(3); 20 U.S.C. 241dd(a)(3))

(o) Other information that the Commissioner may request as part of the application form.

(Pub. L. 81-874, sec. 305(a); 20 U.S.C. 241dd(a))

2. *Applications under the Tribal Schools—Entitlement Grants program.* (a) An applicant under the Tribal Schools—Entitlement Grants program shall comply with paragraphs (d) through (o) of section 1 of this Appendix, relating to the contents of an application, except to the extent that they refer to a parent committee.

(b) If an applicant claims eligibility on the ground that it operates a school under contract in accordance with the Indian Self-Determination and Education Assistance Act, the applicant shall include a copy of the contract in its application.

(Pub. L. 95-561, sec. 1146; 20 U.S.C. 241bb-1)

3. *Applications under the Indian-Controlled Schools program.* (a) An applicant under the Indian-Controlled Schools program shall comply with paragraphs (f) through (o) of section 1 of this Appendix, relating to the contents of an application, except to the extent that they refer to a parent committee. However, if the applicant is an LEA, it shall comply with the parent committee provisions of those paragraphs and with all other provisions of section 1 of this Appendix.

(b) In addition, an applicant shall include in its application documentation from each appropriate Indian tribe, located on a reservation near the school for which assistance is sought, that children who attend the school either live on or maintain regular economic, cultural, and family ties with that reservation.

(Pub. L. 81-874, sec. 303(b); 20 U.S.C. 241cc(b))

4. *Applications under the Demonstration Projects program.* An

applicant under the Demonstration Projects program shall comply with all the provisions of section 1 of this Appendix.

(Pub. L. 81-874, sec. 303(c); 20 U.S.C. 241bb(c))

PART 186b—INDIAN EDUCATION ACT (PART B)

General

Sec.
186b.1 Indian Education Act (Part B).
186b.2 Eligibility.
186b.3 Definitions.

Educational Services

General

186b.11 What is the purpose of this program?
186b.12 Who is eligible to apply?

Selection Factors

186b.13 Is priority given to certain applicants?
186b.14 How is an application evaluated?
186b.15 Selection criterion: Educational need. (0 to 15 points)
186b.16 Selection criterion: Lack of comparable services. (0 to 15 points)
186b.17 Selection criterion: Project design. (0 to 20 points)
186b.18 Selection criterion: Parental and community involvement. (0 to 15 points)
186b.19 Selection criterion: Budget and cost effectiveness. (0 to 5 points)
186b.20 Selection criterion: Adequacy of resources. (0 to 5 points)
186b.21 Selection criterion: Staff. (0 to 10 points)
186b.22 Selection criterion: Evaluation plan. (0 to 10 points)
186b.23 Selection criterion: Commitment. (0 to 5 points)

Planning, Pilot, and Demonstration Projects

General

186b.31 What is the purpose of this program?
186b.32 Who is eligible to apply?

Selection Factors

186b.33 Is priority given to certain applicants?
186b.34 How is an application evaluated?
186b.35 Selection criterion: Need and rationale. (0 to 20 points)
186b.36 Selection criterion: Project design. (0 to 15 points)
186b.37 Selection criterion: Parental and community involvement. (0 to 10 points)
186b.38 Selection criterion: Budget and cost effectiveness. (0 to 10 points)
186b.39 Selection criterion: Adequacy of resources. (0 to 5 points)
186b.40 Selection criterion: Staff. (0 to 15 points)
186b.41 Selection criterion: Evaluation design. (0 to 20 points)
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186b.43 Annual priority areas.

Educational Personnel Development—I

General

186b.51 What is the purpose of this program?
186b.52 Who is eligible to apply?
186b.53 Must preference in selection of participants be given to Indians?
186b.54 Stipends and dependency allowances.

Selection Factors

186b.55 Is priority given to certain applications?
186b.56 How is an application evaluated?
186b.57 Selection criterion: Need. (0 to 10 points)
186b.58 Selection criterion: Project design. (0 to 25 points)
186b.59 Selection criterion: Budget and cost effectiveness. (0 to 10 points)
186b.60 Selection criterion: Adequacy of resources. (0 to 5 points)
186b.61 Selection criterion: Staff. (0 to 15 points)
186b.62 Selection criterion: Benefit to Indian students. (0 to 5 points)
186b.63 Selection criterion: Evaluation plan. (0 to 10 points)
186b.64 Selection criterion: Commitment. (0 to 20 points)

Educational Personnel Development—II

General

186b.71 What is the purpose of this program?
186b.72 Who is eligible to apply?
186b.73 Must preference in selection of participants be given to Indians?
186b.74 Stipends and dependency allowances.

Selection Factors

186b.75 Is priority given to certain applications?
186b.76 How is an application evaluated?
186b.77 Selection criterion: commitment.

Appendix

Authority.—Title IV, Part B, of Pub. L. 92-318, 86 Stat. 339, as amended (20 U.S.C. 887c-1, 3385), unless otherwise noted.

General

§ 186b.1 Indian Education Act (Part B).

This part governs—(a) The provision of assistance for carrying out special projects to improve educational opportunities for Indian students under the appropriate subsection of section 1005 of the Elementary and Secondary Education Act of 1965, as amended; and

(b) The provision of assistance for special projects to prepare educators of Indian people under section 422 of the Indian Education Act.

(20 U.S.C. 887c-1, 3385)

§ 186b.2 Eligibility.

Eligibility for each program is described in the section on eligibility under the appropriate program heading. (20 U.S.C. 887c-1, 3385)

§ 186b.3 Definitions.

The following terms used in this part are defined in section 1001 of the Elementary and Secondary Education Act of 1965, as amended:

Commissioner.
Elementary school.
Equipment.
Institution of higher education.
Local educational agency (LEA).
Secondary school.
State.
State educational agency (SEA).

(20 U.S.C. 3381)

Educational Services

General

§ 186b.11 What is the purpose of this program?

(a) This program supports the following types of projects:

(1) Educational service projects designed to improve educational opportunities for Indian children of pre-school, elementary school, and secondary school age. Projects must be designed to provide educational services that are not available to those children in sufficient quantity or quality.

(2) Enrichment projects that introduce innovative and exemplary approaches, methods and techniques into the education of elementary and secondary school Indian children.

(b) Examples of projects that may be supported are those that—

(1) Provide Indian children with culturally related instruction during the school day through a cooperative effort between a school and an Indian educational center;

(2) Stimulate interest in careers directly related to the manpower needs of the Indian community;

(3) Provide accelerated courses in areas such as mathematics, science, or tribal management;

(4) Introduce a new approach to the teaching of reading;

(5) Establish after-school education centers;

(6) Stimulate interest in tribal cultural and heritage by involving members of the community in instruction;

(7) Are designed to prevent alcoholism and drug abuse;

(8) Provide opportunities for students to become involved in the arts or other extra-curricular activities.

(c) The projects listed in paragraph (b) are examples. Additional examples of authorized services are listed in section 1005(c)(1) of the Elementary and Secondary Education Act of 1965, as amended.

(ESEA, sec. 1005(a)(2), (c); 20 U.S.C. 3385(a)(2), (c))

§ 186b.12 Who is eligible to apply?

Eligible applicants are—(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs);

(c) Indian tribes;

(d) Indian organizations; and

(e) Indian institutions.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

Selection Factors

§ 186b.13 Is priority given to certain applicants?

In addition to the points awarded under §§ 186b.15 through 186b.23, the Commissioner awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(ESEA, sec. 1005(f)(1); 20 U.S.C. 3385(f)(1))

§ 186b.14 How is an application evaluated?

The Commissioner evaluates an application on the basis of the criteria in §§ 186b.15 through 186b.23. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 186b.15 through 186b.23 is 100.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

§ 186b.15 Selection criterion: Educational need. (0 to 15 points)

(a) The Commissioner reviews each application to determine the extent to which the Indian children in the service area need the proposed services.

(b) In making this determination, the Commissioner considers the conclusions and supporting evidence from a current needs assessment or other appropriate documentation for the service area. In particular, the Commissioner considers—

(1) How widespread the need is, as indicated by the number and percentage of Indian children who need the proposed services; and

(2) The severity of the need, as indicated by dropout rates, academic achievement levels, standardized test scores, or other appropriate measures.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

§ 186b.16 Selection criterion: Lack of comparable services. (0 to 15 points)

(a) The Commissioner reviews each application to determine the extent to which the proposed services are presently unavailable in the service area in sufficient quantity or quality.

(b) In making this determination, the Commissioner considers—

(1) A description of other services, including those offered by the applicant and by the schools attended by Indian children, that are designed to meet the same educational needs as those to be addressed by the project;

(2) The number of children who receive those services;

(3) The number of children who do not receive those services;

(4) Evidence that those other services are insufficient in either quantity or quality, or an explanation of why those services are not used by the children to be served by the project; and

(5) Evidence that the applicant lacks the financial resources necessary to carry out the project.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

§ 186b.17 Selection criterion: Project design. (0 to 20 points)

(a) The Commissioner reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Commissioner looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of children who will participate directly in the project; and

(5) An effective plan for administration of the project.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

§ 186b.18 Selection criterion: Parental and community involvement. (0 to 15 points)

The Commissioner reviews each application to determine the extent to which parents and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(ESEA sec. 1005 (c), (f)(1); 20 U.S.C. 3385 (c), (f)(1))

§ 186b.19 Selection criterion: Budget and cost effectiveness. (0 to 5 points)

(a) The Commissioner reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Commissioner looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

§ 186b.20 Selection criterion: Adequacy of resources. (0 to 5 points)

(a) The Commissioner reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Commissioner looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

§ 186b.21 Selection criterion: Staff. (0 to 10 points)

(a) The Commissioner reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Commissioner considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) The plan for appropriate training of project staff and the applicant's board members, committee members, or officers.

(ESEA, sec. 1005(c), (f)(1); 20 U.S.C. 3385(c), (f)(1))

§ 186b.22 Selection criterion: Evaluation plan. (0 to 10 points)

(a) The Commissioner reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Commissioner looks for—

(1) An objective, quantifiable method, including a measurement of the project's effectiveness in meeting the needs of the participating students, to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

§ 186b.23 Selection criterion: Commitment. (0 to 5 points)

(a) The Commissioner reviews each application to determine the extent to which the applicant is committed to education in general (or, in the case of State and local educational agencies, to the education of Indians) and to the project objectives in particular.

(b) In making this determination, the Commissioner considers—

(1) Relevant excerpts from official documents, such as the applicant's charter, constitution, and by-laws;

(2) Other efforts by the applicant to improve educational opportunities for Indian students; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

Planning, Pilot, and Demonstration Projects

General

§ 186b.31 What is the purpose of this program?

(a) This program supports planning, pilot, and demonstration projects designed to improve educational opportunities for Indian children.

(b) Examples of projects that may be supported are those that—

(1) Test and validate culturally related curriculum materials designed to improve the academic achievement of Indian children;

(2) Use culturally relevant techniques to lower the dropout rate among Indian children;

(3) Encourage Indian students to enter the fields of natural sciences and mathematics by developing and using culturally related curricula;

(4) Test and validate culturally relevant achievement tests.

(ESEA, sec. 1005(a)(1), (b); 20 U.S.C. 3385(a)(1), (b))

§ 186b.32 Who is eligible to apply?

Eligible applicants are—

(a) State educational agencies (SEAs);

(b) Local Educational agencies (LEAs);

(c) Elementary or secondary schools for Indian children supported by the Department of the Interior;

(d) Indian tribes;

(e) Indian organizations; and

(f) Indian institutions.

(ESEA, sec. 1005(b); 20 U.S.C. 3385(b))

Selection Factors

§ 186b.33 Is priority given to certain applicants?

In addition to the points awarded under §§ 186b.35 through 186b.42, the Commissioner awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(ESEA, sec. 1005(f)(1); 20 U.S.C. 3385(f)(1))

§ 186b.34 How is an application evaluated?

The Commissioner evaluates an application on the basis of the criteria in §§ 186.35 through 186b.42. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under sections 186b.35 through 186b.42 is 100.

(ESEA, sec. 1005(b); 20 U.S.C. 3385(b))

§ 186b.35 Selection criterion: Need and rationale. (0 to 20 points)

(a) The Commissioner reviews each application to determine the need for the project and the soundness of the rationale for the project.

(b) In making this determination, the Commissioner looks for—

(1) An identification and description of the specific problem to be addressed;

(2) Evidence that the problem to be addressed is one of significant magnitude among Indian children;

(3) A clear statement of the educational approach to be developed, tested, and demonstrated;

(4) Evidence that the planned educational approach is based on the culture and heritage of the children to be involved in the project;

(5) A description of a literature review, site visits, or other appropriate activity that shows that the applicant has made a serious attempt to learn from other projects that addressed similar needs or tried similar approaches; and

(6) Evidence that the project is likely to serve as a model for communities having similar educational needs.

(ESEA, sec. 1005(b); 20 U.S.C. 3385(b))

§ 186b.36 Selection criterion: Project design. (0 to 15 points)

For the text of this criterion, see section 186b.17.

(ESEA, sec. 1005(b), (f)(1); 20 U.S.C. 3385(b), (f)(1))

§ 186b.37 Selection criterion: Parental and community involvement. (0 to 10 points)

For the text of this criterion, see § 186b.18.

§ 186b.38 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

For the text of this criterion, see § 187.19.

(ESEA, sec. 1005(b); 20 U.S.C. 3385(b))

§ 186b.39 Selection criterion: Adequacy of resources. (0 to 5 points)

For the text of this criterion, see section 186b.20.

(ESEA, sec. 1005(b); 20 U.S.C. 3385(b))

§ 186b.40 Selection criterion: Staff. (0 to 15 points)

For the text of this criterion, see § 186b.21.

(ESEA, sec. 1005(b), (f)(1(; 20 U.S.C. 3385(b), (f)(1))

§ 186b.41 Selection criterion: Evaluation design. (0 to 20 points)

(a) The Commissioner reviews each application to determine how well the evaluation will isolate and measure the project's effectiveness in meeting each objective and the impact of the project on the students involved.

(b) In making this determination, the Commissioner considers—

(1) Plans for the use of control groups, pre- and post-testing, or other comparable procedures;

(2) The appropriateness of the instruments to collect data;

(3) The appropriateness of the method for analyzing the data;

(4) The timetable for collecting and analyzing the data; and

(5) Procedures for periodic assessment of the project's progress.

(ESEA, sec. 1005(b), (f)(1); 20 U.S.C. 3385(b), (f)(1))

§ 186b.42 Selection criterion: Commitment. (0 to 5 points)

For the text of the criterion, see § 186b.23.

(ESEA, sec. 1005(b); 20 U.S.C. 3385(b))

§ 186.43 Annual priority areas.

(a) Each year, the Commissioner may select one or more of the types of projects listed in § 186b.31(b) for priority.

(b) The Commissioner publishes the selected priority areas, if any, in the Federal Register.

(c) In addition to the points awarded under §§ 186b.35 through 186b.42, the Commissioner awards up to 10 points to an application on the basis of the proportion of the proposed project activities that address the priority areas.

(ESEA, sec. 1005(b); 20 U.S.C. 3385(b))

Educational Personnel Development—I

General

§ 186b.51 What is the purpose of this program?

(a) This program supports projects that prepare persons to serve Indian students as teachers, administrators, teacher aides, social workers, and ancillary educational personnel and that improve the qualifications of persons who are currently serving Indian students in those capacities.

(b) Participants may be prepared for positions such as (1) Classroom teachers;

(2) Special educators for handicapped or gifted and talented students;

(3) Bilingual-bicultural specialists;

(4) Guidance counselors and school psychologists;

(5) School administrators;

(6) Adult education specialists or instructors; and

(7) Community college administrators.

(ESEA, sec. 1005(a)(3), (d); 20 U.S.C. 3385(a)(3), (d))

§ 186b.52 Who is eligible to apply?

Eligible applicants are—(a) Institutions of higher education;

(b) State educational agencies (SEAs) in combination with institutions of higher education; and

(c) Local educational agencies (LEAs) in combination with institutions of higher education.

(ESEA, sec. 1005(b); 20 U.S.C. 887c(d))

§ 186b.53 Must preference in selection of participants be given to Indians?

In selecting project participants, a grantee must give preference to Indians.

(ESEA, sec. 1005(a), (d); 20 U.S.C. 3385(a), (d))

§ 186b.54 Stipends and dependency allowances.

(a) A grantee may, from project funds, pay to a participant who is a full-time student—

(1) A stipend to cover the fellow's living expenses, without regard to dependents; and

(2) An allowance for dependents.

(b) The Commissioner includes in the annual application notice a statement of the maximum stipend and allowance for dependents. The minimum stipend and allowance for dependents are—

(1) The maximum amounts stated in the notice; minus

(2) Other financial assistance (other than loans) received or expected to be received by the fellow for the fellow's living expenses and for the support of the fellow's dependents.

(c) A grantee may not pay a stipend or dependency allowance to a participant who is not a full-time student. However, the Commissioner may approve payments for—

(1) Salary reimbursement for a teacher aide who must take leave without pay in order to be a part-time student; or

(2) The cost of a substitute for a teacher aide who is given released time with pay to be a part-time student.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

Selection Factors

§ 186b.55 Is priority given to certain applications?

In addition to the points awarded under § 186b.57 through 186b.64, the Commissioner awards—

(a) Ten points to applications for projects in which 100 percent of the participants will be Indian; and

(b) Ten points to an application for a project in which participants will work toward degrees at the baccalaureate level or higher.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

§ 186b.56 How is an application evaluated?

The Commissioner evaluates an application on the basis of the criteria in §§ 186b.57 through 186b.64. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 186b.57 through 186b.64 is 100.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

§ 186b.57 Selection criterion: Need. (0 to 10 points)

The Commissioner reviews each application to determine the need for the type of personnel to be trained, as indicated by a current survey or other appropriate documentation.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

§ 186b.58 Selection criterion: Project design. (0 to 25 points)

(a) The Commissioner reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Commissioner looks for—

(1)— A clear statement of the purpose of the project;

(2) Objectives that are—(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) Educational approaches that take into account the culture and heritage of Indian people;

(5) Techniques designed specifically to enable project participants to meet the needs of Indian students; and

(6) An effective plan for administration of the project.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

§ 186b.59 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

For the text of this criterion, see § 186b.19.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

§ 186b.60 Selection criterion: Adequacy of resources. (0 to 5 points)

For the text of this criterion, see § 186b.20.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

§ 186b.61 Selection criterion: Staff. (0 to 15 points)

For the text of this criterion, see § 186b.21.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

§ 186b.62 Selection criterion: Benefit to Indian students. (0 to 5 points)

(a) The Commissioner reviews each application to determine the likelihood that, after receiving training under the project, the participants will serve Indian students as teachers, administrators, teacher aides, or ancillary educational personnel.

(b) In making this determination, the Commissioner considers—

(1) Policies or practices of the applicant, such as those governing selection of participants, that increase the likelihood that participants will serve Indian students upon the completion of the training; and

(2) Evidence that, upon completion of the training, participants will be able to obtain positions that involve serving Indian students.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

§ 186b.63 Selection criterion: Evaluation plan. (0 to 10 points)

(a) The Commissioner reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Commissioner looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress.

(ESEA, sec. 1005(d), (f)(1); 20 U.S.C. 3385(d), (f)(1))

§ 186b.64 Selection criterion: Commitment. (0 to 20 points)

(a) The Commissioner reviews each application to determine the extent to which the applicant is committed to Indian education in general, and to the project's objectives in particular.

(b) In making this determination, the Commissioner considers—

(1) Official statements in the applicant's publications such as course catalogs;

(2) The expected use of the applicant's human, physical, and financial resources to support the project; and

(3) Other efforts of the applicant to improve educational opportunities for Indian people.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

Educational Personnel Development—II

General

§ 186b.71 What is the purpose of this program?

(a) This program supports projects that prepare individuals for teaching in or administering special programs designed to meet the special educational needs of Indian people and that provide in-service training for persons teaching in those programs.

(b) Participants may be prepared for positions such as those listed in § 186b.51(b).

(Indian Education Act, sec. 422; 20 U.S.C. 887c-1)

§ 186b.72 Who is eligible to apply?

Eligible applicants are—(a) Institutions of higher education;

(b) Indian organizations; and

(c) Indian tribes.

(Indian Education Act, sec. 422; 20 U.S.C. 887c-1)

§ 186b.73 Must preference in selection of participants be given to Indians?

In selecting project participants, a grantee must give preference to Indians.

(Indian Education Act, sec. 422; 20 U.S.C. 887c-1)

§ 186b.74 Stipends and dependency allowances.

Allowable payments to participants are the same as those described in § 186b.54.

(Indian Education Act, sec. 422; 20 U.S.C. 887c-1)

Selection Factors

§ 186b.75 Is priority given to certain applications?

In addition to the points awarded under §§ 186b.76 and 186b.77, the Commissioner awards—

(A) Twenty-five points to applications from Indian tribes, Indian organizations, and eligible Indian institutions; and

(b) Ten points to applications for projects in which the participants will be enrolled in a course of study resulting in degrees at the baccalaureate level or higher.

(Indian Education Act, sec. 422; 20 U.S.C. 887c-1)

§186b.76 How is an application evaluated?

The Commissioner reviews each application on the basis of the criteria in §§ 186b.57 through 186b.63 and 186b.77.

(Indian Education Act, sec. 422; 20 U.S.C. 887c-1)

§ 186b.77 Selection criterion: Commitment. (0 to 20 points)

(a) In addition to the criteria in sections 186b.57 through 186b.63, the Commissioner reviews each application to determine the extent to which the applicant is committed to education in general (or, in the case of institutions of higher education, to the education of Indians) and to the project objectives in particular.

(b) In making this determination in the case of applications from institutions of higher education, the Commissioner considers the factors in § 186b.64(b).

(c) In making this determination in the case of applications from Indian tribes and Indian organizations, the Commissioner considers the factors in § 186b.23(b).

(Indian Education Act, sec. 422; 20 U.S.C. 887c-1)

Appendix

1. (a) Each year the Commissioner, in accordance with the provisions of 45 CFR 100a.100 through 100a.102, publishes an application notice that states the amount of funds available for new projects under each of the four programs governed by Part 186b.

(b) When making awards for new projects, the Commissioner allocates funds to each program on the basis of the statement of available funds in the application notice. However, the Commissioner may reduce the allocation of funds for a program if he determines, on the basis of the appropriate selection criteria, that the amount of funds necessary for approvable activities described in meritorious applications is less than the entire initial allocation for that program.

(20 U.S.C. 887c-1, 3385).

2. An applicant shall comply with the provisions of the Education Division General Administrative Regulations (EDGAR) regarding applications. Those provisions are set out in 45 CFR 100a.107 through 100a.129.

(20 U.S.C. 887c-1, 3385)

3. An applicant shall specify the particular part 186b program (for example, Planning, Pilot, and Demonstration Projects) under which it is applying. An applicant may apply under more than one Part 186b program, but it may not apply to carry out a particular activity under more than one part 186b program.

(20 U.S.C. 887c-1, 3385)

4. If an applicant submits an application under a program for which the proposed project is not authorized, the Commissioner may, with the consent of the applicant, review the application under an appropriate program, if any under part 186b, for which it may be timely considered.

(20 U.S.C. 887c-1, 3385)

5. An applicant shall include in its application the date of any needs assessment, survey, or other research effort, the results of which it describes in its application to demonstrate the need for the project.

(20 U.S.C. 887c-1, 3385)

6. An applicant shall include in its application a description of the activities for which it seeks assistance, including the specific number of children who will participate in the project, or, in the case of applications under the Educational Personnel Development programs, the number of individuals to be trained.

(20 U.S.C. 887c-1, 3385(f)(1)(A))

7. An applicant shall include in its application a plan for evaluating the effectiveness of the project in achieving its objectives. This plan must include descriptions of—

(a) The data collection method;

(b) The instruments to be used for testing and measuring;

(c) The method for analyzing the data to be collected;

(d) A timetable for collecting and analyzing data; and

(e) If known, the qualifications of those who will conduct the evaluation.

(20 U.S.C. 887c-1, 3385(f)(1)(D))

8. An applicant under the Educational Services program shall include in its

application adequate provisions for the training of personnel who will participate in the project.

(20 U.S.C. 3385(f)(1)(C))

9. The Commissioner does not approve an application under the programs for Planning, Pilot, and Demonstration Projects or Educational Services unless the Commissioner is satisfied that the application, and any documents submitted with respect to the application, shows that parents of the children who will participate in the project and other members of the Indian community adequately participated in planning and developing the project, and will participate in the operation and evaluation of the project.

(20 U.S.C. 3385(f)(1))

10. An applicant under the Educational Personnel Development programs shall—(a) State the number and percentage of participants who will be Indian; (b) Describe the plan for giving preference to Indians in the selection of participants; (c) Include an assurance that it will, in its final performance report, provide information on the selection, academic performance, and job placement of project participants; and (d) Include an assurance that it will cooperate with the Commissioner in follow-up studies of project participants.

(20 U.S.C. 887c-1, 3385(d))

11. The Commissioner does not approve an application under the programs for Planning, Pilot, and Demonstration Projects or Educational Services, or under the Educational Personnel Development-I program unless the Commissioner is satisfied that the application, to the extent consistent with the number of eligible children in the area to the served who are enrolled in private nonprofit elementary and secondary schools and whose needs are of the type which the project is intended to meet, provides for the participation of those children on an equitable basis.

(20 U.S.C. 3385(f)(1))

PART 186c—INDIAN EDUCATION ACT (PART C)

General

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186c.59 Selection criterion: Adequacy of resources. (0 to 5 points)
186c.60 Selection criterion: Staff. (0 to 15 points)
186c.61 Selection criterion: Evaluation plan. (0 to 15 points)
186c.62 Selection criterion: Adaptability. (0 to 5 points)
186c.63 Selection criterion: Commitment. (0 to 5 points)

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186c.79 Selection criterion: Adequacy of resources. (0 to 10 points)
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186c.93 Is priority given to certain applicants?
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186c.95 Selection criterion: Need for the project. (0 to 20 points)
186c.96 Selection criterion: Project design. (0 to 20 points)
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186c.99 Selection criterion: Adequacy of resources. (0 to 10 points)
186c.100 Selection criterion: Staff. (0 to 15 points)
186c.101 Selection criterion: Evaluation plan. (0 to 15 points)
186c.102 Selection criterion: Commitment. (0 to 5 points)

Appendix

Authority: Title IV, Part C, of Pub. L. 92-318, 86 Stat. 342, as amended (20 U.S.C. 1211a), unless otherwise noted.

General

§ 186c.1 Indian Education Act (Part C).

(a) This part governs several programs that provide assistance for projects to improve educational opportunities for Indian adults.

(b) Services and instruction provided under this part shall be below the college level.

(c) Activities that are designed solely to prepare individuals to enter a specific occupation or cluster of closely related occupations in an occupational field after participating in the project are not authorized under the programs in this part. Activities that are designed to prepare individuals to benefit from occupational training, or that incidentally involve the teaching of employment-related skills are allowable if otherwise authorized under this part.

(Adult Education Act, secs. 303(b), 316; 20 U.S.C. 1202(b) 1211a)

§ 186c.2 Eligibility.

Eligibility for each program under this part is described in the section on eligibility under the appropriate program heading.

(Adult Education Act, sec. 316; 20 U.S.C. 1211a)

§ 186c.3 Definitions.

The following terms used in this part are defined in section 303 of the Adult Education Act.

Adult
Adult education
Commissioner
Local educational agency (LEA)
State educational agency (SEA)

(20 U.S.C. 1202)

Educational Services

General

§ 186c.11 What is the purpose of this program?

(a) This program supports educational service projects designed to improve educational opportunities for Indian adults.

(b) Examples of projects that may be supported are those that—(1) Enable Indian adults to acquire basic educational skills, including literacy;

(2) Enable Indian adults to continue their education through the secondary school level;

(3) Are designed for the education of handicapped and elderly Indian adults;

(4) Establish career education projects designed to improve employment opportunities; and

(5) Are designed for incarcerated Indian adults.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

§ 186c.12 Who is eligible to apply?

Eligible applicants are—(a) Indian tribes;

(b) Indian organizations; and

(c) Indian institutions.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

Selection Factors

§ 186c.13 How is an application evaluated?

The Commissioner evaluates an application against the criteria in §§ 186c.14 through 186c.22. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available is 100.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

§ 186c.14 Selection criterion: Educational need. (0 to 15 points)

(a) The Commissioner reviews each application to determine the extent to which the Indian adults in the service area need the proposed services.

(b) In making this determination, the Commissioner considers the conclusions and supporting evidence from a current needs assessment or other appropriate documentation for the service area. In particular, the Commissioner considers—(1) How widespread the need is, as indicated by the number and percentage of Indian adults who need the proposed services; and

(2) The severity of the need, as indicated by elementary and secondary school dropout rates, average grade level completed, unemployment rates, or other appropriate measures.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

§ 186c.15 Selection criterion: Lack of comparable services. (0 to 15 points)

(a) The Commissioner reviews each application to determine the extent to which the proposed services are currently unavailable in the service area in sufficient quantity or quality, or both.

(b) In making this determination, the Commissioner considers—(1) A description of other services in the area, including those offered by the applicant, that are designed to meet the same educational needs as those to be addressed by the project;

(2) The number of Indian adults who receive those services;

(3) The number of Indian adults who do not receive those services;

(4) Evidence that those other services are insufficient in either quantity or quality, or an explanation of why those services are not used by the adults to be served by the project; and

(5) Evidence that the applicant lacks the financial resources necessary to carry out the project.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

§ 186c.16 Selection criterion: Project design. (0 to 20 points)

(a) The Commissioner reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Commissioner looks for—(1) A clear statement of the purpose of the project;

(2) Objectives that are—(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of adults who will participate directly in the project; and

(5) An effective plan for administration of the project.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

§ 186c.17 Selection criterion: Community involvement. (0 to 15 points)

The Commissioner reviews each application to determine the extent to which the individuals to be served and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b), (d))

§ 186c.18 Selection criterion: Budget and cost effectiveness. (0 to 5 points)

(a) The Commissioner reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Commissioner looks for information that shows—(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

§ 186c.19 Selection criterion: Adequacy of resources. (0 to 5 points)

(a) The Commissioner reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Commissioner looks for information that

shows—(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

§ 186c.20 Selection criterion: Staff. (0 to 10 points)

(a) The Commissioner reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Commissioner considers—(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project; and

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

§ 186c.21 Selection criterion: Evaluation plan. (0 to 10 points)

(a) The Commissioner reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Commissionr looks for—(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress.

(Adult Education Act, sec. 316(b), (d); 20 U.S.C. 1211a (b), (d))

§ 186c.22 Selection criterion: Commitment. (0 to 5 points)

(a) The Commissioner reviews each application to determine the extent to which the applicant is committed to education in general and to the project objectives in particular.

(b) In making this determination, the Commissioner considers—(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts of the applicant to improve educational opportunities for Indian people; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

Planning, Pilot, and Demonstration Projects

General

§ 186c.31 What is the purpose of this program?

(a) This program supports planning, pilot, and demonstration projects designed to improve employment and educational opportunities for Indian adults.

(b) Examples of projects that my be supported are those that demonstrate the effectiveness of—(1) Educational approaches designed to assist Indian adults in achieving basic literacy;

(2) Methods for improving the basic skills of Indian adults so that they may benefit from occupational training;

(3) Educational approaches designed to assist Indian adults in earning high school equivalency certificates in the shortest time feasible.

(Adult Education Act, sec. 316(a) (1), (2); 20 U.S.C. 1211a(a) (1), (2))

§ 186c.32 Who is eligible to apply?

Eligible applicants are—(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs);

(c) Indian tribes;

(d) Indian organizations; and

(e) Indian institutions.

(Adult Education Act, sec. 316(a) (1), (2); 20 U.S.C. 1211a(a) (1), (2))

Selection Factors

§ 186c.33 Is priority given to certain applicants?

In addition to the points awarded under §§ 186c.35 through 186c.42, the Commissioner awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(Adult Education Act, sec. 316(a) (1), (2) 20 U.S.C. 1211(a) (1), (2))

§ 186c.34 How is an application evaluated?

The Commissioner evaluates an application on the basis of the criteria in §§ 186c.35 through 186c.42. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 186c.35 through 186c.42 is 100.

(Adult Education Act, sec. 316(a) (1), (2); 20 U.S.C. 1211a(a) (1), (2))

§ 186c.35 Selection criterion: Need and rationale. (0 to 20 points)

(a) The Commissioner reviews each application to determine the need for the project and the soundness of the rationale for the project.

(b) In making this determination, the Commissioner looks for—(1) An identification and description of the specific problem to be addressed;

(2) Evidence that the problem to be addressed is one of significant magnitude among Indian adults;

(3) A clear statement of the educational approach to be developed, tested, and demonstrated;

(4) Evidence that the planned educational approach is based on the culture and heritage of the adults to be involved in the project;

(5) A description of a literature review, site visits, or other appropriate activity that shows that the applicant has made a serious attempt to learn from other projects that addressed similar needs or tried similar approaches; and

(6) Evidence that the project is likely to serve as a model for communities having similar educational needs.

(Adult Education Act, sec. 316(a) (1), (2); 20 U.S.C. 1211a(a) (1), (2))

§ 186c.36 Selection criterion: Project design. (0 to 15 points)

For the text of this criterion, see section 186c.16.

(Adult Education Act, sec. 316(a) (1), (2), (d); 20 U.S.C. 1211a(a) (1), (2), (d))

§ 186c.37 Selection criterion: Community involvement. (0 to 10 points)

For the text of this criterion, see section 186c.17.

(Adult Education Act, sec. 306(a) (1), (2), (d); 20 U.S.C. 1211a(a) (1), (2), (d))

§ 186c.38 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

For the text of this criterion, see section 186c.18.

(Adult Education Act, sec. 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

§ 186c.39 Selection criterion: Adequacy of resources. (0 to 5 points)

For the text of this criterion, see section 186c.19.

(Adult Education Act, sec. 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

§ 186c.40 Selection criterion: Staff. (0 to 15 points)

For the text of this criterion, see section 186c.20.

(Adult Education Act, sec. 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

§ 186c.41 Selection criterion: Evaluation design. (0 to 20 points)

(a) The Commissioner reviews each application to determine how well the

evaluation will isolate and measure the project's effectiveness in meeting each objective and the impact of the project on the adults involved.

(b) In making this determination, the Commissioner considers—(1) Plans for the use of control groups, pre- and post-testing, or other comparable procedures;

(2) The appropriateness of the instruments to collect data;

(3) The appropriateness of the method for analyzing the data;

(4) The timetable for collecting and analyzing the data; and

(5) Procedures for periodic assessment of the project's progress.

(Adult Education Act, sec. 316(a)(1), (2), (d); 20 U.S.C. 1211a(a)(1), (2), (d))

§ 186c.42 Selection criterion: Commitment. (0 to 5 points)

(a) The Commissioner reviews each application to determine the extent to which the applicant is committed to education in general (or, in the case of State and local educational agencies, to the education of Indians) and to the project objectives in particular.

(b) In making this determination, the Commissioner considers the factors set out in section 186c.22(b).

(Adult Education Act, sec. 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

§ 186c.43 Annual priority areas.

(a) Each year, the Commissioner may select one or more of the types of projects listed in § 186c.31(b) for priority.

(b) The Commissioner publishes the selected priority areas, if any, in the Federal Register.

(c) In addition to the points awarded under §§ 186c.35 through 186c.42, the Commissioner awards up to 10 points to an application on the basis of the proportion of the proposed project activities that address the priority areas.

(Adult Education Act, sec. 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

Research and Development Projects

General

§ 186c.51 What is the purpose of this program?

This program supports research and development projects that develop innovative and effective techniques to assist Indian adults in—(a) Attaining basic literacy; and

(b) Qualifying for high school equivalency certificates.

(Adult Education Act, sec. 316(a)(3); 20 U.S.C. 1211a(a)(3))

§ 186c.52 Who is eligible to apply?

Eligible applicants are—(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs);

(c) Indian tribes;

(d) Indian organizations; and

(e) Indian institutions.

(Adult Education Act, sec. 316(a)(3); 20 U.S.C. 1211a(a)(3))

Selection Factors

§ 186c.53 Is priority given to certain applicants?

In addition to the points awarded under §§ 186c.55 through 186c.63, the Commissioner awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(Adult Education Act, sec. 316(d); 20 U.S.C. 1211a(d))

§ 186c.54 How is an application evaluated?

The Commissioner evaluates an application on the basis of the criteria in §§ 186c.55 through 186c.63. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 186c.55 through 186c.63 is 100.

(Adult Education Act, sec. 316(a)(3); 20 U.S.C. 1211a(a)(3))

§ 186c.55 Selection criterion: Need for the project. (0 to 15 points)

(a) The Commissioner reviews each application to determine the need for the project.

(b) In making this determination, the Commissioner considers the clarity and accuracy of the statement describing the lack of effective techniques for assisting Indian adults to attain basic literacy and to qualify for high school equivalency certificates.

(Adult Education Act, sec. 316(a)(3); 20 U.S.C. 1211a(a)(3))

§ 186c.56 Selection criterion: Research and development design. (0 to 25 points)

(a) The Commissioner reviews each application to determine the quality of the research and development design for the project.

(b) In making this determination, the Commissioner considers—(1) The extent to which the applicant exhibits thorough knowledge of previous work in the field and related the proposed research and development to it;

(2) The extent to which objectives and hypotheses are stated in clear and measurable terms;

(3) The appropriateness and soundness of data collection instruments, sampling designs and techniques, and the procedures for analyzing the data to be collected; and

(4) The degree to which there is an activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective.

(Adult Education Act, sec. 316(a)(3), (d); 20 U.S.C. 1211a(a)(3), (d))

§ 186c.57 Selection criterion: Community involvement. (0 to 5 points)

For the text of this criterion, see § 186c.17.

(Adult Education Act, sec. 316(a)(3), (d); 20 U.S.C. 1211a(a)(3), (d))

§ 186c.58 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

For the text of this criterion, see § 186c.18.

(Adult Education Act, sec. 316(a)(3); 20 U.S.C. 1211a(a)(3))

§ 186c.59 Selection criterion: Adequacy of resources. (0 to 5 points)

For the text of this criterion, see § 186c.19.

(Adult Education Act, sec. 316(a)(3); 20 U.S.C. 1211a(a)(3))

§ 186c.60 Selection criterion: Staff. (0 to 15 points)

For the text of this criterion, see § 186c.20.

(Adult Education Act, sec. 316(a)(3); 20 U.S.C. 1211a(a)(3))

§ 186c.61 Selection criterion: Evaluation plan. (0 to 15 points)

For the text of this criterion, see § 186c.21.

(Adult Education Act, sec. 316(a)(3), (d); 20 U.S.C. 1211a(a)(3), (d))

§ 186c.62 Selection criterion: Adaptability. (0 to 5 points)

The Commissioner reviews each application to determine the extent to which the techniques developed by the project are likely to be effective in other settings in assisting Indian adults to—(a) Attain basic literacy; and

(b) Qualify for high school equivalency certificates.

(Adult Education Act, sec. 316(a)(3); 20 U.S.C. 1211a(a)(3))

§ 186c.63 Selection criterion: Commitment. (0 to 5 points)

For the text of this criterion, see § 186c.42.

(Adult Education Act, sec. 316(a)(3); 20 U.S.C. 1211a(a)(3))

Surveys

General

§ 186c.71 What is the purpose of this program?

(a) This program supports projects to survey the extent of illiteracy and lack of high school completion among Indians.

(b) Surveys may be local, regional, or national in scope.

(Adult Education Act, sec. 316(a)(4); 20 U.S.C. 1211a(a)(4))

§ 186c.72 Who is eligible to apply?

Eligible applicants are—(a) State educational agencies;

(b) Local educational agencies;

(c) Indian tribes;

(d) Indian organizations; and

(e) Indian institutions.

(Adult Education Act, sec. 316(a)(4); 20 U.S.C. 1211a(a)(4))

Selection Factors

§ 186c.73 Is priority given to certain applicants?

In addition to the points awarded under §§ 186c.75 through 186c.82, the Commissioner awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(Adult Education Act, sec. 316(d); 20 U.S.C. 1211a(d))

§ 186c.74 How is an application evaluated?

The Commissioner evaluates an application on the basis of the criteria in §§ 186c.75 through 186c.82. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under the criterion. The total number of points available under §§ 186c.75 through 186c.82 is 100.

(Adult Education Act, sec. 316(a)(4); 20 U.S.C. 1211a(a)(4))

§ 186c.75 Selection criterion: Need for the survey. (0 to 20 points)

(a) The Commissioner reviews each application to determine the extent to which there is a need for the proposed survey.

(b) In making this determination, the Commissioner considers the clarity and accuracy of the statement on the lack of reliable data concerning illiteracy and lack of high school completion among Indain adults in the population to be surveyed.

(Adult Education Act, sec. 316(a)(4); 20 U.S.C. 1211a(a)(4))

§ 186c.76 Selection criterion: Survey and project design. (0 to 25 points)

(a) The Commissioner reviews each application to determine the quality of the survey and project design.

(b) In making this determination, the Commissioner considers—

(1) The appropriateness and soundness of—(i) The sample size;

(ii) The method for selecting the sample;

(iii) The survey instrument to be used, or the plan for developing one; and

(iv) The plan for analyzing the data to be collected;

(2) The extent to which the objectives are stated in clear and measurable terms;

(3) The degree to which there is an activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective; and

(4) The extent to which there is an effective plan for administration of the project.

(Adult Education Act, sec. 316(a)(4); 20 U.S.C. 1211a(a)(4))

§ 186c.77 Selection criterion: Community involvement. (0 to 5 points)

For the text of this criterion, see § 186c.17.

(Adult Education Act, sec. 316(a)(4) (d); 20 U.S.C. 1211a(a)(4), (d))

§ 186c.78 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

For the text of this criterion, see § 186c.18.

(Adult Education Act, sec. 316(a)(4); 20 U.S.C. 1211a(a)(4))

§ 186c.79 Selection criterion: Adequacy of resources. (0 to 10 points)

For the text of this criterion, see § 186c.19.

(Adult Education Act, sec. 316(a)(4); 20 U.S.C. 1211a(a)(4))

§ 186c.80 Selection criterion: Staff. (0 to 15 points)

For the text of this criterion, see § 186c.20.

(Adult Education Act, sec. 316(a)(4); 20 U.S.C. 1211a(a)(4))

§ 186c.81 Selection criterion: Evaluation plan. (0 to 10 points)

For the text of this criterion, see § 186c.21.

(Adult Education Act, sec. 316(a)(4), (d); 20 U.S.C. 1211a(a)(4), (d))

§ 186c.82 Selection criterion: Commitment. (0 to 5 points)

For the text of this criterion, see § 186c.42.

(Adult Education Act, sec. 316(a)(5); 20 U.S.C. 1211a(a)(5))

Dissemination and Evaluation

General

§ 186c.91 What is the purpose of this program?

This program supports projects that—

(a) Disseminate information and materials relating to education programs that may offer educational opportunities to Indian adults, including—

(1) Curriculum information;

(2) Results of evaluations;

(3) Information on how to participate; and

(4) Information on how to start similar programs or operate projects that provide similar educational opportunities; and

(b) Evaluate the effectiveness of education prgrams that may offer educational opportunities to Indian adults.

(Adult Education Act, sec. 316(a)(5); 20 U.S.C. 1211a(a)(5))

§ 186c.92 Who is eligible to apply?

Eligible applicants are—

(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs);

(c) Indian tribes;

(d) Indian organizations; and

(e) Indian institutions.

(Adult Education Act, sec. 316(a)(5); 20 U.S.C. 1211a(a)(5))

Selection Factors

§ 186c.93 Is priority given to certain applicants?

In addition to the points awarded under §§ 186c.95 through 186c.102, the Commissioner awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(Adult Education Act, sec. 316(d); 20 U.S.C. 1211a(d))

§ 186c.94 How is an application evaluated?

The Commissioner evaluates an application on the basis of the criteria in §§ 186c.95 through 186c.102. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under the criterion. The total number of points available under §§186c.95 through 186c.102 is 100.

(Adult Education Act, sec. 316(a)(5); 20 U.S.C. 1211a(a)(5))

§ 186c.95 Selection criterion: Need for the project. (0 to 20 points)

(a) The Commissioner reviews each application to determine the need for the project.

(b) In making this determination for dissemination projects or project components, the Commissioner considers—

(1) A statement of the Indian communities or other groups to whom information will be disseminated and an explanation of why these groups need the information; and

(2) The clarity and accuracy of the statement describing current efforts to disseminate information about Indian adult education to these groups and an explanation of why these efforts are inadequate.

(c) In making this determination for evaluation projects or project components, the Commissioner considers—

(1) A description of other evaluations of programs that the applicant proposes to evaluate; and

(2) An explanation of why the proposed evaluation is needed.

(Adult Education Act, sec. 316(a)(5); 20 U.S.C. 1211a(a)(5))

§ 186c.96 Selection criterion: Project design. (0 to 20 points)

(a) The Commissioner reviews each application to determine the quality of the design for the project;

(b) In making this determination for dissemination projects or project components, the Commissioner considers—

(1) The extent to which the objectives are stated in clear and measurable terms;

(2) The description of the kinds and sources of information and materials to be disseminated;

(3) a description of the methods that will be used to disseminate the information;

(4) The extent to which the activity plan, including a timeline, clearly and realistically outlines the activities necessary for completing each objective; and

(5) The effectiveness of the plan for administering the project.

(c) In making this determination for evaluation projects or project components, the Commissioner considers—(1) The extent to which the objectives are stated in clear and measurable terms;

(2) The extent to which the applicant exhibits thorough knowledge of previous evaluation work in the field and relates the proposed evaluation to it;

(3) The appropriateness and soundness of data collection instruments, sampling designs and techniques, and the procedures for analyzing the data to be collected;

(4) The extent to which the activity plan, including a timeline, clearly and realistically outlines the activities necessary for completing each objective; and

(5) The effectiveness of the plan for administering the project.

(Adult Education Act, sec. 316(a)(5); 20 U.S.C. 1211a(a)(5))

§ 186c.97 Selection criterion: Community involvement. (0 to 5 points)

For the text of this criterion, see section 186c.17.

(Adult Education Act, sec. 316(a)(5), (d); 20 U.S.C. 1211a(a)(5), (d))

§ 186c.98 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

For the text of this criterion, see § 186c.18.

(Adult Education Act, sec. 316(a)(5); 20 U.S.C. 1211a(a)(5))

§ 186c.99 Selection criterion: Adequacy of resources. (0 to 10 points)

For the text of this criterion, see §186c.19.

(Adult Education Act, sec. 316(a)(5); 20 U.S.C. 1211a(a)(5))

§ 186c.100 Selection criterion: Staff. (0 to 15 points)

For the text of this criterion, see §186c.20.

(Adult Education Act, sec. 316(a)(5); 20 U.S.C. 1211a(a)(5))

§ 186c.101 Selection criterion: Evaluation plan. (0 to 15 points)

For the text of this criterion, see §186c.21.

(Adult Education Act, sec. 316(a)(5), (d); 20 U.S.C. 1211a(a)(5), (d))

§ 186c.102 Selection criterion: Commitment. (0 to 5 points)

For the text of this criterion, see § 186c.41.

(Adult Education Act, sec. 316(a)(5); 20 U.S.C. 1211a(a)(5))

Appendix

1. (a) Each year the Commissioner, in accordance with the provisions of 45 CFR 100a.100 through 100a.102, publishes an application notice that states the amount of funds available for new projects under each of the five programs governed by part 186c.

(b) When making awards for new projects, the Commissioner allocates funds to each program on the basis of the statement of available funds in the application notice. However, the Commissioner may reduce the allocation of funds for a program if he determines, on the basis of the appropriate selection criteria, that the amount of funds necessary for approvable activities described in meritorious applications is less than the entire initial allocation for that program.

(Adult Education Act, sec. 316; 20 U.S.C. 1211a)

2. An applicant shall comply with the provisions in the Education Division General Administrative Regulations (EDGAR) regarding applications. Those provisions are set out in 45 CFR 100a.107 through 100a.129.

(Adult Education Act, sec. 316; 20 U.S.C. 1211a)

3. An applicant shall specify the particular part 186c program (for example, Planning, Pilot, and Demonstration Projects) under which it is applying. An applicant may apply under more than one Part 186c program, but it may not apply to carry out a particular activity under more than one Part 186c program.

(Adult Education Act, sec. 316; 20 U.S.C. 1211a)

4. If an applicant submits an application under a program for which the proposed project is not authorized, the Commissioner may, with the consent of the applicant, review the application under an appropriate program, if any, under Part 186c, for which it may be timely considered.

(Adult Education Act, sec. 316; 20 U.S.C. 1211a)

5. An applicant shall include in its application the date of any needs assessment, survey, or other research effort, the results of which it describes in its application to demonstrate the need for the project.

(Adult Education Act, sec. 316; 20 U.S.C. 1211a)

6. An applicant shall include in its application a description of the activities for which it seeks assistance, including the specific number of people who will participate in the project.

(Adult Education Act, sec. 316(d)(1); 20 U.S.C. 1211a(d)(1))

7. An applicant shall include in its application a plan for evaluating the effectiveness of the project in achieving its objectives. This plan shall include descriptions of—

(a) The data collection method;

(b) The instruments to be used for testing an measuring;

(c) The method for analyzing the data to be collected;

(d) A timetable for collecting and analyzing data; and

(e) If known, the qualification of those who will conduct the evaluation.

(Adult Education Act, sec. 316(d)(2); 20 U.S.C. 1211a(d)(2))

8. An applicant under the Educational Services or Planning, Pilot, and Demonstration Projects programs shall include in its application an assurance that it will, at the end of its project—

(a) Submit to the Commissioner the following information about the project:

(1) The number of people who were served.

(2) The number of dropouts from the project.

(3) The number of people who received a Graduate Equivalency Degree (GED) or the increases in grade levels attained by participants; and

(b) Cooperate with the Commissioner in follow-up studies of project participants.

(Adult Education Act, sec. 316(a)(1), (2), (b), (d); 20 U.S.C. 1211a(a)(1), (2), (b), (d))

9. The Commissioner does not approve an application under 45 CFR Part 186c unless the Commissioner is satisfied that the application, and any documents submitted with respect to the application, show that individuals who will participate in, or be served by, the project and other members of the Indian community adequately participated in planning and developing the project, and will participate in the operation and evaluation of the project.

(Adult Education Act, sec. 316, 316(d); 20 U.S.C. 1211a, 1211a(d))

PART 187—INDIAN FELLOWSHIP PROGRAM

Subpart A—General

Sec.

187.1 What is the purpose of this program?
187.2 Who is eligible to apply?
187.3 Definitions.
187.4 Which fields of study qualify as related fields?
187.5 What is included in the fellowship?
187.6 How does an individual apply for a fellowship?

Subpart B—How Are Fellows Selected?

187.11 Is priority given to certain applicants?
187.12 How is an application evaluated?

Subpart C—What Conditions Must Be Met by Fellows?

187.21 Duration and continuation of fellowships.
187.22 Responsibilities of fellows.
187.23 Leave of absence.
187.24 Discontinuation of fellowships.
187.25 Alternate fellows.

Appendix

Authority: Pub. L. 93-380, sec. 632(c), 88 Stat. 586, 587, as amended (20 U.S.C. 887c-2), unless otherwise noted.

Subpart A—General

§ 187.1 What is the purpose of this program?

This program provides assistance to enable Indian students to pursue a course of study of not more than four academic years leading toward—

(a) A postbaccalaureate degree in medicine, law, education, and related fields; or

(b) A graduate or undergraduate degree in engineering, business administration, natural resources, and related fields.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.2 Who is eligible to apply?

(a) An applicant must be Indian as defined in § 187.3(b).

(b) An applicant must be a United States citizen or a resident of the United States for other than a temporary purpose.

(c) A fellow in medicine, law, education, or a related field must be a full-time postbaccalaureate student.

(d) A fellow in engineering, business administration, natural resources, or a related field must be a full-time graduate or undergraduate student.

(e) An undergraduate fellow must be recognized by his or her institution of higher education as a degree candidate in engineering, natural resources, business administration, or a related field.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.3 Definitions.

The following definitions apply to the terms in this part:

"Fellow" means the recipient of a fellowship under the Indian Fellowship Program.

"Fellowship" means an award under the Indian Fellowship Program.

"Full-time student" means an individual pursuing a course of study that constitutes a full-time workload in accordance with an institution's established policies.

"Indian" means any individual who is—

(a) A member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside, or a descendant, in the first or second degree, of any such member;

(b) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(c) An Eskimo or Aleut or other Alaska Native.

(Indian Education Act, sec. 453(a); 20 U.S.C. 1221h(a))

"Undergraduate degree" means a bachelor's degree.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.4 Which fields of study qualify as related fields?

(a) *Related to medicine*—

(1) Veterinary medicine;

(2) Nursing;

(3) Dentistry;

(4) Optometry; and

(5) Clinical psychology.

(b) *Related to engineering*—

(1) Architecture.

(c) *Related to business administration*—

(1) Accounting;

(2) Tribal administration; and

(3) Public administration.

(d) *Related to natural resources*—

(1) Forestry;

(2) Watershed management;

(3) Range science;

(4) Land-use managment;

(5) Fisheries;

(6) Environmental biology; and

(7) Geology.

(e) The Commissioner considers applications for fellowships in related fields other than those listed in paragraphs (a) through (d) of this section on a case-by-case basis.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.5 What is included in a fellowship?

(a) Subject to paragraphs (b) and (c), of this section a fellowship includes—

(1) An amount to cover tuition and all other fees required of students in similar standing at the institution attended by the fellow;

(2) A stipend to cover the fellow's living expenses, withut regard to dependents;

(3) An allowance for dependents;

(4) An allowance for books and other necessary instructional materials;

(5) In cases of extreme hardship, reasonable costs associated with necessary research;

(6) In cases of extreme hardship, a travel allowance for a fellow who must move from his or her residence to an institution of higher education.

(b) The Commissioner includes in the annual application notice a statement of

the maximum stipend and allowance for dependents. The minimum stipend and allowance for dependents are—

(1) The maximum amounts stated in the notice; minus

(2) Other financial assistance (other than loans) received or expected to be received by the fellow for the fellow's living expenses and for the support of the fellow's dependents.

(c) The Commissioner does not award a fellowship in an amount greater than the amount of the fellow's cost of attendance less other financial aid, received or expected to be received by the fellow, as determined by the institution to be attended. The Commissioner may review the institution's determination and may modify it in cases of extreme hardship.

(Indian Education Act, sec. 423, 20 U.S.C. 887c-2)

§ 187.6 How does an individual apply for a fellowship?

Instructions for applying are contained in the Appendix to this Part 187.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

Subpart B—Selection Factors

§ 187.11 Is priority given to certain applicants?

In selecting fellows in the fields of engineering, natural resources, business administration, and related fields, the Commissioner, in addition to the points awarded under § 187.12, awards 15 points to applicants for graduate fellowships.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.12 How is an application evaluated?

The Commissioner evaluates and ranks an application with applications from the same field and related fields. The Commissioner evaluates an application on the basis of the criteria listed below. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under the criteria in this section is 100.

(a) *Financial need. (0 to 20 points).* The extent to which the application demonstrates the financial need of the applicant.

(b) *Academic record. (0 to 30 points).* The quality of the academic record of the applicant. In addition to transcripts, this may include standardized test scores, scholarly publications, honors, and awards.

(c) *Other evidence of potential success. (0 to 30 points).* The extent to which there is eveidence other than the academic record that the applicant will be successful in his or her field. This may include references, statements by the applicant, evidence of related employment experience or community service, and other information requests by the Commissioner.

(d) *Service to Indians. (0 to 20 points).* The likelihood that the applicant, upon receipt of his or her degree, will serve Indians. This may be demonstrated by endorsement of a tribe or Indian group, references, statements by the applicant, evidence of employment experience or community service involving Indians, and other information requested by the Commissioner.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

Subpart C—What Conditions Must Be Met By Fellows?

§ 187.21 Duration and continuation of fellowships.

A fellowship may be awarded for a period not to exceed four years. However, the Commissioner reviews the status of each fellow at the end of each year. The Commissioner continues support only if the fellow has—

(a) Complied with the award terms and conditions, section 423 of the Indian Education Act, and any applicable regulations; and

(b) Remained a full-time student in the field in which the fellowship was awarded.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.22 Responsibilities of fellows.

A fellow shall—

(a) Submit to the Commissioner two copies of his or her official grade reports at the close of each academic term;

(b) Report to the Commissioner any interruption of his or her studies and either—

(1) Request a leave of absence; or

(2) Relinquish the fellowship;

(c) Report to the Commissioner and the institution of higher education all other sources of financial assistance that he or she is receiving and for which he or she has applied;

(d) Report to the Commissioner any changes in financial assistance from other sources and in academic status; and

(e) Agree to cooperate in any evaluations or follow-up studies of the Indian Fellowship Program.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.23 Leave of absence.

(a) A fellow may request a leave of absence for a period not longer than 12 months.

(b) A leave of absence is permissible only if—

(1) It is approved by the Commissioner; and

(2) The institution certifies that the fellow is eligible to resume his or her course of study at the end of the leave of absence.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.24 Discontinuation of fellowships.

(a) The Commissioner may discontinue a fellowship if a fellow fails to comply with this part 187 or the terms and conditions of the fellowship award.

(b) The Commissioner will discontinue a fellowship only after providing reasonable notice and an opportunity for the fellow to rebut, in writing or in an informal meeting with the responsible official in the U.S. Office of Education, the basis for the decision.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.25 Alternate fellows.

If a fellowship is vacated or discontinued, the Commissioner may designate an alternate. The Commissioner may award a fellowship to the alternate for a period of study not in excess of the remainder of the period of time for which the fellowship it replaces was awarded.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

Appendix

1. *Application form.* (a) Application forms are available from the Office of Indian Education, U.S. Office of Education, 400 Maryland Avenue, S.W., Washington, D.C., 20202.

(b) An applicant shall submit a completed application form, before the closing date, to the U.S. Office of Education.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

2. *Evidence that the applicant is Indian.* (a) If the applicant is a member of a tribe, band, or other organized group of Indians, the applicant shall include—

(1) The name of the tribe, band, or other organized group of Indians with which the applicant claims membership; and

(2) If available, the name and address of the organization that has updated an accurate membership data for the applicant's tribe, band, or other organized group of Indians.

(b) If the applicant is not a member of a tribe, band, or other organized group of Indians, the applicant shall submit the information required in subsection (a) for the parent or grandparent through whom the applicant claims eligibility.

(c) The applicant shall also submit—

(1) The tribal enrollment number of the applicant, or the parent or grandparent through whom the applicant claims eligibility; or

(2) At least one of the following as evidence that he or she is Indian as defined in § 187.3(b):

(i) A copy of the Bureau of Indian Affairs Certification of Degree of Indian Blood for the applicant or for the parent or grandparent through whom the applicant claims eligibility.

(ii) A copy of the tribal enrollment document of the applicant or of the parent or grandparent through whom the applicant claims eligibility.

(iii) A statement from a recognized official of the appropriate tribe, band, or other organized group of Indians that the applicant or a parent or grandparent of the applicant is a member of that tribe, band, or group.

(iv) Evidence that the applicant is considered by the Secretary of the Interior to be an Indian.

(v) Evidence th the applicant is an Eskimo, Aleut, or other Alaska Native.

(Indian Education Act, sec. 453(a); 20 U.S.C. 1221h(a))

3. *Evidence of admission or attendance.* (a) The applicant shall submit evidence that he or she is in attendance or has been accepted for admission as a full-time student at an institution of higher education in one of the eligible fields of study listed in §§ 187.1 and 187.5 of the program regulations.

(b) An applicant who has not yet been accepted for admission may submit an application that the Commissioner may consider, provided that the applicant is accepted by an institution of higher education by a subsequent date to be specified by the Commissioner.

(c) The Commissioner may require evidence that the applicant will be enrolled in an accredited program of study.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

4. *Academic transcripts.* (a) An applicant for an undergraduate fellowship shall submit high school and, if appropriate, undergraduate transcripts.

(b) An applicant for a graduate fellowship shall submit undergraduate and, if appropriate, graduate transcripts.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

5. *Other information and assurances.* (a) An applicant shall submit information showing the amount of tuition and fees charged by the institution of higher education to be attended.

(b) The applicant shall submit information the Commissioner may require in order to determine the extent of the applicant's financial need.

(c) The applicant shall submit other information and assurances the Commissioner may require.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

PART 187—INDIAN FELLOWSHIP PROGRAM

Subpart A—General

Sec.

187.1 What is the purpose of this program?
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Appendix

Authority: Pub. L. 93-380, sec. 632(c), 88 Stat. 586, 587, as amended (20 U.S.C. 887c-2), unless otherwise noted.

Subpart A—General

§ 187.1 What is the purpose of this program?

This program provides assistance to enable Indian students to pursue a course of study of not more than four academic years leading toward—

(a) A postbaccalaureate degree in medicine, law, education, and related fields; or

(b) A graduate or undergraduate degree in engineering, business administration, natural resources, and related fields.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.2 Who is eligible to apply?

(a) An applicant must be Indian as defined in § 187.3(b).

(b) An applicant must be a United States citizen or a resident of the United States for other than a temporary purpose.

(c) A fellow in medicine, law, education, or a related field must be a full-time postbaccalaureate student.

(d) A fellow in engineering, business administration, natural resources, or a related field must be a full-time graduate or undergraduate student.

(e) An undergraduate fellow must be recognized by his or her institution of higher education as a degree candidate in engineering, natural resources, business administration, or a related field.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.3 Definitions.

The following definitions apply to the terms in this part:

"Fellow" means the recipient of a fellowship under the Indian Fellowship Program.

"Fellowship" means an award under the Indian Fellowship Program.

"Full-time student" means an individual pursuing a course of study that constitutes a full-time workload in accordance with an institution's established policies.

"Indian" means any individual who is—

(a) A member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside, or a descendant, in the first or second degree, of any such member;

(b) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(c) An Eskimo or Aleut or other Alaska Native.

(Indian Education Act, sec. 453(a); 20 U.S.C. 1221h(a))

"Undergraduate degree" means a bachelor's degree.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.4 Which fields of study qualify as related fields?

(a) *Related to medicine*—

(1) Veterinary medicine;

(2) Nursing;

(3) Dentistry;
(4) Optometry; and
(5) Clinical psychology.
(b) *Related to engineering*—
(1) Architecture.
(c) *Related to business administration*—
(1) Accounting;
(2) Tribal administration; and
(3) Public administration.
(d) *Related to natural resources*—
(1) Forestry;
(2) Watershed management;
(3) Range science;
(4) Land-use management;
(5) Fisheries;
(6) Environmental biology; and
(7) Geology.
(e) The Commissioner considers applications for fellowships in related fields other than those listed in paragraphs (a) through (d) of this section on a case-by-case basis.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.5 What is included in a fellowship?

(a) Subject to paragraphs (b) and (c) of this section, a fellowship includes—
(1) An amount to cover tuition and all other fees required of students in similar standing at the institution attended by the fellow;
(2) A stipend to cover the fellow's living expenses, without regard to dependents;
(3) An allowance for dependents;
(4) An allowance for books and other necessary instructional materials;
(5) In cases of extreme hardship, reasonable costs associated with necessary research;
(6) In cases of extreme hardship, a travel allowance for a fellow who must move from his or her residence to an institution of higher education.
(b) The Commissioner includes in the annual application notice a statement of the maximum stipend and allowance for dependents. The minimum stipend and allowance for dependents are—
(1) The maximum amounts stated in the notice; minus
(2) Other financial assistance (other than loans) received or expected to be received by the fellow for the fellow's living expenses and for the support of the fellow's dependents.
(c) The Commissioner does not award a fellowship in an amount greater than the amount of the fellow's cost of attendance less other financial aid, received or expected to be received by the fellow, as determined by the institution to be attended. The Commissioner may review the institution's determination and may modify it in cases of extreme hardship.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.6 How does an individual apply for a fellowship?

Instructions for applying are contained in the Appendix to this Part 187.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

Subpart B—Selection Factors

§ 187.11 Is priority given to certain applicants?

In selecting fellows in the fields of engineering, natural resources, business administration, and related fields, the Commissioner, in addition to the points awarded under section 187.12, awards 15 points to applicants for graduate fellowships.

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§ 187.12 How is an application evaluated?

The Commissioner evaluates and ranks an application with applications from the same field and related fields. The Commissioner evaluates an application on the basis of the criteria listed below. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under the criteria in this section is 100.

(a) *Financial need.* (0 to 20 points). The extent to which the application demonstrates the financial need of the applicant.

(b) *Academic record.* (0 to 30 points). The quality of the academic record of the applicant. In addition to transcripts, this may include standardized test scores, scholarly publications, honors, and awards.

(c) *Other evidence of potential success.* (0 to 30 points). The extent to which there is evidence other than the academic record that the applicant will be successful in his or her field. This may include references, statements by the applicant, evidence of related employment experience or community service, and other information requested by the Commissioner.

(d) *Service to Indians.* (0 to 20 points). The likelihood that the applicant, upon receipt of his or her degree, will serve Indians. This may be demonstrated by endorsement of a tribe or Indian group, references, statements by the applicant, evidence of employment experience or community service involving Indians, and other information requested by the Commissioner.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

Subpart C—What Conditions Must Be Met by Fellows?

§ 187.21 Duration and continuation of fellowships.

A fellowship may be awarded for a period not to exceed four years. However, the Commissioner reviews the status of each fellow at the end of each year. The Commissioner continues support only if the fellow has—
(a) Complied with the award terms and conditions, section 423 of the Indian Education Act, and any applicable regulations; and
(b) Remained a full-time student in the field in which the fellowship was awarded.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.22 Responsibilities of fellows.

A fellow shall—
(a) Submit to the Commissioner two copies of his or her official grade reports at the close of each academic term;
(b) Report to the Commissioner any interruption of his or her studies and either—
(1) Request a leave of absence; or
(2) Relinquish the fellowship;
(c) Report to the Commissioner and the institution of higher education all other sources of financial assistance that he or she is receiving and for which he or she has applied;
(d) Report to the Commissioner any changes in financial assistance from other sources and in academic status; and
(e) Agree to cooperate in any evaluations or follow-up studies of the Indian Fellowship Program.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.23 Leave of absence.

(a) A fellow may request a leave of absence for a period not longer than 12 months.
(b) A leave of absence is permissible only if—
(1) It is approved by the Commissioner; and
(2) The institution certifies that the fellow is eligible to resume his or her course of study at the end of the leave of absence.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.24 Discontinuation of fellowships.

(a) The Commissioner may discontinue a fellowship if a fellow fails to comply with this part 187 or the terms and conditions of the fellowship award.

(b) The Commissioner will discontinue a fellowship only after providing reasonable notice and an opportunity for the fellow to rebut, in writing or in an informal meeting with the responsible official in the U.S. Office of Education, the basis for the decision.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

§ 187.25 Alternate fellows.

If a fellowship is vacated or discontinued, the Commissioner may designate an alternate. The Commissioner may award a fellowship to the alternate for a period of study not in excess of the remainder of the period of time for which the fellowship it replaces was awarded.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

Appendix

1. *Application form.* (a) Application forms are available from the Office of Indian Education, U.S. Office of Education, 400 Maryland Avenue, SW., Washington, D.C., 20202.

(b) An applicant shall submit a completed application form, before the closing date, to the U.S. Office of Education.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

2. *Evidence that the applicant is Indian.* (a) If the applicant is a member of a tribe, band, or other organized group of Indians, the applicant shall include—

(1) The name of the tribe, band, or other organized group of Indians with which the applicant claims membership; and

(2) If available, the name and address of the organization that has updated and accurate membership data for the applicant's tribe, band, or other organized group of Indians.

(b) If the applicant is not a member of a tribe, band, or other organized group of Indians, the applicant shall submit the information required in subsection (a) for the parent or grandparent through whom the applicant claims eligibility.

(c) The applicant shall also submit—

(1) The tribal enrollment number of the applicant, or the parent or grandparent through whom the applicant claims eligibility; or

(2) At least one of the following as evidence that he or she is Indian as defined in section 187.3(b):

(i) A copy of the Bureau of Indian Affairs Certification of Degree of Indian Blood for the applicant or for the parent or grandparent through whom the applicant claims eligibility.

(ii) A copy of the tribal enrollment document of the applicant or of the parent or grandparent through whom the applicant claims eligibility.

(iii) A statement from a recognized official of the appropriate tribe, band, or other organized group of Indians that the applicant or a parent or grandparent of the applicant is a member of that tribe, band, or group.

(iv) Evidence that the applicant is considered by the Secretary of the Interior to be an Indian.

(v) Evidence that the applicant is an Eskimo, Aleut, or other Alaska Native.

(Indian Education Act, sec. 453(a); 20 U.S.C. 1221h(a))

3. *Evidence of admission or attendance.* (a) The applicant shall submit evidence that he or she is in attendance or has been accepted for admission as a full-time student at an institution of higher education in one of the eligible fields of study listed in §§ 187.1 and 187.5 of the program regulations.

(b) An applicant who has not yet been accepted for admission may submit an application that the Commissioner may consider, provided that the applicant is accepted by an institution of higher education by a subsequent date to be specified by the Commissioner.

(c) The Commissionr may require evidence that the applicant will be enrolled in an accredited program of study.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

4. *Academic transcripts.* (a) An applicant for an undergraduate fellowship shall submit high school and, if appropriate, undergraduate transcripts.

(b) An applicant for a graduate fellowship shall submit undergraduate and, if appropriate, graduate transcripts.

(Indian Education Act, sec. 423; 20 U.S.C. 887c-2)

5. *Other information and assurances.* (a) An applicant shall submit information showing the amount of tuition and fees charged by the institution of higher education to be attended.

(b) The applicant shall submit information the Commissioner may require in order to determine the extent of the applicant's financial need.

(c) The applicant shall submit other information and assurances the Commissioner may require.

[FR Doc. 79-20148 Filed 6-28-79; 8:45 am]
BILLING CODE 4110-02-M

Friday
June 29, 1979

Part VI

Department of Health, Education, and Welfare

Office of Education

School Assistance in Areas Affected by Federal Activity: School Assistance in Cases of Certain Disasters

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Parts 112, 114, and 115]

School Assistance in Areas Affected by Federal Activity: School Assistance in Cases of Certain Disasters

AGENCY: Office of Education, HEW.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commissioner of Education proposes to amend the regulations for programs that govern assistance for—

(a) Current school expenditures in federally affected areas;

(b) School construction in federally affected areas; and

(c) Current school expenditures and school construction in the case of certain disasters.

These programs are known collectively as the SAFA Program. There are two important reasons for amending the SAFA program regulations:

(a) There have been some changes in the authorizing legislation.

(b) The Secretary of the Department of Health, Education, and Welfare (HEW) believes that all HEW program regulations should be simplified and clarified.

These proposed regulations will make technical improvements that will promote the efficiency and effectiveness of the SAFA program.

DATES: Interested persons are invited to submit comments or recommendations regarding the proposed regulations on or before August 28, 1979.

Public meetings will be held in—

Pierre, South Dakota—August 7, 1979
9 a.m. to 2 p.m.
Phoenix, Arizona—August 9, 1979
9 a.m. to 12 noon
1 p.m. to 5 p.m.
San Juan, Puerto Rico—August 21, 1979
9 a.m. to 12 noon
1 p.m. to 5 p.m.
7 p.m. to 9 p.m.

Public meetings also will be held in each of the ten regions on August 2, 1979.

The time for these meetings is—

9 a.m. to 12 noon
1 p.m. to 5 p.m.
7 p.m. to 9 p.m.

ADDRESSES: Comments should be addressed to Mr. William L. Stormer, U.S. Office of Education (Room 2107, FOB No. 6) 400 Maryland Avenue, SW, Washington, D.C. 20202.

The locations of the public meetings are—

Pierre, South Dakota—Pierre Junior High School, 120 South Highland Street, Pierre, South Dakota 57501.
Phoenix, Arizona—Central High School, 4525 N. Central Avenue, Phoenix, Arizona 85012.
San Juan, Puerto Rico—Antilles High School, Fort Buchanan, San Juan, Puerto Rico 00934.
Region I—Boston—Bunker Hill Community College, Room C 202, Rutherford Avenue, Charlestown, Massachusetts.
Region II—New York—Hearing Room E, Room 2222, 26 Federal Plaza, New York, New York.
Region III—Philadelphia—University City Holiday Inn, 36th & Chestnut Streets, Philadelphia, Pennsylvania.
Region IV—Atlanta—Regional Office Building, Suite 2221, 101 Mariette Tower Bldg., Atlanta, Georgia.
Region V—Chicago—Center for Urban Education, 160 West Wendell Street, (1050 North Wells), Chicago, Illinois.
Region VI—Dallas—William Travis Elementary School, 3001 McKinney Street, Dallas, Texas.
Region VII—Kansas City—Federal Office Bldg., 601 East 12th Street, Room 140, Kansas City, Missouri.
Region VIII—Denver—George Washington High School, 655 South Monaco, Denver, Colorado.
Region IX—San Francisco—Federal Office Building, Room 209, 50 United Nations Plaza, San Francisco, California.
Region X—Seattle—Ingram High School, Little Theater, 1819 North 135th Street, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Stormer. Telephone: (202) 245-8427.

FOR INFORMATION ON REGIONAL HEARINGS CONTACT: The appropriate Regional Commissioner for Educational Programs listed below:

Region I, Boston, Dr. Thomas J. Burns, (617) 223-7500
Region II, New York, Dr. William D. Green, (212) 264-4370
Region III, Philadelphia, Dr. Albert C. Crambert, (215) 596-1001
Region IV, Atlanta, Dr. William L. Lewis, (404) 221-2063
Region V, Chicago, Ms. Juliette Noone Lester, (312) 353-5215
Region VI, Dallas, Mr. Edward J. Baca, (214) 767-3626
Region VII, Kansas City, Dr. Harold Blackburn, (816) 374-2276
Region VIII, Denver, Dr. John Runkel, (303) 837-3544
Region IX, San Francisco, Dr. Caroline Gillin, (415) 556-4920
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SUPPLEMENTARY INFORMATION:

I. Changes Due to Regulations Reform

On September 12, 1977 the Secretary announced an effort by HEW to simplify and clarify its program regulations. Accordingly these proposed regulations have been reorganized and, if appropriate, rewritten, with particular attention to the following considerations:

(a) The use of as simple and clear English as possible.

(b) The use of a standard format for regulations administered by the Commissioner.

(c) Incorporation by reference of other regulations that apply generally to programs administered by the Commissioner and elimination of provisions that duplicate requirements in those other regulations.

(d) The deletion of provisions that prescribe application content. The Commissioner includes these provisions in the notice of closing date or in the program information package sent to prospective applicants.

(e) Elimination of a number of provisions that merely repeat or paraphrase the authorizing statute.

More specifically, the following major changes in organization have been made:

Part 111—Hearings Governing School Construction and Financial Assistance in Federally Affected Areas. The proposed regulations revoke Part 111, which at present covers administrative hearings on matters arising under Pub. L. 81-874 (Assistance for Current School Expenditures) and Pub. L. 81-815 (Assistance for Construction). Administrative hearing provisions will, instead, be contained in the appropriate program regulations—Part 112, 114, or 115, as the case may be.

Part 112—Assistance for School Current Expenditures and Construction in Cases of Certain Disasters. The proposed regulations combine in this part the material currently contained in Parts 112 and 113 governing disaster assistance. Part 113 is revoked. Part 112 conforms generally to a new format being used for many regulations.

It is important to note that the programs for disaster assistance will continue to be governed, also, by other regulations that apply generally to all programs being admnistered by the Commissioner. Currently these general regulations are the General Provisions for Office of Education Programs, contained in 45 CFR Part 100a. Part 100a has been revised and will be issued in 1979 as part of the new Education Division General Administrative Regulations (EDGAR).

The reader is advised to become familiar with EDGAR Part 100a (Direct Grant Programs) and Part 100c (Definitions) since these generally will apply to disaster assistance authorized by Pub. L. 81-874 and Pub. L. 81-815. The reader is encouraged to make comments on these parts of EDGAR during the

comment period indicated in the notice of proposed rulemaking for EDGAR published on May 4, 1979 (44 FR 26308).

Part 114—Assistance for School Construction in Areas Affected by Federal Activities. The proposed regulations will apply EDGAR to this program, with a few exceptions specifically listed. Part 114 also conforms generally to the new format.

Part 115—Assistance for Local Educational Agencies in Areas Affected by Federal Activities, and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Free Public Education.

Subpart G "Determinations under Section 5(d)" contains rules governing determinations as to whether a State has in effect a program of State aid designed to equalize expenditures for free public education. This notice of proposed rulemaking makes only the changes necessary to conform the regulations to the changes enacted by the Educaiton Amendments of 1978 (Pub. L. 95-561).

These changes include only the modifications reflected in the NPRM as follows: Revised § 115.49; new material added by §§ 115.50(a)(5) and 115.57; and a change reflected by § 115.58. The rest of the material in that subpart has not been rewritten in this notice of proposed rulemaking nor is the Commissioner inviting comments on that material. It will remain as it currently appears in Subpart G.

The material formerly contained in subpart I—"Entitlements Related to Low-Rent Public Housing"—has been deleted because, effective in fiscal year 1980, payments based on children associated with low-rent housing will not have to be used for programs designed to meet the special educational needs of disadvantaged children. A new subpart I has bee added, containing the rules that apply particularly to increased entitlements for children residing on Indian lands.

Subpart J contins the material formerly contained in subpart F, pertaining to arrangements by the Commissioner under section 6 of Pub. L. 81-874 to provide free public education to certain federally connected children if no LEA provides for their education.

The following discussion summarizes the major provisions of the legislation (the Act) on which these proposed regulations are based. This discussion should help the reader to better understand the regulations, many of which are very technical.

However, the reader is cautioned that this discussion is not a substitute for studying the Act itself. It does not attempt to repeat or paraphrase every provision of the Act. At times the discussion does specifically refer the reader to parts of the Act that are not discussed in detail, but that may have a crucial bearing on eligibility, entitlement, or the amount of payment in a particular case.

II. Summary of Important Parts of the Authorizing Legislation for Assistance Under Pub. L. 81-874

Pub. L. 81-874 is the Federal statute that authorizes assistance for current expenditures in areas affected by Federal activities and in areas affected by disasters.

Assistance Under Pub. L. 81-874

This first part of the discussion will deal generally with assistance to local educational agencies (LEAs) under Pub. L. 81-874. The general purpose of this part of the SAFA program is to provide assistance for current school expenditures in federally affected areas.

(a) *Pub. L. 81-874—Section 2.*

Entitlements for Federal Property

Section 2 of the Act directs the Commissioner to pay an entitlement to an LEA in whose school district the United States owns certain Federal property acquired since 1938. For an LEA to receive an entitlement, the Commissioner must determine that, at the time the property was acquired, the assessed value of the property was 10 percent or more of the assessed value of all the real property in the school district.

In addition, the Commissioner must find (1) that the United States acquisition of the property has placed a substantial and continuing financial burden on the LEA and (2) that the LEA is not being substantially compensated for the loss in revenue by an increase in revenue resulting from the Federal activity with respect to the property.

The amount of the entitlement equals the continuing Federal responsibility for the additional burden to the LEA in terms of current expenditures.

The term "entitlement" is used here and in the proposed regulations to mean the amount of financial assistance that an applicant may receive if the appropriations for a fiscal year are sufficient to pay all claims.

Section 2(c) of the Act contains a special rule regarding the eligibility of an LEA whose school district has been formed after 1938 by the consolidation of two or more school districts.

(b) *Pub. L. 81-874—Section 3.*

Entitlements for Federally Connected Children

Section 3 provides an entitlement to an LEA based on numbers of federally connected children attending the schools of that LEA.

"A" and "B" Children

In addition to the eligibility requirements summarized under subpart A of part 115 of these proposed regulations, section 3 defines the categories and subcategories of federally connected "A" and "B" children on which eligibility and entitlement are based. Eligibility requirements are conditions an applicant must meet to qualify for *any* grant.

These categories and subcategories of federally connected children are described in § 115.8 of the proposed regulations. Generally "A" children are children who reside on Federal property *and* have a parent with some Federal connection, such as Federal employment. Generally "B" children either reside on Federal property *or* have a parent with some Federal connection.

Formula for Entitlements

Section 3(d)(1) of the Act establishes the general formula for computing entitlements. Generally the entitlement of an LEA under section 3 for any fiscal year is the sum of the products obtained by multiplying—for each category of federally connected children—(1) the number of children in average daily attendance (ADA) in the schools of that LEA and for whom that LEA provided a free public education during the year by (2) a percentage of that LEA's "local contribution rate".

Note.—The LEA's local contribution rate, which is discussed in the proposed regulations in subpart E of part 115, generally reflects current expenditures from local resources per child.

Average Daily Attendance

ADA refers generally to the number of children actually present in the schools of an LEA, in contrast to average daily membership (ADM), which refers to children enrolled on a current basis in the schools.

The percentage of the local contribution rate that is used as a multiplier is determined by Congress and varies, depending on the subcategory of federally connected children.

The Act (section 3(d)(1)(A)) contains a special rule regarding the percent of the local contribution rate used as a multiplier in the case of an LEA with a

large number of federally connected "A" children attending its schools.

Increased Entitlements

The Commissioner increases the amount of an LEA's entitlement in certain cases. These are cases in which the Commissioner determines that the regular entitlement—as computed under section 3(d)(1) of the Act—together with the funds available to that LEA from State and local sources and from other sections of the Act, is insufficient to enable that LEA to provide the level of education that is provided by other, generally comparable LEAs in the State.

The particular conditions under which the Commissioner makes this determination and the method of determining the amount of increase in the entitlement are described fully in the Act (Section 3(d)(2)(B)).

Handicapped Children

The Act (section 3(d)(2)(C)) provides a special rule regarding an increased LEA entitlement in connection with federally-connected handicapped children. To receive this increased entitlement, the LEA must be providing programs for these children—including preschool programs—that take into account the special educational needs of the children and that are of sufficient size, scope, and quality to give reasonable promise of substantial progress towards meeting those needs. Subpart H of part 115 of these proposed regulations contains criteria for assuring that the LEA provides a suitable free educational program for these children.

Children on Indian Lands

The Act (section 3(d)(2)(D) provides a special rule regarding an increased LEA entitlement in connection with children residing on Indian lands. The Act also contains a number of requirements that an LEA must meet in order to receive an entitlement for these children. In general, the LEA is required to ensure that these children participate on an equal basis in the school program with all other children educated by the LEA.

Several other requirements pertain to the dissemination of information to, and involvement of, the tribes and parents of these children concerning the operation of programs assisted under this part of the Act. A tribe that has children attending an LEA may also file a written complaint with the Commissioner concerning that LEA's compliance with these requirements. In certain circumstances the Commissioner may then withhold payments under section 3(d)(2)(D).

Subpart I of part 115 of these proposed regulations contains requirements and interpretations that apply particularly to this increased entitlement.

Reduction in Number

The Act contains a provision that guarantees an entitlement at a reduced rate to certain LEAs for each of four years, beginning with the year in which the number of federally connected children in the LEA decreases to 90 percent or less of what it was in the previous year. The conditions for satisfying this rule and the method of determining the entitlement are provided in section 3(e) of the Act.

(c) *Pub. L. 81-874—Section 4.*

Sudden and Substantial Increase

Section 4(a) of the Act provides for entitlements to an LEA for school years in which the Commissioner determines that—

(1) A sudden and substantial increase in the number of children in ADA in the schools of that LEA has been the direct result of activities of the United States;

(2) The activities of the United States have placed on that LEA a substantial and continuing financial burden; and

(3) The LEA is making a reasonable tax effort and is doing what it reasonably can to use other financial assistance but is nevertheless unable to meet the increased costs involved.

The Act establishes the required increase in the number of children that must result from United States Government activity. The Act also explains how an entitlement is computed. Eligibility may continue for the fiscal year after the year of the increase, but the entitlement is reduced as explained in the Act.

The Act (section 4(d)) provides an entitlement in certain situations in which an LEA has reasonably prepared to provide a free public education to a number of section 4(a) children, but the number of those children is substantially reduced because of a decrease in, or cessation of, Federal activities, or because those activities do not occur.

A section 4 entitlement is based on the increase of children in ADA occurring as a direct result of United States activity. Usually many of these children are "A" or "B" children described in § 115.10, although some are not. The LEA may count "A" or "B" children under either section 3 or section 4, but not under both sections.

The Commissioner does not count for the purpose of section 4, children whose school attendance stems from United States activities in connection with real property under the jurisdiction of the Post Office and used primarily to provide postal service.

(d) *Pub. L. 81-874—Section 5.* Section 5 of the Act contains a number of provisions pertaining to section 2, 3, and 4 entitlements. For example, section 5(a) establishes certain application requirements.

Payment Priorities

Section 5(c) of the Act establishes a system of payment priorities known as the "tier payment system." In addition, special "hold harmless" provisions in section 305(b)(2) of Pub. L. 93-380 guarantee, to the extent of available appropriation, an overall payment to certain LEAs. The Commissioner applies these priorities in any fiscal year in which appropriations by the Congress are not enough to satisfy LEA entitlements. The payment priorities established by Pub. L. 93-380 and by the Act are, in summary, as follows:

(1) *The hold harmless provisions of Pub. L. 93-380.* These hold harmless provisions are described and interpreted in detail in § 115.27 of the proposed regulations. The general purpose of any hold harmless provision is to guarantee to a grantee a payment at a specified level, despite other laws that would, otherwise require a diminished payment or no payment at all.

One of these hold harmless provisions guarantees a level of payment to an applicant LEA that has suffered a decrease in ADA of children counted under section 3 of the Act. However, this decrease in ADA must have resulted directly from a decrease in or a cessation of Federal activities on a military installation announced by the Federal government after April 16, 1973.

The other hold harmless provision established by Pub. L. 93-380—and described in § 115.27 of these proposed regulations—guarantees a level of payment to certain LEAs for children counted under section 3(b) of the Act.

These hold harmless payments are made before any payments under the tier system.

(2) *The tier system.* (i) Under the tier system, the Commissioner first allocates funds to provide—

(A) 100 percent of entitlements under section 2 of the Act; and

(B) 25 percent of entitlements under section 3 of the Act.

These two allocations are known as tier 1.

(ii) After tier 1, the Commissioner allocates funds to provide percentages ranging from 18.2 to 46.75 percent of entitlements for the varying categories of children under section 3. (These

percentages are described in the Act.) However, none of these allocations will be made unless all of them can be made.

These allocations are known as tier 2(A).

(iii) The Commissioner then allocates funds to insure that each LEA receiving the payments indicated above in (i) and (ii) receives at least 90 percent of the amount it received for the previous year.

(iv) If any funds remain after the Commissioner has made the allocations in (iii), the Commissioner allocates funds to provide additional percentages of entitlements in accordance with language contained in an appropriation act.

Allocations in (iii) and (iv) are known as tier 2(B).

(v) If any funds remain after the Commissioner has made the allocations in (iv), the Commissioner—dependent on language contained in an appropriation act—allocates funds to provide additional percentages of entitlements—

(A) First to complete payments in tier 2(B) if they were not completed under (iv); and

(B) Second, to make payments toward unpaid entitlements. These unpaid entitlements are known as tier 3.

SAFA and State Aid

Section 5(d) of the Act establishes a general rule: No SAFA payments may be made to an LEA in a State that considers SAFA payments in determining eligibility for, or how much, State educational aid an LEA is entitled. The exception to this rule is that a State may take SAFA payments into consideration if the Commissioner determines that it has a program to equalize expenditures for public education throughout the State.

Subpart G of part 115 contains the rules under which the Commissioner makes this determination. The Commissioner usually applies one of two tests to make this determination:

(a) Under the "wealth neutrality" test the Commissioner decides whether 85% of the State and local revenues for current expenditures for free public education are "wealth neutral" revenues.

"Wealth neutral" revenues are those received by each LEA that are not based on any wealth advantage that an LEA May have over any other LEA in the State.

(b) Under the "fiscal disparity" test the Commissioner decides whether, among school districts of the State, the disparity in the amount of current expenditures or revenue for free public education per pupil is not more than 25%. States may ask the Commissioner to certify that their equalization programs comply with the rules contained in subpart G.

(e) *Pub. L. 81-874—Section 6.*

Special Arrangements for Free Public Education

Section 6(a) directs the Commissoner, in certain circumstances, to make whatever arrangements are needed to provide a free public education for children residing on Federal property or who are children of active duty members of the Armed Forces.

For children residing on Federal property, the Commissioner is empowered to make these arrangements only if—

(a) No tax revenue of the State, or its political subdivision, may be spent to educate those children; or

(b) after consultation with the State educational agency (SEA), the Commissioner concludes that no LEA is able to provide a suitable free public education for those children.

For children of active duty members of the Armed Forces, the Commissioner is empowered to make these arrangements only if—

(a) The schools in which a free public education is usually provided for those children are made unavailable to them by official action of a State or local governmental authority; or

(b) After consultation with the SEA, the Commissioner concludes that no LEA is able to provide a suitable free public education for those children.

If the Commissioner makes an arrangement under section 6(a) to provide free public education in facilities located on Federal property, the Commissioner may also arrange to educate certain children who reside in an adjacent area with a parent who, during some portion of the fiscal year, was employed on that Federal property.

Section 6(c) of the Act provides that if the Commissioner makes an agreement under section 6(a) to provide free public education in facilities located on Federal property in Puerto Rico, Wake Island, Guam, American Samoa, or the Virgin Islands, the Commissioner may also arrange to educate in those facilities certain children who reside with a parent employed by the United States.

Section 6 contains a number of other requirements related to the Commissioner's activity to make an arrangement. In general, section 6(f) provides that an LEA's failure to provide free public education for childrn residing on Federal property may have consequences upon that LEA's entitlement under sections 3 or 4.

Assistance Under Pub. L. 81-815

This part of the discussion concerns the program authorized by Pub. L. 81-815 (the Act). This law authorizes assistance for school construction in areas affected by Federal activity.

Basic Purpose

The basic purpose of the Act is to provide financial assistance to LEAs for the construction of minimum school facilities that are urgently needed because of a substantial increase in school membership resulting from new or increased Federal activity.

Priorities

Under section 3 of the Act, the Commissioner establishes an order of priority according to which applications are approved when funds are appropriated under the Act. These priorities are based on the relative urgency of need and are contained in subpart F of part 114, of these proposed regulations.

Federal Share

In general, section 4 of the Act makes clear that the Federal share of the cost of a project is limited to the cost, in the school district of the applicant LEA, of constructing minimum school facilities. Section 4 also provides that this assistance is limited to the amount needed to provide these minimum facilities for the estimated number of children who—

(a) Will be attending the schools of that LEA at the end of the second year after the period of membership increase; and

(b) At that time would otherwise be without school facilities.

Section 5 of the Act—the basic section under which an LEA may demonstrate eligibility—imposes other limitations on the amount of this assistance. These limitations do not apply, however, to LEAs that demonstrate eligibility under sections 14(a), 14(b), or 14(c) of the Act. These sections are described later in this preamble.

Under section 5 the total payments to an LEA may not exceed an amount that is computed by adding—for each of a number of categories of federally connected children—the product obtained by multiplying (1) a percentage of the average per pupil cost of constructing minimum school facilities in the State by (2) the estimated increase in the number of children in that particular category.

The particular categories of federally connected children used in this computation are described in subpart B

of part 114, of these proposed regulations.

An LEA is not eligible to receive this assistance unless the increase in number of federally connected children over a four-year increase period equals a minimum number or percentage of children in average daily membership during the base year (the year preceding this period).

These minimum numbers and percentages—and the criteria according to which the Commissioner may waive or reduce them—are contained in subparts B and E of part 114, of these proposed regulations.

Whenever the Commissioner concludes that some or all of the children who are identified under section 5—for the purpose of computing the maximum amount of assistance an LEA may receive—will be members of a federally connected category only temporarily, section 9 directs the Commissioner not to count those children in computing that maximum amount. However, to take care of these children who will be federally connected only temporarily, the Commissioner may provide temporary school facilities to the LEA.

The Commissioner may also provide the LEA assistance equal to the estimated cost of temporary facilities. However, this money must be used for permanent construction, and the LEA must assure the Commissioner that the temporary federally connected membership will be accommodated in adequate facilities.

The LEA may not receive for construction an amount greater than the cost of constructing minimum school facilities for the temporary membership.

Emergency Funding of Non-Federal Share

Section 8 of the Act allows the Commissioner to use up to 10% of a fiscal year's appropriation to award additional amounts to LEAs that are unable to finance the non-Federal share of construction projects or complete their already approved projects due to emergency circumstances. The Commissioner makes these additional payments to the LEAs with the most urgent need.

Under section 7 of the Act, the Commissioner, on approval of an application, pays to the LEA an amount equal to 10% of the Federal share of the cost of the approved project. The Commissioner then monitors the progress of the project and makes additional payments when appropriate.

Special Arrangements for Free Public Education

Section 10 of the Act parallels section 6 of Pub. L. 81–874 (arrangements for the free public education of certain children). In general, it provides that the Commissioner may arrange for the construction or other provision of necessary minimum school facilities if—

(a) The Commissioner finds that no State or local revenues may be expended for the free public education of children residing on Federal property; or

(b) After consultation with the SEA, the Commissioner finds that no LEA can provide a suitable free public education for these children. The Commissioner may also provide, on a temporary basis, minimum school facilities for children of active duty members of the Armed Forces if—

(a) The schools usually provided for these children are made unavailable to them by official action of a State or local government; and

(b) The Commissioner concludes that no LEA is able to provide a suitable free public education for them.

In addition, if the Commissioner constructs or otherwise provides minimum school facilities situated on Federal property in Puerto Rico, Wake Island, Guam, or the Virgin Islands, the Commissioner may also, under certain circumstances, provide minimum school facilities for children residing with a parent employed by the United States though not residing on Federal property.

In the interest of the Federal government, the Commissioner may transfer to the appropriate LEA the interest of the United States in any school facility provided under this section.

Payments To Help Provide Minimum School Facilities to LEAs That Educate Children Residing on Indian Lands or Whose School Districts Have a Substantial Amount of Federal Property

Section 14 authorizes the Commissioner to make payments to LEAs to enable them to provide the minimum school facilities that are needed to provide a free public education to certain types of children. Assistance provided under this section is not subject to the limitations imposed by sections 4 and 5 of the Act. Section 14 does not require an increase in membership as a condition of eligibility.

Briefly, under section 14(a) the Commissioner may make a payment to an LEA that does or will provide a free public education for children residing on Indian lands in order to enable that LEA to provide minimum school facilities for a substantial percentage of the children in the membership of its schools.

Under section 14(b) the Commissioner may make a payment to an LEA that does or will provide a free public education for children residing on Indian lands in order to enable that LEA to provide minimum school facilities for those chidren.

Under section 14(c) the Commissioner may make a payment to an LEA whose school district has a substantial amount of Federal property to provide minimum school facilities for children for whom it now provides or will provide a free public education.

Specific eligibility requirements for sections 14(a), 14(b), and 14(c)—and the conditions under which the Commissioner may waive some of these requirements—are contained in subparts B and E of part 114 of these proposed regulations. In determining the order in which applications are approved, the Commissioner considers the relative educational and financial needs of the LEAs and the nature and extent of Federal responsibility.

Assistance in Cases of Disasters

This part of the discussion concerns the program of assistance for school current expenditures and construction in cases of certain disasters. Assistance for current expenditures is authorized by section 7 of Pub. L. 81–874. Assistance for construction is authorized by section 16 of Pub. L. 81–815. Summarized briefly, in the case of certain disasters— either major disasters identified by the President or localized "pinpoint" disasters—that impair the ability of an LEA to provide a free public education for the children attending its schools, the Commissioner may provide that LEA with the additional assistance it needs.

Under section 7(a) of Pub. L. 81–874, assistance is available on a declining basis for five fiscal years. It is to be used, in conjunction with any other funds available to the LEA, to provide a level of free public education equivalent to that provided prior to the disaster. Under section 7(b), funds may be used to provide temporary school facilities, make minor repairs in existing facilities, and replace instructional and maintenance materials, equipment, and supplies.

Under section 16 of Pub. L. 81–815, assistance is available to restore or replace seriously damaged or destroyed minimum school facilities. The assistance available under section 16, considered in conjunction with other funds available to the LEA, may not exceed the amount needed to restore or

replace the school facilities destroyed or damaged by the disaster.

In determining the order in which applicaitons under section 7 and section 16 are approved, the Commissioner considers the relative educational and financial needs of the LEAs that submit applications.

III. Changes in the Authorizing Legislation

The Education Amendments of 1978 (Pub. L. 95–561) made a number of changes to the two laws governing the SAFA program (Pub. L. 81–874 and Pub. L. 81–815). The following list indicates the important changes made by the new legislation and the consequent changes, if any, to the SAFA regulations.

Changes to Pub. L. 81–874 Effective in Fiscal Year 1979: 1. *Extensions.* (a) The temporary provisions of sections 2, 3(b), and 4 of the Act have been extended through fiscal year (FY) 1983.

(b) Two hold harmless provisions authorized by Pub. L. 93–380 have been extended through FY 1983. These include—

(1) The one related to decrease or cessation of Federal activities on military installations; and

(2) The one that guarantees payments for "B" children at 90 percent of the preceding year's payment.

(c) Two other hold harmless provisions of Pub. L. 93–380 expired at the end of FY 1978. These included—

(1) The one that guaranteed generally to LEAs, a percentage of the preceding year's payment; and

(2) The one pertaining to LEAs whose payments were affected by payments for children associated with low-rent housing.

2. *Absorption.* The provision for absorption, or non-payment, of some "B" children, which was effective in FY 1978 only, has been eliminated.

3. *Early payments.* Applicants for assistance under sections 2 and 3 may submit preliminary applications in order to receive a payment during the first 30 days of a new fiscal year. The payment will be 75 percent of what the applicant was eligible to receive in the prior fiscal year. Section 115.10 of these proposed regualtions states the procedures and rules governing this new applicaiton for preliminary payment.

These proposed regulations also delete the requirement for a final report (RSF–3) currently required by § 115.41. Part of the final application (in contrast to a preliminary application), now due on or before January 31 of the current fiscal year, is to be considered the final report for the prior year. However, as § 115.13 of these proposed regulations specifies, in a case in which actual satisfactory data was not previously available, data for the current year included in a final application may be amended before the end of a fiscal year for an adjustment to an entitlement based on actual satisfactory data.

4. *State equalization programs.* A State proposing to consider as local resources payments to school districts under Pub. L. 81–874 shall advise the Commissioner 60 days before the beginning of the fiscal year of its intent to do this. This State shall notify each affected school district about the proposed action. After making a determination on the State's intent, the Commissioner gives school districts and the States an opportunity for a hearing.

Additionally, States that comply in FY 1979 with regulations under section 5(d)(2)—by having an equalization plan that satisifies those regulations—will not be required to make restitution for Pub. L. 81–874 funds taken into account under their equalization programs in FY 1978.

5. *School districts entitled to hearings.* Although SAFA regulations have provided hearing rights for a number of years, a new amendment to Pub. L. 81–874 establishes a right to a formal hearing. These proposed regulations provide that any school district adversely affected or aggrieved by an action of the Commissioner is entitled to a hearing on, and review of, that action under the provisions of Chapters 5 and 7 of Title 5, United States Code (the Administrative Procedure Act).

6. *Handicapped children.* Handicapped children for whom an LEA pays tuition are counted in the average daily attendance (ADA) of the school district that is paying the tuition.

The definition of "average daily attendance" in § 115.4 now makes it clear that this rule includes children in private schools.

7. *Average daily attendance (ADA).* As authorized by a statutory amendment, § 115.29 establishes a method to convert average daily membership (ADM) to ADA if school districts are not required by the State to keep ADA.

8. *One more State.* The Northern Mariana Islands have been defined as a State under the Act.

9. *Federal schools operated under Section 6.* These schools are affected by several amendments:

(a) The Commissioner ensures that funds provided to operate these schools are spent efficiently. The Commissioner requires the schools to undertake an annual accounting and to supply to the Commissioner data relating to the quality and type of education offered.

(b) The Commissioner ensures the establishment of an elected school board for each federally operated system. Section 115.91 specifies the procedures for these elections. However, it also reflects the Commissioner's interpretation that this rule does not apply to an LEA that, according to State or local law, already has an elected school board.

These school boards shall oversee school expenditures and operations, subject to audit procedures established by the Commissioner.

(c) These proposed regulations clarify the types of children who may attend the section 6 schools in Puerto Rico.

(d) Section 6 schools in Puerto Rico shall provide employees with compensation, tenure, leave, hours of work, and other conditions of employment on the same basis as is provided for similar positions in the public schools of the District of Columbia (D.C.). Section 115.90 specifies that compensation for administrative personnel is to be based on what D.C. officials with similar official responsibilities would receive.

Changes to Pub. L. 81–874 Effective in Fiscal Year 1980: 1. *Eligibility expanded for increased local contribution rate.* A school district having 50 percent or more "A" and "B" children—described in § 115.8—in ADA has its entitlement computed on an increased local contribution rate if the Commissioner determines this necessary in order for that district to provide the level of education of comparable school districts. These "increased-rate" districts will be provided 75 percent of entitlement in payment tier 2. (See explanation of the tier system elsewhere in this preamble under the heading Payment Priorities.)

2. *Eligibility expanded for determination of heavily-impacted "A" district.* A school district having 20 percent (formerly 25 percent) or more of its total ADA comprised of "A" children will have its entitlement for these children computed on 100 percent of the local contribution rate and will receive 75 percent of the entitlement for this type of child in payment tier 2. These districts also will receive 75 percent of entitlement in payment tier 2 for "B" children having parents in the uniformed services.

3. *No vote necessary for spending funds.* No State may require that a vote of qualified electors of a heavily impacted school district be held to determine if this district will spend Pub. L. 81–874 payments.

4. *Funding priorities and new hold harmless provision.* Payment tier 2 will be divided into a 65 percent portion and a 35 percent portion. There will be a new hold harmless guarantee of 90 percent of a previous year's payment. The new funding order is described elsewhere in this preamble under the heading Payment Priorities.

5. *Foreign-owned properties.* Properties that are owned by foreign governments and that are tax-free are added to the definition of eligible Federal property.

6. *Grades 13 and 14 excluded.* The definition of free public elementary and secondary education now excludes grades 13 and 14.

7. *Increased entitlements for Indian children.* Section 3 entitlements for children residing on Indian lands will be multiplied by 125 percent, 75 percent of which will be paid in payment tier 2. In order to receive payments for children residing on Indian lands, a school district must establish policies and procedures that insure—

(a) That Indian children participate in school programs on an equal basis with all other children educated by the district;

(b) That applications, evaluations, and program plans are adequately disseminated to tribes and parents of Indian children; and

(c) That tribes and parents of Indian children—

(1) Have an opportunity to make recommendations concerning the needs of their children and the ways in which they can assist their children in realizing the benefits to be derived from educational programs;

(2) Are actively consulted and involved in the planning and development of educational programs; and

(3) Are afforded the opportunity to present their overall views on current educational programs and operations and on the degree of parental participation allowed.

A tribe or its designated agent may file with the Commissioner a written complaint related to these policies and procedures. The proposed regulations do not detail this complaint procedure. It is spelled out in the Act.

After a complaint is filed, a hearing examiner designated by the Commissioner holds a hearing and makes written findings and recommendations to the Commissioner. The Commissioner determines that remedial actions will be scheduled. If the Commissioner determines that those remedial actions will not be accomplished, a tribe may elect to have educational services provided under the Indian Self-Determination and Education Assistance Act or by a Bureau of Indian Affairs school.

It should be noted that the statute does not require that the increased section 3 entitlement generated by children residing on Indian lands be used for a special education program for those children. In this way the statutory requirements are different from those governing the increased section 3 entitlements for handicapped children. Subpart I of part 115, therefore, does not contain several of the restrictions on use of funds that are contained in subpart H pertaining to handicapped children.

8. *Low-rent housing children.* An LEA will no longer be required to use payments based on children associated with low-rent housing for programs especially designed to meet the needs of disadvantaged children. Also, the Commissioner will make payments for low-rent housing children in payment tier 2 on the same basis as other federally connected children.

Changes to Pub. L. 81–815, all of which are effective in FY 1979: 1. *Extension.* The temporary provisions of section 3 and of section 16 are extended through FY 1983. These provisions pertain, respectively, to deadlines for applications for payments on account of certain children, and to times in which disasters have occurred.

2. *Section 5 categories of children and rate of payment changed.* Categories of children under sections 5(a)(1) and (2) and corresponding payment rates are again comparable with those under Pub. L. 81–874.

3. *Federally-owned schools: definition of construction.* The definition of construction under section 10 is expanded to include "leasing, renovation, remodeling, or rehabilitating."

4. *One more State.* The Northern Mariana Islands have been defined as a State under the Act.

IV. Effect of Amendments to Section 504 of the Rehabilitation Act of 1973

On November 6, 1978, section 504 of the Rehabilitation Act of 1973 was amended by section 119 of Pub. L. 95–602. Section 504 forbids discrimination on the basis of handicap in any federally assisted program. The 1978 amendment to section 504 explicitly makes that section applicable to "any program or activity conducted by an Executive agency." This amendment governs arrangements by the Commissioner under section 6 of Pub. L. 81–874 to provide free public education to children residing on Federal property or children of members of the Armed Forces on active duty.

Section 6 of Pub. L. 81–874 states that, except in certain cases with respect to children of members of the Armed Forces on active duty, education given under a section 6 arrangement must be provided in facilities of an LEA or in school facilities located on Federal property. However, the amendment to section 504 is considered to override those restrictions to the extent of permitting the Commissioner to provide free appropriate public education in a private setting, if that is determined necessary. Section 115.87(c) of these proposed regulations reflects this interpretation.

V. Relationship to Other Notices of Proposed Rulemaking Affecting SAFA Programs

With one exception, these proposed regulations incorporate in substance the changes to part 115 proposed in the Federal Register of December 11, 1978 (43 FR 58022–58027) and the changes to part 114 proposed in the Federal Register of February 14, 1979 (44 FR 7917).

Section 115.74 of the proposed regulations published December 11, 1978 would have required recipients to comply generally with the record keeping requirements of subpart D of 45 CFR Part 74. These proposed regulations delete that requirement.

VI. Public Participation

Several of the issues addressed by these proposed regulations were discussed at regional meetings in November and December, 1978 between the representatives of the Office of Education, and representatives of SEAs and LEAs. These discussions focused on such matters as the elimination of the final report (Form RSF–3) currently required by § 115.41; the current school year survey as a basis for computing federally connected ADA for the purpose of sections 3 and 4 of the Act; the use of the preceding year ADA as an element of that computation; and the conversion of average daily membership to ADA.

These and other issues were also discussed at a meeting in December 1978 between OE representatives and members of the Council of Great City School Systems and at a meeting in January 1979 between OE and representatives of the National School Board Association.

VII. Invitation to Comment

A public meeting on this Notice of Proposed Rulemaking will be held in

each of the ten Federal regions. Since we expect to schedule public meetings for several regulations on the same day, at the same place, it would be helpful for us to know how many persons are interested in speaking about these regulations. If you are interested in commenting at a public meeting, we encourage you to call the appropriate Regional Commissioner of Education, who will schedule a time for your comments. Persons who do not notify the Regional Commissioner of their intention to comment will also be given an opportunity to speak. Those persons making presentations will be called upon according to their prearranged schedule—or if not prearranged—in the order of registration.

In addition, interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All written comments submitted in response to this notice will be available for public inspection, both during and after the comment period, in Room 2107-A, FOB-6, 400 Maryland Avenue, SW, Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

VIII. Citation of Legal Authority

The reader will find a citation of statutory or other legal authority in parenthesis on the line following each substantive provision.

Dated: June 6, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

Approved: June 23, 1979.

Hale Champion,

Acting Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance Nos. 13,477 School Assistance in Federally Affected Areas—Construction and 13.478 School Assistance in Federally Affected Areas—Maintenance and Operation)

The Commissioner proposes to revise 45 CFR Parts 111 and 112 as follows:

PART 111—HEARINGS IN CONNECTION WITH SCHOOL CONSTRUCTION AND FINANCIAL ASSISTANCE IN FEDERALLY IMPACTED AREAS [REVOKED]

1. By revoking part 111.

PART 112—ASSISTANCE FOR SCHOOL EXPENDITURES AND CONSTRUCTION IN CASES OF CERTAIN DISASTERS

2. By amending part 112 to read:

Subpart A—General

Sec.

112.1 Disaster assistance program.
112.2 Who may apply for assistance?
112.3 Regulations that apply to the disaster assistance program.
112.4 Definitions.

Subpart B—Kinds of Projects Assisted Under This Program

112.11 Replacement of instructional and maintenance supplies, equipment, and materials.
112.12 Payment for minor repairs.
112.13 Provisions of needed temporary school facilities.
112.14 Payment of increased current operating expenses or replacement of lost revenues.
112.15 Restoration or replacement of school facilities.

Subpart C—How To Apply for Assistance

112.21 Application procedure.
112.22 State certification of applications or preapplications.

Subpart D—How a Grant Is Made

112.31 Review of an applicaiton: Consideration of other resources available to an applicant.
112.32 Consultation with the State educational agency.
112.33 Determination of priorities among eligible applications.

Subpart E—Eligible Costs

112.41 Eligible costs for assistance related to replacement of instructional and maintenance supplies, equipment, and materials; minor repairs; or provision of temporary school facilities (section 7(b) of Pub. L. 81-874).
112.42 Eligible costs for restoration or replacement of school facilities (section 16 of Pub. L. 81-815).

Subpart F—Hearings

112.51 Hearings relating to assistance for restoration or replacement of school facilities (section 16 of Pub. L. 81-815).
112.52 Hearings relating to assistance other than restoration or replacement of school facilities (sections 7(a) and 7(b) of Pub. L. 81-874).

Authority: Section 7 of Pub. L. 81-874 (20 U.S.C. 241-1) and section 16 of Pub. L. 81-815 (20 U.S.C. 646), as amended, unless othewise noted.

PART 112—ASSISTANCE FOR SCHOOL EXPENDITURES AND CONSTRUCTION IN CASES OF CERTAIN DISASTERS

Subpart A—General

§ 112.1 Disaster assistance program.

(a) *Purpose.* Under this program the Office of Education financially assists local educational agencies (LEAs) that have been afflicted by certain disasters. Assistance under this program is authorized by section 7 of Pub. L. 81-874 (Financial Assistance for Local Educational Agencies in Areas Affected by Federal Activity) and by section 16 of Pub. L. 81-815 (School Construction in Areas Affected by Federal Activities). These two laws are referred to in this part as "the Acts". Assistance may include—

(1) Replacement of instructional and maintenance supplies, equipment, and materials;

(2) Payment for minor repairs;

(3) Provision of needed temporary facilities;

(4) Payment of increased current operating expenses or replacement of lost revenues that relate to free public education; and

(5) Restortion or replacement of seriously damaged or destroyed munimum school facilities.

(b) *Limits on assistance.* Assistance is limited to a reasonable amount of an LEA's expenses resulting from the disaster. The Commissioner determines the allowable amount of assistance after considering other resources available to the LEA.

(20 U.S.C. 241-1(a), (b), 646(a))

§ 112.2 Who may apply for assistance?

An LEA may apply for assistance if it meets these conditions:

(a)(1) *Occurrence of a disaster.* The President declares a major disaster encompassing an area in which part or all of the LEA is located; or

(2) The school facilities of the LEA have been seriously damaged or destroyed by a smaller disaster that the LEA requests the Commissioner to declare as a pinpoint disaster.

(b) *Financial need.* As a result of the disaster, and in order to provide free public education to the children it serves, the LEA requires assistance of at least—

(1) $1,000; or

(2) One-half of one percent of its operating expenses for the fiscal year preceding the fiscal year in which the disaster occurred.

(20 U.S.C. 241-1(a), (b), 646(a))

§ 112.3 Regulations that apply to the disaster assistance program.

The following regulations apply to the disaster assistance program:

(a) The Education Division General Administrative Regulations (EDGAR) in part 100a (Direct Grant Programs) and part 100c (Definitions); except for these sections of EDGAR that do not apply to this program:

(1) § 100a.112 (Describe the key personnel).

(2) § 100a.114 (Describe the evaluation plan).

(3) § 100a.603 (Grantee's title to site).

(b) HEW's General Regulations for Administration of Grants (part 74), which are incorported by reference in EDGAR, except for these sections of part 74 that do not apply to this program:

(1) § 74.94 (Payment methods under construction grants).

(2) Subpart O (Property).

(c) The regulations in this part.

§ 112.4 Definitions.

(a) *Terms defined in EDGAR.* (1) The following terms used in this part are defined in part 100c:

Applicant
Application
Award
Commissioner
Project

(2) The following terms used in this part are defined in HEW's General Regulations for Administration of Grants (part 74), which are incorporated by reference in EDGAR:

Grant
Grantee
Supplies

(b) *Terms defined by statute.* The following terms used in this part are defined in the Acts:

Child
Construct, Constructing, Construction
Equipment
Free public education
Local educational agency (LEA)
School facilities
State
State educational agency (SEA)

(c) *Terms defined in this part.* As used in this part, these terms have the following definitions:

"Acts" means Pub. L. 815, 81st Congress (64 Stat. 967), as amended, and Pub. L. 874, 81st Congress (64 Stat. 1100), as amended.

(20 U.S.C. 236–244, 631–647)

"Latent damages" means damages that are caused by a disaster but that become apparent only after an LEA has applied for a grant.

(20 U.S.C. 241–1(a), (b), 646(a))

"Major disaster" means a disaster the President determines to be of sufficient severity and magnitude to warrant Federal disaster assistance. The disaster may result from flood, drought, fire, hurricane, earthquake, storm, or from some other catastrophe.

(20 U.S.C. 241–1(a)(1)(A), 646(a)(1)(A))

"Membership" means:

(a) The number of children in the membership of a school according to State law; or

(b) If no State law governs membership, the number of children who are listed on the school's current roll of pupils and who have not permanently left the school or become otherwise ineligible to attend classes there.

(c) An exception to the general rule stated in paragraphs (a) and (b) applies if a child resides in the district of one LEA but attends school in the district of another under a tuition arrangement in which the LEA in whose district the child resides reimburses the other LEA. In these cases the child is considered to be a member in the LEA in which it resides, unless the Commissioner approves an agreement between the LEAs that the child will be recorded as a member in the LEA in which it attends school.

(20 U.S.C. 645(5))

"Minimum school facilities" means those facilities that the Commissioner considers necessary for an LEA's educational mission and for which Federal assistance may be provided. Generally, these are facilities—such as classrooms, auxiliary rooms, and initial equipment, machinery, and utilities—that support an educational program for the LEA's membership at normal capacity and in accordance with the laws and common practice in the State.

(20 U.S.C. 645(9)(10))

"Normal capacity" means the number of pupil stations that a school facility accommodates under ordinary conditions according to the laws and common practice of the State.

(20 U.S.C. 634, 645(9), (10))

"Pinpoint disaster" means a disaster the Commissioner determines to have destroyed or seriously damaged an LEA's school facilities.

The disaster may result from flood, drought, fire, hurricane, earthquake, storm, or from some other catastrophe but may not result from negligence or malicious action.

(20 U.S.C. 241–1(a)(1)(B), 646(a)(1)(B))

Subpart B—Kinds of Projects Assisted Under This Program

§ 112.11 Replacement of instructional and maintenance supplies, equipment, and materials.

The Commissioner may authorize assistance to replace instructional and maintenance supplies, equipment, and materials—including textbooks—that have been seriously damaged or destroyed as a result of a disaster (section 7(b) of Pub. L. 81–874).

(20 U.S.C. 241–1(b))

§ 112.12 Payment for minor repairs.

The Commissioner may authorize assistance for payment for minor repairs (section 7(b) of Pub. L. 81–874).

(a) *Repair of school facilities.* Repair of a school facility is considered minor if the repair—

(1) Relates to an architectural, mechanical, or structural element of the facility, or to its site, grading, or surrounding improvements;

(2) Is intended to restore a portion of the facility to a condition similar to its condition before the disaster; and

(3) Involves replacement of no more than 30 percent of any one major structural element, such as a load-bearing wall or roof truss, that supports the weight of the facility.

(b) *Use of funds for construction.* An LEA may raze a facility needing minor repairs and apply the grant funds available for those repairs to construction of a new facility.

(c) *Repair of equipment and materials.* Repair of equipment and materials is considered minor if the repair costs less than replacement of the equipment and materials.

(20 U.S.C. 241–1(b), 244(13), (14))

§ 112.13 Provision of needed temporary school facilities.

The Commissioner may authorize assistance for the provision of needed temporary school facilities (section 7(b) of Pub. L. 81–874).

(a) *Means of furnishing temporary school facilities.* Assistance may include the cost of—

(1) Equipment necessary to operate temporary facilities; and

(2) Converting remaining portions of a school facility into classrooms;

(3) A lease on temporary alternative school facilities for a period of time necessary to repair, restore, or replace permanent school facilities; or

(4) Lease or purchase, whichever cost is less, of temporary portable school facilities for a period of time necessary to repair, restore, or replace permanent

school facilities if conversion of remaining facilities or lease of temporary alternative facilities is not practical.

(b) *Prohibition of permanent arrangements.* Assistance may not include the purchase of land or the construction of nonportable facilities.

(20 U.S.C. 241-1(b))

§ 112.14 Payment of increased current operating expenses or replacement of lost revenues.

The Commissioner may authorize assistance for payment of increased current operating expenses or replacement of lost revenues that relate to free public education (section 7(a) of Pub. L. 81-874).

(a) *Limits on assistance.* Assistance is limited to the smallest of an amount necessary—

(1) To permit an LEA to provide a level of education equivalent to that maintained in its schools before the disaster;

(2) To meet budgeted current operating expenses; or

(3) To meet actual current operating expenses.

(b) *Prohibition of unrelated expenses.* Assistance may not include—

(1) Elimination from the LEA's budget of a deficit balance preceding the disaster; or

(2) Creation for the LEA's budget of a carryover balance following the disaster.

(c) *Five years is the maximum period of assistance.* The Commissioner provides assistance—for operating expenses or replacement or lost revenues—for no more than five consecutive fiscal years, beginning with the fiscal year in which the disaster is declared.

(d) *Diminishing amount of assistance available during the five-year period.* The amount of assistance for which an LEA is eligible to apply diminishes during the five-year eligibility period as follows:

(1) Year of disaster—100 percent of elibible expenses.

(2) First year following disaster—100 percent of eligible expenses.

(3) Second year following disaster—75 percent of the amount provided in the first year following the disaster.

(4) Third year following disaster—50 percent of the amount provided in the first year following the disaster.

(5) Fourth year following disaster—25 percent of the amount provided in the first year following the disaster.

(e) *Private school children displaced by a major disaster.* If a private school has been disrupted or destroyed by a major disaster, assistance to an LEA may include an amount necessary to provide free public education for displaced children previously enrolled in the private school.

(20 U.S.C. 241-1(a))

§ 112.15 Restoration or replacement of school facilities.

The Commissioner may authorize assistance for the restoration or replacement of seriously damaged or destroyed minimum school facilities (section 16 of Pub. L. 81-815).

(a) *Serious damage.* A school facility is considered to be seriously damaged if it is necessary to restore or replace more than 30 percent of a major structural element, such as a load-bearing wall or roof truss, that supports the weight of the facility.

(b) *Limits on assistance.* Assistance is limited to providing the lesser of—

(1) Those facilities necessary to operate a program of free public education for an LEA's membership at normal capacity according to the laws and common practice of the State; or

(2) Those facilities that the LEA is obligated by State law to restore or replace, and that were—

(i) In use by the LEA before the disaster, or

(ii) Newly constructed facilities that the LEA had accepted from the builder as complete.

(c) *Facilities for private school children displaced by a major disaster.* In the case of a major disaster, minimum school facilities also include facilities necessary to operate a program of free public education for displaced children previously enrolled in private school facilities that have been destroyed by the disaster and will not be replaced.

(d) *Damaged facilities.* For facilities seriously damaged but not destroyed, assistance is limited to the lesser of—

(1) The cost of restoring the facility; or

(2) The cost of replacing the facility.

(e) *Destroyed facilities.* For facilities that have been destroyed, assistance is limited to the lesser of—

(1) The cost of replacing the facility on the same site; or

(2) The cost of replacing the facility on another appropriate site.

(20 U.S.C. 646(a))

Subpart C—How To Apply for Assistance

§ 112.21 Application procedure.

(a) *How to use regulations—How to apply for funds.* The "Introduction of Education Division Programs" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(b) *Application requirement.* To be considered for assistance an LEA must file an application with the Commissioner through its State educational agency (SEA).

(c) *Preapplication requirement in certain cases.* If the LEA is seeking assistance for restoration or replacement of minimim school facilities (section 16 of Pub. L. 81-815), it must file a preapplication before filing an application. The LEA shall file the preapplication with the Commissioner through the SEA.

(d) *State certification: closing date for filing.* (1) The LEA shall submit its application—or, if a preapplication is required, its preapplication—to the SEA. The LEA shall ensure that the SEA certifies and transmits this material to the Commissioner on or before a date 90 days after—

(i) The date of publication in the Federal Register that the President has declared a major disaster; or

(ii) The date of the pinpoint disaster.

(2) However, an LEA that is required to file a preapplication within this 90-day period is not also required to file an application during the same period of time. That LEA may file an application within a reasonable period of time after the Commissioner approves its preapplication.

(e) *Change in information included in the application or preapplication.* The LEA shall promptly inform the Commissioner of any change in the information included in its application—or preapplication—that would affect eligibility for assistance or the amount of a grant.

(f) *New application each year in certain cases.* In order to receive continuing assistance for payment of current operating expenses or replacement of lost revenues (section 7(a) of Pub. L. 81-874), the LEA shall file a new application for each of the fiscal years following the initial grant.

(20 U.S.C. 241-1(e), 638(a), (b), 646(c))

§ 112.22 State certification of applications or preapplications.

(a) *For major disasters.* The SEA's certification of an application or preapplication related to a major disaster shall contain the following assurances on the authority of the Governor unless the Governor has previously filed these assurances with the Federal Disaster Assistance Administration:

(1) Assurance that the LEA is located in an area declared by the President as a major disaster area.

(2) Assurance of the LEA's need for Federal disaster assistance.

(3) Assurance that the State or one or more of its political subdivisions will expend an amount of funds the Commissioner considers reasonable to assist the LEA.

(b) *For pinpoint disasters.* The SEA's certification of an application or preapplication related to a pinpoint disaster shall contain a request from the Governor for assistance, accompanied by the following assurances:

(1) Assurance of the serious damage or destruction of the LEA's school facilities.

(2) Assurance of the LEA's need for Federal disaster assistance.

(3) Assurance that the State or one or more of its political subdivisions will expend an amount the Commissioner considers reasonable to assist the LEA. The assurance must include a statement of the amount of funds available for expenditure.

(4) Assurance that the disaster site has been investigated by appropriate State or local officials who have determined—

(i) That the disaster was not caused by negligence or malicious action; or

(ii) If the cause of the disaster is unknown, that no evidence indicates the disaster was caused by negligence or malicious action.

(20 U.S.C. 241–1(a), (e), 646(a), (c))

Subpart D—How a Grant Is Made

§ 112.31 Review of an application: Consideration of other resources available to an applicant.

The Commissioner reviews a properly completed application and considers other resources available to an applicant in order to determine the applicant's eligibility for assistance and the amount of assistance that would be reasonable.

(a) *What resources are considered?* Other resources available to the applicant include, but are not limited to—

(1) State assistance;

(2) Local assistance;

(3) Federal assistance in addition to that provided under this program;

(4) Insurance proceeds; and

(5) Interest earned on any of (1) through (4) above.

(b) *Special rule in certain cases.* Other resources available to an applicant for assistance related to restoration or replacement of minimum school facilities (section 16 of Pub. L. 81–815) also include—

(1) The proceeds of bonds voted specifically for restoration or replacement of a destroyed or seriously damaged facility; and

(2) The greater of—

(i) An amount the State requires an LEA to set aside in a related insurance program or mandatory reserve fund; or

(ii) All unobligated or unencumbered non-Federal funds that the Commissioner determines have been set aside by the LEA in a related insurance program, monetary reserve fund, or other comparable fund.

(20 U.S.C. 241–1(a)(3), 646(a)(4)(5))

§ 112.32 Consultation with the State educational agency.

(a) *General.* The Commissioner may consult an SEA before making and determination regarding an application for assistance from one of its LEAs.

(b) *Specific determinations in certain cases.* An application for assistance related to restoration or replacement of minimum school facilities (section 16 of Pub. L. 81–815) is approved only if the Commissioner, after consultation with the SEA, determines that the restoration or replacement—

(1) Relates exclusively to minimum school facilities; and

(2) is consistent with overall State plans respecting construction of school facilities.

(20 U.S.C. 646(c))

§ 112.33 Determination of priorities among eligible applications.

(a) *General.* Funds for this program are appropriated by the Congress under the respective Acts that authorize the program—Pub. L. 81–815 and Pub. L. 81–874. This results in these two separate appropriations:

(1) Funds that may be used for eligible applications that relate to the restoration or replacement of minimum school facilities (Pub. L. 81–815).

(2) Funds that may be used for all other eligible applications (Pub. L. 81–874).

(b) *Priorities for applications related to restoration or replacement of school facilities.* If the amount of funds appropriated for eligible applications that relate to restoration or replacement of minimum school facilities is insufficient to permit the award of a grant to all these applications, the Commissioner awards as many grants as possible in the following order of priority:

(1) *Applications for situations in which students must be relocated.* First the Commissioner funds those applications that relate to situations in which an LEA must relocate students because of a disaster.

(i) The Commissioner determines relative priority among these applications by computing for each application the following percentage, then ranking applictions in descending order of priority from the highest to the lowest computed percent:

Number of students requiring relocation/LEA's total current membership

(ii) If an application relates to a major disaster as a result of which private school students require relocation, the percentage in (i) is computed by including these students both in the number of students requiring relocation and in the LEA's total current membership.

(2) *Applications for situations in which it is unnecessary to relocate students.* After the Commissioner funds applications requiring the reolcation of students, the Commissioner funds remaining applications. The Commissioner determines relative priority among these remaining applications by computing for each application the following percentage, then ranking applications in descending order of priority from the highest to the lowest computed percent:

Estimated Federal assistance required for the project described in the application/Estimated unused bond sale capacity of the LEA on the date of the disaster

(20 U.S.C. 646(c))

(c) *Priorities for applications not related to restoration or replacement of school facilities.* If the amount of funds appropriated for eligible applications that do not relate to restoration or replacement of minimum school facilities is insufficient to permit the award of a grant to all these applications, the Commissioner awards as many grants as possible in the order of priority established by this method:

(1) The Commissioner computes for each application the following percentage:

Estimated Federal assistance required for the project described in the application/The LEA's operating expenses for the Fiscal year preceding the disaster

(2) Applications are then ranked in descending order of priority from the highest to the lowest computed percent.

(20 U.S.C. 241–1(d))

Subpart E—Eligible Costs

§ 112.41 Eligible costs for assistance related to replacement of instructional and maintenance supplies, equipment, and materials; minor replars; or provision of temporary school facilities (section 7(b) of Pub. L. 81-874).

(a) *Commissioner's approval.* A grantee may apply grant funds only to—

(1) Costs that the Commissioner approves in advance; or

(2) Costs that the Commissioner approves retroactively because they were necessarily incurred as emergency measures immediately prior to, during, or subsequent to a disaster.

(b) *Which costs may be approved?* Among the costs the Commissioner approves as eligible for payment are reasonable costs related to the following items:

(1) *Preventive work.* Preventive work done on or immediately adjacent to a school site in anticipation of or during the disaster, if the work could reasonably have been expected to minimize damage.

(2) *Use of equipment owned by a grantee.* Use of equipment owned by a grantee to repair damage, if the grantee can document the type of work performed and the prevailing pre-disaster rental rate for comparable equipment.

(3) *Work performed by a grantee's maintenance employees.* Work performed by a grantee's maintenance employees in addition to their regular duties.

(4) *Installation of utilities.* Installation costs for utilities in temporary or leased facilities.

(5) *Replacement of equipment.* (i) Assistance in replacing movable equipment—including vehicles—if the equipment, when purchased, was essential to school operations, and if it would cost more to repair the equipment than to replace it.

(ii) If a school bus is being replaced, the Commissioner determines the amount of assistance by deducting from the cost of replacement the salvage value of the bus and any available insurance proceeds and State transportation assistance.

(6) *Off-site work.* Off-site work to permit emergency access to damaged school facilities, if the work is consistent with State law and is not the responsibility of another unit of local government.

(7) *Trees, shrubs, and ground cover.* Replacement of trees and shrubs by the size of plantings customarily made on the site of new school facilities in the State, and of ground cover by seeding, unless sod is the only effective replacement.

(8) *Architectural and engineering fees.* Architectural and engineering fees that relate to a repair or replacement authorized by the program.

(9) *Repair of school facilities under construction or renovation.* (i) Repair of school facilities that, at the time of the disaster, were under construction or renovation, if the cost of repair is not covered by insurance.

(ii) Temporary or obsolete facilities may be repaired unless prior to the disaster the LEA took formal action to replace them.

(10) *Repair of school facilities damaged during disaster recovery.* Repair of school facilities necessarily damaged during disaster recovery activities to reestablish school operations.

(11) *Temporary facilities.* Provision of temporary facilities, including necessary operating equipment.

(12) *Insurance on portable classroom units that are purchased by the grantee.*

(13) Necessary demolition of facilities and removal of debris.

(20 U.S.C. 241-1(a)(b))

(c) *Which costs are not approved?* The Commissioner does not approve any costs related to the following:

(1) Purchase of an interest in land.

(2) A gymnasium, stadium, or similar facility primarily intended for events that include an admission charge to the general public.

(3) Latent damages not reported to the Commissioner within six months of the date the Commissioner received the LEA's application.

(20 U.S.C. 241-1(b), 244(13))

(d) *Eligible costs for a grantee afflicted by a pinpoint disaster.* (1) These costs include only the amount of the LEA's expenses that exceed the full value—at the time of the disaster—of the damaged or destroyed supplies, equipment, materials, and facilities.

(2) Full value means the value at which the Commissioner estimates the items in (1) should have been insured at the time of the disaster.

(20 U.S.C. 241-1(a)(1)(B), 646(a)(1)(B))

§ 112.42 Eligible costs for restoration or replacement of school facilities (section 16 of Pub. L. 81-815.

(a) *Commissioner's approval.* A grantee may apply grant funds only to items described in its project application that the Commissioner approves as eligible for payment.

(b) *Which costs may be approved?* The Commissioner approves reasonable costs to restore or replace any of the following minimum school facilities to a condition similar to that before the disaster:

(1) Classrooms and related facilities.

(2) Initial fixed equipment, machinery, and utilities.

(3)(i) An auditorium or gymnasium or both if it is justified by the size and educational program of the LEA and by standards and practices in the State.

(ii) The capacity of the facility may not exceed the membership of the school.

(4) Air conditioning if it is justified by standards and practices in the State.

(c) *Which costs are not approved?* The Commissioner does not approve any costs related to—

(1) Purchase of an interest in land;

(2) Off-site improvements;

(3) A gymnasium, stadium, or similar facility primarily intended for events that include an admission charge to the general public; or

(4) Emergency repairs to prevent further damage to a facility or to make it immediately available for education;

(5) Latent damages not reported to the Commissioner within six months of the date the Commissioner receives the LEA's application.

(20 U.S.C. 645(9)(10), 646(a))

(d) *Eligible costs for a grantee afflicted by a pinpoint disaster.* (1) These costs include only the amount of the LEA's expenses that exceeds the full value of the damaged or destroyed facilities at the time of the disaster.

(2) Full value means the value at which the Commissioner estimates these facilities should have been insured at the time of the disaster.

(20 U.S.C. 241-1(a)(1)(B), 646(a)(1)(B))

(e)(1) *Eligible costs for a grantee afflicted by a major disaster.* These costs include only the amount of the LEA's expenses that exceeds any insurance proceeds on the damaged or destroyed facilities.

(2) A grantee shall prosecute insurance claims promptly and fully.

(20 U.S.C. 241-1(a)(1)(A), 646(a)(1)(A))

Subpart F—Hearings

§ 112.51 Hearings relating to assistance for restoration or replacement of school facilities (section 16 of Pub. L. 81-815).

(a) *Right to an administrative hearing.* This section applies to LEAs that are applicants or grantees for assistance for restoration or replacement of school facilities. These LEAs have a right to an administrative hearing in either or both of the following circumstances:

(1) If the Commissioner proposes in whole or in part to disapprove the LEA's application.

(2) If, after a grant has been made, the Commissioner acts to withhold payments to the LEA (the circumstances in which this occurs are specified in section 11(a) of Pub. L. 81–815).

(b) *Hearing procedures.* The procedures described in 45 CFR Part 114, Subpart I, govern these administrative hearings.

(20 U.S.C. 236(c), 641(b))

§ 112.52 Hearings relating to assistance other than restoration or replacement of school facilities (section 7(a) and 7(b) of Pub. L. 81–874).

(a) *Right to an administrative hearing.* This section applies to LEAs that are applicants or grantees for assistance for other than restoration or replacement of school facilities. These LEAs have a right to an administrative hearing if an action of the Commissioner affects them adversely or aggrieves them.

(b) *Hearing procedures.* The procedures described in 45 CFR Part 115, Subpart E, govern these administrative hearings.

(20 U.S.C. 236(c), 641(b))

The Commissioner proposes to amend 45 CFR Parts 113 and 114 to read as follows:

PART 113—ASSISTANCE FOR CURRENT SCHOOL EXPENDITURES IN CASES OF CERTAIN DISASTERS [REVOKED]

1. By revoking part 113.

PART 114—ASSISTANCE FOR SCHOOL CONSTRUCTION IN AREAS AFFECTED BY FEDERAL ACTIVITIES

2. By amending part 114 to read:

Subpart A—General

Sec.

114.1 Program of assistance for school construction.
114.2 Regulations that apply to the SAFA school construction program.
114.3 Definitions.

Subpart B—Eligibility for Assistance under Various Provisions of the Act

114.11 Requirements an LEA must meet to be eligible under sections 5 and 9 of the Act, which provide assistance because of an increased number of federally connected children.
114.12 Eligibility under sections 5 and 9: Which children may be counted in the increase in federally connected children?
114.13 Eligibility under sections 5 and 9: Minimum increased number and percentage of federally connected children required for eligibility.
114.14 Eligibility under sections 5 and 9: Financial need requirement regarding certain federally connected children.
114.15 Requirements an LEA must meet to be eligible under section 14(a) of the Act, which provides assistance because an LEA serves children residing on Indian lands and has great financial need.
114.16 Eligibility under section 14(a): How may an LEA demonstrate it gives substantial service to children residing on Indian lands?
114.17 Eligibility under section 14(a): How may an LEA demonstrate it has great financial need?
114.18 Requirements an LEA must meet to be eligible under section 14(b) of the Act, which provides assistance because an LEA serves children residing on Indian lands and has significant financial need.
114.19 Eligibility under section 14(b): How may an LEA demonstrate it gives substantial service to children residing on Indian lands?
114.20 Eligibility under section 14(b): How may an LEA demonstrate it has significant financial need?
114.21 Requirements an LEA must meet to be eligible under section 14(c) of the Act, which provides assistance because a substantial portion of the land in the LEA's school district is Federal property.
114.22 Requirements an LEA must meet to be eligible under section 8 of the Act, which provides supplementary assistance to LEAs that have already established their eligibility under other sections of the Act.

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114.70 Waiver of requirement that an LEA must have at least one-third of its membership residing on Indian lands to satisfy one means of establishing eligibility under section 14(a).
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114.102 With whom does the Commissioner make an arrangement?
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114.105 Under what conditions is a free public education considered suitable?

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114.112 Hearing procedures.

Authority: Pub. L. 81-815, 64 Stat. 967 (20 U.S.C. 631-647), as amended, unless otherwise noted.

Subpart A—General

§ 114.1 Program of assistance for school construction.

(a) *Assistance to local educational agencies.* These regulations govern Federal financial assistance to local educational agencies (LEAs) under sections 5, 8, 9, and 14 of Pub. L. 81-815 (School Construction in Areas Affected by Federal Activities). This law is referred to in this part as "the Act." This program is the school construction portion of the Office of Education's program of School Assistance in Federally Affected Areas (SAFA). Under the program the Government provides direct grants to help LEAs construct urgently needed minimum school facilities in school districts that have been affected by various Federal activities.

(b) *Arrangements by the Commissioner to educate federally connected children.* These regulations also govern the circumstances in which the Commissioner, under the authority of section 10 of the Act, makes arrangements with another Federal agency to provide minimum school facilities for certain federally connected children in cases in which no LEA is providing those children a free public education that is suitable. These arrangements do not directly provide assistance to an LEA.

(20 U.S.C. 631-645, 647)

§ 114.2 Regulations that apply to the SAFA school construction program.

The following regulations apply to the SAFA school construction program:

(a) The Education Division General Administrative Regulations (EDGAR) in part 100a (Direct Grant Programs) and part 100c (Definitions), except for these sections of EDGAR which do not apply to this program:

(1) § 100a.112 (Describe the key personnel).

(2) § 100a.114 (Describe the evaluation plan).

(3) § 100a.603 (Grantee's title to site).

(b) HEW's General Regulations for Administration of Grants (part 74), which are incorporated by reference in EDGAR, except for these sections of part 74 which do not apply to this program:

(1) 74.94 (Payment methods under construction grants)

(2) Subpart O (Property)

(c) The regulations in this part.

§ 114.3 Definitions.

(a) *Terms defined in EDGAR.* (1) The following terms used in this part are defined in part 100c: Applicant, application, award, commissioner, fiscal year, and project.

(2) The following terms used in this part are defined in HEW's General Regulations for Administration of Grants (part 74), which are incorporated by reference in EDGAR: Equipment, grant, and grantee.

(b) *Terms defined by statute.* The following terms used in this part are defined by section 15 of the Act: Base year, child, construct, constructing, construction, increase period, Federal property, free public education, local educational agency (LEA), parent, school facilities, State, and State educational agency (SEA).

(c) *Terms defined in this part.* As used in this part, these terms have the following definitions: "Act" means Pub. L. 815, 81st Congress (64 Stat. 967), as amended.

(20 U.S.C. 631-647)

"Average daily membership" means—

(1) The number of children in average daily membership in an LEA's schools according to State law; or

(2) If no State law governs average daily membership—

(i) The result obtained by dividing the total days of membership of all pupils in the LEA's schools by the number of days the schools were in session; or

(ii) For a group of schools within an LEA having varying lengths of term the result obtained by dividing the sum of the average daily membership figures for the individual schools by the number of schools in the group.

(20 U.S.C. 642, 645(5))

"Contracts-let-date" means the date on which the Commissioner files with the Office of the Federal Register a notice setting a closing date for receipt of applications.

(20 U.S.C. 634)

"Facilities available to the LEA" are those facilities—described in detail in § 114.40—that the Commissioner considers available to an LEA without grant assistance.

(20 U.S.C. 623, 642)

"Federally connected children" are those children—described more completely in § 114.12—whose presence in an LEA's membership results from Federal activities.

(20 U.S.C. 238 (a), (b), 635(a))

"Membership" means—

(a) The number of children in the membership of a school according to State law; or

(b) If no State law governs membership, the number of children who are listed on the school's current roll of pupils and who have not permanently left the school or become otherwise ineligible to attend classes there.

(c) An exception to the general rule stated in paragraphs (a) and (b) applies if a child resides in the district of one LEA but attends school in the district of another under a tuition arrangement in which the LEA in whose district the child resides reimburses the other LEA. In these cases the child is considered to be a member in the LEA in which it resides, unless the Commissioner approves an agreement between the LEAs that the child will be recorded as a member in the LEA in which it attends school.

(20 U.S.C. 645(5))

"Minimum school facilities" means those facilities that the Commissioner considers necessary for an LEA's educational mission and for which Federal assistance may be provided. Generally, these are facilities—such as classrooms, auxiliary rooms, and initial equipment, machinery, and utilities—that support an educational program for the LEA's membership at normal capacity and in accordance with the laws and common practice in the State.

(20 U.S.C. 645 (9), (10))

"Normal capacity" means the number of pupil stations that a school facility accommodates under ordinary conditions according to the laws and common practice of the State.

(20 U.S.C. 634, 645 (9), (10))

"Regular school year" means a period beginning after June 30th of a calendar year and ending before July 1st of the following calendar year.

(20 U.S.C. 645 (15), (16))

"Unhoused children" means those children in an LEA's membership who lack minimum school facilities because their number exceeds the normal capacity of facilities available to the LEA.

(20 U.S.C. 634, 640, 644, 645(10))

"Uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, Environmental Science

Services Administration, and Public Health Service.

(20 U.S.C. 235 (a)(2), (b)(3), 635 (a)(1)(A), (a)(2)(A))

Subpart B—Eligibility for Assistance Under Various Provisions of the Act

§ 114.11 Requirements an LEA must meet to be eligible under sections 5 and 9 of the Act, which provide assistance because of an increased number of federally connected children.

(a) *Increase in federally connected children.* If the Commissioner determines that an LEA has experienced a substantial increase of federally connected children in its membership as a result of new or increased Federal activities, the LEA is eligible for assistance under—

(1) Section 5 of the Act, which provides assistance for a permanent increase in federally connected membership; or

(2) Section 9 of the Act, which provides assistance for a temporary increase in federally connected membership.

(b) *How is the required increase measured?* (1) The LEA shall demonstrate that the increase of federally connected children has occurred during an "increase period" of four regular school years.

(2) An increase is demonstrated by comparing the estimated number of federally connected children in the LEA's membership at the close of the increase period with the estimated number of these children in the LEA's average daily membership during a "base year."

(3) The "base year" is the year immediately preceding the first year of the increase period.

(20 U.S.C. 634, 635, 645 (15), (16))

§ 114.12 Eligibility under sections 5 and 9: Which children may be counted in the increase in federally connected children?

The LEA may count and include in its increase any federally connected children who came into the LEA's membership during the increase period. For this purpose, federally connected children include the following types of children (categories of children are followed by references, in parentheses, to the specific sections of the Act that authorize given levels of assistance regarding the type of child described in each category):

(a) *First category.* A child who resides on Federal property and has a parent on active duty in the uniformed services, or a child who resides on Indian lands (section 5(a)(1)(A) of the Act).

(b) *Second category.* A child who resides on Federal property with a parent employed on Federal property situated in whole or in part in the same State as the school district of the LEA (section 5(a)(1)(B) of the Act).

(c) *Third category.* A child who does not reside on Federal property but has a parent on active duty in the uniformed services (section 5(a)(2)(A) of the Act).

(d) *Fourth category.* A child who resides on Federal property (Section 5(a)(2)(B) of the Act).

(e) *Fifth category.* A child who does not reside on Federal property but resides with a parent employed on Federal property situated—

(1) In whole or in part in any county in which the school district is located; or

(2) Outside the county of the school district, but in whole or in part in the same State as the school district (section 5(a)(2)(C).

(f) *Sixth category.* A child whose membership in the LEA results directly from Federal activities carried on either by the Government itself or through a contractor (section 5(a)(3) of the Act).

(20 U.S.C. 238 (a), (b), 635(a)).

§ 114.13 Eligibility under sections 5 and 9: Minimum increased number and percentage of federally connected children required for eligibility.

(a) *General rule.* An LEA is eligible for assistance only if the Commissioner estimates that the increased number of children in appropriate categories of federally connected children is at least 20 and meets certain percentage requirements in relation to the LEA's average daily membership for all children during the base year. The appropriate categories of federally connected children and these percentage requirements are specified in sections 5 (a), (b), and (c) of the Act. These sections deal with limitations on payments to any LEA.

(20 U.S.C. 635 (a), (b), (c))

(b) *Exception.* The Commissioner may waive or reduce these number and percentage requirements under the conditions described in §§ 114.66 through 114.69 of subpart E.

(20 U.S.C. 635(e))

§ 114.14 Eligibility under sections 5 and 9: Financial need requirement regarding certain federally connected children.

(a) *Excessive financial burden.* This requirement applies to an LEA that bases its eligibility on an increased number of children in the sixth category of federally connected children (§ 114.12(f)). This LEA—in addition to meeting the minimum increased number and percentage requirements—shall demonstrate that, without Federal assistance, construction of needed minimum school facilities would cause an excessive financial burden on its taxing and borrowing authority.

(b) *Determination of excessive financial burden.* The Commissioner determines that an LEA would experience an excessive financial burden if the combination of the following two factors would cause in construction bonds a percentage obligation against the LEA's assessed valuation greater than the average percentage of similar indebtedness incurred by school districts in the State:

(1) The cost of providing minimum school facilities for the estimated increased number of federally connected children.

(2) The LEA's outstanding bonded debt for construction.

(c) *Exceptional circumstances.* In exceptional circumstances, the Commissioner also may base a determination of excessive financial burden on consideration of any or all of the following factors:

(1) Dollars per child in assessed valuation.

(2) Increase in total assessed valuation in relation to increase in membership during the increase period.

(3) Ratio of assessed valuation to true value.

(4) Special State laws or practices.

(20 U.S.C. 635(c)(2))

§ 114.15 Requirements an LEA must meet to be eligible under section 14(a) of the Act, which provides assistance because an LEA serves children residing on Indian lands and has great financial need.

(a) An LEA is eligible for assistance under section 14(a) of the Act if the Commissioner determines that the LEA—

(1) Is or will be giving substantial service to children residing on Indian lands;

(2) Has unhoused children in its membership;

(3) Has great financial need; and

(4) Is not eligible under sections 5 or 9, or

(5) If eligible under these sections, would receive under them a grant award too small to provide minimum school facilities.

(b) If an LEA meets these requirements, the Commissioner provides assistance by taking into account the need of all unhoused children, whether or not the children reside on Indian lands.

(20 U.S.C. 644(a))

§ 114.16 Eligibility under section 14(a): How may an LEA demonstrate it gives substantial service to children residing on Indian lands?

The LEA shall satisfy one of these conditions:

(a) *Number of children.* (1) The number of children residing on Indian lands is at least 15 and represents at least one-third of the LEA's total membership.

(2) The Commissioner may waive this percentage requirement under the conditions described in § 114.70 of subpart E.

(b) *Percentage of school district land.* Indian lands in the LEA's school district represent at least one-third of the total land area of the school district.

(c) *Children outside the school district.* The LEA is providing, or will be providing on completion of the project, free public education for at least 100 children residing on Indian lands located outside the LEA's school district.

(20 U.S.C. 644(a))

§ 114.17 Eligibility under section 14(a): How may an LEA demonstrate it has great financial need?

(a) *General rule.* The LEA shall satisfy all of these conditions:

(1) *Financial impairment.* The immunity of Indian lands to taxation creates a substantial and continuing impairment of the LEA's ability to finance needed school facilities.

(2) *Reasonable effort to use other resources.* The LEA is making a reasonable tax effort and diligently making use of State and other financial assistance that may be available.

(3) *Inability to provide minimum school facilities.* Despite full use of facilities available to it, the LEA lacks the resources to provide minimum school facilities for 5 percent or more of the total number of children the Commissioner estimates will be in the LEA's membership two years after the year eligibility is established.

(b) *Exception to the general rule.* An LEA providing free public ecucation for children residing on Indian lands located outside the LEA's boundaries is not required to satisfy the condition that it have an impaired ability to finance needed school facilities because of the tax immunity of Indian lands.

(20 U.S.C. 642, 644(a))

§ 114.18 Requirements an LEA must meet to be eligible under section 14(b) of the Act, which provides assistance because an LEA serves children residing on Indian lands and has significant financial need.

(a) An LEA is eligible for assistance under section 14(b) of the Act if the Commissioner determines that the LEA—

(1) Is or will be giving substantial service to unhoused children in its membership who reside on Indian lands;

(2) Has significant financial need; and

(3) Is not eligible under sections 5 or 9; or

(4) If eligible under these sections, would receive under them a grant award too small to provide minimum school facilities.

(b) If an LEA meets these requirements, the Commissioner provides assistance by taking into account the need of only those unhoused children who reside on Indian lands.

Note.—That under section 14(a), which has somewhat similar eligibility requirements, assistance is provided for all unhoused children, whether or not the children reside on Indian lands. Note also that the section 14(a) criteria for financial need are more stringent than the comparable criteria related to section 14(b)—compare § 114.17 and § 114.20)

(20 U.S.C. 644(b))

§ 114.19 Section 14(b): How may an LEA demonstrate it gives substantial service to children residing on Indians lands?

The LEA shall satisfy one of these conditions:

(a) *Number of children.* (1) The number of children residing on Indian lands is at least 15 and represents at least 10 percent of the LEA's total membership.

(2) The Commissioner may waive this percentage requirement under the conditions described in § 114.71 of subpart E.

(b) *Percentage of school district land.* Indian lands in the LEA's school district represent at least 10 percent of the total land area of the school district.

(c) *Children outside the school district.* The LEA is providing, or will be providing on completion of the project, free public education for at least 100 children residing on Indian lands located outside the LEA's school district.

(20 U.S.C. 644(b))

§ 114.20 Eligibility under section 14(b): How may an LEA demonstrate it has significant financial need?

(a) *General rule.* The LEA shall demonstrate that the immunity of Indian lands to taxation creates a substantial and continuing impairment of the LEA's ability to finance needed school facilities.

(b) *Exception.* An LEA need not satisfy this requirement if the LEA provides free public education for children residing on Indian lands located outside the LEA's school district.

(20 U.S.C. 644(b))

§ 114.21 Requirements an LEA must meet to be eligible under section 14(c) of the Act, which provides assistance because a substantial portion of the land in an LEA's schoold district is Federal property.

An LEA is eligible for assistance under section 14(c) of the Act if the Commissioner determines that the LEA—

(a) Is in a school district where one-third of the total land area is Federal property;

(b)(1) Has its membership a number of unhoused children that is at least 20 and represents at least one-third of the LEA's total membership.

(2) The Commissioner may waive this percentage requirement under the conditions described in § 114.72 of subpart E;

(c) Has, on account of the tax immunity of Federal property, a degree of financial need comparable to that described—with respect to Indian lands—under the rules stated in § 114.17(a); and

(d) Is not eligible under sections 5 or 9; or

(e) If eligible under these sections, would receive under them a grant award too small to provide minimum school facilities.

(20 U.S.C. 642, 644(c))

§ 114.22 Requirements an LEA must meet to be eligible under section 8 of the Act, which provides supplementary assistance to LEAs that have already established their eligibility under other sections of the Act.

(a) *Reservation of supplementary funding.* Under section 8 of the Act, the Commissioner may reserve a portion of the program's appropriation as supplementary funding. This supplementary funding may be used to assist—

(1) An LEA that is eligible under section 5 but has not received a grant because it is unable to finance the non-Federal share of its proposed project; or

(2) An LEA that has received a grant under sections 5, 9 or 14 but would be unable to complete its project because of flood, fire, or a similar emergency affecting either the work on the project or the LEA's ability ot finance the non-Federal share of the project.

(20 U.S.C. 638)

(b) *Requirements for section 5 applicants unable to finance a proposed project.* The LEA shall satisfy all of these conditions:

(1) The LEA's application is not an application for which the Commissioner has waived a number of percentage requirement.

(2) The LEA has fully used or will fully use all other facilities available to it.

(3) The LEA's application is eligible for funding according to the order of priority for funding described in subpart F.

(4)(i) The estimated number of the LEA's federally connected children who may be counted for payment is at least 12 percent of the LEA's average daily membership for the base year.

(ii) However, if one year of the increase period has been or may be a basis of payment, this percent must be at least 9; if two years were included, at least 6 percent; and if three years, at least 3 percent.

(20 U.S.C. 635, 638, 642)

(c) *Requirement for grantees otherwise unable to complete a project because of fire, flood, or a similar emergency.* The LEA shall show that it has fully used or will fully used all other facilities available to it.

(20 U.S.C. 635, 638, 639, 642, 644)

Subpart C—Assistance That Is Available If a Grant Is Made

§ 114.31 Purpose of subpart.

This subpart states rules that govern the amount and type of assistance an eligible LEA receives if the Commissioner makes a grant to it.

(20 U.S.C. 631–645)

§ 114.32 Payments under section 5.

(a) Payments to an LEA that is eligible under section 5 of the Act—which provides assistance because of a permanent increase in the number of federally connected children—are limited in the manner explained in that section as well as in section 4, which governs the Federal share of a project.

(b)(1) A limit on payments stated in section 4 requires that assistance to an LEA not exceed the cost of constructing minumum school facilities for the estimated number of unhoused children who will be in the LEA's membership at the end of the second year following the increase period.

(2) The Commissioner considers these unhoused children to include only those children who, despite full use of the facilities available to the LEA, will lack minimum school facilities unless a grant is made.

(20 U.S.C. 635, 642)

§ 114.33 Payments under section 9.

(a) Payments to an LEA that is eligible under section 9 of the Act—which provides assistance because of a temporary increase in the number of federally connected children—are limited in the manner explained in that section.

(b) The Commissioner considers a child's membership to be temporary—and eligible for payment under section 9—if it is probable that the child will reside in the LEA's school district for more than one year but less than six years after the date the Commissioner approves the LEA's application.

(20 U.S.C. 639)

§ 114.34 Payments under section 14(a).

Payments to an LEA that is eligible under section 14(a) of the Act—which provides assistance because the LEA serves children residing on Indian lands and has great financial need—are limited as follows:

(a) Payments may not exceed the cost of constructing minimum school facilities for the number of unhoused children the Commissioner estimates will—

(1) Be in the LEA's membership two years after the LEA's eligibility has been established; and

(2) Despite full use of facilities available to the LEA, will lack minimum school facilities unless a grant is made.

(b) Payments may not exceed that portion of the cost of the project the Commissioner determines the LEA will not recover from other sources, including other Federal payments.

(20 U.S.C. 642, 644(a))

§ 114.35 Payments under section 14(b).

Payments to an LEA that is eligible under section 14(b) of the Act—which provides assistance because the LEA serves children residing on Indian lands and has significant financial need—are limited as follows:

(a) Payments may not exceed the cost of constructing minimum school facilities for the number of unhoused children residing on Indian lands who the Commissioner estimates will—

(1) Be in the LEA's membership two years after the LEA's eligibility has been established; and

(2) Despite full use of facilities available to the LEA, will lack minimum school facilities unless a grant is made.

(b) Payments may not exceed that portion of the cost of the project the Commissioner determines the LEA will not recover from other sources, including other Federal payments.

(20 U.S.C. 642, 644(b))

§ 114.36 Payments under section 14(c).

Payments to an LEA that is eligible under section 14(c) of the Act—which provides assistance because a substantial portion of the land in the LEA's school district is Federal property—are limited as follows:

(a) Payments may not exceed the cost of constructing minimum school facilities for the number of unhoused children the Commissioner estimates will—

(1) Be in the LEA's membership two years after the LEA's eligibility has been established; and

(2) Despite full use of facilities available to the LEA, will lack minimum school facilities unless a grant is made.

(b) Payments may not exceed that portion of the cost of the project the Commissioner determines the LEA will not recover from other sources, including other Federal payments.

(20 U.S.C. 642, 644(c))

§ 114.37 Payments under section 8 in cases in which an LEA is eligible because it is unable to finance the non-Federal share of a project.

(a) This section applies to an LEA that is eligible for payments under section 8 of the Act because of an inability to finance the non-Federal share of a proposed project that is eligible for funding under section 5 of the Act.

(b) Payments under section 8 may not exceed the cost of constructing minimum school facilities for those unhoused children in the LEA's membership who, at the close of the increase period, lack minimum school facilities despite full use of facilities available to the LEA.

(c) Payments under section 8 may not exceed the lesser of—

(1) The actual cost of providing minimum school facilities to children who are counted for payment under section 5;

(2) The average per pupil cost in the State of providing these minimum school facilities.

(d) The Commissioner makes only those payments only those payments that are necessary for the project, taking into account (1) payments made to the LEA under sections 5 and (2) State and local funds available for the project.

(20 U.S.C. 635, 638, 642)

§ 114.38 Payments under section 8 in cases in which an LEA is eligible because of an emergency.

(a) This section applies to an LEA that is eligible for payment under section 8 of the Act because it has been prevented from completing a project by a flood, fire, or similar emergency.

(b) Payments under section 8 may not exceed—

(1) Additional expenses caused by the emergency; minus

(2) Any emergency resources available to the LEA from other sources, including insurance payments.

(20 U.S.C. 635, 638, 639, 642, 644

§ 114.39 Minimum school facilites: Special rules in certain cases.

(a) The term "minimum school facilities" is defined in § 114.3(c). This Section contains various rules that interpret that term in certain cases.

(b)(1) The Commissioner considers an auditorium or gymnasium to be a minimum school facility if it is justified by—(i) the size and educational program of the LEA and (ii) by standards and practices in the State;

(2) The capacity of the facility may not exceed the membership of the school.

(3) Minimum school facilities do not include a gymnasium, stadium, or similar facility primarily intended for events that include an admission charge to the general public.

(c) Air conditioning is a minimum school facility if it is justified by standards ard practices in the State.

(d) Within school buildings spaces that provide shelter from nuclear fallout are minimum school facilities if the spaces are constructed at nominal cost as a part of a larger project.

(e) For an application under section 9 or 10 of the Act, purchase of an interest in land and off-site improvements are minimum school facilities.

(f) For an application under section 14 of the Act, minimum school facilities include facilities that help consolidate small school districts or replace isolated, inadequate buildings.

(20 U.S.C. 645(9)[10]; Senate Report No. 90-726, November 6, 1967, 41])

§ 114.40 Facilities available to the LEA.

(a) The Commissioner provides assistance under the Act for the construction of facilities for unhoused children only, taking into account the normal capacity of all facilities available to the LEA without grant assistance.

(b) Facilities available to the LEA include only the following:

(1) Existing school facilities that were constructed for educational purposes and are being used continuously for instruction.

(2) All school facilities for which a construction contract has been let, except for those facilities that were contracted for after the applicable contracts-let-date and are not being financed with SAFA assistance.

(3) Facilities already constructed, contracted for, or to be provided for under a previous SAFA grant.

(4) Portable facilities used for instruction if—

(i) The facilities were purchased with funds provided under the Act; or

(ii) The State requires that portable facilities be counted as permanent capacity units for the purpose of computing State construction aid.

(5) If the LEA is applying under sections 8, 14(a), or 14(c) of the Act, potential facilities available to the LEA that could be built using funds from other Federal, State, and local sources.

(c) The Commissioner does not consider as facilities available to the LEA—

(1) Basement rooms, hallways, or other areas unsuitable for education; and

(2) Facilities that have been abandoned or must be abandoned by the end of the second year following the regular school year in which the LEA's eligibility is established.

(20 U.S.C. 631, 634, 642, 645(10))

§ 114.41 What potential facilities does the Commissioner consider available to an LEA?

(a) This section applies to LEAs that are eligible for payments under sections 8, 14(a), or 14(c).

(b) The Commissioner considers an LEA to have available to it from local sources an amount that is the lesser of—

(1) The amount that the LEA could raise through issuance of bonds, as regulated by the bonding limits of the State; or

(2) Twelve percent of the LEA's assessed real property valuation.

(c) The Commissioner combines the funds available from local sources with those available from State and other Federal sources. The Commissioner then computes the normal capacity of the potential facilities that the LEA could build through use of these funds as follows:

$$\frac{\text{Amount of available funds}}{\text{Current estimated cost per pupil for constructing minimum school facilities in the State}} = \text{Normal Capacity of potential facilities an LEA can build}$$

(20 U.S.C. 638, 642, 644(a), (c))

§ 114.42 Assistance for an isolated attendance area in an LEA.

In the circumstances described in subpart E, the Commissioner permits an LEA to receive assistance for an isolated attendance area that is a portion of the LEA's total jurisdiction. The Commissioner does this by waiving or reducing certain eligibility requirements or limitations on payments. In these situations, the Commissioner—

(a) Calculates the LEA's degree of need in relation to the isolated attendance area; and

(b) Provides assistance only for those unhoused children lacking minimum school facilities who reside in that area.

(20 U.S.C. 631, 635(e), 644, 1953 U.S. Cong. & Admin. News 2313)

Subpart D—Application Procedure

§ 114.51 Application requirements.

(a) *How to use regulations—how to apply for funds.* The "Introduction to Education Division Programs" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(b) *General.* To be considered for assistance an LEA must file (1) a preapplication and (2) an application with the Commissioner through its State educational agency (SEA).

(c) *Certification by SEA.* From the SEA the LEA shall obtain—

(1) Certification of the preapplication and application; and

(2) Any permits or documents related to the application process that are required by the State.

(20 U.S.C. 636)

§ 114.52 Preapplication: Time of filing.

(a) *Relation to base year.* An LEA shall file its preapplication in either the third or fourth Federal Fiscal Year following the base year selected by the LEA. For example, if the LEA selects the regular school year 1967–77 as a base year, it could file a preapplication relating to the ensuing increase period either in Federal Fiscal Year 1980 or in Federal Fiscal Year 1981.

(b) *Simultaneous filing of preapplications relating to two different base years.* The LEA may file preapplications relating to two different base years in the same Federal Fiscal Year. For example, an LEA could, during Federal Fiscal Year 1980, file both of these applications:

Application I—Base Year 1975–76; Increase Period [1976–77, 1977–78, 1978–79, 1979–80].

Application II—Base Year 1976–77; Increase Period [1977–78, 1978–79, 1979–80, 1980–81].

(All of the dates in these series refer to regular school years.)

(20 U.S.C. 645(15))

§ 114.53 Preapplication: Membership data.

(a) *Demonstration of eligibility.* A preapplication shall contain membership data that demonstrate an LEA's eligibility for assistance.

(b) *Membership count.* These data shall include the results of a membership count, as described in § 114.54.

(20 U.S.C. 635, 636, 644)

§ 114.54 Membership count.

(a) *General.* During the year in which an LEA files its preapplication, the LEA shall determine the number of children it serves and identify the number of those who are federally connected by making a membership count.

(b) *Methods of making the count.* (1) *Basic rule.* With one exception, noted below, an LEA may make this count either by—

(i) Conducting a parent-pupil survey, as described in § 114.55; or

(ii) Making a count on a specific date of all children in membership, then identifying those who are federally connected on that date by obtaining certification—

(A) From employers regarding the employment of parents of these children;

(B) From housing officials regarding the children's residence; or

(C) From both (A) and (B), if necessary.

(2) *Exception.* An LEA basing its eligibility on an increased number of children in the sixth category of federally connected children (§ 114.12(f)) shall make the count by—

(i) Conducting a parent-pupil survey; and

(ii) Within three months of the date of this survey, also obtaining certification from employers or housing officials or both, if necessary, of the Federal connection of its federally connected children.

(20 U.S.C. 635, 644)

§ 114.55 Parent-pupil survey.

(a) *When may the survey be conducted?* An LEA making a membership count by means of a parent-pupil survey shall conduct the survey on a specific day at least three days after the start of the school year.

(b) *Who may provide information for the survey?* (1) Each survey form shall be completely filled out and signed by the pupil's parent—that is, the mother, father, legal guardian, or other person standing in place of parents.

(2) The Commissioner acknowledges survey forms that are not completed and signed by a parent only in unusual circumstances in which the LEA shows the need for an alternative signature. In these cases, the LEA shall state—

(i) Why a person other than the child's parent has signed the form; and

(ii) When, how, and from whom the information on the form was obtained.

(c) *What information must the survey provide?* The survey shall document the Federal connection of the LEA's federally connected children by providing the following information:

(1) Pupil-enrollment information, including—

(i) Name of pupil; and

(ii) Date of birth.

(2) Pupil-residence and parent-employment information, including—

(i) Address of pupil's residence (including the name of the Federal facility if the residence is on Federal property);

(ii) Name of parent (the same as that on the parent's employer's payroll records) with whom the pupil resides, unless the parent is a member of the uniformed services on active duty;

(iii) Name and address of Federal property on which the parent is employed, unless the parent is a member of the uniformed services on active duty;

(iv) If the parent is a member of the uniformed services on active duty, the name, rank, and branch of service of the parent;

(v) If the parent is a civilian employed on a Federal vessel, the name of vessel, hull number, and name of the controlling agency;

(vi) The signature of the parent supplying the information and the date of the signature; and

(vii) The name and address of the employer (unless the parent is a member of the uniformed services on active duty).

(20 U.S.C. 635, 644)

§ 114.56 Changes in an applicant's legal organization or jurisdiction.

(a) *Notice of change.* An LEA shall notify the Commissioner of any changes in its legal organization or jurisdiction that occur during the application process and that would affect the LEA's rights or benefits under the Act.

(b) *Succession to the territory of another LEA.* If an LEA succeeds to any part of the territory of one more other LEAs that have filed applications that are eligible under the Act, the successor LEA—under the following conditions—may assume any rights and benefits that those applications have established with respect to the transferred territory:

(1) The successor LEA shall demonstrate that its succession to the territory and property meets all requirements of State law.

(2) The successor LEA shall agree to be bound by the assurances and obligations undertaken by the LEA(s) that filed the application(s).

(3) The successor LEA receives rights and benefits that are no greater than the total rights and benefits established by the application(s).

(20 U.S.C. 636, 642)

Subpart E—Waiver or Reduction of Certain Requirements Governing Eligibility or Limiting Payments

§ 114.61 Purpose of this subpart.

(a) Whenever necessary to avoid inequity or defeating the purpose of the Act, the Commissioner waivers—or, in some cases, reduces—certain requirements of the Act that govern an LEA's eligibility or limit the amount of payment an LEA may receive. This subpart describes these requirements and the circumstances in which the Commissioner waives or reduces them.

(20 U.S.C. 635(e), 642, 644 (a), (b), (c))

§ 114.62 Procedure for requesting waiver or reduction.

If an LEA wishes a waiver or reduction it shall file with the Commissioner a request for that waiver or reduction. The LEA shall state in its request the specific requirement or requirements it seeks to have waived or reduced, and include in the request information that the Commissioner requires.

(20 U.S.C. 635(e), 642, 644 (a), (b), (c))

§ 114.63 General criteria for waiver or reduction.

(a) The Commissioner grants a waiver or reduction of a requirement listed in this subpart if—

(1) An LEA satisifies conditions relating to the requirement that are specified in this subpart; or

(2) In analogous circumstances, the LEA is experiencing a comparable hardship.

(b) The Commissioner determines—

(1) The extent of any waiver or reduction that is granted; and

(2) The portion of the LEA's jurisdiction for which the LEA receives assistance as a result of the waiver or reduction.

(20 U.S.C. 635(e), 642, 644 (a), (b), (c))

§ 114.64 Definitions.

In this subpart:

(a) "Attendance area" means the geographical area in which the children normally served by a school reside;

(b) An LEA or an attendance area within an LEA is considered "isolated" if distance, topography, climate, traffic conditions, or other factors make it impractical to transport children in the isolated area to other school facilities of the LEA or an adjacent LEA.

(20 U.S.C. 635(e), 644 (a), (b), (c))

§ 114.65 Waiver or reduction: Assistance based on isolated area.

An LEA receiving assistance on account of a waiver or reduction relating to an isolated attendance area that is a portion of the LEA's total jurisdiction receives assistance only in relation to that isolated area (the rule governing the amount of assistance in these instances is fully stated in §114.42).

(20 U.S.C. 635(e), 642, 644 (a), (b), (c), 1953 U.S. Code Cong. & Admin. News 2313)

§ 114.66 Waiver or reduction of the minimum increased number of federally connected children an LEA must have to be eligible under section 5.

(a) The general rule is that an LEA is not eligible for assistance under section 5 of the Act unless, at the end of the increase period, the estimated increased number of children in appropriate categories of federally connected children is at least 20. Appropriate categories of federally connected children are specified in sections 5 (a), (b) and (c) of the Act. These sections deal with limitations on payments to any LEA.

(b) The Commissioner waives or reduces the minimum eligibility number stated in paragraph (a) if all of the following conditions are satisfied:

(1) The estimated increased number of federally connected children is at least 25 percent of all children in average daily membership during the base year.

(2) The LEA is located in an isolated area or has within its jurisdiction an attendance area that is isolated.

(3) The LEA needs additional facilities for the estimated number of children who reside in the isolated area and are in the LEA's membership at the end of the increase period.

(20 U.S.C. 635 (c), (e), 1965 U.S. Code Cong. & Admin. News 3940)

§ 114.67 Eligibility and entitlement under section 5: General rule for percentage and number increase requirements.

(a) The general rule is that an LEA seeking to establish eligibility for assistance under section 5 of the Act is not eligible unless the estimated increased number of federally connected children in the LEA's membership is at least equal to percentage or number requirements that are specified in that section (sections 5(c)(1) and 5(c)(2)).

(b) Even if an LEA has met the requirements described in paragraph (a) and has established eligibility for assistance, the actual number of federally connected children that the LEA may count for payment is normally decreased by a factor specified in section 5(d) if the LEA has not experienced the parallel increase in non-Federal membership required by that section.

(20 U.S.C. 635)

§ 114.68 Eligibility and entitlement under section 5: Conditions for waiver and reduction of percentage and number increase requirements.

The Commissioner waives the requirements described in the preceding section or reduces those requirements or both waives and reduces them if all of the following conditions are satisfied:

(a) The LEA is located in an isolated area or has within its jurisdiction an attendance area that is isolated.

(b) With respect to an isolated attendance area there is an estimated increased number of federally connected children at least equal to 10 percent of all children in average daily membership during the base year.

(c) The LEA agrees that the amount of its grant will not exceed the amount the Commissioner determines the LEA would have received if—

(1) The LEA had qualified for assistance without the waiver or reduction; and

(2) The Commissioner had processed the LEA's application with respect to LEA's total area.

(20 U.S.C. 635)

§ 114.69 Eligibility and entitlement under section 5: Conditions for waiver and reduction of percentage and number increase requirements in isolated attendance areas consisting entirely of a Federal property.

(a) This section applies only with respect to an isolated attendance area consisting entirely of a Federal property.

(b) The Commissioner waives or reduces the requirements described in § 114.67 if the following conditions are satisfied:

(1) Either—

(i) The estimated increased number of children residing on the Federal property is at least 50 and equal to at least eight percent of the average daily membership of these children during the base year; or

(ii) In a case in which the Commissioner has determined that the LEA was eligible for a grant based on a previous application, there are at least 50 more children residing on the Federal property than were estimated to be in the LEA's membership at the end of the increase period relating to the previous application.

(2) Either—

(i) The LEA, considered as a whole, needs additional facilities; or

(ii) The LEA's facilities are not reasonably accessible to children residing on the Federal property due to the property's isolation.

(3) The facilities to be constructed will be accessible to children residing on the Federal property.

(4) The LEA agrees that the amount of its grant will not exceed the amount the Commissioner determines the LEA would have received if—

(i) The LEA had qualified for assistance without the waiver or reduction; and

(ii) The Commissioner had processed the LEA's application with respect to the LEA's total area.

(20 U.S.C. 635 (c), (d), (e), 1953 U.S. Code Cong. & Admin. News 2313)

§ 114.70 Waiver of requirement that an LEA must have at least one-third of its membership residing on Indian lands to satisfy one means of establishing eligibility under section 14(a).

(a) The general rule is that an LEA seeking to establish its eligibility under section 14(a) of the Act, because a substantial percentage of the children in its membership reside on Indian lands, must show that these children represent at least one-third of the LEA's total membership (§ 114.16(a)).

(b) The Commissioner waives the requirement described in paragraph (a) if all of these conditions are satisfied:

(1) The LEA's jurisdiction is countywide or sufficiently extensive to be analogous to a countywide school system.

(2) The LEA has an isolated attendance area where there is a concentration of children residing on Indian lands.

(3) In this attendance area the number of children in membership and for whom the LEA is providing free public education is at least 15 and represents at least 20 percent of the LEA's total membership; and

(4) Federal lands represent at least 80 percent of the LEA's total area.

(20 U.S.C. 644(a))

§ 114.71 Waiver of requirement that an LEA must have at least 10 percent of its membership residing on Indian lands to satisfy one means of establishing eligibility under section 14(b).

(a) The general rule is that an LEA seeking to establish its eligibility under section 14(b) of the Act, because a substantial percentage of the children in its membership reside on Indian lands, must show that these children represent at least 10 percent of the LEA's total membership (§ 114.19(a)).

(b) The Commissioner waives the requirement described in paragraph (a) if all of these conditions are satisfied:

(1) The LEA's jurisdiction is countywide or sufficiently extensive to be analogous to a countywide school system.

(2) The LEA has an isolated attendance area where there is a concentration of children residing on Indian lands.

(3) In this attendance area the number of these children in membership and for whom the LEA is providing free public education is at least 15 and represents at least five percent of the LEA's total membership.

(4) Federal lands represent at least 20 percent of the LEA's total area.

(20 U.S.C. 644(b))

§ 114.72 Waiver of requirement that an LEA must have at least one-third of its membership lacking minimum school facilities to establish eligibility under section 14(c).

(a) The general rule is that an LEA is not eligible under section 14(c) of the Act unless the number of children in its membership who lack minimum school facilities represents at least one-third of the LEA's total membership (§ 114.21(b)).

(b) The Commissioner waives the requirement described in paragraph (a) if all of these conditions are satisfied:

(1) The LEA's jurisdiction is countywide, or sufficiently extensive to be analogous to a countywide school system.

(2) The LEA has an isolated attendance area where there is a concentration of children lacking minimum school facilities.

(3) In this attendance area the number of these children in membership and for whom the LEA is providing free public education is at least 20 and represents at least 20 percent of the LEA's total membership.

(4) Federal lands represent at least 80 percent of the LEA's total area.

(20 U.S.C. 644(c))

Subpart F—Determining Priority for Funding among Eligible Applications

§ 114.81 General.

If the estimated amount of money necessary to fund all eligible applications is more than the amount Congress appropriates for this program during a fiscal year, the Commissioner funds a limited number of applications in the order of priority described in this subpart.

(20 U.S.C. 633)

§ 114.82 Basic policy.

The basic policy governing the order of priority in which applications are funded is that the Commissioner funds applications eligible under sections 9, 10, 14(a), 14(b), and 16 of the Act before funding applications eligible under sections 5, 8, and 14(c).

(20 U.S.C. 633)

§ 114.83 Implementation of basic policy.

These procedures implement the basic policy described in the preceding section:

(a) The Commissioner allocates funds estimated to be necessary to fund all applications eligible under section 16 of the Act.

(b) The Commissioner then allocates remaining funds to the respective groups of applications that are eligible under sections 9, 10, or 14(a) or 14(b) in the ratio of the estimated requirements for each of these groups of applications to the total estimated requirements for all of them.

(c) The Commissioner divides the applications eligible under section 10 into five subgroups (described in § 114.84) and uses relative priority indices (described in §§ 114.85 through 114.88) to determine the order of priority within each subgroup.

(d)(1) After making the allocations described in paragraphs (a), (b), and (c), the Commissioner allocates any remaining funds to the group of applications eligible under sections 5, 8, and 14(c) of the Act.

(2) If only some of the applications under sections 5, 8, and 14(c) can be funded, the Commissioner funds as many applications as possible in the order determined by the applications' relative priority indices, except that—

(3) In this group of applications the Commissioner gives least priority to that portion of payments based on increases in the number of children either residing on or residing with a parent employed on a property that is a federally assisted low-rent housing project (under the United States Housing Act of 1937).

(20 U.S.C. 632, 633, 636(b)(2)(c), 642, 644(e), (h))

§ 114.84 Priority subgroups within the group of applications eligible under section 10.

The Commissioner divides the group of applications that are eligible under section 10 of the Act into the five subgroups listed below. Within this group, applications in the first subgroup receive the highest priority, applications within the second subgroup receive a higher priority than those in the third, fourth, and fifth subgroups, and so forth.

(a) Applications requesting assistance for major repairs necessary for the safety of school children or to prevent further deterioration of existing school facilities.

(b) Applications for assistance for situations in which upgrading or new construction or both is necessary to meet standards of life safety or accessibility for persons who are handicapped.

(c) Applications in cases in which an LEA operates a school program in facilities located on Federal property and assures the Commissioner that it will accept ownership of the facilities upon completion of the project it proposes.

(d) Applications in cases in which there are unhoused children.

(e) Applications for assistance for construction necessary to permit the offering of an improved educational program that reflects contemporary practices and standards.

(20 U.S.C. 633, 640)

§ 114.85 Priority indices: General.

(a) If the funds allocated to a subgroup of applications eligible under section 10 of the Act, or to a group of applications eligible under any other section of the Act, are insufficient to meet the requirements of all the applications within that subgroup or group, the Commissioner funds as many applications as possible in the order of priority determined by priority indices that are assigned to the applications.

(b) The Commissioner computes a priority index, reflecting the relative urgency of the need an LEA has for school facilities, for each application eligible for assistance.

(c) Priority indices are computed as numerical percentages. For the purpose of determining relative priority within a group or subgroup, the Commissioner compares applications having different priority indices and ranks them in descending order of priority from the highest to the lowest computed percent.

(d) In computing priority indices, the Commissioner uses membership figures that relate to the time an LEA's eligiblility is established. These membership figures are for the LEA as a whole unless the LEA's application is for an isolated attendance area that is only a portion of the LEA's total jurisdiction (the circumstances in which this is permitted are described in Subpart E). If this is the case, the Commissioner uses membership figures that relate to the isolated attendance area.

(20 U.S.C. 633)

§ 114.86 Priority indices: Applications eligible under section 5, 9, 14, or 8.

(a) For these applications the Commissioner computes a priority index as follows:

$$\text{Priority Index} = \frac{\text{Number of federally connected children countable for payment}}{\text{Total membership}} + \frac{\text{Unhoused membership}}{\text{Total membership}}$$

(b) A priority index may not equal more than twice the percent that the number of federally connected children counted for payment is of total membership. For example, an LEA having 1,000 children in total membership, 100 federally connected children countable for payment, and 200 children unhoused by minimum school facilities would initially project a priority index of 30 percent (100/1000+200/1000), but the LEA's actual priority index would be 20 percent (2×100/1000).

(c) The Commissioner does not compute a priority index for an application that is eligible under sections 5, 9, 14(c), or 8 of the Act unless there are at least 20 unhoused children in the LEA's membership.

(20 U.S.C. 633, 635, 638, 639, 644)

§ 114.87 Priority indices: Applications eligible under section 10.

(a) For these applications the Commissioner computes a priority index as follows:

$$\text{Priority Index} = \frac{\text{Number of children to be housed by school facilities described in the application}}{\text{Total membership residing and attending school on the Federal property}} + \frac{\text{Unhoused membership}}{\text{Total membership residing and attending school on the Federal property}}$$

(b) A priority index may not equal more than twice the percent that the number of children to be housed by school facilities described in the application is of the total membership residing, and attending school, on the Federal property. For example, an LEA having 1,000 children in total membership, 75 children to be housed by the facilities described in the application, and 125 children unhoused by minimum school facilities, would initially project a priority index of 20 percent (75/1000+125/1000), but the LEA's actual priority index would be 15 percent (2×75/1000).

(20 U.S.C. 633, 640)

§ 114.88 Priority indices: Special rules in certain instances.

(a) If funds are insufficient to permit the funding of two or more applications—either filed by a single applicant, or by different applicants—that are considered together in a group or subgroup and have identical priority indices, the Commissioner gives priority to the application having the highest percentage, computed as follows:

(1) If applications are eligible under section 10:

$$\frac{\text{Number of children to be housed by school facilities described in the application}}{\text{Total membership residing and attending school on the Federal property}}$$

(2) If the two applications are eligible under other sections of the Act:

$$\frac{\text{Number of federally connected children countable for payment}}{\text{Total membership}}$$

(b)(11) An applicant having an eligible application that describes more than one construction project whall designate the order of priority among these projects.

(2) The Commissioner reduces the priority index for the project designated as second priority by twice the percent obtained as follows:

$$\frac{\text{Number of children housed by normal capacity of school facilities described in the project designated as first priority}}{\text{Total membership}}$$

(3) The Commissioner reduces the priority index for any project designated as third—or lower—priority by twice the percent obtained as follows:

$$\frac{\text{Number of children housed by normal capacity of school facilities described in projects designated as higher priority}}{\text{Total membership}}$$

(20 U.S.C. 633)

§ 114.89 Readiness to proceed with construction: A condition of priority ranking and project approval.

(a) An applicant whose application and proposed project are approved by the Commissioner because of the application's high priority ranking shall proceed with construction within 120 days of the Commissioner's approval.

(b) If the applicant fails to proceed with construction within 120 days, the Commissioner may—

(1) Extend this time period if the applicant shows good cause for the Commissioner to do so; or

(2) Subordinate funding of the applicant's project to any project or projects with lower priority ranking.

(20 U.S.C. 633, 636(b)(1)(D))

Subpart G—Conditions That Apply to a Grant

§ 114.91 Procurement of school facilities: General.

(a) If a project relates to assistance under sections 9, 10, or 14 of the Act, the project may proceed only after the Commissioner has approved all plans and pertinent specifications and determined that they are educationally adequate for the purpose for which they are intended.

(b) A grantee may entertain bids or enter into contracts only after the Commissioner has approved bid and contract documents.

(20 U.S.C. 636, 637)

§ 114.92 Special rules for equipment.

(1) An LEA may issue invitations for bids or requests for proposals relating to equipment for the project only after the Commissioner has approved a list of the equipment to be procured and an equipment budget.

(2) If the approved equipment budget is below the lowest equipment bid or proposal received and the LEA is not entitled to any additional Federal assistance, the LEA shall submit for the Commissioner's approval a written proposal identifying which of these two methods the LEA will use to provide needed additional funds:

(i) The LEA may transfer from other portions of its approved grant budget surplus funds that can be applied to equipment; or

(ii) The LEA may furnish a written certification that the cost of the bid overrun will be financed by other funds available to it.

(3) The LEA may not make substantial changes in the approved equipment list without the Commissioner's advance approval. Before final payment is made, the LEA shall furnish the Commissioner a list of the cost of each item of equipment procured and certification that this equipment has been received.

(20 U.S.C. 636, 637, 642, 645(9))

§ 114.93 Cost of project.

(a) The Federal share of the cost of a project may not exceed the amount specified in the grant award.

(b) Without the Commissioner's prior approval the LEA may not enter into a construction contract exceeding the total estimated cost specified in the grant award.

(20 U.S.C. 636, 637, 642)

Subpart H—Arrangements for Children Residing on Federal Property and Certain Other Children

§ 114.101 Purpose of this subpart.

This subpart governs arrangements by the Commissioner to provide minimum school facilities for certain federally connected children. Section 10 of the Act authorizes the Commissioner to make these arrangements in cases in which no LEA is providing these children a suitable free public education.

(20 U.S.C. 640)

§ 114.102 With whom does the Commissioner make an arrangement?

The Commissioner makes an arrangement with the Federal department or agency that administers the Federal property on which the facilities are to be located.

(20 U.S.C. 240)

§ 114.103 Procedure for making an arrangement.

(a) The head of a Federal department or agency described in § 114.102 files a request with the Commissioner through the SEA.

(b) The content, terms, and conditions of this request are prescribed by the Commissioner.

(c) The SEA shall review this request and submit to the Commissioner its recommendation concerning the request.

(20 U.S.C. 640)

§ 114.104 Under what conditions is an LEA considered able to provide a suitable free public education?

(a) A condition for making an arrangement is that the Commissioner must determine, after consultation with the SEA, that no LEA is able to provide a suitable free public education for the federally connected children to be served by the proposed project.

(b) The Commissioner considers an LEA able to provide a suitable free public education if the LEA—

(1) Has the authority under State law to provide a suitable free public education to pupils residing on Federal property;

(2) Has not refused to provide that education;

(3) Has the authority to provide educational facilities on property it does not own if the LEA determines that the property is necessary to serve pupils residing on Federal property; and

(4) Has the facilities and actual or potential financial resources need to provide that education.

(20 U.S.C. 640)

§ 114.105 Under what conditions is a free public education considered suitable?

(a) Free public education is "suitable" for the purposes of the preceding section if—

(1) The primary language of instruction is English;

(2) The school facility that a pupil attends or would attend is within the State's established maximum commuting distance from a pupil's home; and

(3)(i) The programs of instruction offered or that can be offered with combined local, State, and Federal resources meet standards for State accreditation or approval.

(ii) If the particular State has not established standards for accreditation or approval, the Commissioner applies appropriate accreditation associations' standards to assess the suitability of the LEA's program of instruction.

(b) However, the Commissioner may also consider a free public education to be suitable if, in the judgment of the Commissioner, his or her intervention would—because of adverse social and political factors—cause serious detriment to the children to be served.

(20 U.S.C. 640)

Subpart I—Hearings

§ 114.111 Right to an administrative hearing.

An LEA has a right to an administrative hearing in either or both of these circumstances:

(a) If the Commissioner proposes in whole or in part to disapprove the LEA's application.

(b) If, after a grant has been made, the Commissioner acts to withhold payments to the LEA (the circumstances in which this occurs are specified in section 11(a) of the the Act).

(20 U.S.C. 236(c), 641(b))

§ 114.112 Hearing procedures.

(a) If the Commissioner assigns the hearings described in § 114.111 to the Office of Education's Education Appeal Board, the regulations governing that Board's procedures govern the conduct of a hearing.

(b) If the Commissioner does not assign these hearings to the Education Appeal Board, the following procedures govern a hearing:

(1) *Request for hearing.* Within 60 days from the time the Commissioner notifies the LEA of its right to a hearing, the LEA shall file with the Commissioner a written request for the hearing.

(i) The request shall clearly state the issues of fact and law to be considered at the hearing.

(ii) The LEA shall send a copy of the request to the State educational agency.

(2) *Time and place of hearing.* Hearings are scheduled at times and places the Commissioner designates. Consideration is given for the convenience of participants.

(3) *Hearing officer.* (1) A hearing officer or officers appointed by the Commissioner conduct the hearing. The hearing officer issues appropriate rules of procedure regarding notice to participants, requests for information, introduction of evidence, the keeping of a hearing record, and related matters.

(4) *Right to counsel.* The LEA and the Commissioner have a right to be represented by counsel.

(5) *Evidence.* (i) The LEA and the Commissioner may introduce relevant evidence.

(ii) Although the hearing is not governed by technical rules of evidence, the hearing officer has discretion to require production of the most helpful evidence available and to permit cross-examination of testimony.

(iii) Evidence taken for the record is open to examination by the participants.

(iv) Each participant is given an opportunity to refute facts and arguments presented by other participants.

(6) *Transcript of oral evidence.* A transcript of oral evidence is made unless all participants agree that a transcript is unnecessary.

(7) *Decision in cases in which the hearing officer makes an initial decision.* (i) The hearing officer makes an initial decision based on the hearing record if authorized to do so by the Commissioner.

(ii) A written copy of this initial decision is sent to the LEA and to the Commissioner.

(iii) The initial decision becomes the Commissioner's decision without further proceedings unless, within 45 days of receipt of the initial decision—

(A) The LEA appeals the initial decision to the Commissioner for

(B) The Commissioner elects independently to review the initial decision.

(iv) The Commissioner may grant or deny an appeal for review of an initial decision. The Commissioner gives the LEA written notice of a decision to grant or deny that appeal or of an election to review an initial decision.

(v) The LEA has a right to file a written statement of its views regarding a review of an initial decision.

(vi) After an initial decision has been reviewed, the Commissioner sends the LEA a written final decision.

(8) *Decision procedure in cases in which the hearing officer certifies the hearing record to Commissioner.* (i) If not authorized by the Commissioner to make an initial decision, the hearing officer certifies the hearing record to the Commissioner.

(ii) The LEA has a right to file a written statement of its views regarding the evidence introduced at the hearing and the bearing of its evidence on issues essential to its rights.

(iii) The Commissioner sends the LEA a written decision based on the hearing record and consideration of any statement filed by the LEA.

(20 U.S.C. 636(c), 641(b))

The Commissioner proposes to amend 45 CFR Part 115 by revising Subparts A through I and adding a new Subpart J as follows:

PART 115—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

Subpart A—General

Sec.

115.1 Assistance for school expenditures in federally affected areas.
115.2 Purposes of these regulations.
115.3 Federal statutes and regulations on nondiscrimination.
115.4 Definitions.
115.5 Who is eligible for assistance under section 2 (Federal ownership of certain property)?
115.6 Who is eligible for assistance under section 3 (federally connected children)?
115.7 Who is eligible under section 4 (sudden and substantial increase in attendance)?
115.8 Federally connected children under section 3.

Subpart B—Application Procedures

115.9 Purpose of this subpart.
115.10 Application for preliminary payment.
115.11 Application for Financial Assistance: Form RSF-1
115.12 Application for Financial Assistance: Filing dates.
115.13 Amendments to applications for financial assistance: Filing dates.
115.14 [Reserved]
115.15 How membership data must be obtained: General.
115.16 First or only count.
115.17 Second count.
115.18 Alternative methods for making counts.
115.19 Parent-pupil survey.

Subpart C—Entitlements under Sections 2, 3, and 4 of the Act—Interpretive Rules and Information Requirements

115.20 Notification of legal changes affecting boundaries, identity, or administrative authority of applicant or grantee.
115.21 How does loss of legal identity affect LEA eligibility or entitlement?
115.22 How is eligibility or entitlement affected if an LEA assumes jurisdiction of a previously existing applicant or recipient?
115.23 Entitlement of successor LEA if pre-existing LEA was eligible under exceptions to the "3 percent" requirement.
115.24 Section 3(e) entitlement: When is there a substantial decrease in the number of children?
115.25 When is a parent considered to be "employed on Federal property" for the purpose of section 3 of the Act?
115.26 Section 4(a) entitlements: When does an increase in the number of children in ADA result from a United States activity?
115.27 Adjustments to payments related to special hold harmless provisions under Pub. L. 93-380.
115.28 Computations.
115.29 Conversion of average daily membership to ADA.

Subpart D—Generally Comparable Local Educational Agencies; Local Contribution Rate

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115.31 Computation of local contribution rate.
115.32 Jurisdictions not covered by general rule on local contribution rates.
115.33 How does the Commissioner decide which school districts are generally comparable to the applicant's school district?
115.34 Deadline for SEA submittal of comparability recommendations and data.
115.35 First method for determining generally comparable school districts: Classifying all the school districts in a State.
115.36 What data must the SEA furnish under § 115.35?
115.37 Alternate method of classifying all LEA's in a State into generally comparable groups.
115.38 Second method for determining generally comparable school districts.
115.39 What data must the SEA furnish under § 115.38?

Subpart E—Administrative Hearing; Judicial Review

115.40 Purpose of this subpart.
115.41 Opportunity for administrative hearing and judicial review.
115.42 Request for hearing.
115.43 Administrative hearing procedure.
115.44 Judicial Review.

Subpart F—Records and Reports Required by the Commissioner; Adjustments or Recovery of Excessive Payments

115.45 What records must a grantee maintain?
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115.47 Adjustment or recovery for excessive payment.
115.48 Information submitted after deadlines.

Subpart G—Determinations Under Section 5(d)

115.49 Scope and purpose.
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115.51 General qualifying standard for State aid programs.
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Subpart H—Entitlements for Handicapped Children

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Subpart J—Arrangements under Section 6 of Pub. L. 81-874

115.82 Purpose of this subpart.
115.83 Policy of section 6: LEA's should provide free public education.
115.84 When is an LEA considered able to provide a suitable free public education?
115.85 Suitable free public education for the purpose of section 115.84.
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115.87 The Commissioner provides suitable free public education under section 6.
115.88 With whom does the Commissioner make section 6 arrangements?
115.89 Procedure for making section 6 arrangements.
115.90 Comparability of employment conditions.
115.91 Elected school board required.
115.92 What children are served under section 6(b)?
115.93 What children are eligible to attend section 6 schools under section 6(c)?
115.94 Notice of Commissioner's action; authority to obligate funds.
115.95 Agreement with LEA
115.96 Duration of section 6 arrangement.
115.97 Reports required by the Commissioner.

Authority: Titles I and IV, Pub. L. 81-874, 64 Stat. 1100 (20 U.S.C. 236-244), as amended, unless otherwise noted.

Subpart A—General

§ 115.1 Assistance for school expenditures in federally affected areas.

These regulations govern Federal financial assistance to local educational agencies (LEAs) under sections 2, 3, 4, and 6 of Pub. L. 81-874 (Financial Assistance for Local Educational Agencies in Areas Affected by Federal Activity). This law is referred to in this part as "the Act." These sections are part of the program known as the SAFA program (School Assistance in Federally Affected Areas).

(a) *Purpose.* The purpose of the Pub. L. 81-874 SAFA program is to help LEAs in areas affected by Federal activities to—

(1) Meet their current school expenses; and

(2) Educate children residing on certain Federal property.

(b) Section 2 of the Act provides for direct grants by the Commissioner to certain LEAs in whose school districts the United States has acquired property.

(c) Section 3 of the Act provides for direct grants by the Commissioner to LEAs based on the number of federally connected children attending school in the LEA's school district.

(d) Section 4 of the Act provides for direct grants by the Commissioner to certain LEAs in whose school districts there has been, due to activities of the United States, a sudden and substantial increase in the number of children attending school.

(e) Section 6 of the Act requires the Commissioner to arrange to provide free public education to—

(1) Children residing on Federal property;

(2) Children of members of the Armed Services on active duty; and

(3) Children of certain Federal employees in specified cases in which no LEA provides suitable free public education for those children.

(20 U.S.C. 236-240)

§ 115.2 Purposes of these regulations.

(a) The purposes of these regulations are—

(1) To inform LEA applicants and grantees and the interested public of the basic requirements of the Act;

(2) To inform LEAs what they must do to obtain financial assistance under the Act and to ensure proper accountability for financial assistance which they receive; and

(3) To regulate in areas in which the Act requires the Commissioner to regulate and in areas in which interpretation of the Act is needed.

(b) These regulations do not repeat or parapharse every provision in the Act. Several sections of the regulations summarize the Act with appropriate cross-references.

(20 U.S.C.236-241; 1221e-(3)(a)(1))

§ 115.3 Federal statutes and regulations on nondiscrimination.

Each grantee and each agency or department with whom an arrangement is made under section 6 of the Act, shall comply with the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4).	45 CFR Part 80
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683).	45 CFR Part 83
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	45 CFR Part 84
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*)	45 CFR Part 90

(20 U.S.C. 1221e-3(a)(1))

§ 115.4 Definitions.

(a) *Definitions in the Education Division General Administration Regulations* (EDGAR). The following terms used in this part are defined in EDGAR (Part 100(c)):

Applicant
Application
Fiscal year

(20 U.S.C. 1221e-3(a)(1))

(b) *Terms defined by statute.* The following terms are defined by section 403 of the Act:

Child
Commissioner
Current expenditures
Free public education
Indian lands—This term is defined in section 403(1) under the heading "Federal property."
Local educational agency (LEA)
Parent
State educational agency (SEA)
State

(20 U.S.C. 244)

(c) *Definitions in this part.* "A" children are federally connected children defined in § 115.8(c).

"B" children are federally connected children defined in § 115.8(c).

"Act" means title I and title IV of Pub. L. 81-874 (81st Congress) as amended, except section 7 of title I.

"Average daily attendance" (ADA) is defined in section 403(a)(10) of the Act as amended. The last sentence of section 403(10)—which was added to the definition by section 1013 of Pub. L. 95-561—is interpreted to include handicapped children who meet the other requirements of the sentence and who are attending private schools.

"County" means—

(1) A State division designated as a county by the Secretary of Commerce for the purpose of compiling and reporting data for counties;

(2) A municipality or other State subdivision that is not designated as a county or part of a county by the Secretary of Commerce for the purpose of compiling and reporting data for counties.

"Entitlement" means the amount of financial assistance that an applicant may receive under sections 2, 3, and 4 of the Act if the appropriations for a fiscal year are sufficient to pay all claims.

"Federal property" is defined in section 403(1) of the Act.

(1) Section 403(1) is interpreted to include Federal ships owned by the United States and whose home ports are on Federal property.

(2) All property of the United States that was transferred to the United States Postal Service and that before the transfer was treated as Federal property for the purposes of the Act is considered Federal property for two years beyond the end of the fiscal year in which the transfer occurred.

(20 U.S.C. 244(1); Pub. L. 92-277 (April 24, 1972), 86 Stat. 124)

"Federally connected children" means—

(1) For purposes of section 3 of the Act, the children described in § 115.8.

(2) For purposes of section 4 of the Act, children whose school attendance in the schools of an LEA is the direct result of activities of the United States, carried on either directly or through a contractor.

"Hold harmless provision" means a provision of law guaranteeing to an LEA a level of Federal assistance that would not otherwise be available to it.

"Membership" means the number of children enrolled in the schools of an LEA as of a specific date in the school year.

"Refugee" means a person who meets the requirements of the Migration and Refugee Assistance Act of 1962, section 2(b)(3), clauses (A) and (B).

"Revenue from local sources"—

(a) Means any of the following:

(1) Locally received and retained funds from local taxes.

(2) Funds from local taxes on real property, in cases in which those funds are collected by the county or State and returned to its LEAs in the same amount as collected.

(3) Funds from taxes on "Wherry-Spence" housing projects located on private property.

Note.—The Wherry-Spence Act (12 U.S.C. 1702 *et seq.*) pertains to federally assisted housing near military establishments.

(b) Does not mean any of the following:

(1) Payments under Pub L. 81-874 or the Johnson-O'Malley Act.

Note.—The "Johnson-O'Malley Act" (20 U.S.C. 452) pertains to programs of assistance for Indian children administered by the U.S. Department of the Interior.

(2) Funds from taxes on "Wherry-Spence" housing projects located on property owned by the United States.

(3) Funds from local taxes on real property, in cases in which the State collects and distributes those funds to its LEAs on a formula basis.

"School year" means the period between July 1 of one year and June 30 of the next year.

"Uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, Environmental Science Services Administration, and Public Health Service.

(20 U.S.C. 236-241; 244)

§ 115.5 Who is eligible for assistance under section 2 (Federal ownership of certain property)?

(a) An LEA may be eligible for financial assistance under section 2 of the Act if the United States—

(1) Owns property in the school district of that LEA; and

(2) Has acquired that property since 1938.

(b) The elements of eligibility are stated in full in section 2(a) of the Act.

(c) The Act, in section 2, states a special rule with respect to eligibility of an LEA whose school district has been formed since 1938 by the consolidation of two or more former school districts.

(20 U.S.C. 237)

§ 115.6 Who is eligible for assistance under section 3 (federally connected children)?

(a) *General.* An LEA is eligible for financial assistance under section 3 of the Act if it—

(1) Has the prescribed number of federally connected "A" and "B" children in ADA in its schools; and

(2) Provides free public education for those children during that school year.

(b) Federally connected "A" and "B" children are defined in § 115.8. The number of these children must be—

(1) At least 400; or

(2) A number, at least 10, equal to three percent or more of the total number of children who were in ADA during that year at the schools of the agency and for whom the LEA provided free public education.

(c) *Exceptions.* (1)(i) If it has at least 10 "A" and "B" children for each of the two years after it has met the "three percent" requirement in subparagraph (b)(2), an LEA is eligible even if it fails to meet the three percent requirement during those two years. The conditions covering this exception are stated fully in section 3(c)(2)(A)(ii) of the Act.

(ii) This exception may apply even to an LEA that did not exist in one or both of the two years just before it applies for assistance. However, that LEA must be composed only of territory that was included in a pre-existing LEA or LEAs that met the three percent requirement for one or both of those years.

(2) The Commissioner may waive the three percent requirement referred to in subparagraph (b)(2) if the Commissioner determines that that requirement would defeat the purpose of title I of the Act.

(3) An LEA may not receive any payments based on federally connected "B" children who are the children of refugees unless the number of those children is at least 20 percent of the total number of children—

(i) Who were in ADA in the schools of that agency; and

(ii) For whom the agency, during the school year, provided free public education.

Note.—"Refugee" is defined in § 115.4(e).

(20 U.S.C. 238)

§ 115.7 Who is eligible under section 4 (sudden and substantial increase in attendance)?

Generally an LEA is eligible for financial assistance under section 4 of the Act for a school year for which the Commissioner determines that—

(a) A sudden and substantial increase in the number of children in ADA in the schools of that agency has been the direct result of activities of the United States;

(b) The activities of the United States have placed on that agency a substantial and continuing financial burden; and

(c) The agency is making a reasonable tax effort and is doing what it reasonably can to obtain other financial assistance but is, nevertheless, unable to meet the increased costs involved.

(20 U.S.C. 239)

§ 115.8 Federally connected children under section 3.

(a) *General.* (1) There are two general categories of federally connected children counted for section 3. They are referred to in these regulations as "A"

and "B" children. "A" children are defined in section 3(a) of the Act; "B" children are defined in section 3(b) of the Act.

(2) There are several subcategories within each of these two categories. All these federally connected children include only children:

(i) Who were in ADA at the schools of an LEA;

(ii) Who received free public education from LEA during the year for which financial assistance is requested; and

(iii) Who had the required status as federally connected children while they were in attendance at the schools of the LEA.

(3) The LEA may count a child in only one category.

(b) *"A" children.* These are children who reside on Federal property and, except for the children residing on Indian lands, whose presence has some additional relationship to a Federal activity. The subcategories of "A" children are as follows:

(1) A child who resides on Federal property with a parent employed on Federal property situated in whole or in part in the same State as the school district of the LEA.

(2) A child who resides on Federal property and has a parent on active duty in the uniformed services.

(3) A child who resides on Indian lands. For the purposes of the Act this child is considered to be the same as a child described in subparagraph (2) above.

(c) *"B" children.* The five subcategories of federally connected "B" children are as follows:

(1) A child who resides on Federal property.

(2) A child who resides with a parent employed on Federal property situated in whole or in part in any county in which the school district is located.

(3) A child who resides with a parent employed on Federal property situated outside the county of the school district, but in whole or in part in the same State as the school district.

(4) A child who does not reside on Federal property but has a parent who is on active duty in the uniformed services.

(5)(i) A child who resides with a parent who was a refugee at any time during the three years just before the fiscal year for which financial assistance is requested.

Note.—"Refugee" is defined in § 115.4(e).

(ii) However, this subcategory does not include any child with respect to whose education any agency of the United States Government has made a payment for that fiscal year under Section 2(b)(4) of the Migration and Refugee Assistance Act of 1962.

(20 U.S.C. 238 (a), (b))

Subpart B—Application Procedures

§ 115.9 Purpose of this subpart.

(a) This subpart describes the forms and procedures that an applicant LEA must use in applying for—

(1) Assistance under sections 2, 3 and 4 of the Act; and

(2) The hold harmless payments described in § 115.27.

(b)(1) The LEA shall file an Application for Financial Assistance for Current Expenditures for Public Schools in Areas Affected by Federal Activities (Form RSF–1).

(2) An LEA applying for assistance under sections 2 and 3 may also submit an application for preliminary payment as described in § 115.10.

(c)(1) The applicant shall, as a condition of entitlement, furnish the Commissioner with the information and assurances that the Commissioner considers necessary for making the appropriate decisions and for ensuring that the applicant complies with the Act and regulations.

(2) The Commissioner notifies prospective applicants of specific requirements for application content in program information packages sent to the prospective applicants.

(d) A key element of the Application for Financial Assistance for payments under sections 3 and 4 (Form RSF–1) is the membership count. The data derived from this count is the basis for determining the number of federally connected children in ADA in the schools of the LEA. This subpart, in §§ 115.15 through 115.19, sets forth the rules for making the membership count.

(20 U.S.C. 238, 239, 240(a), (b))

§ 115.10 Application for preliminary payment.

(a) *Purpose.* The purpose of a preliminary payment is to enable an LEA to receive payment under sections 2 and 3 of the Act as early as possible in a school year. The Commissioner's ability to make a preliminary payment is dependent on the receipt and amount of an appropriation. If an appropriation does not contain enough funds, the Commissioner reduces the amount of preliminary payments.

(b) *Who is eligible for a preliminary payment?* An LEA that applies for a preliminary payment is eligible for that payment if the Commissioner has determined it to be eligible to receive a payment for the preceding fiscal year under section 2 or 3.

(c) *Procedures.* (1) The LEA shall send its application for preliminary payment to the Commissioner through its State educational agency (SEA).

(2) The LEA shall file this application with the Commissioner before October 1 of the fiscal year for which the preliminary payment is requested.

(3) The LEA is responsible for seeing that the application is submitted to the Commissioner on time.

(4) The application must be in writing, but no particular form is required.

(d) *Contents.* The LEA shall in the application for preliminary payment request a payment of 75 percent of the amount it was eligible to receive for the preceding fiscal year.

(20 U.S.C. 240(b)(2))

§ 115.11 Applications for Financial Assistance: Form RSF–1

(a) *Purpose.* The Application for Financial Assistance (Form RSF–1) supplies the basic information that the Commissioner uses in computing entitlement.

(b) *Procedure.* (1) An LEA shall submit this application for a fiscal year within the deadlines described in § 115.12. The LEA shall send the application to the Commissioner through its SEA.

(2) The SEA shall certify the application.

(3) The LEA is responsible for seeing that the application is submitted to the Commissioner on time.

(20 U.S.C. 240(a)(1))

§ 115.12 Application for Financial Assistance: Filing dates.

(a) *General.* An LEA shall file an application for financial assistance with the Commissioner on or before January 31 of the fiscal year for which the LEA seeks assistance. The Commissioner encourages the LEA to submit its application to the SEA by January 2, to allow the SEA time to forward the application to the Commissioner by January 31.

(b) If the application is filed directly with the Commissioner on or before January 31 and a copy is filed with the SEA on or before January 31, Commissioner considers the application to be timely filed if, by February 15, the applicant obtains and files with the Commissioner the certification of the application by the SEA.

(c) *Under what conditions may an LEA file an application after January 31?*

(1) An LEA may file an application after January 31 if any of the following

events, giving rise to eligibility, occurs after January 31:

(i) The United States Government initiates or reactivates a Federal activity, or acquires property.

(ii) The United States Congress enacts new legislation.

(iii) A reorganization of school districts has taken place.

(iv) Property, previously determined in writing by the Commissioner not to be Federal property, is determined to be Federal property.

(2) The LEA shall file this application within 60 days after the event occurs, but not later than the end of the fiscal year.

(20 U.S.C. 240(a)(1))

§ 115.13 Amendments to applications for financial assistance: Filing dates.

(a) An LEA may amend its application for financial assistance within 60 days after any of the events described in § 115.12(c) but no later than the end of the fiscal year.

(b) The LEA may also amend its application for financial assistance no later than the end of the fiscal year—

(1) For additional funds under section 3(d)(2)(B) of the Act;

(2) For additional funds under section 4(d) of the Act;

(3) For adjustment to its entitlement based on data obtained from a second membership count; or

(4) For an adjustment to entitlement based on actual satisfactory data in a case where actual satisfactory data was not available when the application was filed.

(20 U.S.C. 240(a)(1))

§ 115.14 [Reserved]

§ 115.15 How membership data must be obtained: General.

(a) The Commissioner determines the amount of an LEA's entitlement on the basis of information in the application for financial assistance, including information regarding the membership of federally connected children.

(b) In its application for financial assistance the LEA shall supply information regarding membership on the basis of any count as described in §§ 115.16 through 115.19.

§ 115.16 First or only count.

(a)(1) An applicant shall select a given date in the current school year as the survey day for making the count.

(2) The survey date of the first or only count must be at least three days after the start of the school year.

(3) The applicant shall use the same survey date for all schools in the school district.

(b)(1) As of the survey date, the applicant shall count the membership of all federally connected children falling in the categories described in sections 3 and 4 of the Act who are in the school district.

(2) The LEA shall also count as of that same date the membership of all children—federally connected and non-federally connected—who are in all the schools in the school district.

(3) Section 115.4(c) defines "membership."

(20 U.S.C. 238, 239, 240(a)(1))

§ 115.17 Second count.

(a) The applicant may, but is not required to, make a second count of membership during the last quarter of the current school year.

(b) For this count the applicant shall select a survey date in that quarter.

(c) The applicant shall use the same survey date for all schools in the school district.

(d) Information obtained from this count is used in amending the application for financial assistance, which will have been submitted by the time of this second count.

(20 U.S.C. 238, 239, 240(a)(1))

§ 115.18 Alternative methods for making counts.

The applicant may use one of two alternative methods in making the counts:

(a) The applicant may conduct a parent-pupil survey to determine the federally connected membership. Information that the applicant shall collect in the survey form is described in § 115.19.

(b) The applicant may determine federally connected membership by obtaining certificates from—

(1) Employers as to the employment of parents of children claimed; or

(2) Housing officials as to the residence of the children on the survey date; or

(3) Both (1) and (2), if necessary.

(20 U.S.C. 238, 239, 240(a)(1))

§ 115.19 Parent-pupil survey.

The parent-pupil survey used as the basis for a membership count must meet the following requirements:

(a)(1) The survey shall be filled out an signed by the pupil's parent as the term "parent" is defined in § 115.4(c).

(2) Some other person may complete and sign the survey. In that case the survey form must say—

(i) Why that person instead of a parent has completed it; and

(ii) When, how, and from whom the employment and residence information was obtained.

(b) The survey form must be completely filled out.

(c) The survey must include the following information:

(1) Pupil-enrollment information including—

(i) Name of pupil; and

(ii) Date of birth.

(2) Pupil residence and parent employment information, including

(i) Address of pupil residence—including the name of the Federal facility if the residence is on Federal property;

(ii) Name of parent—the same as that on the employer payroll records—who is employed on Federal property and with whom the pupil resides, unless the parent is a member of the uniformed services on active duty;

(iii) Name and address of Federal property on which the parent is employed, unless the parent is a member of the uniformed services on active duty;

(iv) If the parent is a member of the uniformed services on active duty, the name, rank, and branch of service of the parent;

(v) If the parent is a civilian employed on a Federal vessel, the name of the vessel, hull number, and name of the controlling agency;

(vi) The signature of the parent supplying the information and the date of the signature; and

(vii) the name and address of the employer, unless parent is a member of the uniformed services on active duty.

(20 U.S.C. 238, 239, 240(a), (b))

Subpart C—Entitlements Under Sections 2, 3, and 4 of the Act—Interpretive Rules and Information Requirements.

§ 115.20 Notification of legal changes affecting boundaries, identity, or administrative authority of application or grantee.

(a) An applicant or grantee shall notify the Commissioner in writing as soon as practicable of any legal change affecting its boundaries, its identity, or its administrative direction and control of free public education.

(b) The applicant or grantee shall furnish whatever information the Commissioner may require to determine how the legal change affects eligibility or entitlements or both.

(20 U.S.C. 237, 238, 239, 244(6)(A))

§ 115.21 How does loss of legal identity affect LEA eligibility or entitlement?

(a) This section applies to an applicant or grantee that ceases to be an LEA as the result of a legal change effective before the end of the regular school year. That LEA is not entitled to any payment and is required to repay to the United States any payment made before the Commissioner considered the legal change.

(b) *Exceptions.* (1) Repayment by the pre-existing LEA is not required if, the Commissioner makes an adjustment in the entitlement of a successor applicant, for the payment made to the pre-existing LEA.

(2) Repayment by the pre-existing LEA is not required if the payment that was made—

(i) Does not exceed the amount that would have been payable for the year for the children claimed by the pre-existing LEA;

(ii) Was based on children who are not counted by any other applicant—under sections 2, 3, or 4 of the Act—for that fiscal year; and

(iii) Was based on children who were provided free public education for the entire school year by the pre-existing LEA or the successor non-applicant LEA or both.

(20 U.S.C. 237, 238, 239, 244(6)(A))

§ 115.22 How is eligibility or entitlement affected if an LEA assumes jurisdiction of a previously existing applicant or recipient?

(a) This section applies to an LEA that, during the school year, assumes administrative control and direction of free public education for a previously existing applicant or recipient LEA.

(b) Upon application the newly formed LEA may have eligibility and its regular entitlement detemined by whichever of the following ways is more favorable to it:

(1) Based on the entire area of its jurisdiction on the last day of the school year; or

(2)(i) Based only on the area acquired from the previously existing LEA.

(ii) However, the LEA has this second option only if the pre-existing agency was determined eligible, or would have been determined eligible except for the change in district organization.

(20 U.S.C. 237, 238, 239, 244(6)(A))

§ 115.23 Entitlement of successor LEA if pre-existing LEA was eligible under exceptions to the "3 percent" requirement.

(a) This section applies to a successor LEA described in § 115.22 but only if the pre-existing LEA was eligible for a section 3 payment under the exceptions to the "3 percent" requirement described in § 115.6(b)(1). (Section 115.6(b)(1) refers to LEAs which are eligible for two years after they fail to meet the "3 percent" eligibility requirement).

(b) In this case, upon application the successor LEA's section 3 entitlement is based on—

(1) The area acquired from the pre-existing LEA; and

(2)(i) The entitlement of the pre-existing LEA without regard to the 3 percent requirement.

(ii) However, the Commissioner subtracts from the successor LEA's payment any payment made to the pre-existing LEA.

(20 U.S.C. 238)

§ 115.24 Section 3(e) entitlement: When is there a substantial decrease in the number of children?

(a) Section 3(e) of the Act provides a "hold harmless" entitlement in certain cases in which the number of "A" or "B" children or both in an LEA has substantially decreased from the immediately preceding fiscal year because of a decrease or cessation of Federal activities in the same State as the applicant.

(b) This decrease is considered substantial if it equals—

(1) At least 3 percent of the current school year's total ADA; and

(2) At least 10 "A" and "B" children in ADA.

(20 U.S.C. 238(e))

§ 115.25 When is a parent considered to be "employed on Federal property" for the purpose of section 3 of the Act?

A parent is "employed on Federal property" if the Commissioner determines that—

(a) The parent normally reports to work on Federal property;

(b) The parent normally receives work instructions on Federal property; and

(c) The parent normally has work attendance initially recorded while on Federal property.

(20 U.S.C. 238 (a), (b))

§ 115.26 Section 4(a) entitlements: When does an increase in the number of children in ADA result from a U.S. activity?

(a) A United States activity may be carried on by the United States either directly or under a contractor. Any other activity is not considered a United States activity.

(b)(1) The Commissioner considers any increase in ADA to have resulted from United States activity if the number of employees engaged in United States activity in the current school year has increased from the preceding year.

(2) This increase in the number of employees may result from—

(i) Expansion of the United States activity; or

(ii) A change in job requirements for the United States activity that has caused new employees with different skills to move into the school district of the LEA.

(20 U.S.C. 239(a))

§ 115.27 Adjustments to payments related to special hold harmless provisions under Pub. L. 93-380.

(a) *General.* There are two hold harmless provisions that guarantee, to the extent of available appropriations, an overall payment to eligible LEAs.

(b) *Hold harmless provision if there is a decrease or cessation of Federal activities on military installations.* This hold harmless provision guarantees a level of payment to certain LEAs whose ADA of children counted under the Act has decreased as a direct result of a decrease in or cessation of Federal activities on a military installation announced by the Federal government on or after April 16, 1973.

(1) *Guaranteed level of payment.* The level of payment for the first year of eligibility and each succeeding year for which an application if filed is 90 percent of the LEA's entitlement under section 3 for the preceding year.

(2) *Required decrease in ADA.* No payment will be made unless the decrease in the ADA under section 3 is at least 10 percent for any one of the following—

(i) Fiscal year 1974 section 3 ADA compared to fiscal year 1973 section 3 ADA;

(ii) Fiscal year 1975 section 3 ADA compared to fiscal year 1974 section 3 ADA; or

(iii) Fiscal year 1975 section 3 ADA compared to fiscal year 1973 section 3 ADA.

(3) *Type of announcement required.* The decrease in or cessation of Federal activities must have been due to an official announcement or order—

(i) Issued by the Federal government; and

(ii) Specially referring to a particular military installation or installations.

(4) *"Military installation" defined.* In this section "military installation" means a facility, camp, or base operated by or under the jurisdiction of the Armed Forces of the United States.

(5) *Required data and information.* In order to receive this hold harmless payment, an applicant must provide to the Commissioner whatever data and information the Commissioner considers

necessary to establish the basis for payment.

(c) *Hold harmless provision guaranteeing payment for "B" children.* (1)(i) This hold harmless provision guarantees to an LEA for "B" children a payment that is not less than 90 percent of the amount the LEA received for "B" children for the preceding year.

(ii) The amount received for "B" children for the preceding year may have been received through section 3(b) of the Act or either of the hold harmless provisions described in this section or both.

(2) *Eligible LEAs.* An applicant is eligible under this hold-harmless provision if, during the year of application, the number of children in either of the following categories is equal to 10 percent or more of the number of "B" children for that year:

(i) A child who resides with a parent employed on Federal property in a State other then the State in which the applicant is situated but that is within reasonable commuting distance of the applicant.

(ii) A child who resides with a parent employed on Federal property in a county outside the county in which the applicant is situated but within the same State.

(3) *Reasonable commuting distance.* (i) In determining whether a particular Federal property is within reasonable commuting distance, any prior determination for that property under the Act is controlling, unless the applicant presents new information justifying a reconsideration of that determination.

(ii) Any Federal property located in the same State as the applicant is considered to be within reasonable commuting distance.

(d) *Savings clauses do not create separate entitlements.* The hold harmless provisions described in this section do not create separate entitlements to be added individually to the basic Pub. L. 81-874 payment. The amount of payment guaranteed by these hold harmless provisions is computed by subtracting (1) any payment under section 3 of the Act from (2) the highest level of payment that is guaranteed by either hold harmless provision.

(e) *Rights of successor LEAs.* (1) *Hold harmless provision if there is a decrease or cessation of Federal activities on military installations.* (i) An applicant LEA not in existence the preceding fiscal year may, nevertheless, receive this hold harmless guarantee if it is composed only of territory that was formerly included in a predecessor LEA or LEAs that—

(A) Were determined eligible under this hold harmless provision; and

(B) Received for the preceding fiscal year a net payment under either section 3 of the Act or this hold harmless provision.

(ii) The successor LEA's hold harmless payment is based on the section 3 entitlements—plus any amounts added to satisfy the guarantee—of all the predecessor LEAs.

(2) *Hold harmless guaranteeing payment for "B" children.* (i) An applicant LEA not in existence the preceding fiscal year may nevertheless receive this hold harmless guarantee.

(ii) The successor LEA's hold harmless payment is based on the net amount paid for the preceding year under section 3(b)—plus any amount added to satisfy the guarantee—to any predecessor LEA or LEA's.

(iii) For the purpose of computing this hold harmless amount the Commissioner does not consider the section 3(b) payment to a predecessor LEA unless all of the territory of that LEA is included in the territory of the successor LEA.

(Pub. L. 93-380, sec. 305(b)(2); Sen. Rept. No. 93-763, pp. 206, 207 (1974))

§ 115.28 Computations.

(a) This section describes the manner in which the Commissioner computes the average daily attendance (ADA) of federally connected pupils for each category in sections 3 and 4 of the Act—for the fiscal year in question—in order to determine entitlements under those sections.

(b) If the applicant is making only one count, the Commissioner—

(1) Determines the ratio of total ADA to total membership for the previous school year; and

(2) Multiplies this ratio by the total membership of federally connected pupils in each subcategory (obtained as described in § 115.16). This product is the ADA of federally connected pupils in each subcategory.

(c) If the applicant is making two counts; the Commissioner—

(1) Adds the total federally connected membership for each subcategory for each count;

(2) Divides that sum by two to compute the average federally connected membership for each subcategory for both counts;

(3) Determines the ratio of total ADA to total membership for the previous school year; and

(4) Multiplies this ratio by the average federally connected membership in each subcategory obtained as described in subparagraph (2) above.

This product is the ADA of federally connected pupils in each subcategory.

(20 U.S.C. 238, 239, 240(a)(1))

§ 115.29 Conversion of average daily membership to ADA.

(a) This section applies only to LEAs in a State that—

(1) Reimburses its LEAs based on average daily membership—rather than on ADA;

(2) Does not require LEAs to keep records based on ADA.

(b) The Commissioner determines the total ADA for these LEAs by using the national average ratio of ADA to average daily membership, based on data obtained by the National Center for Educational Statistics for the second year before the fiscal year for which financial assistance is being requested.

(c) The LEA then multiplies its average daily membership by that ratio to arrive at its total ADA.

(20 U.S.C. 244(10))

Subpart D—Generally Comparable Local Educational Agencies; Local Contribution Rate

§ 115.30 Purpose of this subpart.

The purpose of this subpart is to interpret section 3 of the Act with respect to local contribution rates and to explain how the Commissioner determines other school districts to be generally comparable to the school district of the applicant. This subpart also states procedures that SEAs and applicants must follow so that the Commissioner can make the necessary decisions on these matters.

(20 U.S.C. 238(d)(3), 239)

§ 115.31 Computation of local contribution rate.

(a) *General.* (1) The local contribution rate for an applicant under section 3 of the Act is the per child amount an applicant needs for current school expenditures due to the presence of federally connected children.

(2) To compute the local contribution rate, the Commissioner first determines the aggregate current expenditures from local sources—made during the second year before the fiscal year of the application—of school districts that the Commissioner has found to be generally comparable to the applicant school district.

(3) The Commissioner then divides this aggregate amount by the aggregate number of children in ADA to whom those LEAs provided free public education during the second preceding fiscal year. The quotient is the local contribution rate for the applicant.

(b) *Exceptions.* (1) The Act states the minimum local contribution rate.

(2) The Act allows the Commissioner to increase an LEA's regular local contribution rate in certain cases where the school district of that LEA has unusual geographic factors that affect its current school expenditures. This rule and the method by which the Commissioner determines the increase are stated in the Act.

(20 U.S.C. 238(d)(3))

§ 115.32 Jurisdictions not covered by general rule on local contribution rates.

(a) The Commissioner is not required to apply § 115.31 to LEAs in—

(1) Puerto Rico, Wake Island, Guam, American Samoa, the Virgin Islands, or the Northern Marianas;

(2) Any State in which a substantial portion of the land is unorganized territory; or

(3) Any State in which there is only one LEA.

(b) The Act states a special rule with respect to determining the local contribution rate for LEAs in those jurisdictions.

(20 U.S.C. 238(d)(3)(B)(iii), (C))

§ 115.33 How does the Commissioner decide which school districts are generally comparable to the applicant's school district?

The Commissioner, in consultation with the SEA and the LEA applicant, approves either one of the following basic methods to determine which school districts are generally comparable to the applicant's school district:

(a) Under the first method the State classifies all of its school districts into groups of districts that are generally comparable to each other.

(b) Under the second method the applicant selects the school districts in the State that the applicant considers to be generally comparable to its school district.

(20 U.S.C. 238(d)(3), 239)

§ 115.34 Deadline for SEA submittal of comparability recommendation and data.

For the purpose of §§ 115.35 through 115.37, the SEA shall submit its recommendation and data to the Commissioner by September 1 before the fiscal year for which local contribution rates are being determined.

(20 U.S.C. 238(d)(3), 239)

§ 115.35 First method for determining generally comparable school districts: Classifying all the school districts in a State.

The State places each of its school districts into one or another group (as described in § 115.33(a)) based on the following principal factors:

(a) State legal classification.

(b) ADA.

(c) Per Pupil cost.

(d) Grade span maintained in the school district.

(e) Economic characteristics of the school district, (for example, whether the school district is located in an area that is primarily agricultural, industrial, or commercial; and whether the area is urban or rural).

(f) Cost per pupil in ADA paid from local source funds only.

(g) Percent of pupils transported.

(h) Pupil-teacher ratio.

(i) Assessed local real property valuation per pupil in ADA.

(j) Ratio of assessed value of real property to true value.

(k) Tax rate levied on real property for current expenses only and for all school purposes.

(l) Teacher salary schedule.

(m) Curricula offered.

(n) Other relevant factors.

(20 U.S.C. 238(d)(3), 239)

§ 115.36 What data must the SEA furnish under § 115.35?

The SEA shall furnish to the Commissioner whatever data the Commissioner requires in order to approve the group rates requested by the SEA as described in § 115.35. The Commissioner notifies the SEA each year, in a memorandum, what specific information must be submitted.

(20 U.S.C. 238(d), 235(5))

§ 115.37 Alternate method of classifying all LEA's in a State into generally comparable groups.

(a) This section describes an alternate way—to the first method described in § 115.35—in which the SEA places each school district in the State into one or another group. The Commissioner allows this alternate method in States where the majority of LEAs—

(1) Are not applicants; and

(2) Provide free public education to the majority of public elementary and secondary pupils in the State.

(b) Under the alternate method, the SEA divides each group established under § 115.35 into applicant school districts and non-applicant school districts. In each group the school districts of the non-applicants must generallly number at least 5. The data for school districts of non-applicants determines the local contribution rate for the applicants in each group.

(c) This alternate method produces a local contribution rate which is not distorted by the presence of federally connected children in the school districts that are being compared to the applicant's school district.

(U.S.C. 238(d)(3), 239)

§ 115.38 Second method for determining generally comparable school districts.

(a) This section applies in cases in which the Commissioner after consultation with the SEA, uses the second method described in § 115.33(b) for determining comparable school districts.

(b) The applicant identifies generally five school districts that it considers to be generally comparable to its school district.

(c) In its application, the applicant makes this identification based on a minimum of five of the criteria listed in § 115.35.

(d) If comparability is not established, the local contribution rate for the applicant is the minimum rate allowable under the Act for that State.

(20 U.S.C. 238(d)(3), 239)

§ 115.39 What data must the SEA furnish under § 115.38?

The SEA shall furnish to the Commissioner whatever data the Commissioner requires in order to approve the use of the second method. The Commissioner notifies the SEA each year, in a memorandum, what specific information must be submitted.

(20 U.S.C. 238(d))

Subpart E—Administrative Hearing; Judicial Review

§ 115.40 Purpose of this subpart.

This subpart governs the opportunity for an applicant or grantee to have an administrative hearing and judicial review on matters arising under the Act.

(20 U.S.C. 240(g))

§ 115.41 Opportunity for administrative hearing and judicial review.

An LEA that is adversely affected or aggrieved by an action of the Commissioner is entitled to an administrative hearing and judicial review of that action.

(20 U.S.C. 240(g))

§ 115.42 Request for hearing.

(a) An LEA requesting for an administrative hearing shall file its request in writing with the Commissioner within 6 days after

receiving written notice of the Commissioner's action.

(b) The LEA shall support its request with a written statement indicating the issues of fact and law on which the request is based.

(20 U.S.C. 240(g))

§ 115.43 Administrative hearing procedure.

Appointment of the administrative hearing officer and hearing procedures are governed by rules stated in the Administrative Procedure Act (Chapter 5 of Title 5, United States Code).

(20 U.S.C. 240(g); 5 U.S.C. 551, 554–559; H. Rept. 95–113, 95th Cong. 1st Sess. 112)

§ 115.44 Judicial review.

Judicial review of the Commissioner's action is governed by the provisions of Chapter 7 of Title 5, United States Code.

(20 U.S.C. 240(g)); 5 U.S.C. 701–706)

Subpart F—Records and Reports Required by the Commissioner; Adjustments or Recovery of Excessive Payments.

§ 115.45 What records must a grantee maintain?

(a) An applicant or grantee shall maintain adequate written records to prove its entitlement to whatever amount of payment it received under this part for any fiscal year.

(b) On request the applicant or grantee shall make its records available to the Commissioner for the purpose of examination or audit.

(20 U.S.C. 1232f)

§ 115.46 How long must a grantee maintain records?

A grantee shall keep all the records referred to in § 115.45 until the later of the following:

(a) Five years after the end of the fiscal year for which the funds were received; or

(b) If, the records have been questioned on Federal audit or review, until the question is finally resolved and the necessary adjustments to payments have been made.

(20 U.S.C. 1232f(a))

§ 115.47 Adjustment or recovery for excessive payment.

(a) If the Commissioner determines that a grantee has received a payment in excess of what it should have received under the Act and this part, the Commissioner deducts the amount of the excessive payment from subsequent payments to which the grantee is entitled under the Act.

(b) If the grantee is not entitled to subsequent payments under the Act, the grantee shall refund the amount of the excessive payment to the Commissioner.

(20 U.S.C. 1232d)

§ 115.48 Information submitted after deadlines.

(a) *General.* The Commissioner does not consider information submitted by an applicant or grantee after the deadlines prescribed in subpart B for submission of applications and amendments to applications.

(b) *Information solicited by the Commissioner.* After the deadlines prescribed in subpart B, the Commissioner may solicit from the grantee, in writing, additional clarifying information for the purpose of processing an applicaiton.

(20 U.S.C. 240(a); 1221e–3(a)(1))

Subpart G—Determinations Under Section 5(d)

§ 115.49 Scope and purpose.

The regulations in this subpart apply only to the determinations of the Commissioner under section 5(d) of the Act as amended. They do not establish definitions or standards for any other purpose.

(20 U.S.C. 240(d); sections 304(c), 305(a)(2) of Pub. L. 93–380; section 330(a) of Pub. L. 94–482; and section 1006 of Pub. L. 95–561)

§ 115.50 Treatment of State aid programs in general.

(a) *Statutory provisions.* (1) Section 5(d)(1) of the Act provides that, except in section 5(d)(2), no payment may be made to any local educational agency within a State which takes into consideration payments under section 5 of the Act in determining the eligibility of any agency for State aid, or the amount of that aid, with respect to free public education during the fiscal year of those payments or the preceding fiscal year, or which makes aid available in such a manner as to result in less State aid to any agency which is eligible for payments under the Act than that agency would receive if it were not so eligible.

(2) Section 5(d)(2) of the Act provides that, if a state has in effect a program of State aid for free public education for any fiscal year, which is designed to equalize expenditures for free public education among the local educational agencies of that State, payments under the Act may be taken into consideration by that State in determining (i) the relative financial resources available to local educational agencies in that State and (ii) the relative financial need of those agencies for the provision of free public education for children served by those agencies, subject to the provisions in that section.

(3) Section 5(d)(2)(A)(ii) of the Act provides that, if a State takes payments under the Act into consideration in accordance with section 5(d)(2), the State may do so only to the extent of the proportion that the local revenues of a local educational agency covered under the equalization part of a State aid program are of that agency's total local revenues for education.

(4) Section 5(d)(2)(C) of the Act, as added by Pub. L. 94–482 provides that no payment under the Act may be withheld from and no repayment may be required of any State or local educational agency because of any noncompliance with section 5(d)(2)(A) of the Act or this subpart prior to July 1, 1977 if that State had a program of State aid whose procedures were designed to equalize expenditures for free public education among those agencies in effect on October 12, 1976.

(5) No SEA or LEA is required—because of non-compliance with this subpart—to repay to the Commissioner funds distributed under the Act for school year 1977–1978 if that State has an equalization program for school year 1978–1979 that complies with this subpart.

(20 U.S.C. 240(d); H.R. Rept. No. 94–1701, 235 (1976); Section 1006(b) of Pub. L. 95–561)

(b) *General rules.* (1) Except as provided in paragraph (b)(2) of this section, a State may take into consideration payments under the Act in allocating State aid if that State has a program of State aid which qualifies under § 115.51. However, those payments may be taken into consideration for each affected local educational agency only in the proportion described in § 115.55.

(2) No program of State aid may qualify under this subpart if a court of that State has determined by final order, not under appeal, that the program fails to equalize expenditures for free public education among local educational agencies within the State or otherwise violates law.

(3) The Commissioner will not interpret any of the provisions of §§ 115.51, 115.52, and 115.54 so as to consider any part of a State aid program which allocates funds for the additional cost of providing free public education for children with special educational needs as disequalizing expenditures for free public education. For the purposes of this subpart, children with special educational needs are handicapped

children, non-English speaking children, economically disadvantaged children, gifted and talented children and the like.

(20 U.S.C. 240(d)(2); 20 U.S.C. 242(b))

(c) *Data for determinations.* Determinations under this subpart requiring the submission of financial or school population data may be made either (i) On the basis of data for the fiscal year preceding the fiscal year of determination if the same program was then in effect; or (ii) On the basis of estimates of data for the fiscal year of determination. Data submitted must be the most currently available and complete data, whether based on revenues or current expenditures. Estimates submitted by a State educational agency or other appropriate State agency must set forth the assumptions upon which such estimates are founded, must be accompanied by an assurance as to their accuracy, and must be adjusted by actual data for the fiscal year of determination as soon as available for the purpose of verification.

(20 U.S.C. 240[d); 242(b))

(d) *Definitions.* For the purposes of this subpart, the following terms shall have the meanings indicated below:

(1) "State aid" means any contribution, no repayment for which is expected, which is made by a State to or on behalf of local educational agencies within the State for current expenditures in the provision of free public education;

(2) "Equalize expenditures" means to meet the standards set forth in § 115.51;

(3) "Current expenditures" means the total charges incurred for the benefit of the school year in an elementary or secondary school program, exclusive of capital outlay and debt service for capital outlay.

(4) "Revenue" means an addition to assets which does not increase any liability, does not represent the recovery of an expenditure, does not represent the cancellation of certain liabilities without a corresponding increase in other liabilities or a decrease in assets, and does not represent a contribution of fund capital in food service or pupil activity funds. Furthermore, for the purposes of this subpart, the term "revenue" includes only revenue for current expenditures.

(20 U.S.C. 240(d)(2))

§ 115.51 General qualifying standard for State aid programs.

(a) *General standard.* For the purposes of section 5(d)(2) of the Act, the Commissioner will consider a program of State aid to be designed to equalize expenditures for free public education among local educational agencies in that State if the program—

(b) Is authorized by State law in effect for the fiscal year for which the determination under this subpart is made;

(c) Provides for the apportionment of State aid among local educational agencies in the State in order to carry out the objectives of the program;

(d) Provides that in detrmining the amount to be apportioned to each local educational agency in the State, the State will take into consideration the relative financial resources available to local educational agencies in that State for the program; and

(e) Meets the standard of either § 115.52, § 115.53, or § 115.54 of this subpart.

(20 U.S.C. 240(d)(2))

§ 115.52 Disparity standard.

(a) *25 percent disparity limitation.* The Commissioner will consider a program of State aid to have fulfilled the requirement of § 115.51(a)(4) of this subpart if the disparity in the amount of current expenditures or revenue per pupil for free public education among local educational agencies in the State is no more than 25 percent for the fiscal year for which a determination is made under this subpart. The method for calculating the percentage of that disparity in a State is set out in the Appendix to this subpart.

(b)(1) *Weighted average disparity for different grade level groups.* If a State requests it, the Commissioner will make separate disparity computations for different groups of local educational agencies in the State which have similar grade levels of instruction.

(2) In those cases, the weighted average disparity, based on the proportionate number of pupils in each group, may not be more than 25 percent for all the groups. The method for calculating the weighted average disparity percentage is set out in the Appendix to this subpart.

(c) *Per pupil figure computations.* In calculating the current expenditures or revenue disparities under this section, computations of per pupil figures are made on the following bases:

(1) Except as provided in paragraph (c)(2) of this section, the per pupil amount of current expenditures or revenue for a local educational agency is computed on the basis of the total number of pupils receiving free public education in the schools of the agency. The total number of pupils is determined in accordance with whatever standard measurement of pupil count is used in the State.

(2) If a State aid program uses a "weighted pupil," a "classroom," "instructional unit," or other designated unit of need in determining allocations of State aid in order to take account of special cost differentials, the computation of per pupil revenue or current expenditures may be made on those bases. There are two allowable categories of special cost differentials: (i) Those associated with pupils having special educational needs, such as handicapped children, economically disadvantaged children, non-English speaking children, and gifted and talented children; and (ii) those associated with sparsity or density of population, cost of living, or special socioeconomic characteristics within the area served by an agency.

(d) *Revenues and current expenditures included in determinations.* The following revenues or current expenditures must be included for each local educational agency in the State in determining the percentage of disparity under paragraph (a) of this section:

(1) All revenues or current expenditures from State sources, except those applied or contributed outside any equalized part of the State aid program which are designated for special cost differentials of the type specified in paragraph (c)(2) of this section.

(2) All revenues for current expenditures from local or intermediate sources, except those taken into consideration under any equalized part of the State aid program which are designated for special cost differentials of the type specified in paragraph (c)(2) of this section.

(3) Pub. L. 81–874 funds received by the agency under sections 2, 3 and 4 of the Act, except to the extent that (i) they are not taken into consideration under the State aid program, and (ii) they exceed the proportion of those funds that the State would be allowed to take into consideration under § 115.55 of this subpart; and

(4) Any other Federal funds received by the agency for which the agency is not accountable to the Federal Government for their use such as Federal Forest Reserve funds (16 U.S.C. 500).

(20 U.S.C. 240(d)(2))

§ 115.53. [Reserved]

§ 115.54 Consideration for exceptional circumstances.

(a) *General requirements.* A State program which does not conform to the standards of either § 115.52 of this subpart may, nevertheless, qualify under

this section if the Commissioner detemines on the basis of information submitted by the State, that:

(1) a decision not to apply the exact disparity standard specified in § 115.52 to the program submitted by the State would be justifiable because of exceptional circumstances within the State related to disparities in current expenditures or revenue per pupil for education,

(2) current expenditures or revenues for education in that State will be more equalized if payments under the Act are taken into consideration under this subpart than if they are not, and

(3) The program meets the requirements of paragraph (c)(3) of this section.

(b) *Determination of "mere equalized."* For purposes of paragraph (c)(1)(3) of this section, current expenditures or revenues for education within a State are considered "more equalized" if the distribution around the mean per pupil expenditure for all local educational agencies within the State is less when payments under the Act are taken into consideration in conformity with § 115.6 of this part than when they are not, as calculated according to accepted statistical methods appropriate to the circumstances.

(c) *Specific program requirements.* A program of State aid considered under this is not considered a program designed to equalize expenditures among local educational agencies in the State unless the Commissioner finds that, in addition to meeting the requirements of the preceding subparagraphs—

(1) The amount of the revenue available to local educational agencies in the State is not predominantly a function of the wealth of individual local educational agencies;

(2) The program is designed to ensure the provision of financially adequate educational programs and supportive services for every pupil in the State who is enrolled in public schools;

(3) In the determination of the relative financial need of local educational agencies, that program (i) makes provision for identifying those pupils with special educational needs (such as handicapped children, economically disadvantaged children, children with limited English-speaking ability), (ii) takes into consideration the additional costs of providing free public education for such children or categories of children; and (iii) takes into consideration the costs of providing education which might be associated with such factors as sparsity or density of population, cost of living, and socio-economic characteristics of the local educational agencies; except that nothing in this clause shall be construed to require any particular system of weighting of pupils.

(4) Such program involves a substantial percentage of school revenues;

(5) Such program is designed to provide systems and procedures for evaluating the degree to which the program is achieving its stated objectives.

(20 U.S.C. 240(d)(2); S. Rep. No. 763, 93d Cong., 2d Sess. 56 (1974); H.R. Rep. 805, 93d Cong., 2d Sess. 42–44 (1974); 102 Cong. Rec. S. 8604–8607 (daily ed., May 20, 1974); *Id.*, H 7401 (daily ed., July 31, 1974); Congressional Research Service, *Public Law 874 and State Equalization Plans 30–40 (H.R. Comm. on Education and Labor Print (March 1974))*

§ 115.55 Proportion of funds that may be taken into consideration.

(a) *Provision of law.* Section 5(d)(2)(A)(ii) of the Act provides that, in allocating State aid a State may consider as local resources funds received under the Act only in proportion to the share that local revenues covered under a State equalization program are of total local revenues. That determinatons of proportionality must be made on a case-by-case, school district by school district basis, for each local educational agency affected and not on the basis of a general rule to be applied throughout a State.

(20 U.S.C. 240(d)(2)(A)(ii); S. Rep. No. 1026, 93d Cong., 2d Sess., 103 (1974))

(b) *Computation of proportion.* (1) In computing the share that local revenues covered under a State equalization program are of total local revenues for a local educational agency with respect to a program qualifying under § 115.51 the proportion is obtained by dividing (i) the amount of local revenues covered under the equalization program by (ii) the total local revenues attributable to current expenditures for free public education within such agency.

(2) In cases where there are no local revenues for current expenditures and the State provides all of those revenues on behalf of the local educational agency, the State may consider up to 100 percent of the funds received under the Act by that agency in allocating State aid.

(20 U.S.C. 240(d)(2)(A)(ii); 102 Cong. Rec. H. 7403 (daily ed., July 31, 1974)

(c) *Local revenues.* For the purposes of this section—

(1) "Local revenues covered under a State equalization program" means those revenues for current expenditures produced within the boundaries of a local educational agency contributed to or taken into consideration in a program of State aid subject to a determination under this subpart, but excluding all revenues from State and Federal sources.

(2) "Total local revenues" means all revenues for current expenditures of a local educational agency, including revenues for education programs for children needing special services, vocational education, transportation, and the like during the period in question but excluding all revenues from State and Federal sources.

(3) Revenues received by a local educational agency which are produced within the boundaries of an intermediate school district or other local governmental instrumentality will be counted as local revenues.

(d) *Application of proportion to payments under the Act.* (1) The proportion established under this section (or a lesser proportion) for any local educational agency receiving payments under the Act may be appliedd by a State to actual receipts of those payments or to the prorated entitlements provided for under section 5 of the Act and § 115.24 of this subpart.

(2) That proportion may not be applied to any portion of a payment under the Act made to a local educational agency on the basis of low-rent public housing pupils or handicapped children after July 1, 1975.

(20 U.S.C. 240(d)(2); 102 Cong. Rec. H7412 (daily ed., July 31, 1974))

§ 115.56 Assurances in applications.

(a) *By applicants.* Each applicant for financial assistance under the Act must set forth an assurance in its application either (1) that the State in which it is situated is not taking payments to such applicant under the Act into consideration with regard to a program of State aid, or (2) that, if the State is taking such payments into consideration with regard to its program of State aid, the State is doing so, for that applicant, in conformity with § 115.55 of this subpart.

(b) *By State educational agencies.* Each State educational agency which certifies an application for financial assistance under the Act, as provided for in § 115.10 of this part, must submit to the Commissioner an assurance with such application either (1) that the State is not taking payments under the Act into consideration with regard to a program of State aid, or (2) that the State is taking such payments into consideration with regard to a program

of State aid in conformity with section 5(d)(2) of the Act and this subpart.

(c) *State guarantee of certain payments.* A further assurance is required of any State which does not take into consideration payments under the Act in allocating State aid to local educational agencies. The State must assure, for each application it certifies in accordance with § 115.10 of this part, that it will reimburse any local educational agency the amount of any of those payments taken into consideration but not in fact received by the agency by the time of final payment under the Act for the year of determination. The State must also include this assurance as part of any submission for determination under § 115.68 of this subpart.

(20 U.S.C. 240(d); S. Rep. No. 1026, 93d Cong., 2d Sess. 163 (1974))

§ 115.57 Certification of State aid program.

(a)(1) The procedure described in this section applies to a State that, for any fiscal year, wishes to take into consideration payments made under section 5 of the Act in determining the eligibility of any LEA for State aid, or the amount of that aid, for free public education.

(2) The State shall, no later than 60 days prior to the beginning of any fiscal year—

(i) Notify the Commissioner that it intends to take section 5 payments into consideration as described in paragraph (a); and

(ii) Request the Commissioner to certify that it has in effect a State aid program that satisfies section 5(d)(2) of the Act and this subpart.

(3) The State shall include with each request for certification—

(i) Documentation, satisfactory to the Commissioner, showing how the State aid program is consistent with the requirements of this subpart;

(ii) A statement of the proportion of funds under the Act that will be taken into consideration for each LEA receiving those funds in accordance with § 115.55; and

(iii) A copy of the State's written notice to each LEA explaining—

(A) The State's intention to have its program of State aid certified by the Commissioner;

(B) The effect of the State aid program on the LEA;

(C) The availability of all information transmitted to the Commissioner; and

(D) The right of the LEA to a hearing prior to the Commissioner's certification.

(b) *Hearing prior to certification.* An SEA or LEA may request the Commissioner to hold a hearing to enable it to express its views about the consistency of the State aid program with the requirements of this subpart. The Commissioner may also initiate a hearing.

(1)(i) An SEA or LEA requesting a hearing shall notify the Commissioner in writing no later than 30 days prior to the beginning of the fiscal year.

(ii) An SEA requesting a hearing shall send a copy of its request to each LEA within the State.

(iii) An LEA requesting a hearing shall send a copy of its request to the SEA.

(iv) The Commissioner gives the SEA and its LEAs reasonable notice whenever the Commissioner initiates a hearing.

(2) A request for a hearing prior to certification must—

(i) Specify the issues to be considered; and

(ii) Explain why the State program appears to be consistent or inconsistent with the requirements of this subpart.

(20 U.S.C. 240(d)(2)(C) (i), (ii))

(c) *Certification decision.* (1) After considering a State's request for certification and the views presented at any hearing prior to certification, the Commissioner determines whether a State aid program satisfies section 5(d)(2) of the Act.

(2) The Commissioner sends written notice to an SEA and to affected LEAs if a State aid program is certified. SEAs and LEAs in those States are required to give the assurances described in § 115.56 of this subpart.

(d) *Notice of decision.* The Commissioner sends a written notice, including a brief statement of reasons, to an SEA and affected LEAs if a program does not receive certification.

(20 U.S.C. 240(d)(2)(C)(i))

(e) *Effect of certification or failure to receive certification.* (1) A state that has in effect a State aid program certified by the Commissioner may take payments under section 5 of the Act into consideration in—

(i) Determining the eligibility of any LEA for State aid; and

(ii) In allocating that State aid to the extent permitted by § 115.55.

(2) If a State without certification by the Commissioner implements a State aid program that takes into consideration payments to LEAs under the Act, the Commissioner reduces or terminates payments under section 5 of the Act.

(20 U.S.C. 240(d))

§ 115.58 Notice and opportunity for hearing.

(a) *General requirements.* After any determination under this subpart—including a determination to certify or not to certify a State aid program—the Commissioner notifies every SEA and LEA that is adversely affected by that determination and gives it the opportunity for hearing. The Commissioner will afford the notice and opportunity for a hearing and the hearing (if requested) shall take place prior to the implementation by the Commissioner of any determination. The notice shall set forth the reasons for the determination in sufficient detail to enable the agencies to respond.

(b) *Requests for hearing.* (1) A State or local educational agency which is adversely affected by a determination under section 59(d) of the Act and this subpart and which desires a hearing regarding that determination must submit a written request for a hearing within 30 days after the Commissioner gives appropriate notice. The time within which a request must be filed will not be extended unless the time for filing the request is extended in writing by the Commissioner or the Commissioner's designee at the time notice of the determination is given.

(2) A request for a hearing in accordance with this section must specify the issues of fact and law to be considered.

(3) If a local educational agency requests a hearing it must furnish a copy of the request to the appropriate State educational agency. If a State requests a hearing, it must furnish a copy of the request to all local educational agencies whose payments under the Act are or would be taken into consideration in the allocation of State aid.

(c) *Time and place of hearing.* The hearing shall be held at a time and place fixed by the Commissioner or the Commissioner's designee (with due regard to the mutual convenience of the parties).

(d) *Counsel.* In all proceedings under this section, all parties shall have the right to be represented by counsel.

(e) *Proceedings.* The Commissioner may refer the matter in controversy to a hearing officer or to a hearing panel designated by the Commissioner for such purpose. The hearing officer or hearing panel may consist of or include persons who are employees of the Department, employees of the other Federal departments and agencies, and persons who are not Federal employees.

(f) *Procedural rules.* (1) If in the opinion of the hearing officer or panel no dispute exists as to material fact the

resolution of which would be materially assisted by oral testimony, the hearing officer or panel shall afford each party to the proceeding an opportunity for presenting its case at the option of the hearing officer or panel (i) in whole or in part in writing or (ii) in an informal conference which shall afford each party sufficient notice of the issue to be considered (where such notice has not previously been afforded).

(2) With respect to hearings involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the hearing officer or panel shall afford each party, in addition to the notice of issues required by paragraph (f)(1)(ii) of this section, the following:

(i) An opportunity for a record of the proceedings;

(ii) An opportunity to present witnesses on the party's behalf; and

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.

(g) *Decisions.* When a hearing officer or panel is designated to consider the matter, the officer or panel shall make an initial decision based upon written findings, which shall be forwarded to the Commissioner. The Commissioner may, by appropriate notification to the parties, determine to review it or certify it as the final decision of the Commissioner without further proceedings. Written notice of the initial decision shall be sent to all parties. In any case in which the Commissioner modifies or reverses the initial decision, a notice of that action shall be accompanied by a written statement of the grounds for the reversal or modification. Notice of the final decision of the Commissioner shall be served upon all parties to the hearing, the hearing panel and any local educational agency which may be adversely affected thereby.

(h) *Effect on payments.* (1) When an appropriate request for a hearing under this section has been made the Commissioner will not suspend or terminate payments to a local educational agency under the Act on the basis of section 5(d)(1) of the Act until a final decision with respect to the matter in controversy has been made under this subpart.

(2) If a State has been finally determined, after notice and opportunity for hearing, to have been taking into consideration payments under the Act in violation of sections 5(d) (1) and (2) of the Act, the commissioner shall terminate payments under the Act to all local educational agencies in that State unless the State provides satisfactory assurances within thirty (30) days after receiving notice of a final decision, that it will restore to all affected local agencies any State aid which was denied the agencies because of those payments.

(3) If a State has been finally determined, after notice and opportunity for a hearing, to have been taking into consideration payments under the Act in excess of the proportion computed under § 115.66 of this subpart, the Commissioner shall terminate payments under the Act to all local educational agencies in that State, unless the State provides satisfactory assurances, within thirty (30) days after receiving notice of a final decision, that it will reimburse all affected local educational agencies for the excess amount of payments taken into consideration in the allocation of State aid and that thereafter it will only take into consideration payments under the Act in the proportion permitted.

(4) During the thirty days provided under paragraphs (h) (2) and (3) for a State to provide satisfactory assurances, the Commissioner will suspend payments under the Act to all local educational agencies in the State. However, if during that time the State does provide the assurances required, the Commissioner will lift the suspension of payments.

(20 U.S.C. 240(d), 242(b); S. Rep. No. 1026, 93d Cong., 2d Sess. 163 (1974).)

Appendix

[Pub. L. 81-874, Section 5(d)]

Assistance for Local Educational Agencies in Areas Affected by Federal Activities; Methods of Calculations for Treatment of Payment Under State Equalization Programs

The following paragraphs describe the methods for making certain calculations in conjunction with determinations made under various requirements of the regulations set forth in this subpart. These methods shall be the only methods used in making these calculations.

1. *Determinations of disparity standard compliance under § 115.52.*

The determination of disparity in current expenditures or revenue per pupil is made by:

(a) Ranking all local educational agencies having similar grade levels within the State on the basis of current expenditures or revenues per pupil with respect to the fiscal year for which data has been submitted in accordance with these regulations;

(b) Identifying those local agencies in each ranking which fall at the 95th and 5th percentiles of the total number of pupils in attendance in the schools of these agencies; and

(c) Subtracting the lower current expenditure or revenue per pupil figure from the higher for those agencies identified in paragraph (b) and dividing the difference by the lower figure.

Example: In State X, after ranking all local educational agencies organized on a grade 9–12 basis in order of the expenditures per pupil for the fiscal year in question, it is ascertained by counting the number of pupils in attendance in these agencies in ascending order of expenditure that the 5th percentile of student population is reached at LEA A with a per pupil expenditure of $820, and that the 95th percentile of student population is reached at LEA B with a per pupil expenditure of $1000. The percentage disparity between the 95th and 5th local educational agencies is 22 percent ($100−$820=$180÷$320). The program would be deemed to qualify.

(d) In cases under § 115.52(b), where separate computations are made for different groups of local educational agencies, the disparity percentage for each group is obtained in the manner described in paragraphs (a), (b) and (c) above. Then the weighted average disparity percentage as for the State as a whole is determined by:

(i) Multiplying the disparity percentage for each group by the total number of pupils receiving free public education in the schools in that group;

(ii) Summing the figures obtained in (i); and

(iii) Dividing the sum obtained in (ii) by the total number of pupils for all the groups.

Example: For State Y three groups of local educational agencies were considered. Group #1 (grades 1–6) had a disparity percentage of 18 percent and 60,000 pupils. Group #2 (grades 7–12) had a disparity percentage of 22 percent and 100,000 pupils. Group #3 (grades 1–12) had a disparity percentage of 35 percent and 20,000 pupils. The figure obtained under (i) is 14,400 for group #1, 22,000 for group #2, and 7,000 for group #3. The sum of these figures under (ii) is 43,400. Dividing that number by the total number of pupils for all three groups (200,000) gives a weighted average percentage of 21.7 percent. State Y meets the requirements of § 115.63(b).

2. *Determination under § 115.52(b) as to maximum proportion of pub. L. 81–874 payments that may be taken into consideration by a State under an equalization program.* The proportion that local revenues covered under a State equalization program are of total local revenues for a particular local educational agency is obtained by dividing: (a) the amount of local revenues covered under the equalization program by (b) the total local revenues attributable to current expenditures for education within the agency.

Examples

Example 1. State A has an equalization program under which each LEA is guaranteed $900 per pupil less the LEA contribution based on a uniform tax levy. LEA X contributes $700 per pupil and the State contributes the $200 difference. No other local revenues are applied to current expenditures for education by LEA X. The percentage of funds under the Act which may be taken into consideration by State A for LEA X is 100% (700/700). If LEA X receives $100 per pupil in Public Law 81–874 funds, $100 per pupil may be taken into consideration by State A in determining LEA

X's relative financial resources and needs under the program. LEA X is regarded as contributing $800 and State A would now contribute the $100 difference.

Example 2. The initial facts are the same as in Example 1, except that LEA X, under a permissible additional levy outside the equalization program, raises an additional $100 per pupil. The percentage of Pub. L. 81–874 funds which may be taken into consideration is 87.5% (700/800). If LEA X receives $100 per pupil in Pub. L. 81–874 funds, $87.50 per pupil may be taken into consideration. LEA X is now regarded as contributing $787.50 per pupil under the program and State A would now contribute $112.50 per pupil as the difference.

Example 3. State B has an equalization program in which each participating LEA is guaranteed a certain per pupil revenue at various levels of tax rates. For an 8 mill rate the guarantee is $500, for 9 mills $550, for 10 mills $600. LEA Y levies a 10 mill rate and realizes $300 per pupil. Furthermore, it levies an additional 10 mills under a local leeway option, realizing another $300 per pupil. The percentage of Pub. L. 81–874 which may be taken into consideration is 50% (300/600). If LEA Y receives $100 per pupil in Pub. L. 81–874 funds, $50 per pupil may be taken into consideration. LEA Y may be regarded as contributing $350 per pupil under the program and State B would now contribute $250 as the difference.

Example. 4. The initial facts are the same as in Example 3, except that LEA Z in State B, while taxing at the same 10 mill rate for both the equalization program and leeway allowance as LEA Y, realizes $550 per pupil for each tax. As with LEA Y, the percentage of Pub. L. 81–874 funds which may be taken into consideration for LEA Z is 50% (550/1100). If LEA Z receives $150 per pupil in Pub. L. 81–874 funds, then up to $75 per pupil normally could be taken into consideration. However, since LEA Z would have received only $50 per pupil in State aid, only $50 on the allowable $75 could be taken into consideration. Thus, LEA Z may be regarded as contributing $600 per pupil under the program and State B would not contribute any State aid.

Example 5. The initial facts are the same as in Example 4, except that LEA Z realizes $600 per pupil from each of the 10 mill taxes. Since LEA Z is regarded as contributing $600 to the equalization program and receives no State aid, no Pub. L. 81–874 funds are taken into consideration under the program.

Subpart H—Entitlements for Handicapped Children

§ 115.59 Purpose of this subpart.

This subpart states the requirements and interpretations that apply particularly to increased LEA entitlements for handicapped children (section 3(d)(2)(C)) of the Act).

(20 U.S.C. 238(d)(2)(C))

§ 115.60 Summary of relevant statutory provisions.

(a) The Act requires that an applicant, as a condition of qualifying for the increased entitlement—

(1) Take into account the special needs of handicapped children; and

(2) Provide for these children programs—including preschool programs—that are of sufficient size, scope, and quality as to give reasonable promise of substantial progress toward meeting those needs.

(b)(1) Section 5(f) of the Act requires an applicant to use a payment attributable to a determination under section 3(d)(2)(C) of the Act for special programs and projects designed to meet the special educational needs of the children counted under the provision.

(2)(i) Only payments related to the increased entitlement must be used in this manner.

(ii) Payments related to the basic entitlement provided under section 3(c) for these children do not have to be used in this manner.

(20 U.S.C. 238(d)(2)(C)(iii); 240(f))

§ 115.61 Definitions.

For the purposes of this subpart—

"Children with specific learning disabilities"—

(a) Means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written. The disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. These disorders include conditions such as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia.

(b) Does not mean children who have learning problems that are primarily the result of visual, hearing, or motor handicaps, of mental retardation, or of environmental, cultural, or economic disadvantage.

"Education of the Handicapped Act" (EHA) means Pub. L. 91–230, as amended (20 U.S.C. 1401 *et seq.*).

"Free public education" means free appropriate public education as used in the EHA and as defined in 45 CFR 121a.4. In particular, this means special education and related services that—

(a) Are provided at Public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include preschool, elementary school, or secondary school education to the extent that these levels of schooling are generally available in the State.

(d) Are provided in conformity with an individualized education program that meets the requirements under 45 CFR 121a.340 through 121a.360.

"Handicapped children" mean children—

(a) Who are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired or other health-impaired, deaf-blind, or milti-handicapped or who have specific learning disabilities; and

(b) Who, because of these impairments, need special education and related services.

"Preschool program" means an educational or related program—

(a) Encompassing the educational level from a child's birth to the time at which elementary education is provided as determined under State law; and

(b) Recognized as free public education under State law.

"Related needs" means those needs related to a handicap or specific learning disability for which related services, in addition to direct instructional services, are deemed necessary so that a child may effectively participate in the instructional program of the LEA.

"Related services"—

(a) Means transportation and other developmental, corrective, and other supportive services, including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services.

(b) However, these medical services shall be used only for diagnostic and evaluation purposes required to assist a handicapped child to benefit from special education. These purposes include the early identification and assessment of handicapping conditions in children.

(20 U.S.C. 238(d)(2)(C))

§ 115.62 Eligibility requirements.

(a) *Regular eligibility requirements must be met.* (1) To be eligible for an increased entitlement, an applicant shall meet the regular eligibility requirements of section 3(c) of the Act and subparts A through G of this part.

(2) However, there is no minimum number of handicapped children that the applicant serve in order to be eligible for the increased entitlement.

(b) *Status of children.* To be counted for the increased entitlement, a handicapped child must—

(1) Have a parent on active duty in the uniformed services; or

(2) Reside on Indian lands.

(c) *Handicapped children must be enrolled in special program.* To be counted for the increased entitlement, a handicapped child must be enrolled in a program, described in § 115.60(a), that—

(1) Meets both the child's special educational and related needs, and

(2) Is provided as part of free public education in the LEA.

(20 U.S.C. 238 (a), (b), (d)(2)(C); 240(f) Sen. Rept. No. 93-1026, p. 159 (1974); *Chinle Common School District* v. *Mathews,* Civil No. 76-1273 (D.D.C., 1976).)

§ 115.63 What information must an applicant submit to the Commissioner?

(a) The applicant shall include in its application the information and assurances that the Commissioner requires to ensure that the applicant meets the requirements of the Act and of this part.

(b) To substantiate an applicant's or grantee's compliance with assurances provided in the application, the Commissioner may require information in addition to that contained in the application.

(20 U.S.C. 238(d)(2)(C); 240(f); 1221e-3(a)(1))

§ 115.64 Conformity with EHA part B.

The Commissioner considers a special education program to meet the requirements of the Act and this subpart only if the policies and procedures of that program conform to Part B of EHA (20 U.S.C. 1411 *et seq.*).

(20 U.S.C. 240(f))

§ 115.65 Conformity to State standards.

The program provided for handicapped children claimed under the Act shall conform to State standards for elementary and secondary education programs for those children.

(20 U.S.C. 238(d)(2)(C); 240(f))

§ 115.66 No supplanting of State funds.

(a) The use of funds provided under section 3(d)(2)(C) of the Act may not supplant any State funds that were or would have been available to the applicant agency for the free public education of children counted for that section.

(b) The applicant agency shall spend for handicapped children claimed under the Act at least the same amount, per pupil, of State general aid funds and State handicapped education funds as it spends for other similarly handicapped children enrolled in the schools of the agency.

(c)(1) A reduction in the amount, per pupil, of State aid spent for handicapped children claimed under the Act from that spent for these or similar children in a previous year raises a presumption that supplanting has occurred.

(2) This presumption may be rebutted by the applicant agency demonstrating that an equivalent reduction was made in the amount, per pupil, spent for other handicapped children enrolled in the schools of the agency.

(20 U.S.C. 238(d)(2)(C); 240(f))

§ 115.67 Per pupil expenditure requirement.

Expenditures per pupil by an applicant agency from State, local, and section 3(d)(2)(C) funds for handicapped children enrolled in programs serving handicapped children and children with specific learning disabilities claimed under the Act must be greater than the expenditure per pupil for all children, other than handicapped children, receiving free public education in the schools of that agency.

(20 U.S.C. 238(d)(2)(C); 240(f))

§ 115.68 Relation to section 5(d)(2) of the Act.

(a) Section 5(d)(2) of the Act provides that a State (1) that has a State aid program designed to divide expenditures for children equally among LEAs in the State and (2) that conforms to subpart G may consider payments received by an agency under Pub. L. 81-874 as local resources in determining the need for or the amount of State aid allocated to that agency. Subpart F of this part contains these standards.

(b) However, whether or not a State had a program of State aid that meets the reqirements of section 5(d)(2) of the Act, the State may not consider payments provided under section 3(d)(2)(C) determining the need for or the amount of State aid that will be allocated to an LEA receiving those payments.

(20 U.S.C. 238(d)(2)(C), 240(d), (f), 242(b))

§ 115.69 Individualized educational programs.

(a) An applicant must have in effect a written individualized educational program for a handicapped child or a child with a specific learning disability claimed under the Act. This program must—

(1) Be in effect before special education and related services are provided to the child; and

(2) Be implemented as soon as possible after meetings held for the purpose of developing, reviewing, or revising the child's program.

(20 U.S.C. 238(d)(2)(C); 240(f))

§ 115.70 Parent involvement in the child's educational program.

(a) An applicant must provide for the participation of and consultation with the parent or guardian of a handicapped child counted under section 3(d)(2)(C) of the Act in that child's educational development. The applicant shall comply with the requirements of Part B of EHA and 45 CFR 121a.345 regarding the involvement of parents of handicapped children.

(20 U.S.C. 238(d)(2)(C), 240(f), 242(b), 1231(d))

§ 115.71 Allowable expenditures.

(a) An agency receiving funds under section 3(d)(2)(C) of the Act shall use those funds for—

(1)(i) Expenditures that are reasonable related to the conduct of programs or projects that meet the requirements of this subpart.

(ii) These expenditures may include planning, evaluating, and disseminating the results of those programs or projects.

(iii) These expenditures may not include the construction of school facilities;

(2)(i) Expenditures for equipment to meet the special educational needs of the handicapped children counted under section 3(d)(2)(C).

(ii) If the funds received under that section are used for the acquisition of equipment and any financial advantage is realized through bargins, rebates, discounts, bonuses, free pieces of equipment—not used in the program or project covered by this paragraph—or other circumstances, the fair market value of that financial advantage is not an allowable expenditure and may not be credited as an expenditure of those funds.

(b) In not case may fund provided by section 3(d)(2)(C) be used to acquire equipment if the title to that equipment would be in a private school and not in the applicant agency.

(20 U.S.C. 238(d)(2)(C); 240(f))

§ 115.72 Children in private schools.

(a) An applicant may place a handicapped child in, or refer a handicapped child to, a private school or facility, so long as the applicant follows the policies and procedures under Section 613 of EHA. Regulations implementing those policies and procedures are stated in 45 CFR 121a.

(1) In order for the child to be counted under section 3(d)(2)(C) of the Act, placement of that child in, or referral of that child to the private school or facility shall have been made by the applicant.

(b) If placement in a public or private residential program is necessary to

provide a free public education to a handicapped child because of his or her handicap, the program—including non-medical care and room and board—shall be provided at not cost to the child or his or her parents or guardian.

(c)(1) A child who has been placed in a private school by his or her parent may participate in public school programs that use section 3(d)(2)(C) funds.

(2) However, the LEA may not count that child for purposes of Federal assistance under the part.

(20 U.S.C. 238(d)(2)(C); 240(f), 242(b), H. Rept. 93-763, p. 45 (1974))

§ 115.73 Methods of obligation and expenditure of funds.

(a) A grantee may obligate and spend funds based on the increased entitlement in either of these two ways:

(1) By reimbursing itself for obligations or expenditures from local funds already made during the fiscal year for which the funds were appropriated or during the following fiscal year.

(2) By obligating or spending those funds on a current basis during the fiscal year for which the funds were appropriated or during the following fiscal year.

(b) All obligation and expenditure of funds based on the increased entitlement shall be for programs or projects serving the children for whom these funds were paid.

(20 U.S.C. 238(d)(2)(C); 240(f) 1225(b))

§ 115.74 Funds may be obligated during a "carryover period."

(a) If any funds based on the increased entitlement are not obligated by a grantee by the end of the fiscal year for which Congress appropriated the funds, the grantee may obligate the funds during a carryover period of one additional fiscal year.

(b) The grantee shall return to the Federal Government any funds not obligated by the grantee by the end of the carryover period.

(20 U.S.C. 1225(b); 1221e-3a(1))

§ 115.75 Applicability of EDGAR.

The relevant provisions of the Education Division General Administrative Regulations in parts 100a and 100c of this chapter apply to programs under section 3(d)(2)(C); However, subpart D—How a Grant is Made—specifically does not apply.

Subpart I—Entitlements for Children Residing on Indian Lands

§ 115.76 Purpose of this subpart.

This subpart states the requirements and interpretations which apply particularly to increased LEA entitlements for the "A" children residing on Indian lands (Section 3(d)(2)(D) of the Act).

(20 U.S.C. 238(d)(2)(D))

§ 115.77 Compliance a condition of entitlement.

For the purpose of section 3 of the Act, and LEA may not count a child residing on Indian lands unless the LEA meets the requirements of this subpart.

(20 U.S.C. 238(d)(2)(D); 240(b)(3))

§ 115.78 Other rules that apply to entitlements for children residing on Indian lands.

(a) To be eligible for an increased entitlement, an applicant shall meet the regular eligibility requirements of section 3(c) of the Act and this part.

(b) However, there is no minimum number of children residing on Indian lands that an applicant must serve in order to be eligible for the increased entitlement.

(20 U.S.C. 238(d)(2)(D))

§ 115.79 What information must the applicant submit to the Commissioner in order to get the increased entitlement for children residing on Indian lands?

The applicant shall include in its application the information and assurances that the Commissioner requires to ensure that the applicant meets the requirements of the Act and the regulations in this part. Detailed instructions about the content of the application are supplied to potential applicants in program information packages.

(20 U.S.C. 1232, 238(d)(2)(D), 240(B)(3))

§ 115.80 Policies and procedures must be in effect for entire school year.

(a) This section concerns the requirement in the Act that an applicant adopt policies and procedures to ensure—

(1) Participation on an equitable basis of "A" children residing of Indian lands; and

(2) The dissemination of information to, and involvement of, tribes and parents of these children in programs assisted under section 3(d)(2)(D) of the Act.

(b) These policies and procedures adopted by the applicant must be in effect for the entire school year for which this assistance is provided.

§ 115.81 Standards for participation of "A" children residing on Indian lands.

The program provided for children counted by the LEA as "A" children residing on Indian lands must conform to State standards for elementary and secondary education programs on the same basis that similar programs provided for other children conform to State standards.

(20 U.S.C. 240(b)(3)(B)(i))

Subpart J—Arrangements under Section 6 of Pub. L. 81-874

§ 115.82 Purpose of this subpart.

This subpart governs arrangements by the Commissioner under section 6 of Pub. L. 81-874 (section 6) to provide free public education to certain federally connected children.

(20 U.S.C. 241)

§ 115.83 Policy of section 6: LEAs should provide free public education.

(a) The Commissioner considers the basic policy of section 6 to be the children who reside on Federal property, or whose parents are members of the Armed Forces on active duty, should be educated in schools operated and controlled by LEAs. The legislative history of section 6 indicates that section 6 arrangements were intended to be made only in unusual cases in which the requirements of section 6(a) of the Act clearly are satisfied.

(b) The Commissioner does not consider insufficient funding under section 3 of the Act as a reason for making a section 6 arrangement.

(20 U.S.C. 241, H.R. 81-2287, June 20, 1950, 22-23)

§ 115.84 When is an LEA considered able to provide a suitable free public education?

The Commissioner considers an LEA able to provide a suitable free public education if the LEA—

(a) Has the authority under the State law to provide a suitable free public education to pupils residing on Federal property;

(b) Has not refused to provide that education; and

(c) Has the actual or potential financial resources to provide that education.

(20 U.S.C. 241; H.R. 81-2287, June 20, 1950, 22-23)

§ 115.85 Suitable free public education for the purpose of § 115.84.

Free public education is "suitable" for the purposes of the preceding section if—

(a) The primary language of instruction is English;

(b) The school facility that a pupil attends or would attend is within the State's established maximum commuting distance from a pupil's home; and

(c)(1) The programs of instruction offered or that can be offered with combined local, State, and Federal resources meet standards for State accreditation or approval.

(2) If the particular State has not established standards for accreditation or approval, the Commissioner applies appropriate accreditation associations, standards to assess suitability of the LEA's program of instruction;

(d) However, the Commissioner also considers a free public education to be suitable if, in the judgment of the Commissioner, his or her intervention under section 6 would—because of adverse social and political factors—cause serious detriment of the children to be served.

(20 U.S.C. 241)

§ 115.86 Presumption of continuing inability to provide suitable free public education.

(a) This section applies to—(1) Arrangements made under section 6(a) for children residing on an Army, Navy, Marine Corps, or Air Force installation; and

(b) Arrangements made under section 6(c).

(c) Once an arrangement described in paragraph (a) is made, the Commissioner presumes that no LEA is able to provide suitable free public education for the children. This presumption continues until the Commissioner and, if appropriate, the Secretary of the military department concerned jointly determine, after consultation with the appropriate SEA, that an LEA is able to provide suitable free public education for these children.

(20 U.S.C. 241(a), (c))

§ 115.87 The Commissioner provides suitable free public education under section 6.

(a) The Commissioner provides suitable free public education to children served by a section 6 arrangement. This education conforms to the standards contained in subparagraphs (a) through (c) of the definition of "suitable free public education" in § 115.85.

(b)(1) To the extent practicable, the Commissioner limits the amount of section 6 payments for educating children in the continental United States, Alaska, or Hawaii to the per pupil cost provided for children in similar grade groupings and programs in comparable communities in the States.

(2) The Commissioner limits section 6 payments for educating other children to a per pupil amount that does not exceed the amount the Commissioner determines to be necessary to provide education comparable to the free public education provided for children in the District of Columbia.

(c)(1) This paragraph applies only to a child who the Commissioner and the operating agency determine needs private placement due to handicap or special learning disability. In that case, section 6 funds may be used for the private placement of that child.

(2) This placement need not be in a facility within the school district of the LEA that is the operating agency, or in facilities situated on Federal property, if there is no facility that meets the child's needs.

(20 U.S.C. 241; 29 U.S.C. 794 as amended by Pub. L. 95-602 section 119)

§ 115.88 With whom does the Commissioner make section 6 arrangements?

(a) If the children to be served reside on Federal property, the Commissioner may make a section 6 arrangement only with—

(1) An LEA; or

(2) The head of a Federal department or agency administering Federal property on which the children to be served reside.

(b) If the children to be served are children of members of the Armed Forces on active duty the Commissioner may make a section 6 arrangement with the head of any Fedeal department or agency having jurisdiction over the parents of all or some of the children.

(20 U.S.C. 241)

§ 115.89 Procedure for making section 6 arrangements.

(a) *General.* An LEA or head of a Federal agency or department that wishes either to enter into a section 6 arrangement with the Commissioner or to assist in making that type of arrangement shall file a proposal with the Commissioner.

(b) *Time for filing proposal.* The Commissioner encourages the LEA or head of the Fedeal agency or department to file the proposal on or before April 30 before the fiscal year for which the arrangement would be made.

(c) *Form and content.* The form and content of the proposal is prescribed by the Commissioner.

(20 U.S.C. 241)

§ 115.90 Comparability of employment conditions.

(a) The Commissioner fixes compensation, tenure, leave, hours of work, and other employment conditions for personnel employed under a section 6 arrangement, as stated in section 6(a) of the Act.

(b)(1) In determining compensation and other employment conditions for administrative personnel in arrangements outside the United States, the Commissioner takes into account the extent of the employee's official responsibility, including the number of duties, the size of the budget administered, and the number of pupils served.

(2) The Commissioner then fixes the conditions of employment on the basis of what is, or would be, provided to an administrative employee with similar official responsibility in the public schools of the District of Columbia.

(20 U.S.C. 241(a))

§ 115.91 Elected school board required.

(a) This section applies to all school systems operated with funds provided under section 6, except those schools which, independently of the section 6 arrangement, are governed by an elected school board as required by State or local law.

(b)(1) An agency with which the Commissioner makes a section 6 arrangement shall establish an elective school board for schools assisted under that section.

(2) The agency shall empower this to oversee school expenditures and operations, subject to audit procedures established by the Commissioner and other provisions of section 6 and this subpart.

(c) A school board established under this section must be composed of a minimum number of three members elected only by parents of students who are attending the school at the time of the election.

(d) An agency shall ensure the following procedures with respect to a school board election.

(1) The parents must have adequate notice of the time and place of the election.

(2) The election must be by majority vote and secret ballot.

(3) Personnel employed in the school system may not be board members.

(4) Nominations must be by petition of parents of students who are attending the school at the time of the election.

(20 U.S.C. 241(g))

§ 115.92 What children are served under section 6(b)?

Section 6(b) of the Act authorizes the Commissioner to arrange to educate children residing on an area adjacent to Federal property with a parent who, during some portion of the fiscal year, was employed on that Federal property. In addition there must be one of the following situations:

(a) The child's parent has resided on Federal property on which there is a section 6 school but has moved from that Federal property to property adjacent to that Federal property. In this situation the child may continue to attend the section 6 school for the rest of the school year if the child continues to reside on property adjacent to that Federal property.

(b) The parent is assigned to duty on Federal property on which there is a section 6 school, and the operating Federal agency certifies that the parent will occupy family housing on that Federal property within 90 days of the date on which the parent officially reports for duty. In this situation the child may, during that 90-day period, attend the section 6 school if the child resides on property adjacent to that Federal property.

(20 U.S.C. 241(b))

§ 115.93 What children are eligible to attend section 6 schools under section 6(c)?

(a) Section 6(c) of the Act authorizes the Commissioner, under specified conditions to arrange to educate children of United States employees. This kind of arrangement is authorized only in cases in which the Commissioner makes an arrangement under section 6(a) of the Act for providing free public education in facilities on Federal property in Puerto Rico, Wake Island, Guam, American Samoa, or the Virgin Islands.

(b) The Act specifies the following two general categories of children who may attend section 6 schools under section 6(c) of the Act if the other requirements of section 6(c) are met:

(1) A child who resides with a parent employed by the United States in a grade, position, or classification subject—by policy and practice—to transfer or reassignment to areas where English is the language of instruction in the schools normally attended by the children of Federal employees; and

(2) Dependents of excepted service professional employees of the schools.

(c) *If the parent is not employed in Puerto Rico.* Currently section 6(c) is being implemented only in Puerto Rico because the only section 6(a) arrangement outside the United States is located there. In the case of a child whose parent is not employed in Puerto Rico, that child is eligible to attend a section 6 school in Puerto Rico only if all the following additional requirements are met:

(1) The parent, with his or her family, has been assigned to an area where English is the language of instruction in the schools generally attended by the children of Federal employees.

(2) The parent has been assigned to a location where the family is not authorized by the employing agency to go.

(3) Either the parent's domicile is Puerto Rico, or the domicile of the parent's spouse was Puerto Rico before their marriage.

(20 U.S.C. 241(c))

§ 115.94 Notice of Commissioner's action; authority to obligate funds.

(a) The Commissioner notifies the responsible Federal officer or LEA of—

(1) The Commissioner's action on a proposal for a section 6 arrangement; and

(2) If the arrangement is approved, the amount of Federal funds approved for the fiscal year's operating budget.

(b) No agency or department may incure any binding financial obligation under a section 6 arrangement until it receives notice that—

(1) The arrangement has been approved; and

(2) The necessary funds have been appropriated and are available.

(20 U.S.C. 241)

§ 115.95 Agreement with LEA.

(a) If the section 6 arrangement is made with an LEA, the Commissioner and that LEA enter into a binding written agreement that specifies—

(1) The terms and conditions on which the education is to be provided, and

(2) The basis on which Federal payment is made.

(b) The Commissioner prepares the agreement and sends it to the LEA for signature.

(20 U.S.C. 241)

§ 115.96 Duration of section 6 arrangement.

(a) An arrangement under section 6 is limited to provide free public education for not more than one year.

(b) However, the Commissioner and the other party in the arrangement may agree to continue that arrangement for a longer period.

(20 U.S.C. 241)

§ 115.97 Reports required by the Commissioner.

(a) Under the Act the Commissioner is responsible for ensuring that funds provided under section 6 are used efficiently.

(b) Each agency or department with whom the Commissioner has made a section 6 arrangement shall, no later than April 15th of each year, make a report to the Commissioner that contains—

(1) An accounting of all section 6 funds made available to that agency or department for the preceding fiscal year;

(2) Data relating to the quality and type of education provided under the section 6 arrangement during the preceding fiscal year.

(c) An agency or department with whom the Commissioner has made a section 6 arrangement shall furnish whatever other reports the Commissioner may require to perform his or her functions under the Act.

(20 U.S.C. 241(d); 1221e—3(a)(1))

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Federal Register

Part VII

Federal Mine Safety and Health Review Commission

Rules of Procedure

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Rules of Procedure

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Adoption of Rules of Procedure.

SUMMARY: The Federal Mine Safety and Health Review Commission adopts Rules of Procedure by which interested parties may participate in the proceedings of the Commission. The Commission is mandated by the Federal Mine Safety and Health Act of 1977 to prescribe rules of procedure for review of cases. The rules are intended to afford simple procedures, to dispense with unnecessary papers, and to be brief.

EFFECTIVE DATE: July 30, 1979.

FOR FURTHER INFORMATION CONTACT: Donald Terry, Executive Director, 1730 K Street, N.W. Sixth Floor, Washington, D.C. 20006 (202) 653-5625.

SUPPLEMENTARY INFORMATION: The Federal Mine Safety and Health Review Commission has proposed the adoption of new procedural rules to replace its interim procedural rules. The interim rules were published at 43 FR 10320 (March 10, 1978); the proposed rules were published at 43 FR 50712 (October 31, 1978). To encourage public participation in their development, written comments on the proposed rules were invited (*id.*, 43 FR 53045 (November 15, 1978)). Responses from a wide range of public and private sectors were received, and each was examined with great care. Public hearings were then conducted, and during the course of two days oral comments were received from persons representing the coal, metal and nonmetal mining industries, organized labor, public interest groups and the United States Department of Labor. On March 12-16, and 19, and May 24-25, 1979, the Commission met in open meetings to discuss the proposed rules and vote on the adoption of the final rules.

Significant differences and similarities between final rules and proposed rules. In its proposed rules, the Commission suggested that statutory documents such as notices of contest, citations, notifications of proposed assessment of penalty, and withdrawal orders could alone serve as pleadings. The proposed rules also did not paraphrase or repeat provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 *et seq.* (1978) ["the Act"]. Public comments indicated that these approaches would be unsatisfactory, and the Commission has decided to adopt a much different solution, one more akin to that of the interim rules. Inasmuch as most of the final Rules of Procedure are significantly different in structure and content from the proposed rules, and incorporate only some proposed rules, we will not describe all of the differences between the final Rules of Procedure and the proposed rules. Some of the final Rules of Procedure that retain important features of the proposed rules are:

29 CFR § 2700.1(b). On procedural questions not regulated by the Act, the Rules of Procedure, or the Administrative Procedure Act (particularly 5 U.S.C. §§ 554 and 556), the Commission and its judges shall be guided so far as practicable by any pertinent provisions of the Federal Rules of Civil Procedure.

29 CFR § 2700.4(a)-(b). Affected miners and their representatives who have not become parties by filing a notice of contest or filing a discrimination or compensation complaint may become parties by intervening. Before a hearing, they must file a written notice with the Commission; after the start of the hearing, they may intervene upon just terms and for good cause shown.

29 CFR § 2700.59. Names of miner-witnesses may not be disclosed to an operator or his agent until two days before a hearing. Except in extraordinary circumstances, names of miner-informants may not be disclosed. The proposed rule was virtually identical, except that it did not permit a miner-witness' name to be revealed until the hearing, rather than 2 days before the hearing.

Significant differences between final rules and rules currently in effect. There are many important differences between the final Rules of Procedure and the interim rules now in effect. Some of them are:

29 CFR § 2700.7(c) requires that a notice of contest, an application for review, a discrimination or compensation complaint, and an application for temporary relief be immediately posted on the mine bulletin board for 30 days and served upon the representative of miners, together with a notice informing affected miners and their representatives of their right to participate as parties.

29 CFR §§ 2700.20 and 2700.21 provide the following procedure for contesting citations and orders issued under section 104 of the Act. A notice of contest is filed with the Secretary. The contesting party may, if he wishes, file with the Commission *as well as* with the Secretary. The notice of contest must contain a short and plain statement of the contesting party's position with respect to each issue of law and fact that the party contends is pertinent. A legible copy of the contested order or citation must be attached to the notice of contest. The Secretary then must file an answer within 15 days.

This procedure does away with the necessity of filing an application for review of citations and orders issued *under section 104.* Note that to contest an imminent danger withdrawal order *under section 107,* however, an operator must file an application for review. See 29 CFR § 2700.21.

29 CFR §§ 2700.25—2700.28 provide the following procedure for contesting proposed assessments of penalties: A notice of contest is filed with the Secretary. The Secretary immediately transmits to the Commission the notice of contest. Within 45 days after the Secretary's receipt of a notice of contest, the Secretary files a proposal for a penalty with the Commission. The party against whom a penalty is sought must then file an answer within 30 days. The answer must contain a short and plain statement of the reasons why each of the violations cited in the Secretary's proposal is contested, and must include a statement as to whether a violation occurred and whether a hearing is requested. Although these rules use different terminology than the interim rules, they are basically similar in structure to them.

29 CFR § 2700.44(a) provides a procedure for reinstatement of miners whose complaints of unlawful discrimination, discharge, or interference have been found by the Secretary not to have been frivolously brought. The interim rules had no counterpart. Under this rule, the Secretary's reinstatement application is immediately examined. Unless it is determined from the face of the application that the Secretary's finding was arbitrarily or capriciously made, an order of temporary reinstatement is issued immediately. If the person against whom relief is sought requests a hearing on the order, an administrative law judge holds a hearing, within 5 days after the request is filed, to determine whether the Secretary's finding was arbitrarily or capriciously made. The Judge may then dissolve, modify or continue the order of reinstatement.

An order may also be dissolved if the Secretary determines that the complaining miner was not unlawfully discriminated against, discharged or

interfered with. If the Secretary fails to file a complaint within 90 days, the Judge may issue an order to show cause why the reinstatement order should not be dissolved. 29 CFR § 2700.44(b).

29 CFR § 2700.55 sets forth the scope of discovery: discovery may extend to any matter, not privileged, that is admissible evidence or appears reasonably calculated to lead to the discovery of admissible evidence. 29 CFR § 2700.57 empowers a judge to permit a party or his agent to enter upon land to inspect and gather information.

29 CFR § 2700.70(g) provides that a petition for discretionary review that is not granted within 40 days after the issuance of the judge's decision is deemed denied. Thus, an order denying a petition need not be issued. The interim rules required such an order.

29 CFR § 2700.83 codifies the limited authorization to the Executive Director that appeared at 44 Fed. Reg. 8932 (1979).

Other matters.

Although the Commission has altered somewhat the interim rule on disciplinary proceedings, it has retained language very similar to that of the interim rule that it construed in *In re Kale,* No. D–78–1 (November 15, 1978), and *Secretary of Labor ex rel. Jones* v. *James Oliver,* No. NORT 78–415 (March 27, 1979), *pet. for rev. filed sub nom. Kennedy* v. *FMSHRC,* No. 79–1409 (D.C. Cir., April 23, 1979). There the Commission held that a finding by the Commission that disciplinary proceedings are warranted must precede an order of censure by an administrative law judge. The final rule explicitly codifies and continues the vitality of this holding.

The interim rule on burden of proof has been deleted.

Differences between the final rules, the interim rules, and the proposed rules should not be exaggerated in importance. Differences may have come about because of, for example, drafting preferences, differences in approach, or a decision to leave the resolution of some problems to case-by-case adjudication. Therefore, the deletion of an interim rule, or the failure to adopt a proposed rule, does not necessarily signify that the Commission has formed an intention to resolve a procedural problem in a particular manner.

Finally, this description of the highlights of the Commission's action should not be viewed as exhaustive. The final rules may reflect many significant changes in present practice that have not been summarized here. It is therefore important to read the rules in their entirety, and in conjunction with the Act.

Dated: June 26, 1979

Jerome R. Waldie,

Chairman, Federal Mine Safety and Health Review Commission.

The Commisson revises 29 CFR Part 2700 as follows:

PART 2700—PROCEDURAL RULES

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Authority: 30 U.S.C. §§ 815 and 823.

General Provisions

§ 2700.1 Scope; applicability of other rules; construction.

(a) *Scope.* This part sets forth rules applicable to all types of proceedings before the Federal Mine Safety and Health Review Commission and its Administrative Law Judges.

(b) *Applicability of other rules.* On any procedural question not regulated by the Act, these Procedural Rules, or the Administrative Procedure Act (particularly 5 U.S.C. §§ 554 and 556), the Commission or any Judge shall be guided so far as practicable by any pertinent provisions of the Federal Rules of Civil Procedure as appropriate.

(c) *Construction.* These rules shall be construed to secure the just, speedy and inexpensive determination of all proceedings, and to encourage the participation of miners and their representatives.

§ 2700.2 Definitions.

In addition to the definitions contained in section 3 of the Act, "Representative of miners" means:

(a) Any person or organization that represents two or more miners at a coal or other mine for the purposes of the Act; and

(b) "Representatives authorized by the miners," "miners or their representatives", "authorized miner representative," and other similar terms as they appear in the Act.

§ 2700.3 Who may practice.

(a) *Attorneys.* Attorneys admitted to practice before the courts of any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Trust Territory of the Pacific Islands, or the District Court of the Virgin Islands are permitted to practice before the Commission.

(b) *Other persons.* (1) A person who is not authorized to practice before the Commission as an attorney under paragraph (a) of this section may practice before the Commission as a representative of a party if he or she is:

(i) a party;

(ii) a "representative of miners";

(iii) an owner, partner, or bona fide full-time officer or employee of a party when the party is a labor organization, an association, a partnership, a corporation, or other business entity.

(2) A person who does not meet the above conditions may be permitted to appear as a representative for the limited purpose of a specific proceeding.

§ 2700.4 Parties.

(a) *Party status.* Persons, including the Secretary and operators, who are named as parties or permitted to intervene, are parties. A miner, applicant for employment, or representative of a miner who has filed a complaint with the Secretary or Commission under sections 105(c) or 111 of the Act, 30 U.S.C. §§ 815(c) and 821, and an affected miner or his representative who has become a party in accordance with subparagraph (b) below, are parties. The Secretary may at any time intervene as a party as of right in proceedings under sections 105(c)(3) and 111, 30 U.S.C. §§ 815(c)(3) and 821.

(b) *Procedure for miners and their representatives to become parties.*

(1) *Generally.* Affected miners or their representatives may intervene before hearing by filing a written notice with the Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street, N.W., Sixth Floor, Washington, D.C. 20006. The Executive Director shall forthwith mail a copy of the notice to all parties. Affected miners or their representatives may intervene after the start of the hearing upon just terms and for good cause shown.

(2) *Special procedure for discrimination proceedings.* In a proceeding instituted by the Secretary under § 2700.40, the complaining miner, applicant for employment or representative of miners may intervene and present additional evidence on his own behalf.

(c) *Intervention.* Except as otherwise provided in subsection (b), a motion for leave to intervene may be filed at any time before hearing on the merits. The motion shall set forth the interest of the movant, and show that intervention will not unduly delay or prejudice the adjudication of the issues.

§ 2700.5 General requirements for pleadings and other documents.

(a) *Jurisdiction.* A proposal for a penalty, an answer to a notice of contest of a citation or withdrawal order issued under section 104, an answer to an application for review of an order issued under section 107, a complaint issued under sections 105(c) or 111, and an application for reinstatement, shall allege that the violation or imminent danger took place in or involves a mine that has products which enter commerce or has operations or products which affect commerce. An operator shall deny jurisdictional facts alleged in an answer to a citation or order issued under section 104, or in an answer to an application for review of an order issued under section 107, by filing a special denial within 10 days.

(b) *Where to file.* Until a Judge has been assigned to a case, all documents shall be filed with the Commission. After a Judge has been assigned, and before he issues a decision, documents shall be filed with the Judge, except for documents filed in connection with interlocutory review, which shall be filed with the Commission. After the Judge has issued his decision, documents shall be filed with the Commission. Documents filed with the Commission shall be addressed to the Executive Director and mailed or delivered to the Docket Office, Federal Mine Safety and Health Review Commission, 1730 K Street, N.W., Sixth Floor, Washington, D.C. 20006.

(c) *Necessary information.* A document shall clearly identify on its cover page the filing party by name rather than by party designations (such as "applicant", "petitioner", or "respondent"). A document shall state the docket number of the case, if one has been assigned. The first document filed, and every document filed by a lawyer or other representative, shall include the party's or other filing person's address and business telephone numbers. Written notice shall be promptly given of any change in address or business telephone number.

(d) *Manner and date of filing.* Filing may be accomplished by mail or personal delivery. Filing is effective upon receipt, or upon mailing by certified or registered mail, return receipt requested, except that filing of a petition for discretionary review is effective only upon receipt.

(e) *Number of copies.* In cases before a Judge, two copies shall be filed; in cases before the Commission, seven copies shall be filed; but if the filing party is not represented by a lawyer or other representative, one copy shall be sufficient.

(f) *Size of paper.* Pleadings and other documents shall be approximately 8½ by 11 inches in size.

(g) *Proof of service.* A filed pleading or other document shall be accompanied by proof of service.

§ 2700.6 Signing of documents.

When a person who appears in a representative capacity signs a document, his signature shall constitute his certificate:

(a) That under the provisions of the law, including these rules and all federal conflict of interest statutes, he is authorized and qualified under these rules to represent the particular party in the matter;

(b) That he has read the document; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

§ 2700.7 Service.

(a) *Generally.* Copies of all documents shall be served on all parties.

(b) *How to serve.* A notice of contest of a citation or order, a proposal for a penalty, an application for review, a complaint of discharge, discrimination or interference, a complaint for compensation, and an application for temporary relief shall be served by personal delivery or by registered or certified mail, return receipt requested. All subsequent documents may be served by personal delivery or by first class mail. Service by mail is complete upon mailing.

(c) *Notice to affected miners.* A copy of a notice of contest of a citation or order, a proposal for a penalty, an application for review, a complaint of discharge, discrimination or interference, a complaint for compensation, and an application for temporary relief, and a notice informing affected miners and their representatives of their right, as provided by these rules, to participate as parties, shall be posted immediately and maintained by the operator on the bulletin board at the mine office for a minimum period of 30 days, and shall be served upon the representative of miners, if known.

(d) *Service upon representative only.* Whenever a party is represented by an

attorney or other authorized representative who has signed any document filed on behalf of such party, or otherwise entered an appearance on behalf of such party, service thereafter shall be made upon the attorney or other authorized representative.

§ 2700.8 Computation of time.

(a) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and Federal holidays shall be excluded in the computation.

(b) When service of a document is by mail, 5 days shall be added to the time allowed by these rules for the filing of a response of other document.

§ 2700.9 Extensions of time.

The time for filing or serving any document may be extended for good cause shown. A request for an extension of time shall be filed 5 days before the expiration of the time allowed for the filing or serving of the document.

§ 2700.10 Motions.

(a) An application for an order shall be by motion which, unless made during hearing, shall be made in writing, and shall set forth the relief or order sought.

(b) A statement in opposition to the motion may be filed by any party within 10 days after the date of service. Unless otherwise ordered or permitted, oral argument on motions will not be heard.

§ 2700.11 Withdrawal of pleading.

A party may withdraw a pleading at any stage of a proceeding with the approval of the Commission or the Judge.

§ 2700.12 Consolidation of proceedings.

The Judge or the Commission may at any time order the consolidation of proceedings that involve similar issues of law or fact.

Contests of Citations and Orders

§ 2700.20 Notice of contest of a citation or order issued under section 104 of the Act.

(a) Section 105(d) of the Act, 30 U.S.C. § 815(d), provides, in part:

If, within 30 days of receipt thereof, an operator of a coal or other mine notifies the Secretary that he intends to contest the issuance or modification of an order issued under section 104, or citation or a notification of proposed assessment of a penalty issued under subsection (a) or (b) of this section [105], or the reasonableness of the length of abatement time fixed in a citation or modification thereof issued under section 104, or any miner or representative of miners notifies the Secretary of an intention to contest the issuance, modification, or termination of any order issued under section 104, or the reasonableness of the length of time set for abatement by a citation or modification thereof issued under section 104, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3 of such section). . . .

(b) An operator, miner, or representative of miners may file a copy of his notice of contest of the issuance, modification, or termination of a citation or order issued under section 104 of the Act, 30 U.S.C. § 814, with the Commission at or following the timely filing of his notice of contest with the Secretary.

(c) *Contents of notice of contest; attachments.* A notice of contest shall contain a short and plain statement of (1) such party's position with respect to each issue of law and fact that the party contends is pertinent, and (2) the relief requested by such party. A legible copy of the contested order or citation shall be attached to the notice of contest.

(d) *Answer.* Within 15 days after service of a notice of contest, the Secretary shall file an answer responding to each allegation of the notice of contest.

§ 2700.21 Applications for review of imminent danger withdrawal orders under section 107 of the Act.

(a) *When to file.* An application for review of an order of withdrawal issued under section 107 of the Act, 30 U.S.C. § 817, or any modification or termination thereof, shall be filed within 30 days of receipt by the applicant of the order sought to be reviewed, or within 30 days of receipt of any modfication or termination of an order if review is sought of the modification or termination.

(b) *Contents of application; attachments.* An application for review shall contain a short and plain statement of (1) the applicant's position on each issue of law and fact that the applicant contends is pertinent, and (2) the relief requested by the applicant. A legible copy of the contested order shall be attached to the application.

(c) *Answer.* Within 15 days after service of the application for review, the Secretary shall file an answer responding to each allegation of the application.

§ 2700.22 Effect of failure to file.

An operator's failure to file a notice of contest of a citation issued under section 104 of the Act, 30 U.S.C. § 814, shall not preclude the operator from challenging the citation in a penalty proceeding.

2700.23 Review of a subsequent order or citation.

(a) The contesting party or applicant shall file, within 30 days of receipt thereof, any subsequent order or citation that modifies or extends the order or citation under review. The notice of contest under section 105 of the Act, 30 U.S.C. § 815, or the application for review under section 107 of the Act, 30 U.S.C. § 817, unless withdrawn, shall be deemed to challenge any such subsequent order or citation.

(b) A person who is not a party in a pending proceeding for review of an order or citation, may obtain review of a citation or order that modifies or extends the citation or order then being reviewed by filing a notice of contest under section 105, or an application for review under section 107 in such pending proceeding. The notice of contest or application shall be filed within 30 days of receipt of the citation or order that modifies or extends the citation or order then being reviewed.

Contests of Proposed Assessments of Penalties

§ 2700.25 General.

The Secretary, by certified mail, shall notify the operator or any other person against whom a penalty is proposed of: (a) the violation alleged; (b) the amount of the penalty proposed; and (c) that such person shall have 30 days to notify the Secretary that he wishes to contest the proposed penalty. If within 30 days from the receipt of the Secretary's notification of proposed assessment of penalty, the operator or other person fails to notify the Secretary that he intends to contest the proposed penalty, the Secretary's proposed penalty shall be deemed to be a final order of the Commission and shall not be subject to review by the Commission or a court.

§ 2700.26 Notice of contest.

A person has 30 days after receipt of the notification of proposed assessment of penalty within which to notify the Secretary that he wishes to contest such proposed penalty. A copy of the notice of contest shall be sent by mail to the representative of miners, if known, and shall be immediately posted on the mine bulletin board by the operator and maintained for a minimum of 30 days. The Secretary shall immediately

transmit to the Commission the notice of contest, at which time a docket number will be assigned and all parties notified.

§ 2700.27 Proposal for a penalty.

(a) *When to file.* Within 45 days of receipt of a timely notice of contest of a notification of proposed assessment of penalty, the Secretary shall file a proposal for a penalty with the Commission.

(b) *Posting; service upon miner representatives.* The Secretary shall serve a copy of the proposal upon any representative of affected miners who has filed proper notification with the Secretary as a representative. The Secretary shall serve by mail on the mine operator a second copy of the proposal which shall be immediately posted by the operator on the mine bulletin board and maintained for a minimum of 30 days.

(c) *Contents.* The proposal for a penalty shall include a list of the cited violations for which penalties are sought to be assessed and the proposed penalties therefor. Each cited violation shall be identified by the number and date of the citation or order involved and the section of the Act or regulations that the Secretary alleges has been violated. The proposal shall state whether the citation or order involved has been contested and, if so, the docket number of the contest.

(d) *Attachments.* A legible copy of each citation or order for which a penalty is sought shall be attached to the proposal.

§ 2700.28 Answer.

A party against whom a penalty is sought shall file and serve an answer within 30 days after service of a copy of the proposal on the party. An answer shall include a short and plain statement of the reasons why each of the violations cited in the proposal is contested, including a statement as to whether a violation occurred and whether a hearing is requested.

§ 2700.29 Assessment of penalty.

(a) In assessing a penalty the Judge shall determine the amount of penalty in accordance with the six statutory criteria contained in section 110(i) of the Act, 30 U.S.C. § 820(i), and incorporate such determination in a decision containing findings of fact, conclusions of law, and an order requiring that the penalty be paid.

(b) In determining the amount of penalty neither the Judge nor the Commission shall be bound by a penalty recommended by the Secretary or by any offer of settlement made by any party.

§ 2700.30 Penalty settlements.

(a) *General.* No proposed penalty that has been contested before the Commission shall be compromised, mitigated, or settled except with the approval of the Commission after agreement by all parties to the proceeding.

(b) *Contents of settlement.* A proposal that the Commission approve a penalty settlement shall include the following information for each violation involved: (1) the amount of the penalty proposed by the Office of Assessments of the Mine Safety and Health Administration; (2) the amount of the penalty proposed by the parties to be approved; and (3) facts in support of the appropriateness of the penalty proposed by the parties.

(c) *Order approving settlement.* Any order by the Judge approving a proposed settlement shall be fully supported by the record. In this regard, due consideration, and discussion thereof, shall be given to the six statutory criteria set forth in section 110(i) of the Act. Such order shall become the final decision of the Commission 40 days after approval unless the Commission has directed that such approval be reviewed.

Complaint for Compensation

§ 2700.35 When to file.

A complaint for compensation under section 111 of the Act, 30 U.S.C. § 821, shall be filed within 90 days after the commencement of the period the complainants are idled or would have been idled as a result of the order which gives rise to the claim.

§ 2700.36 Contents of the complaint.

A complaint for compensation under section 111 of the Act, 30 U.S.C. § 821, shall include:

(a) A short and plain statement of the facts giving rise to the claim, including the period for which compensation is claimed;

(b) The total amount of the compensation claimed, if known; and

(c) A copy of any pertinent order to withdrawal, or information sufficiently identifying the order.

§ 2700.37 Answer.

The operator shall file an answer responding to each allegation of the complaint within 30 days after service.

Complaint of Discharge, Discrimination or Interference

§ 2700.40 Who may file.

(a) *The Secretary.* A complaint of discharge, discrimination or interference under section 105(c) of the Act, 30 U.S.C. § 815(c), shall be filed by the Secretary after an investigation under section 105(c)(2) of the Act, if he finds that a violation of section 105(c)(1) of the Act has occurred.

(b) *Miner, representative, or applicant for employment.* A complaint of discharge, discrimination or interference under section 105(c) of the Act, may be filed by the complaining miner, representative of miners, or applicant for employment if the Secretary determines that no violation has occurred, or if the Secretary fails to make a determination within 90 days after the miner complained to the Secretary.

§ 2700.41 When to file.

(a) *The Secretary.* A complaint of discharge, discrimination or interference shall be filed by the Secretary within 30 days after his written determination that a violation has occurred.

(b) *Miner, representative, or applicant for employment.* A complaint of discharge, discrimination or interference may be filed by a complaining miner, representative of miners, or applicant for employment no more than 30 days after receipt of a written determination by the Secretary that no violation has occurred.

§ 2700.42 Contents of complaint.

A complaint of discharge, discrimination or interference shall include a short and plain statement of the facts, setting forth the alleged discharge, discrimination or interference; and a statement of the relief requested.

§ 2700.43 Answer.

Within 30 days after service of a complaint filed by the Secretary or a complainant, the respondent shall file an answer.

§ 2700.44 Temporary reinstatement proceedings.

(a) *Contents of application; procedure; hearing.* An application for reinstatement shall state the Secretary's finding that the complaint of discrimination, discharge or interference was not frivolously brought and the basis for his finding. The application shall be immediately examined, and, unless it is determined from the face of the application that the Secretary's finding was arbitrarily or capriciously

made, an order of temporary reinstatement shall be immediately issued. The order shall be effective upon issuance. If the person against whom relief is sought requests a hearing on the order, a Judge shall, within 5 days after the request is filed, hold a hearing to determine whether the Secretary's finding was arbitrarily or capriciously made. The Judge may then dissolve, modify or continue the order.

(b) *Dissolution of order.* If, following an order of reinstatement, the Secretary determines that the provisions of section 105(c)(1) have not been violated, the Judge shall be so notified and shall enter an order dissolving the order of reinstatement. If the Secretary fails to file a complaint within 90 days, the Judge may issue an order to show cause why the order of reinstatement should not be dissolved. An order dissolving the order of reinstatement shall not bar the filing of an action by the miner in his own behalf under section 105(c)(3) of the Act and § 2700.40 of these rules.

Application for Temporary Relief

§ 2700.45 Procedure.

(a) *When to file.* An application for temporary relief may be filed at any time before the issuance of a final order in the proceeding to which the application relates.

(b) *Statements in opposition.* The parties opposing the application shall file statements in opposition within 3 days after receipt of the application.

(c) *Prior hearing required.* Temporary relief shall not be granted prior to a hearing.

§ 2700.46 Contents of application.

(a) An application for temporary relief shall contain: (1) a statement of the specific relief requested; (2) a showing of substantial likelihood that the findings and decision of the Judge or the Commission in the matters to which the application relates will be favorable to the applicant; and (3) a showing that such relief will not adversely affect the health and safety of miners in the affected mine.

(b) An application for temporary relief may be supported by affidavits or other evidentiary matter.

Hearings

§ 2700.50 Assignment of Judges.

In any proceedings under the Act in which cases are assigned to Judges for a hearing, the Judges shall be assigned cases in rotation as far as practicable.

§ 2700.51 Hearing sites.

All cases will be assigned a hearing site by order of the Judge, who shall give due regard to the convenience and necessity of the parties or their representatives and witnesses, the availability of suitable hearing facilities, and other relevant factors.

§ 2700.52 Expedition of proceedings.

(a) *Motions.* A motion of a party to expedite proceedings may be made orally, with concurrent notice to all parties, or served and filed by telegram. Oral motions shall be confirmed in writing within 24 hours.

(b) *Timing of hearing.* If the motion is granted, a hearing on the merits of the case shall not be scheduled with less than four days notice, unless all parties consent to an earlier hearing.

§ 2700.53 Notice of hearing.

Except in expedited proceedings, written notice of the time, place, nature of the hearing, the legal authority under which the hearing is to be held, and the matters of fact and law asserted shall be given to all parties at least 20 days before the date set for hearing.

§ 2700.54 Powers of Judges.

(a) *General.* Subject to these rules, a Judge is empowered to:

(1) Administer oaths and affirmations;

(2) Issue susbpoenas authorized by law;

(3) Rule on offers of proof and receive relevant evidence;

(4) Take depositions or have depositions taken when the ends of justice would be served;

(5) Regulate the course of the hearing;

(6) Hold conferences for the settlement or simplication of the issues by consent of the parties;

(7) Dispose of procedural requests or similar matters;

(8) Make decisions in the proceedings before him, provided that he shall not be assigned to make a recommended decision;

(9) Take other action authorized by these rules, by 5 U.S.C. § 556, or by the Act.

(b) *Prehearing conferences and statements.* The Judge may require the parties to appear for a prehearing conference or to submit prehearing statements concerning:

(1) The simplification of the issues;

(2) The possibility of obtaining stipulations, admissions of fact, and of producing documents which will avoid unnecessary proof;

(3) The possibility of agreement disposing of all or any of the issues in dispute;

(4) The exchange of exhibits, names of witnesses and a synopsis of the testimony expected of each witness; and

(5) Such other matters as may aid in the expedition of the hearing and the disposition of the case.

§ 2700.55 Discovery; general.

(a) *Initiation of discovery.* Discovery procedures shall be initiated within 20 days after a notice of contest of a citation or withdrawal order, a proposal for a penalty, an application for review, or a complaint under sections 105(c) or 111 has been filed. For good cause shown, the Judge may permit discovery procedures to be intiated after that date.

(b) *Completion of discovery.* Discovery shall be completed 60 days after a notice of contest of a citation or withdrawal order, a proposal for a penalty, an application for review, or a complaint under sections 105(c) or 111 has been filed. For good cause shown, the Judge may permit the time for discovery to be extended.

(c) *Scope of discovery.* Parties may obtain discovery of any relevant matter, not privileged, that is admissible evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

(d) *Discovery limited by Judge.* Upon application by a party or by the person from whom discovery is sought or upon his own motion, a Judge may, for good cause shown, make any order limiting discovery to prevent undue delay or to protect a party or person from annoyance, oppression, or undue burden or expense.

§ 2700.56 Depositions.

(a) *When permitted.* Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories.

(b) *Orders for deposition.* If the parties are unable to agree thereto, the time, place, and manner of taking depositions shall be governed by the order of the Judge.

§ 2700.57 Interrogatories, requests for admissions, and production of documents.

Any party may serve written interrogatories or a request for admission of facts upon another party. A party served with written interrogatories or a request for admission shall answer such interrogatories or requests within 15 days of service unless the proponent of the interrogatories or request agrees to a longer time, or unless the Judge by order specifies a different time or excuses the party from answering on good cause

shown. Interrogatories shall be answered under oath. For good cause shown, the Judge may order a party to produce and permit inspection, copying or photographing of designated documents or objects, or to permit a party or his agent to enter upon designated land to inspect and gather information.

§ 2700.58 Subpoenas of witnesses.

(a) *Compulsory attendance of witnesses.* The Commission and its Judges are authorized to issue subpoenas, on their own motion or on the written motion of a party, requiring the attendance of witnesses and the production of documents or physical evidence at hearings to be held before them or proceedings ordered by them. A subpoena may be served by any person who is not less than 18 years of age. The original subpoena bearing a certificate of service shall be filed with the Commission or the Judge.

(b) *Fees payable to witnesses.* Witnesses subpoenaed by any party shall be paid the same fees and mileage as are paid for like service in the district courts, of the United States. The witness fees and mileage shall be paid by the party at whose request the witness appears, or by the Commission if a witness is subpoenaed on its own motion or the motion of a judge. This paragraph does not apply to Government employees who are called as witnesses by the Government.

(c) *Motions to revoke or modify subpoenas.* Any person served with a subpoena may move within 5 days of service or at the hearing, whichever is sooner, to revoke or modify the subpoena. The Judge shall revoke or modify the subpoena if the subject of the subpoena does not meet the requirement of § 2700.55(c); or the subpoena does not describe with sufficient particularity the evidence required to be produced; or if for any other reason, sufficient in law, the subpoena is found to be invalid or unreasonable. The Judge shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify.

(d) *Availability of transcript.* Persons compelled to submit data or evidence at a public proceeding are entitled to obtain, or payment of lawfully prescribed costs, a transcript of that part of the proceeding which involves their testimony or production of data.

(e) *Failure to comply.* Upon the failure of any person to comply with an order to testify or a subpoena directed or issued by the Commission or a Judge, the Commission or the Judge, respectively, may apply to the appropriate district court of enforcement of the order or subpoena. Neither the Commission nor the Judge shall be deemed thereby to have assumed responsibility for the effective prosecution of the failure to obey the subpoena or order.

§ 2700.59 Name of miner witnesses and informants.

A Judge shall not, until 2 days before a hearing, disclose or order a person to disclose to an operator or his agent the name of a miner who is expected by the Judge to testify or whom a party expects to summon or call as a witness. A Judge shall not, except in extraordinary circumstances, disclose or order a person to disclose to an operator or his agent the name of an informant who is a miner.

§ 2700.60 Evidence; presentation of case.

(a) Relevant evidence that is not unduly repetitious or cumulative is admissible.

(b) A party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

§2700.61 Retention of documents.

All documents, books, records, papers, etc., received in evidence in a hearing or submitted for the record in any proceeding before the Commission will be retained with the official record of the proceeding. While a case is pending, the withdrawal of original documents may be permitted by the Commission or the Judge if true copies are substituted for the originals. When a decision has become final, the Commission may, upon request and after notice to the other parties, permit the withdrawal of original exhibits by the party entitle to them. The substitution of true copies of exhibits or parts of exhibits may be required by the Commission in its discretion as a condition of granting permission for withdrawal.

§ 2700.62 Proposed findings, conclusions and orders.

The Judge may require the submission of proposed findings of fact, conclusions of law, and orders, together with supporting briefs. The proposals shall be served upon all parties, and shall contain adequate references to the record and authorities relied upon.

§ 2700.63 Summary disposition of proceedings.

(a) *Generally.* When a party fails to comply with an order of a judge or these rules, an order to show cause shall be directed to the party before the entry of any order of default or dismissal.

(b) *Penalty proceedings.* When the Judge finds the respondent in default in a civil penalty proceeding, the Judge shall also enter a summary order assessing the proposed penalties as final, and directing that such penalties be paid.

§ 2700.64 Summary decision of the Judge.

(a) *Filing of motion for summary decision.* At any time after commencement of a proceeding and before the scheduling of a hearing on the merits, a party to the proceeding may move the Judge to render summary decision disposing of all of part of the proceeding.

(b) *Grounds.* A motion for summary decision shall be granted only if the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits shows: (1) that there is no genuine issue as to any material fact; and (2) that the moving party is entitled to summary decision as a matter of law.

(c) *Form of motion and affidavits.* The motion may be supported by affidavits or other verified documents, and shall specify the grounds showing the party's right to the relief sought. Supporting and opposing affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to the affidavit or be incorporated if not otherwise a matter of record. The Judge may permit affidavits to be supplemented or opposed by testimony, depositions, answers to interrogatories, admissions or further affidavits. When a motion for summary decision is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for hearing. If he does not so respond, summary decision, if appropriate, shall be entered against him.

(d) *Case not fully adjudicated on motion.* If a motion for summary decision is denied in whole or in part, and the Judge determines that an evidentiary hearing of the case is necessary, he shall, if practicable, and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted. He shall thereupon make an order

specifying the facts that appear without substantial controversy, and direct such further proceedings as appropriate.

§ 2700.65 Decision of the Judge.

(a) *Form and content of the Judge's decision.* The Judge shall make a decision that constitutes his final disposition of the proceedings. The decision shall be in writing and shall include findings of fact, conclusions of law, and the reasons or bases for them, on all the material issues of fact, law or discretion presented by the record, and an order. If a decision is announced orally from the bench, it shall be reduced to writing after the filing of the transcript. An order by a Judge approving a settlement proposal is a decision of a Judge.

(b) *Procedure for issuance.* The Judge shall transmit to the Executive Director his decision, the record (including the transcript), and as many copies of his decision as there are parties plus seven. The Executive Director shall then promptly issue to each party and each Commissioner a copy of the decision.

(c) *Termination of the Judge's jurisdiction; correction of clerical errors.* The jurisdiction of the Judge terminates when his decision has been issued by the Executive Director. The Judge may correct, at any time before the Commission has directed that his decision be reviewed, on his own motion or on the motion of a party, clerical mistakes and errors arising from oversight or omission in decisions, orders or other parts of the record. After the Commission has directed that the Judge's decision be reviewed, the Judge may correct such mistakes and errors, on his own motion or on the motion of a party, with the leave of the Commission. If the Judge's decision has become the final order of the Commission, or if the Commission has issued a final order, the Judge may correct such mistakes and errors, on his own motion or on the motion of a party, with the leave of the Commission.

Review by the Commission

§ 2700.70 Petitions for discretionary review.

(a) *Procedure.* Any person adversely affected or aggrieved by a Judge's decision or order may file with the Commission a petition for discretionary review within 30 days after issuance of the order or decision. Two or more parties may join in the same petition; the Commission may consolidate related petitions.

(b) *Review discretionary.* Review by the Commission shall not be a matter of right but of the sound discretion of the Commission.

(c) *Grounds.* Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of the Commission;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) *Requirements.* Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations, or principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the Judge had not been afforded an opportunity to pass.

(e) *Statement in opposition.* A statement in opposition to the petition for discretionary review may be filed, but such filing shall in no way delay Commission action on the petition.

(f) *Scope of review.* If a petition is granted, review shall be limited to the questions raised by the petition.

(g) *Denial of petition.* A petition not granted within 40 days after the issuance of the Judge's decision is deemed denied.

§ 2700.71 Review by the Commission on its own motion.

The Commission, at any time within 30 days after the issuance of the Judge's decision, may, by the affirmative vote of two of the Commissioners present and voting, order the case before it for review on its own motion, but only upon the ground that the decision may be contrary to law or Commission policy or that a novel question of policy has been presented. The Commission shall state in such order the specific issue of law, Commission policy, or novel question of policy to be reviewed. If a party's petition for review has been granted, the Commission shall not raise or consider additional issues except in compliance with the requirements of this rule.

§ 2700.72 Briefs.

(a) *When to file.* Within 20 days after the Commission grants a petition for discretionary review, petitioner shall file his brief. If petitioner desires, he may notify the Commission and all other parties within such 20-day period that his petition for discretionary review and any supporting memorandum filed with his petition are to constitute his brief. If a petitioner fails to file a timely brief, the direction for review that granted the petition may be vacated. Other parties may file any briefs within 20 days after the petitioner's brief is served. If the Commission orders review on its own motion, all parties shall file any briefs they wish considered by the Commission within 20 days of the order.

(b) *Length of brief.* Except by permission of the Commission, petitioner's brief may not exceed 35 pages and other briefs may not exceed 25 pages. Where the Commission has ordered review on its motion, each party's brief may not exceed 25 pages.

§ 2700.73 Unreviewed decisions.

An unreviewed decision of a Judge is not a precedent binding upon the Commission.

§ 2700.74 Interlocutory review.

(a) *Procedure.* Interlocutory review is discretionary with the Commission and not a matter of right. Review shall not be granted unless: (a) the Judge has certified the interlocutory ruling to the Commission; or (b) a party applies to the Commission for interlocutory review. The Commission, in its discretion, by a vote of two Commissioners, may grant interlocutory review upon a showing that the ruling involves a controlling question of law and that immediate review of the ruling may materially advance the final disposition of the proceeding. An interlocutory review shall not operate to suspend the hearing unless otherwise ordered by the commission.

(b) *Petitions for interlocutory review.* A petition for interlocutory review by the Commission shall be in writing and shall not exceed 10 pages.

(c) *Briefs.* Unless the Commission directs otherwise, a brief shall be filed by petitioner within 5 days after service of an order granting interlocutory review. Within 5 days after service of petitioner's brief, any other party to the proceeding may file a brief as respondent.

(d) *Scope of review.* If a petition for interlocutory review is granted, the scope of review shall be confined to review of the ruling or order of the Judge on the issue stated in the Commission's order granting review, and shall not extend to other issues.

(e) *Decision and remand.* Upon affirmance, reversal or modification of the Judge's interlocutory ruling or order,

the case will be remanded promptly to the Judge for further proceedings.

§ 2700.75 Reconsideration.

Unless the Commission orders otherwise, the filing of a petition for reconsideration shall not stay the effect of any decision or order of the Commission and shall not affect the finality of any decision or order for purposes of review in the courts.

Miscellaneous

§ 2700.80 Standards of conduct; disciplinary proceedings.

(a) *Standards of conduct.* Individuals practicing before the Commission shall conform to the standards of ethical conduct required of practitioners in the courts of the United States.

(b) *Grounds.* Disciplinary proceedings may be instituted against anyone who is practicing or has practiced before the Commission on grounds that he has engaged in unethical or unprofessional conduct, or that he is practicing without authority under the provisions of these rules, or that he has violated any provisions of the laws and regulations governing practice before the Commission, or that he has been disbarred or suspended by any court or administrative agency, or has been disciplined by a Judge under paragraph (e) of this section.

(c) *Procedure.* Except as provided in subsection (e), a Judge or other person having knowledge of circumstances that may warrant disciplinary proceedings against an individual who is practicing or has practiced before the Commission, shall forward such information, in writing, to the Commission for action. Whenever in the discretion of the Commission, by a majority vote of the members present and voting, the Commission determines that the circumstances reported to it warrant disciplinary proceedings, the Commission shall either hold a hearing and issue a decision or refer the matter to a Judge for hearing and decision. Except as provided in subsection (e), no disciplinary action may be taken except by the Commission or the Judge to whom the Commission has referred the matter. The Commission or the Judge to whom the matter has been referred shall give the individual adequate notice of, and opportunity for reply and hearing on, the specific charges against him, with opportunity to present evidence and cross-examine witnesses. The decision shall include findings and conclusions and either (1) an order dismissing the charges or (2) an appropriate disciplinary order, which may include reprimand, suspension or disbarment from practice before the Commission.

(d) *Appeal from Judge's decision.* Within 30 days after the issuance of the decision of the Judge appointed by the Commission, any person adversely affected or aggrieved by the Judge's decision may file a notice of appeal with the Commission.

(e) *Misbehavior before a Judge.* A Judge may order the removal of any person who engages in contumacious or disruptive behavior or other misconduct in the Judge's presence. The Judge shall allow the party represented by the person removed a reasonable time to engage another representative. The Judge shall promptly file a written decision on the matter. A person aggrieved by the Judge's order may file, within 30 days of the written decision, a petition for interlocutory review, or may, after the Judge has filed a decision in which he finally disposes of the proceedings, assign the Judge's ruling as error in a petition for discretionary review.

§ 2700.81 Disqualification.

(a) *Withdrawal generally.* A Commissioner or Judge may withdraw from a proceeding whenever he deems himself disqualified.

(b) *Request to withdraw.* Any party may request a Commissioner, or the Judge (at any time following his designation and before the filing of his decision), to withdraw on grounds of personal bias or disqualification, by filing promptly upon discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) *Procedure if Judge does not withdraw.* If the Judge does not disqualify himself and withdraw from the proceeding, he shall so rule upon the record, stating the grounds for his ruling and shall proceed with the hearing, or, if the hearing has been completed, he shall proceed with the issuance of his decision, unless the Commission stays the hearing or further proceedings by granting a petition for interlocutory review.

§ 2700.82 Ex parte communications.

(a) *Generally.* There shall be no ex parte communication with respect to the merits of any case not concluded, between the Commission, including any member, Judge, officer, or agent of the Commission who is employed in the decisional process, and any of the parties or intervenors, representatives, or other interested persons.

(b) *Procedure in case of violation.* (1) In the event an ex parte communication in violation of this section occurs, the Commission or the Judge may make such orders or take such action as fairness requires. Upon notice and hearing, the Commission may take disciplinary action against any person who knowingly and willfully makes or causes to be made a prohibited ex parte communication.

(2) All ex parte communications in violation of this section shall be placed on the public record of the proceeding.

(c) *Inquiries.* Any inquiries concerning filing requirements, the status of cases before the Commissioners, or docket information shall be directed to the Office of the Executive Director of the Commission at: Federal Mine Safety and Health Review Commission, 1730 K Street, N.W., Sixth Floor, Washington, D.C. 20006.

§ 2700.83 Authority of Executive Director to sign orders.

(a) The Commission has authorized the Executive Director to sign, on its behalf, orders of the Commission disposing of motions. 44 FR 8932 (1979). The Executive Director shall ascertain either orally or in writing the vote of each participating Commissioner. His signature on a Commission order is a certification that a quorum of Commissioners has participated in the matter, and that a majority of the participating Commissioners voted to dispose of the motion in the manner indicated by the order. The Executive Director shall note on the order a dissenting vote if requested to do so by the dissenting Commissioner. A person aggrieved by an order signed by the Executive Director may move within 10 days of the date of the order that the order be signed or initialed by the participating Commissioners.

(b) The Executive Director is authorized to sign orders disposing of the following motions: motions for extensions of time; motions for permission to file briefs in excess of page limits; motions to accept late filed briefs; motions to consolidate; motions to expedite proceedings; and motions for oral argument.

§ 2700.84 Effective date.

These rules are effective July 30, 1979 and apply to cases initiated after they take effect. They also apply to further procedures in cases then pending, except to the extent that application of the rules would not be feasible, or would work injustice, in which event former rules of procedure apply.

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Friday
June 29, 1979

Part VIII

Department of Justice

Bureau of Prisons

Control, Custody, Care, Treatment, and Instruction of Inmates

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 500, 501, 522, 523, 527, 540, 544, 547, 548, 549, 550, 551,and 571

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons.

ACTION: Final rules.

SUMMARY: This document contains final rules relating to the control, custody, care, treatment and instruction of inmates. This document is intended to give the public notice of the rules in this area, not just changes from prior policy.

DATE: Effective date: August 1, 1979

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 910, 320 1st Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTAL INFORMATION: In this document the Bureau of Prisons is publishing final rules relating to the following:

(1) Definitions;
(2) Contact with news media;
(3) Good time and extra good time;
(4) Scope of rules;
(5) Telephone regulations for inmates;
(6) Grooming;
(7) Religious beliefs and practices;
(8) Inmate manuscripts;
(9) Inmate organizations;
(10) Civil contempt of court commitments;
(11) Voluntary surrender commitments and transfers to Bureau of Prisons facilities;
(12) Apprentice training in institutions;
(13) Education program certificates;
(14) Plastic surgery and identification records;
(15) Birth control, pregnancy, child placement and abortion;
(16) Inmate contributions;
(17) Military and Coast Guard inmates;
(18) Postsecondary education programs for inmates;
(19) Optional programming;
(20) Religious diet requirements;
(21) Urine surveillance to detect and deter illegal drug use;
(22) Administering of polygraph test;
(23) Release gratuities; and
(24) Discharge of inmates under 18 USC 4163.

Each subject has been published in the Federal Register previously as a proposed rule. Final rules (1)-(4) were published as proposed rules on May 23, 1977 (at 42 FR 26334 et seq.). Final rules (5)-(9) were published as proposed rules on August 16, 1977 (at 42 FR 41368 et seq.). Final rules (10)-(17) were published as proposed rules on December 21, 1977 (at 42 FR 64082 et seq.). Final rules (18)-(24) were published as proposed rules on July 17, 1978 (at 43 FR 30574 et seq.). In the July 17, 1978 Federal Register, the Bureau published its proposed rule on the Maximum Security Unit at the Federal Correctional Institution, Alderson, West Virginia. This unit has been discontinued and the rule is withdrawn.

Interested persons were invited to submit comments on the proposed rules and public comments were received from numerous sources. On the basis of these comments and internal staff review of Bureau policies, changes have been made. These have been either of a minor nature or are generally less restrictive than the original proposed rules. Thus, no republication for comment prior to their adoption as final rules is necessary. Members of the public may, of course, submit further comments concerning these rules by writing to the previously cited address. These comments will be considered, but will receive no formal response in the Federal Register. Public comments which were received in these areas and the changes which were made are discussed below.

Summary of Changes

I. Part 500—General Definitions

Several clarifications are included in § 500.1. Subsections (a) and (d) are amended to specify "Federal Community Treatment Center" as opposed to "Community Treatment Center" in the proposed rule. Subsection (b) is amended to include employees of Federal Prison Industries, Inc. Subsection (c) is amended so that "inmate" includes only those federal prisoners who are placed in a Bureau of Prisons institution. Persons on work or study release from Bureau institutions are included within this definition.

II. Part 501—Scope of Rules

Section 501.1 now includes a procedural requirement that a Warden notify the Director within eight hours of the suspension of any rule under the Warden's emergency authority.

III. Part 522, Subpart B—Civil Contempt of Court Commitments

(1) § 522.10 In response to a suggestion, § 522.10 is expanded to include a statement that the confinement of civil contempt inmates terminates when the Bureau of Prisons receives notification from the court that the reason for the contempt commitment has ended or that the inmate is to be released for any other reason.

(2) § 522.11 Proposed subsections (b) and (c) are combined into a final subsection (b). A comment suggested that since the committing court retains continuing jurisdiction over the contempt witness, Bureau rules should specify placement of the contempt witness in a facility designated by the court. In response to this comment, a new subsection (c) provides that when the committing court specifies a place of confinement in its contempt order, the Bureau of Prisons shall designate that specified facility in accordance with the judicial wishes, unless there is reason for not placing the inmate in that facility, in which case the matter is called to the attention of the court and an attempt made, with the agreement of the committing court, to arrive at an acceptable place of confinement. Subsection (f) is amended to state that an inmate serving a civil contempt sentence in a Bureau institution is treated the same as a person awaiting trial, except where the inmate is serving a civil contempt sentence and a concurrent criminal sentence, in which case the inmate is treated the same as a person serving a criminal sentence.

IV. Part 522, Subpart D—Voluntary Surrender Commitments and Transfers to Bureau of Prisons Facilities

Proposed Subpart E is redesignated final Subpart D. The first sentence of § 522.30 is expanded to read "When the court orders or recommends . . ." The final rule also inserts a reference to the Bureau of Prisons policy on furloughs.

V. Part 523, Subpart A—Good Time; Subpart B—Extra Good Time

These provisions are expanded substantially to incorporate various Bureau policies concerning extra good time credits. As most of these additions do not change but only refine the proposed rules and as public comment on the proposed rules in this area was minimal (the only comment received stated that extra good time should be eliminated entirely), no republication for comment is necessary.

(1) § 523.1 The definitions of "extra good time", "seniority", and "earning

status" are expanded or added for clarification purposes.

(2) § 523.10 This section is expanded and clarifies the meaning and effect of a "disallowance" or "termination" of extra good time.

(3) §§ 523.11–523.16 These sections deal separately with each type of extra good time award. Work/Study Release Good Time and Community Treatment Center Good Time were not mentioned in the proposed rules. Standards for awarding meritorious good time are clarified in § 523.11(a).

(4) §523.17 This section expands considerably on proposed §§ 523.11–12. Subsections (b), (c), (d), (e), (f), (h), (i), (j), (k), (l), (m), (n), (o) and (p) are entirely new provisions which reflect present Bureau policies in this area. Subsection (g) changes proposed § 523.11(b)(6) in that an extra good time award may not be terminated after an inmate has been absent from an institution for a period of one month. Instead, any termination must be based on the inmate's conduct, as in other circumstances. Subsection (q) is added merely as a clarification.

VI. Part 527, Subpart B—Military and Coast Guard Inmates

Subpart B, identified previously as Naval and Coast Guard Prisoners, is retitled Military and Coast Guard Inmates to better reflect the subject matter. § 527.10(a) is amended to specifically recognize Coast Guard inmates as acceptable for transfer. § 527.10(b) is expanded to include Coast Guard inmates within the scope of this subsection and to incorporate into subsection (b) "subject to the same discipline and treatment" language of 10 USC 858. §§ 527.10 (c) and (d) are new and relate to the Bureau's acceptance of sentence computation and clemency consideration procedures as provided by the military or Coast Guard authorities.

VII. Part 540, Subpart E—Contact With News Media

(1) § 540.60 The final rule includes a cross reference to § 540.2, which defines "representatives of the news media". § 540.2 was published in the Federal Register June 19, 1979 (at 44 FR 35959 et seq.).

(2) § 540.62 The last sentence of proposed § 540.62(b), which discouraged the "use of the inmate's name, identifiable photographs or voice recordings," is deleted as this is not a mandatory requirement.

(3) § 540.63 The provisions in proposed § 540.63(h) limiting interviews to two one-hour sessions per inmate per month are deleted, since there is insufficient justification for this absolute limitation. Consequently, the word "further" in proposed § 540.63(h)(2) is also deleted.

(4) § 540.65(a) This section has been amended to include examples of unusual, newsworthy incidents. Final § 540.65(b)(6) is revised to read "conviction and sentencing data". Proposed §§ 540.65(b)(6)–(10) and §§ 540.65(b)(13)–(14) are encompassed within this phrase. Proposed §§ 540.65(b)(11)–(12) are renumbered final §§ 540.65(b)(7)–(8). As a result of these changes, § 540.65(c) now reads ". . .(b)(1) through (8)".

VIII. Part 540, Subpart I—Telephone Regulations for Inmates

(1) This section, identified previously as Inmate Telephone Use, is retitled Telephone Regulations for Inmates. Proposed §§ 540.140–144 are renumbered final §§ 540.100–104 respectively.

(2) § 540.100 The final rule specifies that the Warden will ordinarily allow an inmate at least three minutes for each call. The reference in the proposed rule to § 540.143 is amended in the final rule to read § 540.103.

(3) § 540.101 Numerous comments were received concerning monitoring of inmate telephone calls. These comments are accommodated in the final rule, which requires the placement of notices on telephones used by inmates, alerting them to the possibility of monitoring on commonly used telephones. The revision reflects that an inmate's properly placed attorney call is not monitored and requires the Warden to notify inmates of procedures to be followed for an inmate to have an unmonitored telephone conversation with an attorney.

(4) § 540.103 The final rule requires that an inmate be advised that violation of the institution's telephone regulations may result in disciplinary action. Part 541, Subpart B (Discipline) is referenced.

(5) § 540.104 The final rule includes additional examples of cases where the cost of a call may be paid by the institution.

(6) § 540.105 Comment was received that the language of proposed § 540.145 is vague and difficult to interpret. Inmates in Disciplinary Segregation and inmates in general population are allowed a telephone call at least once each three months. The language of final § 540.100 governs in all situations, and therefore proposed § 540.145 has been deleted. Similarly, proposed § 540.146 has also been deleted. A new § 540.105 is added which allows the Warden to establish procedures for inmates in admission, holdover, or segregation status to make phone calls as provided in § 540.100. The rule provides that withholding of phone privileges as a disciplinary measure is to be avoided unless the infraction for which disciplinary action was taken involves abuse, or clear potential for abuse, of phone privileges.

IX. Part 544, Subpart C—Postsecondary Education Programs for Inmates

(1) Proposed §§ 544.30–31 are renumbered final §§ 544.20–21.

(2) §544.20 The final rule is expanded to describe what is meant by the term "college-level programs".

X. Part 544, Subpart F—Apprentice Training in Institutions

§ 544.90 is renumbered final § 544.50 and is amended by substitution of the word "registered" for "approved" to more clearly define the apprentice training programs.

XI. Part 544, Subpart G—Education Program Certificates

Proposed §§544.110–111 are renumbered final §§544.60–61. § 544.61(b)(5) amends the proposed rule by substitution of the term "institutional" for "bureau" certificates, to better reflect the origin of the certificates. This section is further amended by substitution of the more expansive term "occupational" for "vocational" and inclusion of recreation and social education certification as additional examples of institutional certificates. A further amendment is a cross reference to subsection (b)(4) with deletion from the proposed rule of the cross reference to § 523.3(a). Subsection (b)(6) is amended to include further examples of where a transcript may be issued.

XII. Part 544, Subpart H—Optional Programming

Proposed §§ 544.120–122 are renumbered final §§ 544.70–72 respectively. § 544.71 specifies staff "shall", as opposed to "may", place an inmate in an appropriate program for a specified time, not to exceed 90 days. This language reflects the intent of optional programming.

XIII. Part 547, Subpart B—Religious Diet Requirements

(1) Due to the similarity of subject matter, proposed Subpart B (Use of Pork and Pork Derivatives in the Preparation and Seasoning of Specific Food Items) and proposed Subpart C (Kosher Food) are combined into a new Subpart B, Religious Diet Requirements.

(2) A commenter noted that the language of proposed § 547.20 contains a reference not incorporated in the pork usage rule, proposed § 547.10. For the final rule, the two subparts are combined into a new § 547.10 and encompass both types of religious diet requirements.

Another comment noted that the constraint of custodial considerations (proposed § 547.20) was not appropriate. We believe that there are circumstances when security and related concerns may be involved in establishing dietary programs for a particular religious group, and these must be balanced. The phrase has been reworded to reflect the more specific requirement, as noted in the case law, which is the constraint of considering the security and orderly running of the institution.

(3) As a result of establishing an amended Subpart B, final § 547.11 is retitled "Use of Pork and Pork Derivatives in the Preparation and Seasoning of Specific Food Items". A comment to proposed § 547.11(b) noted that the rule conceivably allows pork derivatives to be used in all vegetables served or prepared when more than one vegetable was offered for a particular meal. This was not the intent of the proposed rule, and the final rule requires that at least one vegetable which does not contain pork or pork derivatives be offered at any meal where vegetables are offered the general population.

(4) Proposed § 547.21 is renumbered final section 547.12 and is retitled Kosher Food Eligibility. A cross reference to Part 542 is deleted from the final rule.

(5) Proposed § 547.22 is renumbered final § 547.13 and is expanded to require that staff provide proper utensils for serving and eating Kosher food.

XIV. Part 548, Subpart B—Religious Beliefs and Practices

(1) § 548.11(a) The last sentence of this section is amended to read, "Upon request, the Chaplain is available to provide pastoral care, counseling, religious education, and religious instruction." This clarification is made to better reflect when this service is provided. This section is further amended in the first sentence by indicating that the Chaplains "are available to", as opposed to "shall" provided religious assistance.

(2) § 548.11(b) The term "coordinated" has been substituted for "under general supervision of" to more accurately reflect the function of the Chaplain. The reference to the Warden, in the second sentence, is amended to read "under general supervision of the Warden". Deleted is the language "specific supervision procedures are designated by the Warden".

(3) § 548.11(c) This subsection is amended to acknowledge that the Bureau accepts the services of the volunteers. It inserts the language of "help inmates pursue their religious beliefs" for "achieve the purposes of the Bureau of Prisons policy . . ." to better reflect the intent of the subsection.

(4) § 548.11(d) This subsection is amended to state that no one may coerce an inmate to change religious affiliation.

(5) § 548.11(e) This section acknowledges an inmate's right to designate no religious preference.

(6) § 548.11(g) This section is changed by deleting from the second sentence, ". . . in accordance with Part 551", and inserting the phrase "within the context of maintaining security, safety, and orderly conditions in the institution . . .".

(7) § 548.11(h) A new subsection (h) is added, which allows an inmate to wear religious headgear within the institution as prescribed by the respective faith groups and within the context of maintaining security, safety and orderly conditions in the institution. Proposed subsection (h) becomes final subsection (i) and is amended by deleting the cross references to Part 551. The last sentence of § 548.11(i) is expanded by stating that literature, publications, or books about religion or religious teaching are permitted in accordance with the procedures governing incoming publications.

(8) § 548.12(a) This section is expanded to include a cross reference to Part 547 Subpart B, Religious Diet Requirements.

(9) § 548.13 The title of this section is amended by substituting the word "scheduling" for "rescheduling" to indicate the full scope of the section. The word "sacraments" is deleted from the final rule as it is included within the phrase "celebrations".

XV. Part 549, Subpart D—Plastic Surgery and Identification Records

To insure that an inmate is agreeable to undergoing plastic surgery, § 549.51(a) requires that staff obtain written informed consent of the inmate before surgery is performed. The section further specifies that surgery may be performed only by qualified medical personnel.

XVI. Part 550, Subpart D—Urine Surveillance To Detect and Deter Illegal Drug Use

The phrase "have a history of drug use and * * *" is deleted from § 550.30(a). The final rule requires that testing be performed on at least 50% of those inmates who are involved in community activities. § 550.30(c) is expanded to require that when an inmate does not provide a urine sample when requested, staff shall maintain the inmate under supervision for the two hour period specified in the rule. This action is intended to eliminate the possibility of a diluted or adulterated sample.

XVII. Part 551, Subpart A—Grooming

(1) § 551.2 This section is retitled "Mustaches and Beards". The final rule acknowledges that an inmate may wear a beard. The rule allows the Warden to require an inmate with a beard to wear a beard covering when working in food service or in an area where a beard could result in increased likelihood of work injury.

(2) § 551.3 Proposed § 551.3, Beards, is deleted. Proposed § 551.4, Hairpieces, becomes new § 551.3 and allows a female inmate to wear a wig or hairpiece. The rule specifies that a male inmate may not wear an artificial hairpiece.

(3) § 551.4 Proposed § 551.5 becomes new § 551.4. Part (c) of the proposed rule is eliminated as its substance was in conflict with parts (a) and (b).

(4) Proposed §§ 551.6 and 551.7 become final §§ 551.5 and 551.6 respectively.

XVIII. Part 551, Subpart C—Birth Control, Pregnancy, Child Placement, and Abortion

(1) Proposed §§ 551.40, 42, 43 and 44 are renumbered final §§ 551.20, 22, 23 and 24 respectively. Proposed § 541.41 is renumbered final § 551.21.

(2) § 551.21 Comments noted that the birth control language covers only advice and consultation about methods for birth control. It was suggested that this be expanded to provide for prescription and access to methods for birth control. Existing policy of the Bureau allows for such access. The final rule (§ 551.21) specifies that prescriptions for and providing methods of birth control are made where medically appropriate.

(3) § 551.22 Subsection (c) is new and specifies that medical staff will arrange for childbirth to take place at a hospital outside the institution. Since this provision is encompassed as part of § 551.22, Pregnancy, the term "childbirth" has been removed from both the title of this rule and from final § 551.20.

(4) § 551.24 Subsection (a) is amended to specify that the Warden

may not permit the inmate's newborn child to visit except in accordance with the Bureau of Prisons policy on visiting. Deleted from the final rule is the specific reference to Part 540.

XIX. Part 551, Subpart D—Inmate Organizations

(1) Proposed §§ 551.60, 61, 63, 64, 65 and 66 are renumbered final §§ 551.30, 31, 32, 33, 34, and 35 respectively. Proposed § 551.62 is renumbered final § 551.36.

(2) § 551.34 The final rule is amended to clearly indicate that all activities and projects sponsored by the organization must be approved by the Warden.

(3) § 551.35 This section is amended to state that the attendance of guests at institution organization meetings and activities requires the Warden's approval. Deleted from the proposed rule is the word "regular".

(4) § 551.36 The proposed rule requires an organization to maintain suitable financial records, furnish financial statements and have an annual audit completed. Implicit within this requirement is the expectation that failure to adhere to these areas would result in disbandment of the organization. The final rule specifically addresses this issue in a new subsection (d). As a result of this new subsection, proposed subsection (d) becomes final subsection (e).

XX. Part 551, Subpart E—Inmate Contributions

Proposed § 551.80 is renumbered final § 551.50. Comments within this section focused on use of the word "nonpolitical" in proposed subsection (b), concluding that it would prohibit contributions to outside political organizations. This is not the intent of the rule. Proposed subsection (a) permits contribution to political parties. The intent of the proposed publication is reflected in the amended language to make it clear that inmates may contribute to individual political candidates, and to any political parties or organizations so long as the contribution does not violate any law or regulation.

XXI. Part 551, Subpart G—Administering of Polygraph Test

(1) Proposed §§ 551.95–96 are renumbered final §§ 551.70–71 respectively.

(2) § 551.71 Several comments on the proposed rule centered on those provisions which allow the Warden, in certain instances, to disallow polygraph testing. The restriction on testing in the lesser legal proceedings of misdemeanors and civil matters is a recognition that polygraph testing does provide some disruption to the program of an institution, both for staff and inmate involved. Unless special conditions exist which convince the Warden otherwise, polygraph testing ordinarily will not be permitted for lesser legal proceedings. The final rule (subsection (b)) reflects that testing will be allowed when there is a federal court order for the test. A comment on subsection (d) which objects to the use of "feeling" in the denial process is reflected in our change of the rule to remove this language. Subsection (e) is amended to require a written request to conduct a polygraph examination.

A commenter noted that proposed § 551.96(g) is unclear as to the nature of the records placed in the inmate central file. There was objection to the possibility that the results of the testing were placed in the inmate's file. It is not the intent of the Bureau of Prisons to maintain the results of the test. The purpose of the subsection is to make sure that there is documentation for the occurrence of the test, and the inmate's consent for conducting the test. In order to clarify this part, the rule is amended through substitution of the word "indicating" for "including".

XXII. Part 551, Subpart H—Inmate Manuscripts

The proposed rules published two subpart F's, one on Inmate Arts and Hobbycrafts, the other on Inmate Manuscripts. For purposes of clarification, proposed Subpart F, §§ 551.100–103, on Inmate Manuscripts is redesignated final Subpart H, §§ 551.80–83. § 551.81 amends the proposed rule and specifies that "the inmate may use only non-work time to prepare a manuscript". This revision better reflects the extent of an inmate's opportunity to work on a manuscript.

XXIII. Part 571, Subpart C—Release Gratuities

Proposed §§ 571.30–32 are renumbered final §§ 571.20–22.

XXIV. Part 571, Subpart D—Discharge of Inmates Under 18 U.S.C. 4163

This section, originally identified as proposed Subpart H, § 571.90 is redesignated final Subpart D, § 571.30. Language in subsection (b) is reworded in an effort to clarify the intent of this section.

Other Comments

I. Part 500—General Definitions

One comment indicated that the name "Federal Correctional Institution" should be changed to "U.S. Jail", as the word "correctional" was misleading. That suggestion is rejected because the present name more accurately describes these facilities, and is a name of common and professional usage and understanding.

II. Part 501—Scope of Rules

Comments suggested that this section specify that suspension of the operation of the rules requires "clear and present danger", that the Director approve or disapprove the suspension within eight hours of its occurrence, and provide for periodic review of the suspension by the Director. The commenter also believed the rules should specify that the suspension occurs only as long as the emergency exists. We believe the Warden is in the best position to ascertain if a threat exists to human life or safety within the institution as well as when this danger ceases to exist. While the Director is kept informed of the situation and will receive written detailed information, these are internal procedures and are not subject to publication as rules. In response to a comment calling for due process safeguards for the inmate who is placed in segregation during an emergency, the procedures described in Part 541, Subpart B will apply once the emergency ends.

III. Part 522, Subpart B—Civil Contempt of Court Commitments

(1) § 522.11 One comment indicated that the phrase "or other reasons" in § 522.11(b) is vague and unacceptable. However, it is necessary to leave discretion to allow staff to choose an appropriate facility, and not all reasons can be anticipated and specified.

Another comment expressed the view that § 522.11(d), which authorized the interruption of NARA and YCA sentences for civil contempt commitments, adversely affects the rehabilitative efforts of persons committed under those acts. This interruption is inevitable in any type of intervening court proceeding, and also happens if the YCA or NARA commitment returns to court for regular appearances. To conclude that the sentences are not to be interrupted is to immunize persons on the specialized commitments from contempt citations and the sanction of a civil contempt commitment.

(2) A comment was also received concerning the fingerprinting and identification of civil contempt prisoners. It is essential to have adequate identification of all persons committed to federal custody, and therefore fingerprinting, photographing and other identification procedures are essential.

IV. Part 523, Subpart A—Good Time; Subpart B—Extra Good Time

One comment indicated that extra good time should be eliminated entirely, as it reduces actual periods of incarceration to the point of misleading the public and "bribing" inmates to obey institutional regulations. With regard to the former, we agree that good time awards and parole grants may give the public a mistaken impression as to actual length of sentences since they reduce the time actually served. This is one of many issues being addressed by Congress and the Administration in reform of the Federal Criminal Code. We do not believe that elimination of extra good time awards would be proper at this time. With regard to whether extra good time constitutes "administrative bribery" of inmates, we believe it is desirable for inmates to be able to earn good time credits by obeying institutional regulations. We believe that the "light at the end of the tunnel" provided by good time credits is particularly desirable for persons serving long sentences. The comment indicated that "extra good time" as a disciplinary tool could be replaced by increasing an inmate's sentence each time the inmate violates institutional regulations. Only the courts can change a sentence and we have found that criminal prosecution is not an adequate substitute for institutional discipline.

V. Part 540, Subpart E—Contact With News Media

(1) § 540.61 With regard to subparts (b), (c), and (d) of this section, one comment asserted that the proposed rules attempt to control the content of what a member of the news media will publish or broadcast, and thus infringe upon the First Amendment rights of both prisoners and members of the news media. To so view these subsections, however, is to be insensitive to the serious potential ramifications of inaccurate and abusive reports. These rules do nothing to repress the truth. To the contrary, by urging representatives of the news media to recognize their professional responsibility to make reasonable attempts to verify allegations, to provide the Bureau of Prisons with an opportunity to respond to any allegations, and to collect information from primary sources only, they seek to ensure that some standard of accuracy is maintained, without limiting either the right or ability of reporters to pursue and publish material that they find genuinely newsworthy.

(2) § 540.62 Several comments were received regarding the rules on institutional visits, one of which contended that subsection (b), granting inmates the right not to be photographed or have their voices recorded without their own consent, is vague and seeks to interfere with reporters' First Amendment rights. This, however, is not true. A prison is, for all practical purposes, an inmate's temporary home, and as such, there should be as much privacy as possible. Since inmates have almost no power to select those persons who are allowed access to their living areas, it is only proper that their permission be requested before such infringements on personal privacy as photographs and voice recordings are allowed.

Another comment took exception to subsection (c), which empowers the Warden to suspend all media visits during emergency periods, suggesting that the public has a right to know about significant events during such crucial times. The Bureau of Prisons recognizes that public right and provided for it in § 540.65(a) by requiring the Warden promptly to release to the news media information about unusual events. However, the Warden must have latitude to restore order and to protect staff, inmates, and members of the public and the news media alike.

As for subsection (d), barring a confined inmate from being employed as a reporter and publishing under a byline, one comment contended the provisions involved an unjustified deprivation of First Amendment rights. However, experience has shown that such activities often result in an inmate's gaining a disproportionate prominence and influence among other prisoners which can pose a serious threat to the order of the institution.

A comment objected to the lack of guidelines in § 540.62(e), pertaining to persons referred to within this subsection being granted or denied permission to conduct interviews. § 540.63 discusses aspects of personal interviews and subsection (g) specifically addresses reasons for disapproval of a request for interview.

(3) § 540.63 A comment objected to the provision in § 540.63(d) that an inmate's written denial of consent becomes part of the inmate's central file, stating this serves no legitimate institutional purpose, only a punitive one. We disagree, as the choice of whether or not to consent to an interview is strictly the choice of the inmate. Inclusion in the central file is solely for the purpose of documentation of the inmate's decision.

Strong objections were raised to subsection (e), which requires an inmate, as a prerequisite to the granting of an interview, to authorize responses by institution staff to his or her comments.

Primarily, it was claimed that this restriction violated a prisoner's First, Fourth and Ninth Amendment rights, and that access to news media could not be conditioned on an individual's waiver of such rights. However, this "right" of an inmate to be free from rejoinder by the Government as an implicated party is granted only by statute (the Privacy Act). Thus, it can be freely waived without sacrifice of constitutional rights. Furthermore, this policy is justified not by any desire of the Bureau of Prisons to avoid healthy criticism, but rather by the Bureau's interest in preventing the kind of exploitation of the news media that is likely to occur if inmates can always retreat behind a statutory shield which insulates them from good faith rebuttal.

Other comments, directed toward subsection (g), took issue with various grounds on which Wardens are empowered to deny interviews. One contended that the fact that an inmate is a juvenile should not make possible such a denial where no parental consent has been granted, for parents and guardians have no sufficient independent interest in the interview. Rather than an attempt to deprive juveniles of constitutional rights, the parental consent requirement is intended to protect individuals who, in many states, are legally presumed to be yet unprepared to assume certain responsibilities. As an interview invades an inmate's right to privacy, and may release information that could be harmful to the inmate's best interest, it is desirable that some checks exist to reduce such risks.

Another comment contended that Wardens should not have the power to deny interviews with pretrial detainees, pending clearance by the relevant court. The rule does not require the Warden to obtain specific permission from the court having jurisdiction. It only requires the Warden to ensure that no judicial order limiting pretrial publicity has been entered.

Further criticisms were addressed to the subsection (h) provisions empowering Wardens to limit interview

time for entire institutions and for an inmate in a special status. One comment contended that the former restriction, which can be invoked only when the Warden determines that interviews are imposing a serious drain on staff and facilities, is vague, and thus could be arbitrarily and capriciously enforced. The Warden is the person best qualified to judge at what point a prison's effectiveness is significantly impaired, and he is also the person responsible for acting to ensure the efficient functioning of an institution. As such, the Warden must have the kind of discretion provided in this subsection.

Another comment suggested that the latter restriction, which limits interviews to one hour per month for inmates in segregation and other special circumstances if required by security, custodial, or supervisory needs, violates constitutional guarantees of equal protection. However, the greater latitude required by Wardens in handling these prisoners is consistent with both the problems related to and the reasons underlying their special status.

VI. Part 540, Subpart I—Telephone Regulations for Inmates

(1) § 540.100 The most frequent comment on the telephone use rule involved the frequency of calls. The rule provides for at least one telephone call each three months. The Bureau of Prisons recognizes the desirability of frequent contacts with family and others in the community. Most institutions have adopted local policies which allow for more frequent access to telephones. The intent of the rule is to set a minimum which will be required at each institution.

(2) § 540.101 Comment was received concerning telephone calls with members of the news media. The suggestion was made that these should be, like attorney calls, not subject to monitoring if properly placed. The news media is not in the same category as legal counsel. The Supreme Court has recognized that news media access to institutions and contacts with news media are of the same type as those with the general public. There are administrative limitations on the availability of telephones for private, unmonitored calls. For these reasons, the suggestion for unmonitored news media calls is not adopted.

(3) § 540.102 Comments were received in reference to the requirement that the Warden may not apply frequency limitations on inmate calls to attorneys when the inmate demonstrates that other means of access are inadequate. One comment suggested that to require an inmate to "demonstrate" a need requires the inmate to discuss confidential material. This, however, is not our intent. There is no need for the inmate to go into substance, but the inmate must show a need. For example, the existence of a court deadline, which does not allow inmate-attorney communication by correspondence, visiting or normal telephone use.

(4) § 540.103 A comment that suspension of phone calls should not apply to attorney calls has some merit. Attorney calls may not be suspended under this rule, if the inmate demonstrates that communication by other means will not suffice in order to have communication with an attorney on legal matters. It is intended that § 540.102, specifically dealing with attorney telephone calls, will be the governing rule and that the standards of that section will apply for any such calls. With respect to this section and in response to comments on these points, it is noted that Bureau policy does provide for the posting of notices concerning phone usage and that minimal due process is provided before the removal of telephone privileges. See Inmate Discipline, Part 541.

(5) § 540.104 A comment suggested that the government bear the expense of inmate telephone calls to attorneys. Typically, such telephone calls are placed collect to the attorney's office. It is believed that this is the proper placement of responsibility for bearing the cost of such calls. In emergency situations, as provided in the rule, a telephone call to an attorney may be placed at government expense, but this would be considered an exceptional circumstance.

VII. Part 544, Subpart C—Postsecondary Education Programs for Inmates

(1) § 544.20 A comment suggested that the phrase "college level programs" not be used throughout this rule, since it is a limiting phrase, and that "postsecondary programs" be substituted. The title of the rule is Postsecondary Education Programs. As is made clear in both § 544.21(d) and in the amended section on "Purpose and scope", the guidelines and requirements apply to all types of educational and vocational programs at the postsecondary level. The phrase "college level programs" is easily read and understood, and is described in the rule.

(2) § 544.21 Another comment suggested that the language in § 544.21 does not provide objective guidelines. Since levels of resources differ from time to time, the guidelines in this rule must, of necessity, be flexible. The difference between "appropriate component" and "necessary component" in subsections (b) and (c) was also noted. This is intended to specify that the partial funding of college fees may be made by the institution, if resources are available, at a slightly lower rate than the total payment of such costs, which is occasionally permitted under subsection (c). Greater specificity is not desirable in view of the large variety of situations which may occur in this program area.

VIII. Part 547, Subpart B—Religious Diet Requirements

(1) Comments on the proposed rule, and particularly § 547.10, noted that specific language dealing with the First Amendment rights of inmates had not been included in the rule. A variety of phrases and standards have been used by courts in dealing with the religious rights of prisoners. However, it is not necessary to include a discussion of these in the language of the rule. The rule itself reflects an accommodation of the standards and guidelines which have been developed by the courts in this area.

Another comment stated that the phrase "standard ration allowances" needs to be defined. This phrase is one in common use in nutrition and food preparation and is dealt with in the publications of other agencies, such as the Department of Agriculture. It does vary from time to time, as knowledge and information develop in the field. The Bureau of Prisons standard ration exceeds the recommended daily allowance called for by the U.S. Department of Agriculture. It is not believed that an expanded definition is needed in the context of this rule.

(2) It was noted in one comment to proposed § 547.11 that the rule should provide not only for abstinence from pork "but other food related religious practices as well, such as fasting". This particular part deals with providing special food preparation to meet religious dietary requirements. Fasting does not require such special preparation. The recognition of fasting and special religious meals is considered within the Bureau rules dealing with religious activities of inmates.

(3) Comments to proposed § 547.21 centered primarily on the removal of an inmate from the Kosher food program. In view of the special administrative, financial and security accommodations which are necessary to provide a Kosher food program, it was agreed in

discussion with representatives of various Jewish groups at the time of development of the Kosher food program that inmates who failed to observe the Kosher laws may be removed on the basis of that action alone. An inmate may not switch from the Kosher food line to the main food line from one meal to another depending on the inmate's preferences in the diet that is being provided at a particular meal. Some courts have suggested in the recognition of special religious program, that the sincerity of the individual inmate may be grounds for placement of the inmate in the program, and removal from it. Testing the sincerity of the inmate is an extremely difficult task, but failure to observe dietary laws once they have been provided is grounds for removal from the special program. The rules do provide for review of the removal process through the Administrative Remedy Procedure.

Another comment on the Kosher food section expressed concern that an inmate might believe he or she was not being provided a nutritionally adequate Kosher diet, but that if the inmate went to the regular food line in order to sustain health he or she would be removed from the Kosher food program. This concern is adequately covered by the rule. The provision of a diet which will sustain the inmate in good health is considered to be the equivalent of the provision of a nutritionally adequate diet. If the inmate was not being provided a nutritionally adequate Kosher diet, the Bureau of Prisons would be in violation of its own standards. A final suggestion that the rule specify that an inmate may receive additional portions of non-ration food items is not necessary, since the meaning of "non-ration food" is that any inmate may receive added portions of such items from the food serving line.

IX. Part 548, Subpart B—Religious Beliefs and Practices

(1) § 548.10(b) A comment was received stating that there should be a hearing held before discontinuing a religious activity and that the reason for discontinuation be documented. It is the Bureau's position that a hearing is not necessary due to the immediate need for action in certain situations to insure the security and good order of the institution. Another comment suggested that inmates who worship together should be allowed to limit participation in or attendance at a religious activity to persons who share their adherence to a particular faith. The comment further suggests that the presence of outsiders violates religious doctrine and inhibits free exercise of religion and religious practices. The Bureau's position in this matter is that in a prison setting open worship services are essential and constitutional.

(2) § 548.11(c) A commenter objected to the term "may" in relation to "contract with clergy or representatives of faith groups in the community". The commenter believes staff should be required to make necessary arrangements for visiting clergy to conduct religious services, stating reasonable access to representatives of one's professed religion is compelled by the Constitution. The Bureau believes its present language (§ 548.10(a)) of "greatest amount of freedom of and opportunity for pursuing individual religious beliefs and practices as is consonant with the maintenance of security and good order of the institution" clearly demonstrates this intent and sufficient staff resources may exist to preclude the need for contract services.

(3) § 548.11(f) It was suggested that this paragraph be amended to specify that "participation or non-participation in religious programs shall not be taken into consideration by the Parole Commission when making its decision." This addition was not added, as such a rule is within the authority of the Parole Commission, not the Bureau of Prisons.

(4) § 548.11(g) Another comment suggested that this paragraph be amended to include medals and other symbols related to religious observance. These articles are a part of the liturgical apparel and may be worn so long as their substance or symbolic nature would not serve as a weapon or incite a disturbance within the institution.

(5) § 548.12(b) A comment was received that the Bureau should require its staff to make every effort to promote inmates' awareness of ritual meals, especially on holidays. We believe the existing language adequately provides this and that further expansion is not necessary.

(6) § 548.13(a) It was suggested that we list the religious holidays. However, there are too many diverse religious groups in society to list each holiday.

(7) Another comment suggested that conversation between inmates and religious representatives be protected by the cloak of confidentiality. It is the Bureau's position that this is a matter of legislation, not for Bureau regulation.

X. Part 549, Subpart D—Plastic Surgery and Identification Records

A comment stated that there was no mechanism for monitoring the Warden's criteria for the "solution of inmates eligibility for plastic surgery" (sic). § 549.51 discusses conditions under which an inmate may be approved for plastic surgery. This plus the inmate's written informed consent ensures that plastic surgery is performed within specified criteria. An inmate whose request for plastic surgery is denied may file an appeal under the Administrative Remedy Procedure.

XI. Part 550, Subpart D—Urine Surveillance To Detect and Deter Illegal Drug Use

(1) One comment called for a fuller description of the validation procedures used in drug testing. The administrative requirement is that there be reliability in the testing procedure. Validation and other testing aspects may change from time to time. This is not a requirement of the rule but rather it is an administrative procedure which will be assured in the internal implementing instructions of the Bureau of Prisons.

(2) There was a comment that random testing should not be allowed, and that inmates should be notified in advance when they are to be tested. Such a procedure would obviously destroy the intent of the program, which is both to detect and deter drug usage of persons in confinement. A commenter also requested that all negative results from the testing program be placed in inmate files. This would not appear to serve a valid correctional purpose or justify the administrative burden of placing this additional amount of paper in inmate files. Positive results will ordinarily result in disciplinary actions. The absence of any comments in an inmate's file can be interpreted by a reviewer of the file to indicate that the inmate has not received a positive test result while confined.

(3) Another comment suggested that reasonable suspicion must exist before urine testing is required. Providing a urine sample is not a search of the inmate, and therefore the reasonable suspicion test is not applicable.

XII. Part 551, Subpart C—Birth Control, Pregnancy, Child Placement, and Abortion

(1) § 551.20 Comment was received, inquiring as to why there was no definition of which inmates are covered by the scope of this rule. The services and programs covered by this subpart are available to all inmates who are confined in Bureau of Prisons institutions. There is no distinction according to type of institution or categories of inmates.

(2) § 551.21 It was suggested that specific methods of birth control be

included in the language of the rule, with the requirement that the advantages and disadvantages of various methods be explained with the final decision being made by the individual inmate. It is our intent that such explanation be included in the counseling concerning methods of birth control, but such specifics do not belong in the content of a rule.

(3) § 551.22 Suggestions were made as to specific types of tests and medical care which should be supplied to all women inmates and to those who are pregnant. We do not believe that such details of medical care should be spelled out in rule making. The general requirement for the provision of such care is contained in the rule. A suggestion that a pregnant inmate be allowed or encouraged to consult with family and friends is covered by the general visiting rules.

(4) § 551.23 On this section as in the preceding one, there was a suggestion that the pregnant inmate receive an opportunity to consult family and friends, and have access to consultants outside the prison setting. Access to such consultation may be advisable, and it is enabled within the counseling services provided by the Bureau of Prisons. Visiting rights for the inmate include opportunity for consultation with family and friends. As appropriate, consultation with specialist(s) in the community who may be requested by the inmate should be considered by staff at the institution.

(5) § 551.24 One suggestion proposes that a woman be permitted to bring her child to the institution with her and that the child be allowed to remain with its mother until the age of 2. Other suggestions include the retention of the child until age 1, or as determined by an independent board. We are familiar with literature in this field and suggestions from various groups for this type of placement. We do not favor exposing infants or young children to the prison environment. In any event, the separation of the young child at a time after mother and child have become more psychologically attached poses a serious problem. Additional suggestions that the inmate have the choice of placing the child with relatives or friends, or in temporary placement or adoption go into specific suggestions which are encompassed in the general guidance of the rule's language. It is intended that staff counsel with the inmate as to these various options and arrive at a decision for placement of the child according to the inmate's preferences. A suggestion that prison staff work with the inmate to receive reports concerning the children places a requirement on institution staff which is beyond their ability to provide. It is expected that case management and other staff will help the inmate to the extent possible to obtain such information as is available and helpful under the circumstances. (6) A comment was received suggesting that an additional section be added in this subpart, banning sterilization of prisoners and expressly prohibiting tubal ligations, vasectomies and hysterectomies for sterilization purposes. This suggestion states that voluntary consent for sterilization is not possible in a prison setting. We do not agree that consent is never voluntary in such a situation. To ban sterilization would prevent an inmate from obtaining such a medical procedure when he or she would be able to obtain it in the outside community. The Bureau of Prisons does not generally perform sterilization, since it is an elective procedure and not medically necessary during confinement.

XIII. Part 551, Subpart D—Inmate Organizations

(1) § 551.30 A comment was received stating that this paragraph was too narrow, that there should be political reasons as well as educational and spiritual. Education and religious activities are to be covered in other parts of the rules and these deal with the activities of the groups and meetings. Political functions fall under civic activities.

(2) § 551.31 Another comment stated that there were no guidelines to the exercise of the Warden's very broad discretion. The rest of this subpart gives the Warden some general guidelines. However, there are many types of guidelines and these are too complex to spell out for every situation. A commenter questioned the Warden's authority to amend the constitution and bylaws of an inmate organization. As stated in the rule, the Warden may approve an inmate organization when it does not operate in conflict with the security, good order and discipline of the institution. The Warden may find that the constitution must be amended in order to meet that standard.

A comment on § 551.31(a)(2) urged the Bureau of Prisons to adopt the position of the American Bar Association which requires that an organization must have an unlawful purpose to justify denial of recognition, and that there exist a clear and present danger to the Warden of the institution. We are not aware that this position has been officially adopted by the governing body of the ABA. If it has, the Bureau of Prisons disagrees with this position and the clear and present danger standard. The Bureau favors security, good order and discipline of the institution as the appropriate standard.

Another comment suggested that any denial of the establishment of an organization by the Warden be in writing. In the event of denial by the Warden an inmate has the opportunity to obtain written reasons for the denial through the Administrative Remedy process.

(3) § 551.33 A comment was received suggesting that the group be allowed to request the assignment of a specific employee to provide supervision of their meeting. While the Bureau may consider any request by the group, staff are assigned to the meeting on the availability of work schedules and an assignment will not be changed to accommodate an organization meeting. It is necessary for the security, good order and discipline of the institution that staff supervision be maintained.

(4) § 551.34 It is the opinion of one commenter that the restriction against competing with the commissary be eliminated. It is the position of the Bureau that the commissary is the sales vehicle for the institution. Items not in competition may be sold.

XIV. Part 551, Subpart G—Administering of Polygraph Test

(1) § 551.71 Comments centered on the Warden's authority to disallow polygraph tests as indicated by proposed § 551.96. While the denial of testing because of potential disruption of security or good order of the institution may not occur frequently, the Warden needs the necessary latitude for denial of testing in such circumstances.

Other comments called for articulable reasons for denial of a request for polygraph testing and for an appeal process. If the inmate wishes to have the testing he or she may appeal through the Administrative Remedy process. If a law enforcement official or other party wishes to appeal a disallowance, that may be done to the Regional Director, and to the Director of the Bureau.

(2) Suggestion by commenters that the rules should call for the provision of attorneys for inmates who are being tested and for the signing of a consent by the inmate are requirements of the testing procedure and should be followed by the persons conducting the test. The Bureau of Prisons does not conduct polygraph tests nor establish the standards for such testing.

(3) A comment from one source indicated that the rule should explicitly state that an inmate's refusal will in no

way be used against him. The Bureau of Prisons does not use a polygraph test in any of its activities. It is not necessary to indicate in rules all the negative possibilities as to the use of material or information. Through the publication of the rule, the Bureau is setting the framework for the conducting of polygraph testing by other agencies and individuals.

XV. Part 551, Subpart H—Inmate Manuscripts

(1) § 551.62 Two comments were received stating that there was no justification for prohibiting an inmate from circulating the manuscript within the institution and that this restriction should be eliminated. We do not agree. The purpose of this section is to allow an inmate to write for public, not internal circulation.

(2) § 551.63 It was suggested that this paragraph be clarified in connection with inmates in segregation. This subpart is for inmates in the regular population, not segregation.

XVI. Part 571, Subpart C—Release Gratuities

(1) One comment on this rule noted that the limitation on gratuities to $100.00 is "ridiculously low considering today's inflation and unemployment rate". This is a statutory limitation and it cannot be changed by the rule. The Bureau of Prisons has requested an increase in the ceiling, and it has been included in suggested legislative amendments to Title 18, U.S. Code.

(2) A comment called for a minimum flat grant of gratuity, except where obviously unneeded, and for discretionary awards above this flat grant based upon financial need. The commenter suggested that an assessment of need be guided by concrete standards. Since levels of institutional and inmate resources differ from time to time and from inmate to inmate, flexibility in Bureau guidelines is considered appropriate. Minimum flat grants are not supported because individual programming anticipates that the inmate will generate his own release funds through institutional pay programs or pre-release community employment.

(3) Other comments on this rule related to an encouragement to use the loan provisions of 18 USC 4284 and to give advice to inmates as to the availability of job placement programs and other financial aid available in the community. These alternative release procedures are available elsewhere, and are dealt with in the release preparation practices of the Bureau. The experience of the Bureau of Prisons with the loan procedure has been very unsatisfactory. The burden of collecting loans and the low rate of repayment of the loans convinced the Bureau that an outright gratuity allowance was preferable to a loan procedure.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. § 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(t), 28 CFR, Chapter V, is amended as set forth below. The effective date of these rules will be August 1, 1979.

Dated: June 25, 1979.

Norman A. Carlson,

Director, Bureau of Prisons.

Chapter V of Title 28 is amended by adding new Subchapters A, B, C, and D which consist of the following parts:

CHAPTER V—BUREAU OF PRISONS, DEPARTMENT OF JUSTICE

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

Part
500 General Definitions.
501 Scope of Rules.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

522 Admission to Institution.
523 Computation of Sentence.
527 Transfers.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

540 Contact with Persons in the Community.
544 Education.
547 Food Service.
548 Religious Programs.
549 Medical Services.
550 Drug Programs.
551 Miscellaneous.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

571 Release from Custody.

2. Title 28 is amended by adding Parts 500 and 501 to Subchapter A as follows:

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 500—GENERAL DEFINITIONS

§ 500.1 Definitions.

As used in this chapter, (a) The "Warden" means the chief executive officer of a U.S. Penitentiary, Federal Correctional Institution, Medical Center for Federal Prisoners, Federal Prison Camp, Federal Community Treatment Center, Federal Detention Center, Metropolitan Correctional Center, or any federal penal or correctional institution or facility. "Warden" also includes any staff member with authority explicitly delegated by any chief executive officer.

(b) "Staff" means any employee of the Bureau of Prisons or Federal Prison Industries, Inc.

(c) "Inmate" means any person who is committed to or in the custody of the U.S. Attorney General and who is placed or designated to serve his sentence in a Bureau of Prisons institution. "Inmate" also includes any person who is serving a civil contempt sentence in an institution of the Bureau of Prisons.

(d) "Institution" means a U.S. Penitentiary, Federal Correctional Institution, Medical Center for Federal Prisoners, Federal Prison Camp, Federal Community Treatment Center, Federal Detention Center, or Metropolitan Correctional Center.

(e) "Shall" means an obligation is imposed.

(f) "May" means a discretionary right, privilege, or power is conferred.

(g) "May not" means a prohibition is imposed.

(h) "Contraband" means anything that an inmate is not authorized to possess in an institution.

(5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99)

PART 501—SCOPE OF RULES

§ 501.1 Institutional emergencies.

When there is an institutional emergency which the Warden considers a threat to human life or safety, the Warden may suspend the operation of the rules contained in this chapter to the extent he deems necessary to handle the emergency. The Warden shall notify the Director of the Bureau of Prisons within eight hours of any suspension of rules under this section.

(18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99)

3. Subchapter B is amended by adding new Parts 522, 523, and 527 to read as follows:

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 522—ADMISSION TO INSTITUTION

Subpart A [Reserved]

Subpart B—Civil Contempt of Court Commitments

Part
522.10 Purpose and scope.
522.11 Procedures.

Subpart C [Reserved]

Subpart D—Voluntary Surrender Commitments and Transfers to Bureau of Prisons Facilities

522.30 Purpose and scope.

Authority: 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5015, 5039; 28 U.S.C. 509; 28 CFR 0.95–0.99.

Subpart A [Reserved]

Subpart B—Civil Contempt of Court Commitments

§ 522.10 Purpose and scope.

Occasionally federal civil commitments for contempt of court may be referred to the Bureau of Prisons. These cases are not regular commitments to the custody of the Attorney General and are not convictions for any offense against the laws of the United States. The Bureau of Prisons cooperates with the federal courts in implementing the sentence by making its facilities and resources available. The confinement of civil contempt inmates shall terminate when the Bureau of Prisons receives notification from the court that the reason for the contempt commitment has ended or that the inmate is to be released for any other reason.

§ 522.11 Procedures.

(a) The United States Marshal's Service has primary jurisdiction in federal civil contempt commitments.

(b) When a U.S. Marshal requests designation from the Bureau of Prisons for a federal civil contempt commitment because local jails are not suitable, due to medical, security or other reasons, staff may designate the nearest Bureau institution having the necessary facilities.

(c) When the committing court specifies a Bureau of Prisons institution as the place of incarceration in its contempt order, the Bureau of Prisons shall designate that specified facility in accordance with the judicial wishes, unless there is a reason for not placing the inmate in that facility, in which case the matter shall be called to the attention of the court and an attempt made to arrive at an acceptable place of confinement with the agreement of the committing court.

(d) If an inmate is serving a federal criminal sentence when a civil contempt sentence is ordered, the criminal sentence is suspended for the duration of the civil contempt sentence and time spent serving the contempt sentence is inoperative on any sentence being served, including a Narcotic Addict Rehabilitation Act or Youth Corrections Act commitment, unless the court committing for the contempt orders otherwise.

(e) If a civil contempt is in effect when a criminal sentence is ordered, the criminal sentence runs concurrently with the contempt sentence, unless the judge issuing the criminal judgment specifically states that any sentence imposed is to run consecutively to preserve the intended effect of the civil contempt order.

(f) An inmate serving a civil contempt sentence in a Bureau institution will be treated the same as a person awaiting trial; where the inmate is serving a civil contempt sentence and a concurrent criminal sentence, the inmate will be treated the same as a person serving a criminal sentence.

(g) An inmate is not entitled to statutory or extra good time credits under 18 USC 4161–62 while only the civil contempt sentence is in effect. Time spent serving only a civil contempt sentence is not considered jail time under 18 USC 3568.

Subpart C [Reserved]

Subpart D—Voluntary Surrender Commitments and Transfers to Bureau of Prisons Facilities

§ 522.30 Purpose and scope.

When the court orders or recommends an unescorted commitment to a Bureau of Prisons institution, the Bureau of Prisons authorizes the commitment and designates the institution for service of sentence. The Bureau of Prisons also authorizes furlough transfers of inmates between Bureau of Prisons institutions or to nonfederal institutions in appropriate circumstances in accordance with 18 USC 4082, and within the guidelines of the Bureau of Prisons policy on furloughs, which allows inmates to travel unescorted and to report voluntarily to an assigned institution.

PART 523—COMPUTATION OF SENTENCE

Subpart A—Good Time

Sec.

523.1 Definitions.

Subpart B—Extra Good Time

523.10 Purpose and scope.
523.11 Meritorious good time.
523.12 Work/study release good time.
523.13 Community treatment center good time.
523.14 Industrial good time.
523.15 Camp or farm good time.
523.16 Lump sum awards.
523.17 Procedures.

Authority: 5 U.S.C. 301; 18 U.S.C. 3568, 4001, 4042, 4081, 4082, 4161–4166, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A—Good Time

§ 523.1 Definitions.

(a) "Extra Good Time" means a credit to a sentence as authorized by 18 U.S.C. 4162 for performing exceptionally meritorious service or for performing duties of outstanding importance in an institution or for employment in a Federal Prison Industry or Camp. "Extra Good Time" thus includes Meritorious Good Time, Work/Study Release Good Time, Community Treatment Center Good Time, Industrial Good Time, Camp or Farm Good Time, and Lump Sum Awards. Extra good time and seniority are inseparable with the exception of lump sum awards for which no seniority is earned.

(b) "Seniority" refers to the time accrued in an extra good time earning status. Twelve months of "seniority" automatically cause the earning rate to increase from three days per month to five days per month and seniority is then vested.

(c) "Earning Status" refers to the status of an inmate who is in an assignment or employment which accrues extra good time.

Subpart B—Extra Good Time

§ 523.10 Purpose and scope.

The Bureau of Prisons awards extra good time credit for performing exceptionally meritorious service, or for performing duties of outstanding importance or for employment in an industry or camp. An inmate may earn only one type of extra good time award at a time (e.g., an inmate earning industrial or camp good time is not eligible for meritorious good time), except that a lump sum award as provided in § 523.16 may be given in addition to another extra good time award. The Warden and the Institution Discipline Committee may not forfeit or withhold extra good time. The Warden may disallow or terminate the awarding of any type of extra good time (except lump sum awards), but only in a nondisciplinary context and only upon recommendation of staff. The Institution Discipline Committee may disallow or terminate the awarding of any type of extra good time (except lump sum awards) as a disciplinary sanction. Once an awarding of meritorious good time has been terminated, the Warden must approve a new staff recommendation in order for the award to recommence. A "disallowance" means that an inmate does not receive

an extra good time award for only one calendar month. Unless other action is taken, the award resumes the following calendar month. A "disallowance" must be for the entire amount of extra good time for that calendar month. There may be no partial disallowance. A decision to disallow or terminate extra good time may not be suspended pending future consideration. A retroactive award of meritorious good time may not include a month in which extra good time has been disallowed or terminated.

§ 523.11 Meritorious good times.

(a) Staff is responsible for recommending meritorious good time based upon work performance. Each recommendation must include a justification which clearly shows that the work being performed is of an exceptionally meritorious nature or is of outstanding importance in connection with institutional operations. Work performance or the importance of the work performed is the only criteria for awarding meritorious good time.

(b) Meritorious good time may be retroactively awarded for three months, excluding the month in which the approval is made, provided staff substantiate the inmate's eligibility. Meritorious good time may not be awarded prior to the beginning date of the sentence.

(c) Meritorious good time continues uninterrupted regardless of work assignment changes unless the Warden or the Institution Discipline Committee takes specific action to terminate or disallow the award.

§ 523.12 Work/study release good time.

Extra good time for an inmate in work or study release programs is awarded automatically, beginning on the date the inmate is assigned to the program and continuing without further approval as long as the inmate is participating in the program, unless the award is disallowed.

§ 523.13 Community treatment center good time.

Extra good time for an inmate in a Federal or contract Community Treatment Center is awarded automatically, beginning on arrival at the facility and continuing as long as the inmate is confined at the Center, unless the award is disallowed.

§ 523.14 Industrial good time.

Extra good time for an inmate employed in Federal Prison Industries, Inc., is automatically awarded, beginning on the first day of such employment, and continuing as long as the inmate is employed by Federal Prison Industries, unless the award is disallowed. An inmate on a waiting list for employment in Federal Prison Industries is not awarded industrial good time until actually employed.

§ 523.15 Camp or farm good time.

An inmate assigned to a farm or camp is automatically awarded extra good time, beginning on the date of commitment to the camp or farm, and continuing as long as the inmate is assigned to the farm or camp, unless the award is disallowed.

§ 523.16 Lump sum awards.

(a) Any staff member may recommend, to the Warden, the approval of an inmate for a lump sum award of extra good time. Such recommendations must be for an exceptional act or service that is not a part of a regularly assigned duty. The Warden may make lump sum awards of extra good time not to exceed thirty days. If the recommendation is for an award in excess of thirty days and the Warden concurs, the Warden shall refer the recommendation to the Regional Director who may approve the award. No award may be approved which would exceed the maximum number of days allowed under 18 USC § 4162. The actual length of time served on the sentence, including jail time, to the date that the exceptional act or service terminated is the basis on which the maximum amount possible to award is calculated, less any extra good time previously earned. No seniority is accrued for such awards. Staff may recommend lump sum awards of extra good time for the following reasons:

(1) An act of heroism;

(2) Voluntary acceptance and satisfactory performance of an unusually hazardous assignment;

(3) An act which protects the lives of staff or inmates or the property of the United States; this is to be an act and not merely the providing of information in custodial or security matters;

(4) A suggestion which results in substantial improvement of a program or operation, or which results in significant savings; or

(5) Any other exceptional or outstanding service.

§ 523.17 Procedures.

(a) Extra good time is awarded at a rate of three days per month during the first twelve months of seniority in an earning status and at the rate of five days per month thereafter. The first twelve months of seniority need not be based on a continuous period of twelve months. If the beginning or termination date of an extra good time award occurs after the first day of a month, a partial award of days is made.

(b) An inmate may be awarded extra good time even though some or all of the inmate's statutory good time has been forfeited or withheld.

(c) Parole violators may earn extra good time the same as other inmates; any extra good time or seniority earned on the initial portion of the sentence is not carried over to the violator term.

(d) Staff working in the community have the same extra good time authority as the Warden when approving the award of good time for an inmate confined in a nonfederal facility and may approve meritorious good time or lump sum awards in accordance with this rule upon recommendations made by a responsible person employed by the nonfederal facility. The appropriate staff in the Regional Office may review all such awards if the Regional Director requires the review.

(e) An inmate who is transferred remains in the earning status at time of transfer, unless the reason for transfer would otherwise have caused removal from an earning status and provided the inmate's behavior is such while in transit that it does not justify removal. Where the receiving institution is a camp, farm, or community treatment center, the extra good time continues automatically upon the inmate's arrival. Where the receiving institution is other than a camp, farm, or community treatment center, the extra good time is terminated upon arrival, and staff at the receiving institution shall review each case to determine if the inmate should continue in meritorious good time earning status if not immediately employed in Federal Prison Industries or assigned to a work/study release program. If the inmate then is not continued in meritorious good time earning status, later awards must comply with procedures outlined in § 523.11.

(f) An inmate serving a life sentence may earn extra good time even though there is no mandatory release date from which to deduct the credit since the possibility exists that the sentence may be reduced or commuted to a definite term.

(g) Extra good time is not automatically discontinued while an inmate is hospitalized, on furlough, out of the institution on a writ of habeas corpus, or removed under the Interstate Agreement on Detainers. Extra good time may be terminated or disallowed during such absences if the Warden or the Institution Discipline Committee

finds that the inmate's behavior warrants such action.

(h) Extra good time earned by an inmate in a District of Columbia Department of Corrections facility is treated the same as if earned in a Bureau of Prisons institution, upon transfer to a Bureau institution.

(i) An inmate committed under the provisions of 18 USC 3651 (split sentence) may earn extra good time credits provided the sentence imposed is not under the provisions of 18 USC 5010 (b) or (c) (YCA). All extra good time and seniority earned is carried over to any subsequent probation violator sentence based on the original split sentence.

(j) An inmate committed under the provisions of 18 USC 4205(c) may earn extra good time credits towards the final sentence that may be imposed. Such extra good time credits do not reduce the three months allowed for study.

(k) Inmates committed under the provisions of 18 USC §§ 4244, 4246–47, 4252, 5010 (b), (c), (e), or 5037(c) are not entitled to extra good time deductions.

(l) An unsentenced inmate is not entitled to extra good time deductions.

(m) An inmate committed for civil contempt is not entitled to extra good time deductions while serving the civil contempt sentence.

(n) A military or Coast Guard inmate may earn extra good time. Extra good time earned in Federal Prison Industries in a military or Coast Guard installation is treated the same as if earned in Federal Prison Industries in the Bureau of Prisons. Other forms of military or Coast Guard extra good time, such as Army Abatement time, are fully credited, but no seniority is allowed.

(o) American citizens who are serving sentences in foreign countries and who are subsequently returned to this country under the provisions of 18 USC Chapter 306 (Pub. L. 95–144) may have earned work, labor, or program time credits in the foreign country similar to extra good time earned under 18 USC 4162. Such foreign "extra good time" credits shall be treated as if awarded under § 523.16, Lump Sum Awards, with any future lump sum award consideration in this country calculated on the basis of time served in custody of the Bureau of Prisons. After return to this country an inmate may earn extra good time at the three-day rate and advance to the five-day rate after one year of seniority is accrued. No seniority is accrued for foreign "extra good time" credits.

(p) An inmate in an extra good time earning status may not waive or refuse extra good time credits.

(q) Once extra good time is awarded, it becomes vested and may not be forfeited or withheld or retroactively terminated or disallowed.

PART 527—TRANSFERS

Subpart A [Reserved]

Subpart B—Military and Coast Guard Inmates

Sec.
527.10 Purpose and scope.

Authority: 10 U.S.C. 858; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 4201–4218, 28 U.S.C. 509; 28 CFR 0.95–0.99.

Subpart A [Reserved]

Subpart B—Military and Coast Guard Inmates

§ 527.10 Purpose and scope.

(a) The Bureau of Prisons will accept a military or Coast Guard inmate recommended for transfer to an institution if, after examination of all available information, the Bureau of Prisons can provide appropriate resources for the inmate's needs.

(b) Military or Coast Guard inmates confined in Bureau of Prisons institutions are subject to the same discipline and treatment as other inmates in those institutions (See 10 U.S.C. 858).

(c) The Bureau of Prisons will accept the sentence computation so provided by the military or Coast Guard authorities with the exception that the Bureau of Prisons shall release such inmates, if not paroled, under the provisions of 18 USC 4164 provided they have accrued good time deductions in excess of 180 days. Staff shall refer to the appropriate military or Coast Guard authorities for resolution suspected sentence computation errors or discrepancies, or challenges to the sentence computation by the inmate or his representative or both.

(d) Military and Coast Guard inmates are eligible for clemency consideration and the Bureau of Prisons will honor such clemency actions as issued by military or Coast Guard authorities.

4. Subchapter C is amended as follows:

A. In part 540, Subparts E and I are added, and Subparts C, D, F, G and H are reserved.

B. Parts 544, 547, 548, 549, 550 and 551 are added.

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

Subpart A

* * * * *

Subpart B

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Subpart C-D [Reserved]

Subpart E—Contact With News Media

Sec.
540.60 Purpose and scope.
540.61 Authorization.
540.62 Institutional visits.
540.63 Personal interviews.
540.64 Press pools.
540.65 Release of information.

Subpart F-H [Reserved]

Subpart I—Telephone Regulations for Inmates

540.100 Purpose and scope.
540.101 Monitoring of inmate telephone calls.
540.102 Inmate telephone calls to attorneys.
540.103 Responsibility for inmate misuse of telephones.
540.104 Expenses of inmate telephone use.
540.105 Telephone calls for inmates in admission, holdover, or segregation status.

Authority: 5 U.S.C. 551, 552a; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subparts C-D [Reserved]

Subpart E—Contact With News Media

§ 540.60 Purpose and scope.

The Bureau of Prisons recognizes the desirability of establishing a policy that affords the public information about its operations via the news media. Representatives of the news media (see § 540.2) may visit institutions for the purpose of preparing reports about the institution, programs, and activities. It is not the intent of this rule to provide publicity for an inmate or special privileges for the news media, but rather to insure a better informed public. The Bureau of Prisons also has a responsibility to protect the privacy and other rights of inmates and members of the staff. Therefore, an interview in an institution must be regulated to insure the orderly and safe operation of the institution.

§ 540.61 Authorization.

(a) A news media representative who desires to make a visit or conduct an interview at an institution must make application in writing to the Warden, indicating that he or she is familiar with the rules and regulations of the institution and agrees to comply with them.

(b) As a condition of authorizing interviews and making facilities available to conduct an interview, the news media representative shall recognize a professional responsibility to make reasonable attempts to verify

any allegations regarding an inmate, staff member or institution.

(c) A representative of the news media is requested to provide the Bureau of Prisons an opportunity to respond to any allegation, which might be published or broadcast prior to distribution.

(d) A representative of the news media shall collect information only from the primary source. A representative of the news media may not obtain and use personal information from one inmate about another inmate who refuses to be interviewed.

(e) The Warden may be contacted concerning discussions or comments regarding applicability of any rule or order.

(f) Failure to adhere to the standards of conduct set forth by this rule for the news media representative constitutes grounds for denying that news media representative, or the news organization which he or she represents, permission to conduct an interview.

(g) Any questions as to the meaning or application of this subpart are resolved by the Director of the Bureau of Prisons.

§ 540.62 Institutional visits.

(a) A media representative shall make advance appointments for visits.

(b) When media representatives visit the institutions, photographs of programs and activities may be taken, and media representatives may meet with groups of inmates engaged in authorized programs and activities. An inmate has the right not to be photographed and not to have his or her voice recorded by the media. A visiting representative of the media is required to obtain written permission from an inmate before photographing or recording the voice of an inmate participating in authorized programs and activities.

(c) The Warden may suspend all media visits during an institutional emergency and for a reasonable time after the emergency.

(d) An inmate currently confined in an institution may not be employed or act as a reporter or publish under a byline.

(e) Interviews by reporters and others not included in § 540.2 may be permitted only by special arrangement and with approval of the Warden.

§ 540.63 Personal interviews.

(a) An inmate may not receive compensation or anything of value for interviews with the news media.

(b) Either an inmate or a representative of the news media may initiate a request for a personal interview at an institution.

(c) Visits by the news media to conduct personal interviews are subject to the same conditions stated in § 540.62. A media representative shall make a request for personal interview within a reasonable time prior to the personal interview.

(d) Staff shall notify an inmate of each interview request, and shall, as a prerequisite, obtain from the inmate written consent for the interview prior to the interview taking place. The written consent or denial becomes part of the inmate's central file.

(e) As a prerequisite to granting the interview, an inmate must authorize the institutional staff to respond to comments made in the interview and to release information to the news media relative to the inmate's comments.

(f) The Warden shall normally approve or disapprove an interview request within 24 to 48 hours of the request.

(g) The Warden shall document any disapproval. A request for interview may be denied for any of the following reasons.

(1) The news media representative, or the news organization which he or she represents, does not agree to the conditions established by this subpart or has, in the past, failed to abide by the required conditions.

(2) The inmate is physically or mentally unable to participate. This must be supported by a medical officer's statement (a psychologist may be used to verify mental incapacity) to be placed in the inmate's record, substantiating the reason for disapproval.

(3) The inmate is a juevnile (under age 18) and written consent has not been obtained from the inmate's parent or guardian. If the juvenile inmate's parents or guardians are not known or their addresses are not known, the Warden of the institution shall notify the representative of the news media of the inmate's status as a juvenile, and shall then consider the request.

(4) The interview, in the opinion of the Warden, would endanger the health or safety of the interviewer, or would probably cause serious unrest or disturb the good order of the institution.

(5) The inmate is involved in a pending court action and the court having jurisdiction has issued an order forbidding such interviews.

(6) In the case of unconvicted persons (including competency commitments under 18 USC 4244 and 4246) held in federal institutions, interviews are not authorized until there is clearance with the court having jurisdiction, ordinarily through the U.S. Attorney's Office.

(7) The inmate is a "protection" case and revelation of his or her whereabouts would endanger the inmate's safety.

(h) Interviews are normally held in the institution visiting room during normal weekday business hours. The Warden may:

(1) Determine that another location is more suitable for conducting the interview;

(2) Limit interview time for the entire institution if the Warden determines that the interviews are imposing a serious drain on staff or use of the facilities;

(3) Limit to one one-hour interview per month for an inmate in segregation, restricted, holdover, control unit, or hospital status if required by special security, custodial, or supervisory needs; and

(4) Limit the amount of audio, video, and film equipment or number of media personnel entering the institution if the Warden determines that the requested equipment or personnel would create a disruption within the institution.

(i) In conjunction with the personal interview, if the member of the media wishes to tour the institution, he or she must comply with the provisions of § 540.61.

(j) Interviews are not subject to auditory supervision.

§ 540.64 Press pools.

(a) The Warden may establish a press pool whenever he or she determines that the frequency of requests for interviews and visits reaches a volume that warrants limitations.

(b) Whenever the Warden establishes a press pool, the Warden shall notify all news media representatives who have requested interviews or visits that have not been conducted. Selected representatives are admitted to the institution to conduct the interviews under the specific guidelines established by the Warden.

(c) All members of the press pool are selected by their peers and consist of not more than one representative from each of the following groups:

(1) The national and international news services;

(2) The television and radio networks and outlets;

(3) The news magazines and newspapers; and

(4) All media in the local community where the institution is located. If no interest has been expressed by one or more of these groups, no representative from such group need be selected.

(d) All news material generated by such a press pool is made available to

all media without right of first publication or broadcast.

§ 540.65 Release of information.

(a) The Warden shall promptly make announcements stating the facts of unusual, newsworthy incidents to local news media. Examples are deaths, inside escapes, and institution emergencies.

(b) The Warden shall provide information about an inmate that is a matter of public record to the representatives of the media upon request. The information is limited to the inmate's:

(1) Name;

(2) Register number;

(3) Place of incarceration;

(4) Age;

(5) Race;

(6) Conviction and sentencing data: this includes the offense(s) for which convicted, the court where convicted, the date of sentencing, the length of sentence(s), the amount of good time earned, the parole eligibility date and parole release (presumptive or effective) date, and the date of expiration of sentence, and includes previous Federal, state, and local convictions;

(7) Past movement via transfers or writs;

(8) General institutional assignments.

(c) Information in paragraphs (b)(1) through (8) of this section may not be released if confidential for protection cases.

(d) A request for additional information concerning an inmate by a representative of the news media is referred to the Public Information Officer, Central Office, Washington, D.C.

(e) The Public Information Officer, Central Office, Washington, D.C. shall release all announcements related to:

(1) Bureau of Prisons policy;

(2) Changes in an institutional mission;

(3) Type of inmate population; or

(4) Changes in executive personnel.

Subparts F-H [Reserved]

Subpart I—Telephone Regulations for Inmates

§ 540.100 Purpose and scope.

An inmate may call a person of his choice outside the institution on a telephone provided for that purpose. Inmate telephone use is subject to limitations and restrictions which the Warden determines are necessary to insure the security, good order, and discipline of the institution and to protect the public. The Warden shall establish procedures and facilities for inmate telephone use. The Warden shall permit an inmate who has not been restricted from telephone use under § 540.103 to make at least one telephone call each three months. Ordinarily, an inmate is allowed at least three minutes for each call.

§ 540.101 Monitoring of inmate telephone calls.

The Warden may establish procedures that enable monitoring of telephone conversations on any telephone located within the institution, said monitoring to be done to preserve the security and orderly management of the institution and to protect the public. The Warden must provide notice to the inmate of the potential for monitoring where it exists. Staff may not monitor an inmate's properly placed call to an attorney. The Warden shall notify an inmate of the proper procedures to have an unmonitored telephone conversation with an attorney.

§ 540.102 Inmate telephone calls to attorneys.

The Warden may not apply frequency limitations on inmate telephone calls to attorneys when the inmate demonstrates that communication with attorneys by correspondence, visiting, or normal telephone use is not adequate.

§ 540.103 Responsibility for inmate misuse of telephones.

The inmate is responsible for any misuse of the telephone. The Warden shall refer incidents of unlawful inmate telephone use to law enforcement authorities. The Warden shall advise an inmate that violation of the institution's telephone regulations may result in institutional disciplinary action (See Part 541, Subpart B).

§ 540.104 Expenses of inmate telephone use.

An inmate is responsible for the expenses of inmate telephone use except that the Warden may direct the government to bear the expense of inmate telephone use under compelling circumstances such as when an inmate has lost contact with his family or has a family emergency. Another example is where the inmate experiences a lack of visits over an extended period of time. This is particularly true where there are no financial resources available either from the inmate or his family.

§ 540.105 Telephone calls for inmates in admission, holdover, or segregation status.

The Warden shall establish procedures for allowing inmates in admission, holdover, or segregation status to make phone calls as provided in § 540.100. Staff may not withhold phone privileges as a disciplinary measure except where the infraction for which disciplinary action is taken involves abuse, or a clear potential for abuse, of phone privileges.

PART 544—EDUCATION

Subpart A-B [Reserved]

Subpart C—Postsecondary Education Programs for Inmates

Sec.

544.20 Purpose and scope.
544.21 Procedures.

Subpart D-E [Reserved]

Subpart F—Apprentice Training in Institutions

544.50 Purpose and scope.

Subpart G—Education Program Certificates

544.60 Purpose and scope.
544.61 Procedures.

Subpart H—Optional Programming

544.70 Purpose and scope.
544.71 Description.
544.72 Procedures.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A-B [Reserved]

Subpart C—Postsecondary Education Programs for Inmates

§ 544.20 Purpose and scope.

The Bureau of Prisons encourages an interested inmate's enrollment in college-level programs whenever staff recommends such enrollment to meet a correctional goal. The Warden shall establish procedures for implementation of college-level programs. The term "college-level programs" as used in this rule shall include courses of study provided by junior or community colleges, four-year colleges and universities, and postsecondary vocational or technical schools.

§ 544.21 Procedures.

(a) When an inmate expresses interest in college-level work and staff agrees it is an appropriate program goal, staff shall assist the inmate to explore possible sources of tuition support.

(b) The institution may, as resources permit, pay up to 50 percent of the cost of college-level courses and related expenses for an inmate when: (1) Staff determines participation to be an appropriate component of the inmate's program; and (2) The inmate lacks personal and tuition support resources to pay the total cost.

(c) The institution may, as resources permit, pay total costs of college-level courses and related expenses for an inmate when: (1) No other sources of support are available; and (2) Participation is a necessary component of an inmate's correctional program.

(d) Staff may apply these financial arrangements to the following: (1) Institutional and community-based programs; (2) Correspondence programs offered by junior or community colleges; (3) Four-year colleges and universities; and (4) Postsecondary vocational or technical schools.

Subpart D-E [Reserved]

Subpart F—Apprentice Training in Institutions

§ 544.50 Purpose and scope.

The Bureau of Prisons provides an inmate the opportunity to participate in apprentice training programs to prepare the inmate for career employment in various trades. The Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor, through its Regional, State and area representatives, makes BAT personnel available to Bureau of Prisons educational staff for the development of registered apprenticeship training programs. The Warden shall determine the feasibility of establishing an apprenticeship system in an institution in accordance with BAT policy.

Subpart G—Education Program Certificates

§ 544.60 Purpose and scope.

The Bureau of Prisons encourages certification when an inmate completes an education program. The Warden shall establish a system in the institution's education department for issuing certificates.

§ 544.61 Procedures.

(a) Staff shall issue a certificate when it: (1) Contributes to an inmate's future plans in such a way that it validates the inmate's education and training;

(2) Supports the inmate's chances of securing employment;

(3) Improves the inmate's acceptance for advanced education; or

(4) Enhances the inmate's opportunity for success in any other activity the inmate chooses to pursue.

(b) Staff shall approve and issue a certificate that fits one or a combination of the following categories: (1) Accredited certificates—High school diplomas and vocational training certificates approved or issued through local school districts, state departments of education, or other recognized accrediting educational organizations;

(2) Postsecondary certificates—Postsecondary degrees or course certificates approved or issued through a sponsoring accredited educational institution;

(3) General Education Development tests—Programs sponsored by the American Council on Education;

(4) Private certificates—Outside agencies other than those stated in paragraph (b)(1) of this section;

(5) Institutional certificates—Approved general education, occupational training, recreation and social education certificates, issued to an inmate who completes a program, and when the institution cannot provide a certificate as provided in paragraph (b)(1) and (4) of this section; or

(6) Transcript—Issued to an inmate who completes general education programs, formal vocational training, on-the-job and apprentice training and work assignments, and, upon request of or with consent of the inmate, to schools and colleges, business and industry and other agencies when needed and requested for assistance to inmates who are engaged in advancing or improving their social and economic status.

Subpart H—Optional Programming

§ 544.70 Purpose and scope.

The Bureau of Prisons shall afford each inmate the opportunity for constructive use of time. An inmate shall be able to choose from quality programs which are made available, so as to increase the success of post-release adjustment.

§ 544.71 Description.

Optional Programming: After a discussion with the inmate, staff shall place the inmate in an appropriate educational, vocational training or industrial program for a specified period not to exceed 90 days. At the end of this period, the inmate shall meet again with staff and may "opt out" of the program without negative consequences. If an inmate "opts out" of an educational, vocational training, or industrial program, the inmate will be assigned to work on another activity.

§ 544.72 Procedures.

(a) Staff of each institution shall develop and make known the criteria of eligibility and acceptance for each available program.

(b) Staff of each institution shall establish local policy to provide: (1) Procedure for placing an inmate in an educational, vocational training, or industrial program; (2) The minimum stay in respective programs before an inmate may "opt out"; and (3) Procedure for "opting out" of a program.

PART 547—FOOD SERVICE

Subpart A [Reserved]

Subpart B—Religious Diet Requirements

Sec.

547.10 Purpose and scope.
547.11 Use of pork and pork derivatives in the preparation and seasoning of specific food items.
547.12 Kosher food eligibility.
547.13 Basic Kosher menu.

Authority: 5 USC 301; 18 USC 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 USC 509, 510; 28 CFR 0.95–0.99.

Subpart A [Reserved]

Subpart B—Religious Diet Requirements

§ 547.10 Purpose and scope.

The Bureau of Prisons extends the greatest amount of individual freedom to inmates in the selection of food items within the constraints of standard ration allowances, budget limitations, and consideration of the security and orderly running of the institution. Inmates who wish to observe religious dietary laws will be provided a diet sufficient to sustain them in good health without violating those dietary laws.

§ 547.11 Use of pork and pork derivatives in the preparation and seasoning of specific food items.

(a) In the preparation of 35-day cycle menus for administrative appraisal, staff shall identify with an asterisk all food items to be prepared or seasoned with pork or pork derivatives. Staff shall post the menus, with pork items identified, on menu boards in all dining rooms and shall inform the institution population of the meaning of the asterisk or other marking.

(b) In instances where the posted menu offers only one vegetable for a meal, pork or pork derivatives may not be used as a seasoning agent for that vegetable. If more than one vegetable is offered, at least one will be pork free.

§ 547.12 Kosher food eligibility.

(a) A Jewish inmate who wishes to observe Jewish dietary laws shall sign a statement to that effect. The inmate must present this statement to the institution's chaplain and discuss it with him. Upon presentation of the statement the inmate is entitled to receive Kosher food as soon as practical. This entitlement continues as long as the inmate observes the dietary laws.

(b) If an inmate fails to observe the dietary laws, the Warden may remove the inmate from the Kosher food program. The inmate who is removed may appeal the removal through the Administrative Remedy Procedure.

§ 547.13 Basic Kosher menu.

(a) All food (except raw eggs, fruits and vegetables) to be provided to inmates observing the Jewish dietary laws shall be certified or deemed acceptable by the Kashruth Division of the Union of Orthodox Jewish Congregrations of America or any other Jewish agency deemed acceptable by the inmates at the local institution.

(b) Staff shall provide proper utensils for preparing, storing, serving and eating Kosher food.

(c) The Warden may assign an inmate entitled to Kosher food to the food service to facilitate the implementation of these regulations.

PART 548—RELIGIOUS PROGRAMS

Subpart A [Reserved]

Subpart B—Religious Beliefs and Practices

Sec.

548.10 Purpose and scope.
548.11 Procedures.
548.12 Diet.
548.13 Scheduling to observe religious holidays, services, meetings and activities.

Authority: 18 U.S.C. 4001, 4042; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A [Reserved]

Subpart B—Religious Beliefs and Practices.

§ 548.10 Purpose and scope.

(a) The Bureau of Prisons extends to an inmate the greatest amount of freedom of and opportunity for pursuing individual religious beliefs and practices as is consonant with the maintenance of security and good order of the institution.

(b) When it is considered necessary for security or good order of the institution, the Warden may limit attendance at or discontinue completely a religious activity, service, or meeting. The Warden may not restrict or allow the religious group itself to restrict attendance at or participation in a religious activity, service, or meeting on the basis of race, color, nationality, or creed.

(c) All religious services, activities, and meetings must comply with institution schedules and guidelines.

§ 548.11 Procedures.

(a) Institution Chaplains are available to assist in the expansion of an inmate's knowledge and understanding of and commitment to the beliefs and principles of the inmate's religion. Upon request, the Chaplain is available to provide pastoral care, counseling, religious education, and religious instruction.

(b) Institution Chaplains shall schedule religious services of worship, activities, and meetings. All religious services, meetings, and activities are coordinated by the Chaplain, under general supervision of the Warden. If an institution has no staff Chaplain, a staff member designated by the Warden shall exercise the authority of the Chaplain.

(c) Institution staff may contract with clergy or representatives of faith groups in the community and may also accept the services of volunteers to help inmates pursue their religious beliefs.

(d) No one may disparage the religious beliefs of an inmate, nor coerce or deliberately seek to persuade an inmate to change religious affiliation.

(e) An inmate may designate any or no religious preference. An inmate may change this designation at any time.

(f) Attendance at all religious worship services, activities, and meetings is voluntary.

(g) An inmate may wear, during a religious service, appropriate personal liturgical apparel. An inmate may retain this apparel within the context of maintaining security, safety, and orderly conditions in the institution and it may be worn or used only during scheduled religious services or in private devotional observances.

(h) Within the context of maintaining security, safety, and orderly conditions in the institution, an inmate may wear within the institution religious headgear such as yarmulkes and kufis as prescribed by the respective faith groups.

(i) Each inmate who wishes to have religious books, publications, or materials must comply with the general rules of the institution regarding the retention and accumulation of personal property. Literature, publications, or books about religion or religious teaching are permitted in accordance with the procedures governing incoming publications.

§ 548.12 Diet.

(a) An inmate may abstain from eating food items served to the general inmate population which are prohibited by the inmate's religion (See Part 547, Subpart B).

(b) As a once-a-year accommodation, staff may make arrangements with an inmate religious group to have a special meal which meets liturgical standards of the religion. In most situations, all or most food items to be served are from the main serving line. If the inmates representing the organization request, based upon documented necessity, staff may purchase from a food supplier specially prepared food items which meet religious requirements. Funds for the purchase of special food items are provided from:

(1) Funds from Chaplain's budget;

(2) Inmates' commissary accounts; or

(3) funds provided by the community organization.

548.13 Scheduling to observe religious holidays, services, meetings, and activities.

(a) The Warden shall endeavor to facilitate the observance of important religious holidays or celebrations that do not coincide with legal holidays, and to facilitate that observance in accordance with specific requirements of a faith group, e.g., fasting, worship, diet, or work proscription. The inmate must initiate a request for specific observance of a religious holiday.

(b) The Warden may relieve an inmate from a work assignment if a religious activity, service, or meeting is also scheduled at that time. The Warden may schedule the inmate to make up work at another time. The Warden shall take into consideration the availability of staff and space within the institution when scheduling religious services, activities or meetings.

(c) The chapel may be open during the noon meal hour for prayer and worship.

PART 549—MEDICAL SERVICES

Subpart A-C [Reserved]

Subpart D—Plastic Surgery and Identification Records

Sec.

549.50 Purpose and scope.
549.51 Procedures.

Authority: 18 U.S.C. 4001, 4005, 4042, 4081, 4082, 5006–5024, 5039; 28 CFR 0.95–0.99.

Subpart A-C [Reserved]

Subpart D—Plastic Surgery and Identification Records

§ 549.50 Purpose and scope.

The correction of obvious disfigurements on any part of the body, particularly facial disfigurements or functional impairments, can be a significant factor in improving an inmate's self-image, emotional stability, and social adjustment. The result may well affect institutional adjustment and particularly post-release adjustment and

employability. Therefore, such a procedure can be an integral part of an inmate's overall correctional program. The Bureau of Prisons provides, within available resources, corrective and reconstructive surgery for an inmate to correct obvious disfigurement. The Warden shall establish criteria for the selection of an inmate for plastic surgery procedures which may alter an inmate's physical appearance or otherwise affect identification.

§ 549.51 Procedures.

(a) The inmate's written request for plastic surgery may be approved by the Warden with approval by the appropriate medical and other institutional staff. Plastic surgery may be performed only by qualified medical persons and only with the written informed consent of the inmate involved.

(b) Staff shall approve an inmate for plastic surgery when:

(1) It is indicated for medical reasons; or

(2) It is believed that such surgery will assist the inmate's institutional or particularly his post-release adjustment.

(c) Staff shall consider for correction repulsive disfigurements and nude, lewd, or lascivious tattoos.

(d) Staff is not restricted to those areas of paragraph (c) of this section when other sound medical or psychological and social reasons are identified.

(e) Staff shall photograph and make written descriptions of an inmate's features that are to be altered before and after surgery. Any operation which changes the identification of the inmate in any way is made a part of his record and shall be reported to the FBI.

PART 550—DRUG PROGRAMS

Subpart A-C [Reserved]

Subpart D—Urine Surveillance To Detect and Deter Illegal Drug Use

Sec.
550.30 Purpose and scope.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 4251–4255, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A-C [Reserved]

Subpart D—Urine Surveillance To Detect and Deter Illegal Drug Use

§ 550.30 Purpose and scope.

(a) The Warden shall establish programs of urine testing for drug use, to monitor specific groups or individual inmates who are considered as high risk for drug use, such as those involved in community activities, those with a known history of drug use, and those inmates specifically suspected of drug use. Testing shall be performed with frequency determined by the Warden on at least 50 percent of those inmates who are involved in community activities. In addition, staff shall randomly sample each institution's inmate population during each month to test for drug use.

(b) Institution staff shall have each positive urine test result validated to substantiate the positive result. If the inmate's urine test shows a positive result for the presence of drugs which the inmate cannot justify, staff shall file a disciplinary report.

(c) If an inmate is unwilling to provide a urine sample within two hours of a request for it, staff may file a disciplinary report. To eliminate the possibility of diluted or adulterated samples, staff shall keep the inmate under direct supervision during this two-hour period.

PART 551—MISCELLANEOUS

Subpart A—Grooming

Sec.
551.1 Policy.
551.2 Mustaches and beards.
551.3 Hairpieces.
551.4 Hair length.
551.5 Restrictions and exceptions.
551.6 Bathing and clothing.

Subpart B [Reserved]

Subpart C—Birth Control, Pregnancy, Child Placement, and Abortion

551.20 Purpose and scope.
551.21 Birth control.
551.22 Pregnancy.
551.23 Abortion.
551.24 Child placement.

Subpart D—Inmate Organizations

551.30 Purpose and scope.
551.31 Approval.
551.32 Dues.
551.33 Meetings.
551.34 Fund raising projects.
551.35 Special activities.
551.36 Accountability for funds.

Subpart E—Inmate Contributions

551.50 Policy.

Subpart F [Reserved]

Subpart G—Administering of Polygraph Test

551.70 Purpose and scope.
551.71 Procedures.

Subpart H—Inmate Manuscripts

551.80 Definition.
551.81 Manuscript preparation.
551.82 Mailing inmate manuscripts.
551.83 Limitations on an inmate's accumulation of manuscript material.

Authority: 5 USC 301; 18 USC 4001, 4042, 4081, 4082, 4161–4166, 5006–5024, 5039; 28 USC 509, 510; 28 CFR 0.95–0.99.

Subpart A—Grooming

§ 551.1 Policy.

The Bureau of Prisons permits an inmate to select the hair style of personal choice, and expects personal cleanliness and dress in keeping with standards of good grooming and the security, good order, and discipline of the institution.

§ 551.2 Mustaches and beards.

An inmate may wear a mustache or beard or both. The Warden may require an inmate with a beard to wear a beard covering when working in food service or where a beard could result in increased likelihood of work injury.

§ 551.3 Hairpieces.

(a) A female inmate may wear a wig or hairpiece.

(b) A male inmate may not wear an artificial hairpiece.

§551.4 Hair length.

(a) The Warden may not restrict hair length if the inmate keeps it neat and clean.

(b) The Warden shall require an inmate with long hair to wear a cap or hair net when working in food service or where long hair could result in increased likelihood of work injury.

§ 551.5 Restrictions and exceptions.

The Warden may impose restrictions or exceptions for documented medical reasons.

§ 551.6 Bathing and clothing.

Each inmate must observe the standards concerning bathing and clothing that exist in the institution as required by standards of § 551.1.

Subpart B [Reserved]

Subpart C—Birth Control, Pregnancy, Child Placement, and Abortion

§ 551.20 Purpose and scope.

The Bureau of Prisons provides an inmate with medical and social services related to birth control, pregnancy, child placement, and abortion. The Warden shall ensure compliance with the applicable law regarding these matters.

§ 551.21 Birth control.

Medical staff shall provide an inmate with advice and consultation about methods for birth control and, where medically appropriate, prescribe and provide methods for birth control.

§ 551.22 Pregnancy.

(a) The Warden shall ensure that each pregnant inmate is provided medical, case managment, and counseling services.

(b) In order to insure proper medical and social services, the inmate shall inform the institution medical staff as soon as she suspects she is pregnant.

(c) Medical staff shall arrange for the childbirth to take place at a hospital outside the institution.

§ 551.23 Abortion.

(a) The inmate has the responsibility for deciding to have an abortion or bear the child.

(b) The Warden shall provide medical, religious and social counseling to aid the inmate in making the decision to have an abortion or bear the child.

(c) An inmate shall sign a statement of responsibility for the decision to have an abortion or bear the child.

(d) At the inmate's request, medical staff shall arrange for the abortion to take place at a hospital or clinic outside the institution.

§ 551.24 Child placement.

(a) The Warden may not permit the inmate's new born child to return to the institution except in accordance with the Bureau of Prisons policy governing visiting.

(b) Child placement is the inmate's responsibility.

(c) The Warden shall provide opportunities for counseling by institution staff and community social agencies to aid the inmate with placement.

(d) The institution staff shall work closely with community agencies and persons to ensure the child is appropriately cared for. The staff shall give notice to the responsible community agency of the inmate's plan for her child. Child welfare workers may come to the institution in appropriate cases to interview and counsel an inmate.

Subpart D—Inmate Organizations

§ 551.30 Purpose and scope.

The Bureau of Prisons permits inmate organizations to function for recreational, social, civic, and benevolent purposes.

§ 551.31 Approval.

(a) A warden may approve an inmate organization when:

(1) The organization has a constitution and bylaws which include its purpose and operation and the duties and responsibilities of the officer(s); the Warden may amend the constitution and bylaws; and

(2) The organization does not operate in opposition to the security, good order, and discipline of the institution.

(b) Every inmate organization shall be coordinated by a staff sponsor whose duties are performed while in official duty status. Staff may volunteer off-duty time to work with inmate organizations.

§ 551.32 Dues.

The organization may not make payment of dues a requirement of membership for an inmate who lacks funds. The organization may not collect dues unless the Warden has approved the rate and method of collection.

§ 551.33 Meetings.

All meetings scheduled must be approved by the Warden and supervised by staff. The organization may not hold meetings at times which are competitive with scheduled inmate work and program activities.

§ 551.34 Fund raising projects.

All activities and projects sponsored by the organization require the Warden's approval. Inmates shall do most of the work in fund raising projects. The Warden may not approve a project that is competitive with the commissary nor one that creates work beyond the resources available to the institution.

§ 551.35 Special activities.

Banquets, community programs, charitable contributions, or the attendance of guests at institution organization meetings and activities require the Warden's approval. The Warden shall require guests to purchase a meal ticket when attending banquets where the government incurs the cost.

§ 551.36 Accountability for funds.

(a) The organization treasurer shall keep financial records to reflect:

(1) Income identified by source; and

(2) Expenditures with applicable receipts.

(b) The treasurer of the inmate organization shall prepare financial statements by April 20, July 20, October 20, and January 20 each year. The treasurer shall present the reports to the membership, the staff sponsor, and the Warden.

(c) The Warden shall require an audit of each inmate organization at least once a year.

(d) The Warden shall disband an inmate organization that fails to maintain suitable financial records, to furnish financial statements, or to complete the required annual audit.

(e) The inmate organization may not use its funds to compensate or to furnish gifts to staff or to finance the staff sponsor's activities.

Subpart E—Inmate Contributions

§ 551.50 Policy.

(a) An inmate may contribute to a candidate for election to a federal, state or local office, in a primary, general, or special election.

(b) An inmate may contribute to any international, national or local organization, including political parties, so long as the contribution does not violate any law or regulation.

Subpart F [Reserved]

Subpart G—Administering of Polygraph Test

§ 551.70 Purpose and scope.

The Bureau of Prisons cooperates with law enforcement officials and other authorized individuals in the performance of their duties by permitting them to administer polygraph tests to an inmate if the inmate consents to the testing.

§ 551.71 Procedures.

(a) The Warden may permit polygraph tests in connection with a State or Federal criminal felony investigation.

(b) The Warden may permit polygraph tests in connection with misdemeanor offenses, civil proceedings, or any other matters. This type of request, however, is generally disapproved, absent a federal court order for the test.

(c) The Warden may permit a polygraph test at the request of a defense counsel or other representative of the inmate. These requests are subject to the same standards and procedures applicable to testing by law enforcement officials.

(d) The Warden may deny any request for testing which may disrupt the security or good order of the institution.

(e) Upon written request to conduct a polygraph examination of an inmate, the Warden may approve the request if: (1) The validity of the request and of the examining agency can be confirmed; (2) The request complies with this section; and (3) The inmate gives written consent to the testing.

(f) If the request is approved, the Warden shall notify the requestor that he is responsible for meeting all state and local requirements in administering the test.

(g) The Bureau of Prisons maintains a record in the inmate's central file of the polygraph test indicating the inmate's

consent and the time and place of and the personnel involved in the testing.

Subpart H—Inmate Manuscripts

§ 551.80 Definition.

As used in this rule, "manuscript" means fiction, nonfiction, poetry, music and lyrics, drawings and cartoons, and other writings of a similar nature.

§ 551.81 Manuscript preparation.

An inmate may prepare a manuscript for private use or for publication while in custody without staff approval. The inmate may use only non-work time to prepare a manuscript.

§ 551.82 Mailing inmate manuscripts.

An inmate may mail a manuscript as general correspondence, in accordance with Part 540, Subpart B of this chapter. An inmate may not circulate his manuscript within the institution.

§ 551.83 Limitations on an inmate's accumulation of manuscript material.

The Warden may limit, for housekeeping, fire-prevention, or security reasons, the amount of accumulated inmate manuscript material.

5. Subchapter D is amended by the addition of Part 571 which reads as follows:

PART 571—RELEASE FROM CUSTODY

Subpart A-B [Reserved]

Subpart C—Release Gratuities

Sec.
571.20 Purpose and scope.
571.21 Procedures.
571.22 Release clothing.

Subpart D—Discharge of Inmates Under 18 USC 4163

571.30 Procedures.

Authority: 5 USC 301; 18 USC 4001, 4042, 4081, 4082, 4161–4166, 4201–4218, 5006–5024, 5031–5042; 28 USC 509, 510; 28 CFR 0.95–0.99.

Subpart A-B [Reserved]

Subpart C—Release Gratuities

§ 571.20 Purpose and scope.

When an inmate is released, it is the policy of the Bureau of Prisons that the inmate possess funds to care for himself in the community until the inmate begins to receive an income. 18 USC 4281 provides for a discretionary gratuity of up to $100 per inmate for this purpose.

§ 571.21 Procedures.

(a) An inmate is eligible for a gratuity as determined by the availability of personal and community resources. The Warden may give greater consideration to an inmate without funds or community resources.

(b) A federal prisoner boarded in a nonfederal facility is eligible for a release gratuity. The director of the nonfederal facility housing federal inmates or the community programs officer shall determine the amount of the release gratuity up to $100 for federal inmates housed in nonfederal facilities.

(c) The inmate transferred to a Federal Community Treatment Center may not receive a gratuity. The inmate may receive payment for travel expenses, including meals, en route to the Center.

(d) The inmate who is without personal funds may receive a gratuity when transferred to a contract halfway house. The amount shall enable the inmate to care for needs in transit and allow for the purchase of necessary personal items upon arrival.

(e) Staff shall provide the inmate released to a detainer with information on how to apply for a gratuity if released prior to expiration of the Federal sentence.

(f) The Warden shall insure that each alien released to immigration authorities has at least $20 cash. This provision does not apply to aliens serving 60 days or less in contract facilities.

§ 571.22 Release clothing.

(a) Staff shall provide work clothes at the time of release to the inmate who requests them. The nonavailability of work clothes may limit this practice.

(b) The institution staff shall provide the inmate transferred to a Community Treatment Center or Work Release with appropriate clothing for the time of year and the inmate's geographical destination.

Subpart D—Discharge of Inmates Under 18 USC 4163

§ 571.30 Procedures.

(a) Pursuant to 18 USC 4163, the Bureau of Prisons releases an inmate whose release date falls on a Saturday, Sunday, or holiday, on the preceding regular work day, unless it is necessary to detain the inmate for another jurisdiction seeking custody under a detainer or for any other reason which might indicate that the inmate should not be released until the inmate's normal release date.

(b) The number of days used under 18 USC 4163 may not be added to the number of days remaining to be served to release an inmate "as if . . . on parole" (18 USC 4164) who would otherwise have been released by expiration of sentence.

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BILLING CODE 4410-65-M

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28 CFR Parts 540, 541, and 543

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rules.

SUMMARY: This document contains the Bureau of prisons final rules on Incoming Publications, Control Unit Programs, and Inmate Legal Activities. These rules relate to the control, custody, care, treatment, and instruction of federal prison inmates. This document is intended to give the public notice of the rules in these areas, not just changes from prior policy.

DATE: Effective date: August 1, 1979.

ADDRESS: Send written comments to the Office of General Counsel, Bureau of Prisons, Room 910, 320 1st Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone, 202/724–3062.

SUPPLEMENTARY INFORMATION: On May 23, 1977, the Bureau of Prisons published its proposed rules (at 42 FR 26345 et seq.) on Inmate Legal Activities. On August 16, 1977, the Bureau of Prisons published its proposed rules (at 42 FR 41369) on control Unit Programs. On July 17, 1978, the Bureau of Prisons published its proposed rules (at 43 FR 30576) on Incoming Publications. At the time of each publication, interested persons were invited to submit their comments on the proposed rules.

Public comments were received on each of these rules. In addition, the Bureau of Prisons operation of Control Unit Programs was the subject of federal court review, in the case of *Bono* v *Saxbe* (450 F. Supp. 934, Eastern District of Illinois, 1978). Also subject to federal court review, in the case of *Bell* v *Wolfish*, decided by the Supreme Court on May 14, 1979, was the Bureau of Prisons "publisher only" rule as this relates to Incoming Publications.

On the basis of comments received, internal staff review, and, as applicable, federal court review, changes have been made in the proposed rules.

These changes are either of a minor nature, or their substance is generally less restrictive than the proposed rules, or their need has been confirmed by a federal court. Thus no republication for public comment prior to their adoption

is necessary. Members of the public may, of course, submit further comments concerning these rules by writing to the previously cited address. These comments will be considered, but will receive no formal response in the Federal Register.

Summary of Changes

I. Part 540—Subpart F—Incoming Publications

(1) § *540.70* The first sentence in § 540.70 is expanded to acknowledge that an inmate may subscribe to or receive publications without prior approval. Comments were received suggesting that the last sentence of proposed § 540.70 implies that brochures, flyers and catalogues are prohibited. This was not our intent and this section has been reworded in the final rule to encompass within the definition of publications those flyers, brochures and catalogues addressed to a specific inmate. The term "publication" was further clarified by specifying that it is a single issue of a magazine or newspaper.

Another comment expressed concern that the Bureau does not specify the procedures which determine whether an incoming publication is detrimental to the security, discipline, or good order of the institution. In our final rule, we have addressed this issue in two ways. First, proposed § 540.71(a), renumbered final § 540.70(b), is amended to indicate that the Warden may designate staff to review and where appropriate to approve incoming publications. The final rule further requires that only the Warden may reject a publication. Second, final § 540.71 has been amended to include examples which the Bureau of Prisons believes would clarify what constitutes a threat to the security, discipline, or good order of the institution or facilitate criminal activity. Accordingly, the term "might facilitate criminal activity" has been included in final § 540.70(a) as justification for exclusion of an incoming publication.

(2) § *540.71(a)* We received several comments objecting to the provision that publications must come directly to the institution from either the publisher or from a bookstore. The Bureau's final rule expands the proposed rule to allow hardcover publications to come directly to the institution from a book club. However, we believe there is a continuing need for this restriction insofar as it relates to hardcover publications. Contraband is difficult to detect in hardcover publications. However, we believe this danger does not exist to the same degree with softcover materials and therefore have amended proposed § 540.71(b), renumbered final § 540.71(a), to allow an inmate to receive softcover material from any source.

(3) § *540.71(b)* Proposed § 540.71(c), renumbered final § 540.71(b), is amended to include examples which may create a threat to the security, good order, or discipline of the institution or which may facilitate criminal activity. This section further specifies that the Warden may not reject a publication solely because of its religious, philosophical, political, social or sexual content or because its content is unpopular or repugnant. As a result of this action, proposed § 540.71(d), is deleted.

(4) § *540.71(c)* Comments were received questioning how we could ban future issues of a subscription publication without examination of the content. Consistent and repeated publication of the same content can lead, at some point, to a presumption of further publication of the same kind. However, the Bureau agrees that rejection of a publication should preferably be based on a review of the individual issue. Accordingly, proposed § 540.71(e), which authorized the exlusion of a subscription publication, has been deleted. Proposed § 540.71(f), which becomes final § 540.71(c), is reworded to specify that the Warden shall review the individual publication prior to the rejection of that publication.

(5) § *540.71(d)* Comments on proposed § 540.71(g) suggested establishment of a specific time limit for informing an inmate that his incoming publication has been rejected and the reasons for this action. While we agree that the inmate should be promptly notified of the rejection, we do not consider it feasible to establish a specific time frame in which this must occur. There are too many variables which may affect this process. We do agree that notification should be given without undue delay and proposed § 540.71(g) which becomes final § 540.71(d) has been reworded to require the inmate be "promptly" advised.

Another comment objected to the fact that the rule does not provide an inmate with opportunity to review objectionable material. We agree in principle that the inmate should be permitted to review rejected material for purposes of considering appeal. In many cases, however, the review itself is objectionable. Final § 540.71(d) allows review unless the review is determined to provide an inmate with information which is deemed to pose a threat or detriment to the security, good order, or discipline of the institution, or to encourage or instruct in criminal activity.

Proposed § 540.71(h), which relates to filing an appeal through the Administrative Remedy Procedure and to obtaining a further review of a subscription publication after a six month lapse, has been deleted. Reference to the Administrative Remedy Procedure is now incorporated in final § 540.71(d), and since the Bureau of Prisons no longer excludes subscription publications, the remainder of proposed subsection (h) is superfluous.

(6) § *540.71(e)* In response to a comment and as a result of other revisions, proposed § 540.71(i), which becomes final § 540.71(e), is reworded to allow either the publisher or sender of an unacceptable publication to obtain an independent review of the rejection. A further modification instructs the Warden to retain the unacceptable material at the institution for review where an inmate indicates an intent to file an appeal under the Administrative Remedy Procedure. Where appeal is not indicated, or where the rejection is sustained, the unacceptable material is returned to the publisher or sender. A final change to this subsection deletes the phrase "discontinue mailing the subscription" as subscription publications may no longer be excluded.

(7) § *540.71(f)* In response to comment, proposed § 540.71(j), which becomes final § 540.71(f), is amended by deletion of security as a reason for limiting the number of publications an inmate may receive or retain in his quarters. As now stated, such limitations may be set for fire, sanitation or housekeeping reasons. The rule was further amended to allow limitations to be set on the volume of the publications, in recognition that publications vary greatly in their dimensions.

Other comments suggested that an inmate be allowed to place in the prison library material which exceeds the local limits. Two comments called for exclusion of legal materials from these limitations.

The Bureau of Prisons permits an inmate to retain legal materials necessary for legal actions, including legal reference materials such as books which are not available in the institution library. However, this material may not be exluded from those limitations on incoming publications as may be necessary for fire, safety, sanitation or housekeeping reasons. Regardless of the nature of the material, if an accumulation of material will pose one of these hazards, this accumulation must be restricted. An effort may be made to

provide additional storage for excess legal materials. Accordingly, we have included in new § 540.71(f) a reference to the Bureau policy on personal property of inmates, which authorizes staff to provide an inmate additional storage space in connection with legal activities on a temporary, short-term basis.

(8) Proposed § 540.71(k) which dealt with completion of a subscription when an inmate is transferred and the inmate's responsibility to notify the publisher of his new address has been deleted. Subscriptions are no longer excluded. An inmate's responsibility to notify the publisher of the inmate's new address is not a rule which can be imposed by the Bureau of Prisons but is a requirement better left to the subscriber of the publication.

II. Part 541—Subpart D—Control Unit Programs

(1) § *541.40* Proposed § 541.50 is renumbered final § 541.40. The final rule significantly amends the proposed rule. It now requires that the Bureau of Prisons provide written criteria for the referral, placement, review, and release of an inmate in a control unit progam. The final rule states that an inmate housed in such a program is to have the opportunity to participate in programs and activities, restricted only as necessary to protect the security, good order, or discipline of the institution. As amended, the final rule establishes a framework to provide hearing procedures with respect to placement within a control unit program, and to provide information to an inmate of his or her status while housed within the unit.

(2) § *541.41* Proposed § 541.51 is deleted. Proposed § 541.52 is renumbered final § 541.41 and is retitled "Institutional Referral". The final rule amends the proposed rule and identifies factors which the Warden is to consider in a referral to the Regional Director for an inmate's placement within a control unit program. Criteria contained in proposed § 541.52 is either clarified or, as in the instance of subsection (a)(2), is deleted. Additional factors for consideration are also listed in the final rule.

(3) § *541.42* This section is new. It establishes a Hearing Administrator to initially determine the appropriateness of an inmate's placement in a control unit program. Qualifications required for a person to serve as a Hearing Administrator are identified within this section.

(4) § *541.43* This section is new. It describes the hearing which is provided to an inmate recommended for a control unit placement. The final rule requires that the inmate receive advance written notice and a copy of the rule on control unit programs at least 24 hours prior to the hearing. The final rule identifies that information which is to be contained in the written notice. This section also discusses the inmate's rights at the hearing (right to be present, to staff representation, to present documentary evidence, to present witnesses), as well as procedures for staff to follow where an inmate is illiterate.

(5) § *541.44* This section is new. It requires that the Hearing Administrator prepare a written decision as to whether a control unit placement is warranted. A summary of the hearing and of the information supporting the decision is also required. The final rule states the inmate is to receive a copy of the report, unless knowledge of it would pose a threat to individual safety or institutional security, in which case that limited information may be withheld. The final rule also requires the inmate be advised that the decision of the Hearing Administrator is forwarded for review of the Executive Panel, and that the inmate may file an appeal of the Hearing Administrator's decision with this Panel.

(6) § *541.45* Final § 541.45 is new. It identifies those persons who comprise the Executive Panel and describes this Panel's role in relation to the referral for control unit placement. An inmate's right to appeal a decision of the Executive Panel is discussed within this section.

(7) § *541.46* Proposed § 541.53 is renumbered final § 541.46 and is retitled "Programs and Services". The final rule amends and expands the proposed rule. The contents of proposed § 541.53(a) are deleted as levels no longer are required within the operation of a control unit program. The final rule significantly expands proposed § 541.53(b). Proposed subsections on education, legal activities, work, visiting, correspondence, religion, recreation, and commissary within the control unit are discussed in greater detail within the final rule. Proposed § 541.53(b)(3), counseling, is deleted, with its concept incorporated into the new final rule subsections on casemanagement services, counselor services, and mental health services. The scope of proposed § 541.53(b)(9), leisure activities, is incorporated into the final rule on recreation (§ 541.46(e)). The rule on recreation now requires that an inmate receive a minimum of seven hours (as opposed to two hours in the proposed rule) weekly recreation and exercise out of the cell. Additional subsections incorporated into final § 541.46 include industries, medical services, and food service and personal hygiene.

(8) § *541.467* Final § 541.47 is new and describes Bureau requirements when an inmate is admitted to a control unit program. This final rule includes requirements that an inmate be notified of the expected duration of his or her confinement within the unit, a summary of the unit's rules and procedures, expectations concerning the inmate's involvement in control unit activities, and criteria for release from the unit.

(9) § *541.48* Proposed § 541.54 is renumbered final § 541.48 and is retitled "Review of Control Unit Placement". The final rule amends the proposed rule in several ways. A cross reference within the proposed rule to Part 524 is deleted. The final rule requires that unit staff evaluate informally and daily an inmate's adjustment within the control unit. The final rule retains the provision contained in the proposed rule that an inmate be formally reviewed at least once every 30 days (as opposed to once every month in the proposed rule language) and identifies those persons who normally comprise the control unit team. The final rule identifies those factors which are to be considered in this review process. An expansion of the proposed rule is contained in those provisions that (a) establish the Warden as the review authority for unit team actions, and (b) recognizes an inmate's rights to appeal the decision of the Warden to the Executive Panel. Final § 541.48(d) is a new provision and requires that, at least once every 60–90 days, the Executive Panel review the status of an inmate housed in a control unit program. The final rule specifies that ordinarily an inmate is interviewed in person at the Panel review. An inmate's right to appeal a decision of the Executive Panel is discussed within this section.

(10) § *541.49* Proposed § 541.55 is renumbered final § 541.49 and is amended to state that either the unit team, with approval of the Warden, or the Executive Panel may release an inmate from a control unit program. Deleted from the proposed rule is the language which authorized the Assistant Director, Correctional Programs Division to release an inmate from a control unit program. The final rule identifies factors to be considered in the evaluation of an inmate's readiness for release from a control unit program.

III. Part 543—Subpart B—Legal Matters

(1) § *543.10* Proposed § 543.11 is renumbered final § 543.10. The final rule

contains a provision that law libraries are not provided at Federal Community Treatment Centers nor at the Federal Detention Center, El Paso, Texas, as these facilities have presented no demand or need for such materials.

(2) § *543.11* Proposed § 543.12 is renumbered final § 543.11. The final rule contains a new subsection (b) which requires the Warden ensure that the inmate law libraries are kept intact and that lost or damaged materials are replaced. A complete list of materials required in each law library will not be included in the rules due to the combersome and changing nature of such a list. However, a list is provided below of the materials which we expect will be provided in each institution's main law library. Many institutions have other, smaller "basic" law libraries in their segregation or camp units. These libraries are similarly required to be kept intact and updated. A list of materials for "basic" law libraries is also included below. Proposed subsection (b) is relettered final subsection (c). Proposed subsection (c) is relettered final subsection (d) and is amended by stating that an inmate may receive legal documents from his attorney through the mail or incident to visiting. It further provides for these documents to be inspected for contraband but states that, if properly presented, the documents may not be read. This subsection is also amended to allow inmates to receive hardcover law books from bookstores and softcover materials (for example, paperback books, newspapers, magazines) from any source. Proposed subsections (d) and (e) are relettered final subsections (e) and (f). Proposed subsection (f) becomes final subsection (g) and is amended to indicate that an inmate has no right to have legal documents duplicated by staff when the inmate can accomplish the same by use of carbon paper. This provision was added in consideration of the limited availability of duplication equipment in some institutions. Proposed subsections (g) and (h) are relettered final subsections (h) and (i). Proposed subsection (i) becomes final subsection (j) and is amended by deleting the qualifying phrases "as far as practical" and "equal to inmates in the general population". Our intent is to ensure that an inmate has access to legal materials and an opportunity to prepare legal documents. New subsection (j) provides for an inmate to have a reasonable amount of legal material while in detention or segregation.

A. "Basic" Law Library Materials

1. *Reporter:* "Decisions of the United States Supreme Court" (summaries of decisions).

2. *Statutes:* (a) United States Code Annotated.

(1) Title 5, Sections 1–5100 (includes Freedom of Information and Privacy Acts).

(2) Title 18—Complete (Criminal Code and Criminal Procedures).

(3) Title 21—Complete (Food and Drugs).

(4) Title 26, Sections 4001 to End (Narcotic Offenses).

(5) Title 28—Volumes containing Rules of the Supreme Court of the United States; United States Court of Appeals Rules and Federal Rules of Appellate Procedure.

(6) Title 28, Sections 2241 to End (Habeas Corpus and Motions to Vacate Sentence).

(7) Title 42, Sections 1891–2010 (Public Health and Welfare).

(8) U.S. Constitution and Amendments (Complete).

(b) Federal Rules of Civil Procedure (Pamphlet).

3. *Regulations:* Title 28, Code of Federal Regulations; Judicial Administration

4. *Other Materials:*

(a) Black's Law Dictionary.

(b) Complete Manual of Criminal Forms, Bailey and Rothblatt.

(c) Criminal Law Reporter, current year's subscription.

(d) Modern Criminal Procedure, Hall and Kamisar.

(e) Constitutional Rights of Prisoners, Palmer.

(f) Federal Habeas Corpus, Sokol.

(g) You and the Law, Reader's Digest.

(h) Legal Research in a Nutshell, Cohen.

(i) Legal Research, Writing and Analysis, West Publishing Company.

(j) Corrections and Prisoners' Rights, Krantz.

(k) Manual for Prison Law Libraries, Werner.

(l) Modern Federal Practice Digest, Volumes 16–18A, 26, 26A, 39, and 42.

(m) Manual for Courts Martial, U.S. Government Printing Office.

(n) Justice and the Military, Public Law Education Institute.

(o) Rights of the Imprisoned, Singer.

(p) Practice Manual on Military Discharge Upgrading, American Civil Liberties Union.

(q) Prisoners' Assistance Directory, The National Prison Project.

(r) Criminal Procedure in a Nutshell, Israel and LaFave.

B. "Main" Law Library Materials

1. All "Basic" law library materials; PLUS.

2. Reporters:

(a) United States Supreme Court Reports (Lawyers' Edition 2d Series), Volumes 4–26, 37–present.

(b) Supreme Court Reporter, Volumes 91–93A.

(c) Federal Reporter, 2d Series, Volumes 267–present.

(d) Federal Supplement, Volumes 173–present.

3. Statutes:

(a) United States Code Annotated (Complete).

(b) District of Columbia Code Annotated (Complete).

4. Other Materials:

(a) American Jurisprudence 2d (Complete).

(b) Shepard's United States and Federal Citations.

(c) Ballentine's Law Dictionary.

(d) United States Supreme Court Digest Annotated (Complete).

(3) § *543.12* Proposed § 543.13 is renumbered final § 543.12.

(4) § *543.13* This section was originally published as proposed § 540.46 and was a part of the Bureau of Prisons proposed rules on Inmate Visiting (42 FR 26337 et seq.). Concern about a misunderstanding of proposed § 540.46(f), which allowed searches of attorneys and their belongings prior to their entry into an institution, required that the phrase "for the purpose of ascertaining if contraband is present" be added in the final rule (§ 543.13). Proposed § 540.46(g), which referred the reader to Part 543, is deleted as the section on Visits by Attorneys is now included within Part 543.

(5) § *543.14* Deleted from the final rule are cross references to Part 540 and Part 542 in proposed subsections (a) and (d) respectively. Final §§ 543.14, 543.15 and 543.16 are expanded to clearly state what was meant by the use, within the proposed rules, of the phrase "institution regulations". § 543.14(a)(3) is amended to read "conspiracy to commit".

(6) § *543.15* The final rule states that the Warden shall refer a request or decision to terminate or restrict individual participants within a legal aid program to the Regional Counsel.

(7) § *543.16* Proposed § 543.6 is renumbered final § 543.16. The final rule is amended to state that the Warden "may", as opposed to "shall" in the proposed rule, have each assistant complete the indicated statement and pledge.

Other Comments

Part 540—Subpart F—Incoming Publications

(1) § *540.71* One comment stated that the Bureau's rule is not compatible with the Department of Justice Standard 002 (Mail and Visiting). The Department of Justice standards are draft standards and open to comment. Accordingly, we have suggested that Standard 002 be modified in the format of our amended § 540.71(a), thereby allowing receipt of softcover material from any source but retaining the publisher, book club, or bookstore requirement for hardcover material.

(2) Comments also suggested that the phrase "detrimental to the security, good order or discipline of the institution or if it might facilitate criminal activity", (§ 540.71(b)) is vague and overbroad. More specifically, one commenter suggested the Bureau of Prisons correctional officials were overstepping their authority by including "might facilitate criminal activity". We do not agree. It is in the public interest, we believe, to take steps to deter criminal activity. We believe that "detrimental to the security, good order or discipline" is by necessity broad in its scope, but it is not overbroad.

Another comment suggested that the rule does not recognize that rehabilitation is enhanced by contact with and communication between an inmate and the community. If the publication is detrimental to the security or good order of the institution, this must be controlling. There are many alternative opportunities for community contact.

Comments proposed that the Bureau never exclude publications for reasons stated in the proposed rule unless there is present impermissible content under the *Procunier* v. *Martinez* standard We believe our standards comply with the standards established in *Martinez.* A comment that our use of the word "solely" implies that a publication may be excluded at least in part on its religious, philosophical, political, social or sexual content has been considered and rejected. We recognize that on occasion an individual issue, in its religious, or sexual, or other broad content, may specificially be detrimental to the security, good order or discipline of the institution and therefore warrant exclusion for that reason.

Another comment suggested that only the offending portions of a publication be deleted. We do not agree with this, as it would mean defacing the material and laboriously going over each article in each publication, even after identifying an article that otherwise would be sufficient to reject the publication. Also articles may be cumulatively objectionable, though not objectionable when taken singly.

(3) Another comment calls for the Bureau to make available a list of rejected and approved publications. The commenter states this will greatly contribute towards reduction in inconsistent decisions between institutions while helping establish precedents. We do not believe implementation of this suggestion is appropriate. Our final rule (§ 540.71(c)) prohibits excluded lists, with individual issues subject to rejection only for reasons as indicated in § 540.71(b). These steps provide sufficient details as to when a publication may be rejected, yet allow the Warden the necessary flexibility to consider a publication's acceptability within the context of his particular institution. Discretion is left with individual institutions to determine whether a publication is admissible.

(4) A comment suggesting that judicial determination be sought to review Bureau rejection of a publication on the basis of obscenity is not appropriate, since obscenity is not a criterion in this regulation for rejection of an incoming publication. Another comment expressed concern that the rules do not provide for review by non-correctional officials. We recognize the rights of appeal of both the inmate, through the Administrative Remedy Procedure, and of the publisher or sender of the material, through appeal to the Regional Director. We do not believe it is necessary to impose this burdensome requirement.

We do not concur with comments on proposed § 540.71(h) that the inmate should have the right to assistance, including counsel, to challenge a publication's rejection or that the Administrative Remedy Procedure be amended to provide direct and immediate review by the Regional Director or Central Office. Involvement of counsel is neither legally required nor administratively desirable. The rejection of a publication is not of such an emergency nature that it requires automatic priority. The Administrative Remedy Procedure provides an inmate ample opportunity to appeal an adverse decision, thereby receiving a higher level review and decision.

(5) A comment requesting a detailed description of the standards involved in an "independent review" (§ 540.71(e)) has been considered. We do not believe it necessary or feasible to provide such a description any more than for the original review. The standard is stated in the rule. We have in final § 540.71(b) provided examples of the type of materials which we believe warrant rejection.

(6) A comment suggested that minimum standards be provided and that the limitations placed on the number of publications received or kept (§ 540.71(f)) must be justified in terms of the *Martinez* standard of security, order or rehabilition. We note, however, that *Martinez* talks about standards of review for incoming correspondence but does not address how much material may be stored. Security and order are the justification for the safety and housekeeping standard of the rule. A comment that an inmate be allowed to retain material has been considered and the rule has been modified to reflect that an inmate, upon indication of need, may receive on a temporary basis additional storage space for legal materials. However, we do not consider the completion of serials in publications to be of sufficient significance to overcome legitimate restrictions on safety and good housekeeping. A comment that reasons for limitations be placed in writing, go in an inmate's permanent file, and be made known to the inmate has been considered and rejected. We do not believe this requirement is necessary as the limitation is imposed uniformly on all inmates.

II. Part 541—Subpart D—Control Unit Programs

(1) Several comments questioned the establishment of control unit programs and the need for such units in the Bureau of Prisons. These questions have been considered in the past, and were reconsidered on the basis of these comments. In 1978, a federal court agreed with the need for such a control unit program. *Bono* v. *Saxbe,* 450 F. Supp. 934. Limitations and procedural requirements of these final rules are, in most cases, as required and approved by that court. It is believed necessary to have such a specialized program for those inmates who pose serious problems in the orderly operation of the institution. The final rules have been amended to incorporate rights of procedural and substantive due process, the lack of which was cited by one commenter as a deficiency of the proposed rules.

(2) A comment was received inquiring as to whether the Control Unit at the U.S. Penitentiary at Marion, Illinois is the only such unit presently operated by the Bureau of Prisons, and further as to whether the Bureau intends to open any further units. In response to this comment, it is noted that the Marion

Control Unit is the only one presently operated by the Bureau of Prisons under this rule. However, it is indeed possible that, in the future, other control units could be established and operated under the guidelines of this subpart. The Bureau is currently considering the need for such a unit for female offenders.

(3) A commenter suggested that a "maximum time which a prisoner can spend in the control unit should be set to avoid the possibility of abuse by prison officials". The commenter recommended 90 days. We do not believe that establishment of a maximum period is feasible. Some inmates are so extremely dangerous or continously disruptive as to preclude a 90-day ceiling as a reasonable limit. The purpose of a control unit is to place into a separate unit those inmates who are unable to function in a less restrictive environment. The lapse of a specified number of days does not resolve the scope of this concern. The Bureau's final rule requires regular review of each inmate confined in a control unit program and establishes factors to consider in determining release readiness. We believe this review process provides the balance to avoid abuse and is a more appropriate course to follow.

(4) Comment was received on the exercise periods which are available under proposed § 541.53. Recreation, including physical exercise out of the cell, is considered an important element of a control unit program. Recreation is expanded in the final rule to include a minimum of seven hours of weekly recreation and exercise out of the cell. Other types of recreation are also available. It is important to note however that, contrary to the assumption of the comment, the rule does not act as punishment by setting a limit on exercise. It sets a minimum amount of exercise which must be achieved under any circumstances. Additional exercise is often accomplished, according to the number of inmates who are assigned in the unit and the availability of staff to open up and supervise the exercise areas.

The same commenter suggested the use of control unit "graduates" or citizen boards in establishing programs for the unit. The responsibility for conduct of this unit, especially as it is closely related to security concerns, is lodged in the U.S. Attorney General, and through his delegation in correctional employees of the Bureau of Prisons. The suggestion for "graduate" or citizen involvement has been considered; it is rejected because it is not believed that such ongoing involvement would be of significant benefit to the operation of the control unit program.

III. Part 543—Subpart B—Inmate Legal Activities

(1) § *543.11* One comment objected to the limiting phrases "whenever practical" in the first sentence and "where practical" in the third sentence of § 543.11(a); this commenter indicated that inmates should be able to use the inmate law library whenever they are free and that inmates should always be able to prepare legal documents in their own quarters. These proposed phrases are being retained, since use of an inmate law library requires adequate supervision by staff, and since inmates must schedule their activities in their own quarters to minimize conflict with other inmate activities in those quarters.

One comment objected to the limitation on sources of law books in proposed subsection (c) and indicated that inmates should be able to purchase law books from any source due to the high cost of such books. This rule has been modified (final § 543.11(d)) to allow inmates to receive softcover materials from any source. Continued limitations on receipt of hardcover publications are necessary because the security risk is increased when hardcover books are sent into an institution from sources other than publishers or bookstores. The expansion of the Bureau of Prisons law libraries should further alleviate the law book availability problem.

One comment objected to the limiting phrase "unless clearly impractical" in subsection (h) and indicated that the phrase is too vague and provides no guidance. However, this phrase was intentionally worded broadly to accommodate a wide variation in typewriter availability in the many types of institutions in the Bureau of Prisons.

(2) § *543.13* Some objections were raised to the requirement in proposed § 540.46 that attorneys make advance appointments prior to visiting an inmate-client, on the basis that attorneys, at least during regular visiting hours, should not be subject to any more stringent regulations than other visitors. The provision for attorney visits, however, is necessary given the arrangements which often must be made to provide added privacy for attorney-client consultation. This by no means prohibits attorneys from making regular visits without prior appointments under the same conditions as other visitors.

(3) § *543.14* Several comments objected to provisions in subsection (a) which indicates circumstances in which attorney correspondence or visiting may be limited. One comment indicated that attorney correspondence should only be limited if the attorney violates federal or state laws through his use of the mails. Another comment indicated that subsections (a)(2) and (a)(4) are vague and/or overbroad. The first comment fails to recognize the fact that security precautions must be geared to the degree of threat to institutional security rather than simply to the source of the threat. As to the second comment, we disagree. It is contemplated, however, that these provisions will be invoked infrequently and only after other courses of action have proved to be insufficient.

(4) § *543.15–§ 543.16* One comment objected to the word "generally" in the second sentence of § 543.15(a) and indicated that legal aid programs should always be allowed to operate with the same independence as privately retained attorneys. The Bureau of Prisons agrees with that argument but is bound by state laws and court rules which restrict the operation of legal aid programs.

One comment objected to provisions in proposed §§ 543.15(c) and 543.6(b)(3) and indicated that provisions relating to legal assistants should be no more restrictive than those relating to attorneys in proposed § 543.14. However, legal assistants are not subject to the same educational, professional, and licensing requirements as attorneys, and extra caution in the supervision of assistants' activities is therefore appropriate.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(t), 28 CFR, Chapter V, is amended as set forth below. The effective date of these rules will be August 1, 1979.

Dated: June 27, 1979.

Norman A. Carlson,

Director, Bureau of Prisons.

Part 540, Subpart F is added as set forth below:

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

* * * * *

Subpart F—Incoming Publications

Sec.

540.70 Purpose and scope.
540.71 Procedures.

Authority: 5 USC 301; 18 USC 4001, 4042, 4081, 4082, 5015, 5039; 28 USC 509, 510; 28 CFR 0.95–0.99.

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Subpart F—Incoming Publications

§ 540.70 Purpose and scope.

(a) The Bureau of Prisons permits an inmate to subscribe to or to receive publications without prior approval and has established procedures to determine if an incoming publication is detrimental to the security, discipline, or good order of the institution or if it might facilitate criminal activity. The term publication, as used in this rule, means a book, or a single issue of a magazine or newspaper, plus such other materials addressed to a specific inmate as advertising brochures, flyers, and catalogues.

(b) The Warden may designate staff to review and where appropriate to approve all incoming publications in accordance with the provisions of this rule. Only the Warden may reject an incoming publication.

§ 540.71 Procedures.

(a) An inmate may receive hardcover publications only from the publisher, from a book club, or from a bookstore. An inmate may receive softcover material (for example, paperback books, newspapers, magazines) from any source. The Warden may have all incoming publications inspected for contraband.

(b) The Warden may reject a publication only if it is determined detrimental to the security, good order, or discipline of the institution or if it might facilitate criminal activity. The Warden may not reject a publication solely because its content is religious, philosophical, political, social or sexual, or because its content is unpopular or repugnant. Publications which may be rejected by a Warden include but are not limited to publications which meet one of the following criteria:

(1) It depicts or describes procedures for the construction or use of weapons, ammunition, bombs or incendiary devices;

(2) It depicts, encourages, or describes methods of escape from correctional facilities, or contains blueprints, drawings or similar descriptions of Bureau of Prisons institutions;

(3) It depicts or describes procedures for the brewing of alcoholic beverages, or the manufacture of drugs;

(4) It is written in code;

(5) It depicts, describes or encourages activities which may lead to the use of physical violence or group disruption;

(6) It encourages or instructs in the commission of criminal activity;

(7) It advocates or may lead to prohibited sexual activity in the institution.

(c) The Warden may not establish an excluded list of publications. This means the Warden shall review the individual publication prior to the rejection of that publication. Rejection of several issues of a subscription publication is not sufficient reason to reject the subscription publication in its entirety.

(d) Where a publication is found unacceptable, the Warden shall promptly advise the inmate in writing of the decision and the reasons for it. The notice must contain reference to the specific article(s) or material(s) considered objectionable. The Warden shall permit the inmate an opportunity to review this material for purposes of filing an appeal under the Administrative Remedy Procedure unless such review may provide the inmate with information of a nature which is deemed to pose a threat or detriment to the security, good order or discipline of the institution or to encourage or instruct in criminal activity.

(e) The Warden shall provide the publisher or sender of an unacceptable publication a copy of the rejection letter. The Warden shall advise the publisher or sender that he may obtain an independent review of the rejection by writing to the Regional Director within 15 days of receipt of the rejection letter. The Warden shall return the rejected publication to the publisher or sender of the material unless the inmate indicates an intent to file an appeal under the Administrative Remedy Procedure, in which case the Warden shall retain the rejected material at the institution for review. In case of appeal, if the rejection is sustained, the rejected publication shall be returned when appeal or legal use is completed.

(f) The Warden may set limits locally (for fire, sanitation or housekeeping reasons) on the number or volume of publications an inmate may receive or retain in his quarters. The Warden may authorize an inmate additional storage space for storage of legal materials in accordance with the Bureau of Prisons procedures on personal property of inmates.

Part 541, Subpart D is added as set forth below:

* * * * *

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

Subpart A [Reserved]

Subpart B * * *

* * * * *

Subpart C [Reserved]

Subpart D—Control Unit Programs

Sec.
541.40 Purpose and scope.
541.41 Institutional referral.
541.42 Designation of hearing administrator.
541.43 Hearing procedure.
541.44 Decision of the hearing administrator.
541.45 Executive panel review and appeal.
541.46 Programs and services.
541.47 Admission to control unit.
541.48 Review of control unit placement.
541.49 Release from the control unit.

Authority: 5 USC 301; 18 USC 4001, 4042, 4081, 4082, 4161–4166, 5015, 5039; 28 USC 509, 510; 28 CFR 0.95–0.99.

* * * * *

Subpart D—Control Unit Programs

§ 541.40 Purpose and scope.

(a) In an effort to maintain a safe and orderly environment within its institutions, the Bureau of Prisons operates Control Unit Programs intended to place into a separate unit those inmates who are unable to function in a less restrictive environment without being a threat to others or to the orderly operation of the institution. The Bureau of Prisons provides written criteria for the:

(1) Referral of an inmate for possible placement within the Control Unit;

(2) Selection of an inmate for placement within the Control Unit;

(3) Regular review of an inmate while housed in the Control Unit; and

(4) Release of an inmate from the Control Unit.

(b) The Bureau of Prisons provides an inmate confined within the Control Unit the opportunity to participate in programs and activities restricted as necessary to protect the security, good order, or discipline of the unit.

§ 541.41 Institutional referral.

(a) The Warden shall submit a recommendation for referral of an inmate for placement in the Control Unit to the Regional Director in the region where the inmate is located.

(b) The Warden shall consider the following factors in a recommendation for Control Unit placement.

(1) Any incident during confinement in which the inmate has caused injury to other persons.

(2) Any incident in which the inmate has expressed threats to the life or well-being of other inmates or staff members.

(3) Any incident involving possession by the inmate of deadly weapons or dangerous drugs.

(4) Any incident in which the inmate is involved in a disruption of the orderly operation of a prison, jail or other correctional institution.

(5) Escapes and escape attempts.

(6) The nature of the offense for which committed. For referral to a control unit in a Security Level 6 institution, factors (1)–(4) in this paragraph (b) may be considered; for referral to a control unit in a Level 6 institution, factors (5) and (6) in this paragraph (b) may not be considered, except as provided in paragraph (c) of this section.

(c) The Warden may not refer an inmate for placement in the Control Unit:

(1) If the inmate shows evidence of significant mental disorder or major physical disabilities;

(2) Solely on the nature of the crime which resulted in the inmate's incarceration if the referral is to a Control Unit in a Level 6 institution; for that referral, the nature of the crime may be considered in combination with other factor(s), as described in paragraph (b) of this section;

(3) Solely on the basis of escape attempts, or incidents involving possession of escape tools or plans if the referral is to a Control Unit in a Security Level 6 institution; for that referral, however, if injury or threat to life or use of deadly weapons occurs in an escape attempt, a requisite factor will be met, to warrant consideration for a recommended referral to the Control Unit.

(4) On the basis that the inmate is a protection case, e.g., a homosexual, an informant, etc., unless the inmate meets other criteria as described in paragraph (b) of this section.

§ 541.42 Designation of hearing administrator.

The Regional Director shall designate a person in the Regional Office to review the institutional referral and to conduct a hearing on the appropriateness of an inmate's placement in the Control Unit. The Hearing Administrator shall have the following qualifications:

(a) Correctional experience, including institutional work with inmates, processing of inmate disciplinary actions, significant institutional experience in observing and evaluating inmate adjustment and disruptive behavior, and knowledge of the options available in the Bureau of Prisons for dealing with such conduct;

(b) Lack of former personal involvement in an Institution Disciplinary Committee action involving the particular inmate referred; and

(c) Familiarity with Bureau of Prisons policies and operations, including the criteria for placement of inmates in different institutions and in the Control Unit.

§ 541.43 Hearing procedure.

(a) The Hearing Administrator shall provide a hearing to an inmate recommended for placement in the Control Unit. The hearing shall take place at the recommending or sending institution.

(b) The hearing shall proceed as follows.

(1) Staff shall provide an inmate with advance written notice of the hearing and a copy of this rule at least 24 hours prior to the hearing. The notice will advise the inmate of the specific act(s) or other evidence which forms the basis of the recommendation that the inmate be transferred to the Control Unit, unless such evidence would likely endanger staff or others. If an inmate is illiterate, staff shall explain the notice and this rule to the inmate and document that this explanation has occurred.

(2) The inmate has the right to be present throughout the hearing, except where institutional security is jeopardized. The Hearing Administrator may conduct a hearing in the absence of the inmate when the inmate refuses to appear. The Hearing Administrator shall document an inmate's refusal to appear, or other reason for non-appearance, in the record of the hearing.

(3) The Hearing Administrator shall provide an inmate the service of a full time staff member to represent the inmate, if the inmate so desires. The Hearing Administrator shall document in the record of the hearing an inmate's request for or refusal of staff representation. The inmate may select a staff representative from the local institution. If the selected staff member declines or is unavailable, the inmate has the option of selecting another representative or, in the case of an absent staff member, of waiting a reasonable period for the staff member's return, or of proceeding without a staff representative. When an inmate is illiterate, the Warden shall provide a staff representative. The staff representative shall be available to assist the inmate and, if the inmate desires, shall contact witnesses and present favorable evidence at the hearing. The Hearing Administrator shall afford the staff representative adequate time to speak with the inmate and to interview available witnesses.

(4) The inmate is entitled to present documentary evidence and to have witnesses appear, provided that calling witnesses would not jeopardize or threaten institutional security or individual safety, and further provided that the witnesses are available at the institution where the hearing is being conducted.

(i) The evidence to be presented must be material and relevant to the issue as to whether the inmate can and would function within any prison population without being or posing a threat to staff or others or to the orderly operation of the institution. The Hearing Administrator may not consider evidence offered to reverse or repeal a prior finding of a disciplinary violation.

(ii) Repetitive witnesses need not be called. Staff who recommend placement in the Control Unit are not required to appear, provided their recommendation is fully explained in the record. Staff who were involved, in any capacity, in former disciplinary proceedings need not be called as to their involvement in those proceeding, since this hearing is not to go over the factual basis for prior actions which have been decided.

(iii) When a witness is not available within the institution, or not permitted to appear, the inmate may submit a written statement by that witness. The Hearing Administrator shall, upon the inmate's request, postpone any decision following the hearing for a reasonable time to permit the obtaining and forwarding of written statements.

(iv) The Hearing Administrator shall document in the record of the hearing the reasons for declining to permit a witness or to receive documentary evidence.

§ 541.44 Decision of the hearing administrator.

(a) At the conclusion of the hearing and following review of all material related to recommendation for placement of an inmate in the Control Unit, the Hearing Administrator shall prepare a written decision as to whether this placement is warranted. The Hearing Administrator shall:

(1) Prepare a summary of the hearing and of all information presented upon which the decision is based; and

(2) Indicate the specific reasons for the decision, to include a description of the act, or series of acts, or evidence on which the decision is based.

(b) The Hearing Administrator shall advise the inmate in writing of the

decision. The inmate shall receive the information described in paragraph (a) of this section unless it is determined that the release of this information could pose a threat to individual safety, or institutional security, in which case that limited information may be withheld. The Hearing Administrator shall advise the inmate that the decision will be submitted for review of the Executive Panel. The Hearing Administrator shall advise the inmate that, if the inmate so desires, the inmate may submit an appeal of the Hearing Administrator's decision to the Executive Panel. This appeal, with supporting documentation and reasons, must be filed within five working days of the inmate's receipt of the Hearing Administrator's decision.

(c) The Hearing Administrator shall send the decision, whether for or against placement in the Control Unit, and supporting documentation to the Executive Review Panel. Ordinarily this is done within 20 working days after conclusion of the hearing. Any reason for extension is to be documented.

§ 541.45 Executive panel review and appeal.

The Executive Panel is composed of the Regional Director of the region where the Control Unit is located to which referral is being considered and the Assistant Director, Correctional Programs Division.

(a) The Executive Panel shall review the decision and supporting documentation of the Hearing Administrator and, if submitted, the information contained in an inmate's appeal. The Panel shall accept or reject the Hearing Administrator's decision within fifteen working days of its receipt, unless for good cause there is reason for delay, which shall be documented in the record.

(b) The Executive Panel shall provide a copy of their decision to the Warden at the institution to which the inmate is to be transferred, to the inmate, to the referring Warden, and to the Hearing Administrator.

(c) An inmate may appeal a decision of the Executive Panel, through use of the Administrative Remedy Procedure, directly to the Office of General Counsel, Bureau of Prisons.

§ 541.46 Programs and services.

The Warden shall provide the following services to the Control Unit inmate.

(a) *Education:* The Warden shall assign a member of the education staff to the Control Unit on at least a part-time basis to assist in developing an educational program to fulfill each inmate's academic needs. Study courses are provided for all levels, i.e., adult basic education, GED programs, correspondence courses, areas of special interest, and college courses. The education staff member is also ordinarily a member of the Control Unit team.

(b) *Work Assignments:* Staff may assign inmates to a work assignment, such as range orderly. The manner in which these duties are carried out will reflect the inmate's unit adjustment, and will assist staff in evaluating the inmate.

(c) *Industries:* If an industry program exists in the Control Unit, each inmate participating in this program may earn industrial good time and industrial pay, subject to the regulations of Federal Prison Industries, Inc. The industry program is supervised by an industry foreman. The Control Unit team will determine when or if an industry assignment is appropriate for each inmate who submits a request for possible assignment to industries work.

(d) *Legal:* The Control Unit legal library is equipped with basic legal reference books, table and chair, typewriter, paper and carbon. The library is offered to each inmate, upon request and in turn.

(e) *Recreation:* The recreation program in the control unit shall include the following requirements.

(1) Each inmate shall have the opportunity to receive a minimum of seven hours weekly recreation and exercising out of the cell.

(2) Staff shall provide recreation by a rotation of participants during the day. When an inmate refuses recreation, staff shall note this fact on the inmate's recreation form.

(3) An inmate who desires to recreate with another inmate or other inmates may submit a request to do so. The inmates involved must all sign the form, indicating that they are willing to recreate together. Before release from the unit, each inmate must have shown, for a significant period of time, the ability to recreate at the same time and cooperatively with others.

(4) Staff shall offer outdoor recreation to inmates who desire this, weather permitting. Staff shall provide foul weather gear for inmates who choose to recreate outdoors during inclement weather.

(5) Staff shall provide various games and exercise materials as consistent with custodial considerations. Inmates who alter or intentionally damage recreation equipment will be deprived of the use of that equipment in the future.

(f) *Casemanagement Services:* The casemanager is responsible for all areas of case management including preparation of the visiting list, notarizing documents, preparation of various reports, and other casemanagement duties. The casemanager is ordinarily a member of the Control Unit team.

(g) *Counselor Services:* The unit counselor handles phone call requests, special concerns and requests of inmates, requests for administrative remedy forms, and is available for consultation.

(h) *Medical Services:* A member of the medical staff shall visit the Control Unit inmates daily. A physician will visit the unit as the need arises. Should an illness require evaluation or treatment which cannot be administered in the unit, and upon the request of the medical doctor or dentist, staff shall escort the inmate patient to the institution hospital.

(i) *Mental Health Services:* During the first 30-day period in the Control Unit, staff shall schedule the Control Unit inmate for a psychological evaluation conducted by a staff psychologist. Additional individual evaluations shall occur no less than every 3 months. The psychologist shall assist on other problems, related to his or her field, upon request. Psychiatric services will be provided when necessary.

(j) *Religion:* Staff shall issue religious materials upon request, limited by security consideration and housekeeping rules in the unit. This material may come from an inmate's personal property or from the chaplain's office. The institutional chaplains shall make weekly visits to the Control Unit, and additional visits as needed. Religious assemblies or group meetings will not be allowed in the unit.

(k) *Food Service and Personal Hygiene:* Staff shall provide food services and personal hygiene care consistent with the requirements of the current rule regarding Special Housing Units.

(l) *Correspondence:* Inmates confined in the Control Unit are considered, by reason of their placement in the Unit, to be security risks, and are therefore placed in restricted correspondence status.

(m) *Visiting:* Visits for inmates confined in the Control Unit are conducted in a controlled visiting area, separated from regular visiting facilities. Staff shall allot a minimum of 16 hours per month visiting time to the Control Unit inmate. The number of consecutive hours visiting on a particular day may be limited by the number of visitors waiting to visit. All visitors must be on the inmate's approved visiting list.

(n) *Commissary:* Staff shall establish a commissary purchase schedule. The

amount of money Control Unit inmates can spend per month is comparable to what inmates residing in the general population can spend for commissary and hobbycraft items. Staff may limit commissary items to ensure the safety and security of the unit.

§ 541.47 Admission to control unit.

Staff shall provide an inmate admitted to the Control Unit with:

(a) Notice of the expected duration of the inmate's confinement in the Control Unit;

(b) The choice of a closed front or open front cell (staff may place an inmate in a solid front cell, which screens out noise and light, only with the inmate's written consent); the inmate has this choice only when closed front cells are available in the unit;

(c) That personal property which is allowable in the unit (items made of glass or metal will not be permitted);

(d) A summary of the rules and regulations and disciplinary procedures applicable in the unit;

(e) An explanation of the activities of the Control Unit;

(f) The expectations of the inmate's involvement in Control Unit Activities; and

(g) The criteria for release from the unit, and how those criteria specifically relate to this confinement period in the unit and any specific requirements in the inmate's individual case.

§ 541.48 Review of control unit placement.

(a) Unit staff shall evaluate informally and daily an inmate's adjustment within the Control Unit. Once every 30 days, the Control Unit team, comprised of the Control Unit Manager, and other members designated by the Warden (ordinarily to include the casemanager and education staff member assigned to the unit) shall meet with an inmate in the Control Unit. The unit team shall consider the inmate's:

(1) Unit status;

(2) Adjustment; and

(3) Readiness for release from the unit. (See § 541.49[a])

(b) The Warden shall serve as the review authority at the institutional level for unit team actions.

(c) An inmate may appeal the Warden's decision to the Executive Panel within five working days of receipt of that decision.

(d) At least once every 60 to 90 days, the Executive Panel shall review the status of an inmate in the Control Unit to determine the inmate's readiness for release from the Unit. The Executive Panel shall consider those factors specified in § 541.49[a], along with any recommendations by the unit team and Warden.

The decision of the Executive Panel is communicated to the inmate. Ordinarily, the inmate is interviewed in person at this review. If the inmate refuses to appear for this review, or if there is other reason for not having an in-person review, this will be documented.

(e) An inmate may appeal a decision of the Executive Panel, through use of the Administrative Remedy Procedure, directly to the Office of General Counsel, Bureau of Prisons.

§ 541.49 Release from the control unit.

(a) Either the unit team, with approval of the Warden, or the Executive Review Panel may release an inmate from the Control Unit. The following factors are considered in evaluation of an inmate's readiness for release from the Control Unit:

(1) Personal grooming and cleanliness;

(2) Quarters' sanitation;

(3) Relationship with other inmates and staff members, which demonstrates improvement in the type of disruptive behavior which was the basis for placement in the unit;

(4) Satisfactory involvement in work and recreational activities and assignments;

(5) Adherence to institution and Bureau of Prisons rules and policy.

(b) An inmate released from the Control Unit may be returned:

(1) To the institution from which the inmate was originally transferred;

(2) To another institution;

(3) Into the general population of the institution which has the Control Unit.

Part 543 is added as set forth below:

PART 543—LEGAL MATTERS

Subpart A [Reserved]

Subpart B—Inmate Legal Activities

Sec.

543.10 Purpose and scope.
543.11 Legal research and preparation of legal documents.
543.12 Retention of attorneys.
543.13 Visits by attorneys.
543.14 Limitation or denial of attorney visits and correspondence.
543.15 Legal aid program.
543.16 Other paralegals, clerks, and legal assistants.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A [Reserved]

Subpart B—Inmate Legal Activities

§ 543.10 Purpose and scope.

The Bureau of Prisons affords an inmate reasonable access to legal materials and counsel, and reasonable opportunity to prepare legal documents. The Warden shall establish an inmate law library, and procedures for access to legal reference materials and to legal counsel, and for preparation of legal documents. Law libraries are not provided at Federal Community Treatment Centers or at the Federal Detention Center, El Paso, Texas.

§ 543.11 Legal research and preparation of legal documents.

(a) The Warden shall make materials in the inmate law library available whenever practical, including evening and weekend hours. The Warden shall allow an inmate a reasonable amount of time, ordinarily during the inmate's leisure time, to do legal research and to prepare legal documents. Where practical, the Warden shall allow preparation of documents in living quarters during an inmate's leisure time.

(b) The Warden shall periodically ensure that materials in each inmate law library are kept intact and that lost or damaged materials are replaced.

(c) Staff shall advise an inmate of rules and local procedures governing use of the inmate law library. Unauthorized possession of library materials by an inmate constitutes a prohibited act, generally warranting disciplinary action (see Part 541 of this chapter).

(d) An inmate may receive or purchase law materials from outside the institution, but the Warden may reject material if there is a compelling reason in the interest of institution security, good order, or discipline. The Warden may limit for housekeeping reasons the amount of legal materials an inmate may accumulate. An inmate may receive hardcover law books from publishers or bookstores. An inmate may receive softcover material (for example, paperback books, newspapers, magazines) from any source. An inmate may receive court or legal documents from court clerks or judges or from his attorney through the mail or incident to visiting. Staff may inspect these documents for contraband but may not read them if properly presented.

(e) An inmate is responsible for submitting his documents to court. Institution staff who are authorized to administer oaths shall be available to provide necessary witnessing of these

documents, as requested by inmates and at times scheduled by staff.

(f) Unless the institution has an active, ongoing legal aid program, the Warden shall allow an inmate the assistance of another inmate during their leisure time for purposes of legal research and preparation of legal documents. The Warden may impose limitations on this assistance in the interest of institution security, good order, or discipline.

(g) The institution staff shall, upon an inmate's request and at times scheduled by staff, duplicate legal documents if the inmate demonstrates that more than one copy must be submitted to court and that the duplication cannot be accomplished by use of carbon paper. The inmate shall bear the cost, and the duplication shall be done so as not to interfere with regular institution operations. Staff may waive the cost if the inmate is without funds or if the material to be duplicated is minimal, and the inmate's requests for duplication are not large or excessive.

(h) Unless clearly impractical, the Warden shall allow an inmate preparing legal documents to use a typewriter, or, if the inmate cannot type, to have another inmate type his documents. The Warden may allow the inmate to hire a public stenographer to type documents outside the institution, but the institution may not assume the expense of hiring the public stenographer. Staff shall advise the inmate of any delay in the typing of which they have received notice.

(i) The Warden shall give special time allowance for research and preparation of documents to an inmate who demonstrates a requirement to meet an imminent court deadline. Otherwise, each inmate shall continue his regular institutional activities without undue disruption by legal activities.

(j) With consideration of the needs of other inmates and the availability of staff and other resources, the Warden shall provide an inmate confined in disciplinary segregation or administrative detention a means of access to legal materials, along with an opportunity to prepare legal documents. The Warden shall allow an inmate in segregation or detention a reasonable amount of personal legal materials. In no case shall the amount of personal legal materials be such as to pose a fire, sanitation, security, or housekeeping hazard.

§ 543.12 Retention of attorneys.

(a) The Warden shall allow an inmate to contact and retain attorneys. With the written consent of the inmate, staff may advise an attorney of the inmate's available funds. Staff may not interfere with selection and retention of attorneys if the inmate has attained majority and is mentally competent. If the inmate is a mental incompetent or a minor, the Warden shall refer to the inmate's guardian or to the appropriate court all matters concerning the retention and payment of attorneys.

(b) The Bureau of Prisons may not act as guarantor or collector of fees. As to correspondence with attorneys and telephone calls to attorneys, see Part 540 of this chapter.

§ 543.13 Visits by attorneys.

(a) The Warden shall, under the conditions of this section, permit visits by the retained, appointed, or prospective attorney of an inmate or by an attorney who wishes to interview an inmate as a witness.

(b) The Warden generally may not limit the frequency of attorney visits since the number of visits necessary is dependent upon the nature and urgency of the legal problems involved. The Warden shall set the time and place for visits, which ordinarily take place during regular visiting hours. Attorney visits shall take place in a private conference room, if available, or in a regular visiting room in an area and at a time designed to allow a degree of privacy. The Warden may make exceptions according to local conditions or for an emergency situation demonstrated by the inmate or visiting attorney.

(c) The attorney shall make an advance appointment for the visit through the Warden prior to each visit; however, the Warden shall make every effort to arrange for a visit when prior notification is not practical.

(d) The Warden may require an attorney to indicate where he is licensed as an attorney and how that fact may be verified. Prior to each appointment or visit, the Warden shall require each attorney to identify himself and to confirm that he wishes to visit an inmate who has requested his visit or whom he represents or whom he wishes to interview as a witness. The Warden may not ask the attorney to state the subject matter of the law suit or interview. If there is any question about the identity of the visitor or his qualification as an attorney in good standing, the Warden shall refer the matter to the Regional Counsel.

(e) Staff may not subject visits between an attorney and an inmate to auditory supervision. The Warden may permit tape recordings to be used by an attorney during the course of a visit only if the attorney states in writing in advance of the interview that the sole purpose of the recording is to facilitate the attorney-client or attorney-witness relationship.

(f) The Warden may, at any time, subject an attorney to a search of his person and belongings for the purpose of ascertaining if contraband is present, as a condition of visiting an inmate.

§ 543.14 Limitation or denial of attorney visits and correspondence.

(a) An act by an attorney which violates Bureau regulations or institution guidelines and which threatens the security, good order, or discipline of the institution is grounds for limitation or denial by the Warden of the attorney's privileged visitation and correspondence rights. Acts by an attorney which may warrant such limitation or denial include, for example the following:

(1) A false statement as to the attorney's identity or qualifications;

(2) A plan, attempt, or act to introduce contraband into the institution;

(3) A conspiracy to commit, an attempt to commit, or the actual commission of an act of violence within an institution; and

(4) Encouraging an inmate to violate the law, Bureau of Prisons rules, or local implementing guidelines.

(b) Unless the breach of regulations is extreme or repeated, limitation rather than a denial of visitation or correspondence rights is proper, especially where the inmate is represented by the attorney and is confronted with a court deadline. For example, the Warden may subject an attorney to a search of his person and belongings or may permit the attorney only non-privileged correspondence. The Warden shall also consider referral of the matter to the state agency regulating the attorney's professional conduct.

(c) An act by an inmate in violation of Bureau regulations or institution guidelines warrents a limitation by the Warden of the inmate's correspondence or visiting rights with attorneys only if necessary to protect institution security, good order, or discipline. The Warden may not deny correspondence or visiting rights with attorneys generally.

(d) The attorney may appeal any limitation or denial by the Warden of attorney visits or correspondence rights to the Regional Director. The inmate affected may appeal through the Administrative Remedy Procedures.

§ 543.15 Legal aid program.

(a) A legal aid program which is funded or approved by the Bureau is expected to provide a broad range of

legal assistance to inmates. Staff shall allow these programs generally to operate with the same independence as privately retained attorneys. The Warden shall refer a request or decision to terminate or restrict a program, or individual participants in a program, to the Regional Counsel.

(b) In order to promote the inmate-program relationship, the Warden shall give those students or legal assistants working in legal aid programs the same status as attorneys with respect to visiting and correspondence except where specific exceptions are made in this section and in Part 540 of this chapter.

(c) An attorney or law school professor shall supervise students and legal assistants participating in the program. The supervisor shall provide the Warden with a signed statement accepting professional responsibility for acts of each student or legal assistant affecting the institution. The Warden may require each student or legal assistant to complete and sign a personal history statement and a pledge to abide by Bureau regulations and institution guidelines. If necessary to maintain security or good order in the institution, the Warden may prohibit a student or legal assistant from visiting or corresponding with an inmate.

§ 543.16 Other paralegals, clerks, and legal assistants.

(a) The Bureau of Prisons recognizes the use of assistants by attorneys to perform legal tasks and, with proper controls and exceptions enumerated in this section and in Part 540 of this chapter, accords such assistants the same status as attorneys with respect to visiting and correspondence.

(b) The attorney who employs an assistant and who wishes the assistant to visit or correspond with an inmate on legal matters shall provide the Warden with a signed statement including:

(1) Certification of the assistant's ability to perform in this role and awareness of the responsibility of this position;

(2) A pledge to supervise the assistant's activities; and

(3) Acceptance of personal and professional responsibility for all acts of the assistant which may affect the institution, its inmates, and staff. The Warden may require each assistant to fill out and sign a personal history statement and a pledge to abide by Bureau regulations and institution guidelines. If necessary to maintain security or good order in the institution, the Warden may prohibit a legal assistant from visiting or corresponding with an inmate.

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Friday
June 29, 1979

Part IX

Department of the Interior

Bureau of Land Management

Outer Continental Shelf Minerals Leasing and Rights-of-Way Granting Programs

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2880 and 3300

[Circular No. 2446]

Outer Continental Shelf Minerals Leasing and Rights-of-Way Granting Programs

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking implements the changes mandated in the Outer Continental Shelf Mineral Leasing and Rights-of-way Granting program administered by the Secretary of the Interior by the enactment of the Outer Continental Shelf Lands Act Amendments of 1978. The final rulemaking contains changes to make Part 3300 more readable as directed by Executive Order 12044, and rearranges the subparts to make the part easier to follow and understand. Finally, subpart 2883, (Part 2880) Rights-of-way on the Outer Continental Shelf, is being moved to Part 3300 in order to consolidate all Outer Continental Shelf programs in one part.

EFFECTIVE DATE: July 30, 1979.

ADDRESS: Any recommendations or comments on the final rulemaking should be sent to: Director (712), Bureau of Land Management, Department of the Interior, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: William J. Quinn (202) 343-8457 or Robert C. Bruce (202) 343-8735.

SUPPLEMENTARY INFORMATION: The proposed rulemaking on the Outer Continental Shelf Minerals Leasing and Rights-of-way Granting program was published in the Federal Register on February 1, 1979 (44 FR 6471). The proposed rulemaking invited comments for 60 days ending on April 2, 1979. During the comment period, a total of 37 comments were received and considered. Thirteen comments came from companies interested in the Outer Continental Shelf, 12 came from State Governments, five from industry interest groups, three from environmental interest groups and four from Federal agencies.

Among the general comments were expressions that the rulemaking followed the requirements of the Outer Continental Shelf Land Act Amendments of 1978 (43 U.S.C. 1331 et seq.). Several of the State comments also commended the Department of the Interior on its efforts to work with the States on this rulemaking and to incorporate provisions that facilitated the coordination of the Outer Continental Shelf program with the States. One comment was that the rulemaking was wordy and a large portion of it could be eliminated in keeping with the provisions of Executive Order 12044. However, most of the comments requested additional wording for the rulemaking, wording that made the final rulemaking longer than the proposed document.

Several of the comments expressed concern that the proposed rulemaking made no reference to the national policy section or the mandate in section 3 of the Outer Continental Shelf Lands Act Amendments to protect specific resources, such as fisheries or recreation. In response to these comments, a new section on policy was added to clarify the Bureau of Land Management's responsibilities and to include these references.

Several comments raised questions about the lack of reference in the rulemaking to the National Environmental Policy Act, (42 U.S.C. 4321 et seq.), the Coastal Zone Management Act (16 U.S.C. 1451 et seq.), and protection of the environment mandated by the policy sections of the Outer Continental Shelf Lands Act Amendments. These comments were not only general but were made in reference to many sections of the proposed rulemaking. These three areas are, among others, areas of major concern to the Department of the Interior and the Bureau of Land Management in carrying out their responsibilities under the Outer Continental Shelf Lands Act, as amended. Not only are these responsibilities recognized and accepted, but the National Environmental Policy Act and many other statutes impose obligations on the Department and the Bureau at virtually every phase of the leasing and resource management process. For these reasons, it was not considered necessary to enumerate in every section of the rulemaking the legal obligations of the Department and the Bureau. This repetition of clearly accepted obligations would be redundant and lengthen the rulemaking.

A few comments stated that a section was needed in the rulemaking that outlined the responsibilities of each of the agencies involved in the mineral leasing program on the Outer Continental Shelf. The addition of a "responsibilities" section was not considered appropriate for inclusion in the text of the rulemaking which deals primarily with the role of the Bureau of Land Management. The Bureau's responsibilities are implicit in this rulemaking: the responsibilities of other agencies in the leasing process are covered in their own rules. Some important responsibilities of other agencies are mentioned in the text as required for clarity, typically by cross-reference to other regulations or by citation of applicable laws. The responsibilities of the major Federal agencies participating in the process are outlined below.

Briefly, the Bureau of Land Management is the lead agency for the Outer Continental Shelf leasing process and is responsible for the issuance and maintenance of leases. The Bureau of Land Management also issues rights-of-way for the transportation of minerals through the Outer Continental Shelf. The Bureau of Land Management, along with the U.S. Geological Survey, is responsible for providing an index and summary of existing information on the Outer Contiental Shelf to affected States.

The U.S. Geological Survey provides technical advice throughout the leasing process. The Geological Survey is responsible for supervising and regulating pre-lease exploration activity and post-lease exploration, development and production activities on the lease area. The Geological Survey also grants rights of use and easements on the Outer Continental Shelf.

The Department of Energy has responsibilities transferred from the Department of the Interior to issue regulations which relate to:

(1) fostering of competition for Federal leases;

(2) implementation of alternative bidding systems authorized for the award of Federal leases;

(3) implementation of diligence requirements for operations conducted on Federal leases;

(4) setting rates of production for Federal leases; and

(5) specific procedures, terms and conditions for the acquisition and disposition of Federal royalty interest taken in kind, except determination of value. The Department of Energy is afforded up to 30 days to review the final lease terms and conditions on all Outer Continental Shelf leases relative to the five functions cited above.

A number of comments expressed a desire for extensive cross-referencing to other laws in various sections of the rulemaking, especially the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). These comments

were not adopted, but a new section on cross-references, 3300.0–6, was added to the final rulemaking which includes extensive cross-reference to other applicable regulations, including National Environmental Policy Act compliance.

Several comments suggested changes in the definitions used in the proposed rulemaking. After careful consideration of the suggested changes, it was decided to change the definition of the term "mineral" in order to remove an ambiguous reference. All of the other definitions track the language of the Outer Continental Shelf Lands Act Amendments and are sufficiently clear.

A suggestion was offered that section 3300.1 set the scale and availability of leasing maps and diagrams. The preparation of leasing maps and diagrams is an internal Bureau of Land Management procedure. Further, the scale of available maps and diagrams is subject to change and the Bureau should be permitted the broadest possible latitude in the preparation process.

A few comments on section 3300.1 questioned why withdrawal of areas of the Outer Continental Shelf as provided for in section 12 (a) and (d) of the Act was not covered. The focus of withdrawal, e.g., for defense or any other purpose in the national interest, and the procedures for withdrawal are not appropriate for consideration in this rulemaking which deals with mineral leasing. However, deletion of tracts, for whatever reason, is specifically covered by the rulemaking.

A large number of comments were received on section 3300.2 indicating confusion as to the form, content, timing and distribution of information to the affected States. In reference to these comments, the wording of the section has been changed in an effort to clear up the confusion reflected in the comments.

The current policy of the Department of the Interior is to prepare a joint Bureau of Land Management—U.S. Geological Survey regional index of Outer Continental Shelf information. This index is widely distributed and is updated, as needed, so as to be of maximum use to the affected States and the public. This joint index lists those documents prepared and controlled by each agency so the user will be required to refer to only one list for all relevant information. Another change in section 3300.2 was the addition of language that emphasizes that information under the control of the Bureau of Land Management that is listed on the index, e.g., environmental statements or studies, lease sale data, etc., generally is information that is not protected by the Freedom of Information Act and will be released to the public upon request. Information under the control of the U.S. Geological Survey that is listed in the index is more likely to be proprietary and is subject to the U.S. Geological Survey regulations for thr release of such data. The rulemaking makes it clear that the Bureau of Land Management cannot release protected data listed on the index under the control of the U.S. Geological Survey. The section also closely controls the release of proprietary data controlled by the Bureau of Land Management, namely the specific nominations of tracts made by industry. This expanded wording, which is in response to a sizable number of comments on this subject, should dispell doubts expressed in the comments about the release of protected information listed on the index.

The timing of the updating of the index drew a large number of comments. As was pointed out, the index must be current in order to be useful. The updating of the index is likely to vary greatly among regions according to the levels of leasing and development activity taking place in an area. Therefore, it is not practicable to set a definite timetable in the rulemaking for the updating of the index, as serveral comments suggested. The Department of the Interior will make every effort to keep the public fully informed of the availability of key documents through the use of local press releases, Federal Register notices and other means. Such notices will also be used to notify the public of the availability of an updated index, as was recommended by one comment.

Since the index is a public document that will receive broad distribution, the suggestions that its distribution be limited by the rulemaking were not adopted. Similarly, recommendations to restrict the distribution of information listed in the index could not be adopted. The Bureau of Land Management will, as required by law, honor all requests for information except that which is withheld under the Freedom of Information Act or information protected by the provisions of the Outer Continental Shelf Lands Act Amendments. The phrase "in conjuncton with the USGS" was made a part of the section as recommended in one of the comments to clarify the intent to publish a single joint index for each region. The cross references to 30 CFR 250, 251 and 252 are retained to guide the readers of this rulemaking to companion regulations but do not imply that the Bureau of Land Management can release any information controlled by the U.S. Geological Survey.

A number of wording changes recommended in the comments were adopted to make section 3300.2 internally consistent. Finally, a recommendation to move section 3300.2 and make it a part of section 3313 Call for Nominations and Comments was not accepted because the information covered by section 3300.2 is much broader than that covered by a single pre-lease event in the leasing process.

Several comments were directed to section 3300.3. As was suggested, wording from existing regulations on this subject was restored to the final rulemaking to make it clear that the extraction of helium will not be the cause for substantial delay in the delivery of natural gas. In order to clear up confusion about who determines reasonable compensation for losses, wording was added that the United States would make such determinations. However, comments that suggested that the Federal government should be made solely responsible for all risk, cost and expenses connected with the removal of helium were not adopted. The determination of those issues will be made on case-by-case basis when the United States exercises its option to extract helium.

In connection with section 3300.4 payments, comments suggesting that the section be deleted in favor of specific references to payments at each stage of the process which calls for a payment were not adopted. The suggested change would add a great deal of language to the rulemaking and not add much additional clarity.

One comment recommended the use of electronic fund transfer or Federal fund drafts as the required form of payment. While the merits of these systems are under discussion and the rulemaking is flexible enough to allow their use as methods of payment, a formal adoption of this recommendation cannot be made at this time. This recommendation is being considered as a separate issue. If these systems can be adapted to the OCS Leasing program they will be considered in a future amendment. There are many amounts of money collected under this program that are too small to be amenable to payment to either of these two systems.

Several comments, in addressing section 3313, suggested that the rulemaking include a commitment to publish the Call for Nominations and Comments for oil and gas lease sales. In keeping with the current policy of the Department of the Interior to publish calls in the Federal Register and to

announce them through press releases; this suggestion has been adopted and appropriate language added to the section.

A comment suggested additional State involvement in the preparation of the Call for Nominations and Comments. The wording of section 3313.1(a) was not changed. An additional layer of coordination efforts mandated by regulation would only serve to burden an already complicated pre-lease process. The affected States have ample opportunities for input to the very early leasing decision and sale design. Affected States are, by law and regulation, given the opportunity to review and comment on the 5-year leasing program which is now being developed and which will be reviewed annually and on the Call for Nominations, after it is issued. The intergovernmental planning program also allows continuous input by affected States to all phases of the leasing and lease management processes.

There were several suggestions to further describe the terms used in section 3313 of the rulemaking. In response, language has been added showing examples of the types of information the Director may request in the Call for Nominations and Comments. The Call requests "nominations", i.e., asks interested parties to nominate tracts they wish to be included in a lease sale for an area which has been designated as being potentially available for leasing. One suggestion was that "negative nominations" referred to in the Outer Continental Shelf Lands Act Amendments be explicitly included in the term "nominations" as it is used in this section. This is not the intent of the Act. The Call requests nominations as well as "Comments" on potential environmental impacts and use conflicts in the areas under consideration. The comments often identify areas or specific tracts which the individuals making comments feel should receive special concern or analysis, or which should be deleted from the sale area. The comment to delete a tract or tracts is what is referred to in the Act as a "negative nomination."

Nominations of tracts by the industry or States do not assure their selection for further analysis or ultimate inclusion in a lease sale. Comments, including the request to delete a tract, or so called "negative nominations" do not assure automatic deletion of a tract or tracts from the sale area.

Similarly, selection of tracts for further analysis does not assure their inclusion in any subsequent lease sale offering, nor does it mean they will be deleted for environmental or other reasons. In other words, it is the intention of the Bureau of Land Management to consider, during the Call and the tentative tract selection processes, all available information which might influence the recommendation of tracts for further environmental analysis. Such information includes, but is not limited to, multiple uses of the area, including fisheries, environmental and geological conditions, resource potential, and indications of interest. Tentative tract selection leads to recommendations by the Director to the Secretary of the tracts which should be further analyzed.

The term "recommendation", as it is used in the rulemaking, implies justification of the decision being recommended. This being true, it was not necessary to adopt a suggestion that language be added to the rulemaking requiring the Director to justify his recommendations.

As suggested by several comments, a new section 3313.2 has been added providing procedures for State consultation on tracts within three miles of a State's seaward boundary. Subpart 3314, tentative tract selection, has been given a new title and strengthened as a result of comments directed to it. First, a sentence has been added to section 3314.1(a) permitting the Director to include in the recommendation tracts not nominated. Second, another sentence has been added to the same section requiring the Director to consider environmental and all other relevant information before making recommendations on tract selection. For clarity, the section has been broken into two subsections, with the word "tentatively" to indicate that this stage is an interim designation of tracts to be further considered for leasing. Another change in subsection (b) was the addition of "local governments" to the list of agencies and individuals whose recommendations will be considered. Finally, a phrase has been included in subsection (b) requiring the Director not only to assess the impacts of leasing but also to develop appropriate measures to mitigate adverse impacts.

A new subsection (c) has been added to the section requiring the Director to inform the public as soon as possible of any tract additions or deletions that occur after the tentative selections have been made.

A suggestion that a public hearing be held before a tentative tract selection was not adopted since there is ample opportunity for public input associated with the Call for Nominations and Comments. An additional hearing would only burden the process without yielding any real benefit.

A suggestion that was not adopted was that a coordination process be written into section 3314 of the rulemaking. The language calls for consultation with other agencies that is designed to determine priorities and will vary with each tract selection process.

In connection with section 3314.2, a suggestion was made that the term "reasonable economic production unit" be defined. The term is used as a criterion for selecting tracts larger than 5760 acres. This decision will be made on a sale or tract basis.

The language of subpart 3315, lease sales, was changed in several instances in response to a number of comments. The titles of the first two sections were changed to more accurately reflect the contents of the sections.

Several comments suggested that affected States be directly involved in the development of lease stipulations and conditions. This suggestion could not be adopted since it would add another layer of consultation that is not warranted. Affected States are afforded an opportunity for continuous input into leasing decisions through the intergovernmental planning program. Further, State agencies are consulted while mitigating measures are being developed during the environmental analysis. Affected States have an opportunity to submit written comments on mitigating measures and may give testimony at hearings, during the public comment period. Finally, States are allowed 60 days to comment on the proposed notice of rule, which includes mitigating measures as part of the proposal.

Suggestions to significantly expand or restrict the involvement of affected States and to require consultation with local governments, the industry and the public, go beyond the intent of the Outer Continental Shelf Lands Act, as amended, and could not be accepted since the language of section 19 of the Act is quite specific on this point. For example, suggestions made to require the Secretary of the Interior to give the same weight to affected local government recommendations as to those from the Governors of affected States could not be adopted because of the very precise wording of section 19(c) of the Act. Similarly, the scope of the recommendations by affected States and which the Secretary typically must accept is clearly spelled out in section 19(a) of the Act and cannot be expanded, as suggested, to cover comments on lease stipulations. This is

not to imply, however, that Governors or any member of the public are in any sense prohibited from commenting on any part of the proposed notice or that any such comment will not be given due consideration.

Subsection (a) of section 3315.1 has been revised, as suggested, to define "mitigating measures" as including lease stipulations but does not spell out the issues which the stipulations might address, e.g., geologic hazards, etc. These issues are sale or tract-specific and would not be appropriately the subject of a rulemaking that covers all sales. Another suggestion on this section was that industry be contacted to discuss the development of particularly unusual or extreme stipulations. While this suggestion was not adopted, it was felt to have merit and efforts will be made by the Department of the Interior, when appropriate, to elicit industry involvement in the development of stipulations that impose substantial burdens on the lessee.

Another suggestion of merit that was not added to section 3315.1 of the rulemaking dealt with the addition of a sale date in the proposed notice. While this is an item that is not appropriately included in a rulemaking, there will be an attempt to publish a tentative sale date as part of the proposed notice to facilitate planning.

A new subsection (c) added to section 3315.1 outlines the publication procedure on a proposed notice of sale. The subsection also requires the notice to be sent to the Governor of any affected State at the same time it is published in the Federal Register. This subsection was added when it was discovered that the proposed rulemaking failed to include this requirement.

A suggested amendment to section 3315.2(b) was adopted by the addition of a new sentence to expand the provision relating to how a determination of national interest will be made and to reemphasize the Department of the Interior's commitment to developing resources consistent with the findings, purposes and policies of the Outer Continental Shelf Lands Act, as amended. For further clarity, subsection (b) was divided into two parts, with the second part becoming a new subsection (c). A recommendation to require the Secretary to respond to the Governors' recommendations within 30 days was rejected as being too restrictive.

A new section 3315.3, Department of Energy review, added to the regulations specifies the review process with the Department of Energy. This change was made in response to a suggestion that pointed out the importance of this mandated review.

Section 3315.4(b) was amended by the addition of a sentence pointing out that the suggested formats for bidder submissions and joint bidder's statements have been prepared and added to Part 3300 as appendices. This addition will be of assistance to those who are required to file the documents. A cut-off date for the use of multiple bidding submissions for statistical purposes was added to section 3315.4(e) to reflect the language of the Outer Continental Shelf Lands Act Amendments. The need for this date was indicated in several comments. An amendment that was suggested but not adopted was a request that the procedures for multiple bidding be spelled out in greater detail. The Department of the Interior will detail the procedures for use of the multiple bidding systems at the time a decision is made to use such systems.

Many minor wording changes to subpart 3316, Issuance of Leases, were made. Most of these changes were recommended in the comments and are designed to clarify the subpart. One major change was the addition of a sentence to section 3316(b) to include two provisions of the Outer Continental Shelf Lands Act Amendments relating to lease term. One suggestion to provide for a 10-year lease term for tracts when production technology is not available for the water depths involved was not accepted. Rather the statutory language was retained to allow the determination of the need for a longer lease term to be made on a sale-by-sale basis.

A number of comments requested that the reference to diligence requirements in section 3316.4(i) be expanded to included definitions, standards, hearing procedures, etc., or alternatively, be deleted until such definitions and procedures are available. While the expressed concerns are valid, the language of the subsection was not changed. The subsection necessarily draws the attention of potential bidders to the diligence provisions of the Act. The establishment of diligence requirements and the setting of production rates are the responsibility of the Department of Energy. The U.S. Geological Survey has the responsibility for setting deadlines for the submission of exploration and development plans, requirements which deal with diligence in the broad sense of the word. The U.S. Geological Survey has already surfaced exploration and development plan submission requirements in its proposed rulemaking, 30 CFR 250.34. There is movement, therefore, towards more precise definitions of the responsibilities of lessees to actively explore and develop offshore leases.

Several comments objected to the possibility of a potential bidder receiving a notice of disqualification just prior to a lease sale and wanted a 30 or 60 day notice period to be included. The language of the law prohibits submission of bids by a bidder found not to be diligent on other leases, without mention of a specific period for notification prior to a sale. However in practice, it is reasonable to expect that a potential bidder would have ample notice of possible disqualification because of the statutory requirement for notice and hearing. No change was made in the rulemaking.

Among other changes to section 3316.5 is the rearrangement of provisions to more closely follow the sequence of events in the issuing of leases. A suggestion to require bidders to submit an "add-on" bid to determine the winning high bid in case of a tie bid was not adopted since tie bids are rare. The procedure outlined is sufficient to handle the problem. Several comments objected to the reduced time allowed for execution of leases and payment of the balance of the cost bonus. The language was left to stand. The benefits to the Government far outweigh the inconvenience which successful joint bidders might experience in executing leases within the fifteen days allowed. Recommended language to further clarify what happens when the 15th day coincides with a holiday or weekend was not adopted because it was not needed. Standard practice recognized in the Government extends a deadline that falls on a holiday or weekend to the next working day.

Several suggestions on section 3316.5(i), renumbered (h), to require the payment of interest on deposits while bids are being considered were not accepted. The Outer Continental Shelf Lands Act Amendments clearly leaves this matter to the discretion of the Secretary of the Interior. However, the wording was changed to make interest provisions apply, again at the discretion of the Secretary, in cases where sale areas are withdrawn or restricted before leases are issued. The Department of the Interior is presently exploring, in consultation with the Treasury Department, procedures to pay interest on deposits.

Several comments asked what would happen if the Secretary of the Interior rejected a highest qualified bid upon the recommendation of the Attorney General after the anti-trust review of the bids. This is a difficult question because

it is current practice to hold only the highest bids and return all others. There has been no need to hold other bids because to date there has been no rejection of high bids because of the recommendation of the Attorney General. However, this is recognized as a potential problem area and there may be a need, at some future date, to change current practices or to amend this rulemaking to cover this specific situation.

The change in section 3317 of the proposed rulemaking requiring rental payments in lieu of minimum royalties was intended to simplify accounting procedures for future leases. Many of those making comments stated that the wording of the proposed rulemaking was unclear as to when the new provisions would apply. Others pointed out that there would be some increased financial burden to lessees in the first year of production since royalties could not be credited against production royalties as could the minimum royalty required by existing leases. The accounting involved to negate this unintended result and make rentals creditable against royalties would be far more complicated and troublesome than existing procedures. The comments indicate that the proposed change in the procedure caused confusion and could create additional accounting burdens, contrary to the intent of the change. Therefore, the final rulemaking will contain the language of the existing regulations rather than the language of the porposed rulemaking.

One comment recommended that subpart 3317 be expanded to deal with net profit shares as well as rentals and royalties. New language will be added to the subpart after a new profit share bidding system has been developed and adopted.

A comment pointed out that the language of section 3318.1(f) was ambiguous and needed clarification. The section was changed to clarify that the filing of separate bonds, after default on the $300,000 area wide bond, would meet the bonding requirements for those leases on which the new separate bonds had been filed.

Comments on subpart 3318 addressed the amount of the bond and the rationale for requiring additional bonding. The general wording of the subpart has not been changed since it covers all situations, including particular site specific operating conditions where additional bonding might be warranted. Situations of this type can be best handled on a case-by-case basis at the discretion of the authorized officer rather than through requirements in regulations.

Subpart 3319, Assignments, Transfers and Extensions, received a number of comments, many of which were adopted. A major change in the subpart was the addition of a new section 3319.3, which spells out the 30-day time period allowed for Attorney General review of an assignment or transfer.

A number of comments made the point that operating agreements do not transfer title and should not be subject to the filing requirement in section 3319.2(a)(1). The wording of the section was changed to require "filing of operating rights" which do affect record title and which, historically, have been required to be filed. Section 3319.2(a)(2) was changed to require that any document not required to be filed by this rulemaking must be accompained by a $25 fee per each lease affected and further to authorize the authorized officer to reject any such documents. This change will permit the recovery of costs related to the recording of unnecessary documents and allow rejection of those documents that are not, in the opinion of the authorized officer, a proper part of the case file.

A number of comments noted that the proposed change in section 3319.4(b), renumbered 3319.5(b) in the final rulemaking, is a change from current practice and might discourage "farmouts". After careful review, it was determined that the change would not be a significant disincentive to "farmouts". The provision was left to stand as in the proposed rule. The change is consistent with Departmental efforts to encourage prompt and efficient development as required by section 5(a)(7) of the Act. While segregations, especially those near the end of the primary term, would be discouraged, a new subsection (c) was added to protect the small number of existing segregated leases.

It was suggested that the wording of 30 CFR 250.35 be incorporated in section 3319.5, renumbered section 3319.6 of the final rulemaking rather than referred to in the section. The reference to this section of title 30 of the Code of Federal Regulations is adequate for this rulemaking and the suggestion was not adopted. Another suggestion that the phrase "any officially designated subdivision" be defined was not adopted. This phrase has been in the regulations on this subject for a number of years and has not caused confusion indicating that this term of art is well understood in the industry and does not need to be defined.

Several comments suggested that the word "accrued" be deleted from section 3320.1 as a modifier of the phrase "rentals and royalties" since rentals are payable in advance. While it is true that rentals and royalties are normally payable in advance and would not accrue, rentals not paid on time do accrue and are due before relinquishment takes effect. Therefore, the wording of the section was left essentially intact with only minor editorial changes to make the section clearer.

One comment asked that the phrase "at the option of the lessee" be inserted in that portion of section 3320.1 that requires the removal or conditioning of all platforms and other facilities upon relinquishment. This suggestion was not adopted. The section does not impose any unreasonable burden on the lessee and retains the flexibility needed by the Director, U.S. Geological Survey, to determine the best means of protecting the environment. Further, the language parallels that of 30 CFR 250.

A number of comments requested that section 3320.2(d) be amended to include all of the various conditions under which lease cancellation can occur. It is true that the language of the proposed rulemaking did not make reference to the five-year suspension period or incorporate all of the conditions for cancellation or fair value considerations, etc. The section was amended to delete all the procedural references and to include a cross-reference to 30 CFR 250.12 which deals at length with this subject.

One comment suggested that the language of the rulemaking be greatly expanded to detail the procedures and conditions under which the Bureau of Land Management would notify the U.S. Geological Survey and the Secretary of the Interior of the potential threats which might warrant cancellation. This suggestion was not adopted because these internal procedures, e.g., consultation among bureaus of the Department of the Interior, are covered by Secretarial Order 2974, and are not appropriate for inclusion in a rulemaking.

Many comments were made on the timing and use of the studies described in section 3331. Most of the recommendations were accommodated through the inclusion of the new policy section, section 3300.0–2 and by changes in the wording of section 3331.

The new policy section included in this rulemaking states that the Secretary of the Interior shall use available environmental data in making decisions, i.e., for all decisions at all stages of the

lengthy leasing and lease management process. The new policy section re-emphasizes the commitment of the Department of the Interior and the Bureau of Land Management to use such data. This commitment is further strengthened by the addition of a recommended phrase to section 3331.1(e) that specifies that the studies program is designed to provide information in a form and "in a timeframe" that can be used in decisionmaking. These changes should remove any lingering doubt about the use of environmental data for decisionmaking.

The Outer Continental Shelf Lands Act Amendments specify a deadline of six months prior to a sale for the initiation of studies. The language of the rulemaking mirrors that requirement. It is emphasized that this does not preclude the use of data collected earlier in the decisionmaking process, nor does it preclude starting studies much earlier, including studies in areas not identified in the five-year leasing program, subject, of course, to budgetary and management constraints. Specific starting times for studies (other than the six-month statutory requirement), were purposely not addressed in the rulemaking in order to allow the necessary flexibility to tailor the design of the studies program to make relevant data available in time to influence decisions. The time for initiation of studies was left flexible rather than set by this rulemaking to a specific term, as was recommended in several comments.

There were a number of comments that suggested the listing of the specific statutory requirements of section 20(a)(3) of the Outer Continental Shelf Lands Act, as amended, with regard to what subjects are to be studied, e.g., the introduction of drilling muds or the laying of pipe. These suggestions were adopted by the addition of a sentence to section 3331.1(a) dealing with the focus of the predictive studies to be carried out. However, the phrase "environmental impacts of pollutants introduced into the environments" was used in place of the more restrictive language of the Amendments that does not provide an all-inclusive list of potential impacts. The broader language adopted for the final rulemaking allows, for example, the study of the effects of air pollution, as well as the impacts on marine biota of chronic or acute oil spills and drilling muds and fluids mentioned in the Act.

The phrase "if appropriate" was deleted from the last sentence of section 3331.1(d) as recommended in the comments. The purpose of the modifier was to indicate that the results of the studies would be used to improve mitigating measures only when the findings of the studies recommended such changes. The phrase was misleading and redundant and was dropped.

There was a recommendation to specify all the decision points in the leasing and resource management processes. This was not considered appropriate for inclusion in the rulemaking since many of the events and documents generated in the studies program are parts of internal processes which can vary over time according to a particular sale and the issues involved.

The addition of a separate sentence to section 3331.1(a) dealing specifically with predictive studies also points up the Department of the Interior's commitment to such studies and to the move away from the baseline studies approach. Several of the comments stated that the language of the proposed rulemaking did not place enough emphasis on the need for predictive studies.

Several recommended wording changes to section 3331 were not adopted because they added unneeded language that lengthened the rulemaking without adding any substance. There was, for example, a suggestion to reword the first sentence of section 3331.1(a) to read ". . . impacts on the human, marine and coastal environments of the outer continental shelf and the coastal areas which may be affected by OCS oil and gas activities. . . ." This change was not adopted as the environments listed in the suggestion and the text of the rulemaking include the OCS and the coastal areas by definition. Another suggestion on this section wanted studies sent to affected States. The availability of studies is fully covered by section 3300.2 and does not need to be provided for here. Finally, there was a suggestion to list the types of impacts and the types of resources to be studies. This suggestion was not adopted in that the general language of the section allows study of all impacts and all resources in all areas. The rulemaking already contains one listing of resource areas, section 3313.1(b), which is sufficient.

In subpart 3340, new section 3340.0–1, purpose, and section 3340.0–2, policy, have been added to expand on the purpose of the rulemaking, to draw attention to the compliance requirements of other affected Federal agencies, and to spell out the Department of the Interior's policy of engaging in advance transportation planning through programs designed to involve affected parties. These two new sections were added in response to a number of comments on these subjects.

One comment proposed an expanded definition section to clarify the classification of pipelines and the corresponding division of responsibilities between the Bureau of Land Management and the U.S. Geological Survey for granting rights-of-way, easements and permits on the Outer Continental Shelf Lands. Even though the suggestion was not adopted, it did focus on an issue of concern. The growth of the offshore pipeline network requires a careful look at jurisdictional questions and an evaluation of the effects on existing and future operations which could result from any change in definitions. The Department of the Interior is presently considering the pipeline jurisdiction questions.

One comment recommended a change in section 3340.1(a)(1) providing that maximum environmental protection be achieved by utilization of the best available and safest technologies (BAST). While section 5(e) of the Outer Continental Shelf Lands Act, as amended, is phrased that way, the comment was not adopted. The intent of this section is to give the authorized officer sufficient discretion to assure maximum environmental protection as required by the Act under varying circumstances. Environmental stipulations may be required which are not related to technology. One comment pointed out that the word "Maximum" was not shown to modify environmental protection in the proposed rulemaking as it appears in section 5(e) of the Outer Continental Shelf Lands Act, as amended. The word has been restored to the section in the final rulemaking. However, the phrase "which the Secretary determines to be economically feasible" was not deleted as a test for BAST as was recommended by one comment, since section 21 of the Act, which deals with safety regulations, includes such a qualifier of the use of BAST. Because of this inclusion in the Act, the qualifier was retained in the final rulemaking wherever there is a reference to BAST.

Several comments requested a cross-reference to the U.S. Geological Survey regulations be added to section 3340.1(a)(1) which mentions BAST. This request was not accepted since the U.S. Geological Survey has not at this time completed its rulemaking on this subject.

One comment noted that section 3340.1(a)(1) should require the use of common pipelines wherever possible.

This was not adopted as it was felt that the decision as to whether to require common pipelines should be made on a case-by-case basis after examining the facts rather than having it mandated in every instance by regulation. The rulemaking allows the authorized officer to require the use of a common pipeline as part of the application approval process.

Several comments sought the deletion of the reference in section 3340.1(a)(4) to rights-of-way within boundaries of areas designated for pipelines. This suggestion has been adopted. The intergovermental planning program provides an appropriate and flexible mechanism for designating transportation routes.

Several comments requested section 3340.1(a)(1) be changed to give preference to the rights of the initial or prior right-of-way grant over those of all subsequent grants. This was not adopted since the language of the section is consistent with the nature of the grant from the United States, i.e., it is a limited grant for a limited purpose. Safety and protection of the environment will be considerations that are essential ingredients of the authorized officer's decision. The authorized officer is given flexibility to quickly and equitably resolve conflicts between an applicant and the holders of existing grants by the removal of the protest provisions in section 3340.2–1(e)(1). The procedures provided by the rulemaking are adequate to protect the legitimate rights of prior holders.

A question was raised in the comments on the applicability of the new rental rates provided for in the proposed rulemaking. It is intended that the rental rates will apply to all rights-of-way, existing and new.

One comment noted that section 3340.1(a)(6) of the proposed rulemaking greatly expanded the provisions of the existing regulation dealing with the requirements for revocation or termination of a grant. The comment suggested cross-referencing Department of Transportation regulations on this subject rather than listing requirements as was done in the proposed rulemaking. This suggestion was not adopted because the Bureau of Land Management, as the permitting agency, needs to have its own authority to enforce practices it deems necessary for maximum environmental protection required under the law.

A comment suggested that the discretionary authority given the authorized officer be restricted to allow suspension only for and during an emergency which would result in serious, irreparable or immediate harm. This suggestion was not adopted. The rulemaking is in compliance with the broad language of the Outer Continental Shelf Lands Act, as amended, which allows suspension if there is a threat of harm. The language of section 3340.1(a)(7) was amended to include authority for suspension of operations in cases where there is a threat of serious harm.

A comment requesting section 3340.1(a)(7) be changed to allow Federal and State agency input to the determination of whether to suspend operations was adopted. However, a comment suggesting the addition of provisions for State involvement in all the procedures covered by section 3340.1 was not adopted because it would be redundant. State involvement and the consistency of the application with approved coastal zone management plans are already covered at length in sections 3340.2–2 (c) and (d).

Another comment suggested that section 3340.1(a)(7) include a cross-reference to the U.S. Geological Survey suspension and cancellation provisions. This was not accepted because it would be inappropriate to cross-reference these provisions that deal with subjects other than pipelines. However, the section has been expanded considerably to address some of the conditions under which suspension and cancellation might occur and to provide public input into the determination to cancel or suspend operations.

The wording of section 3340.1(a)(8) was questioned in the comments. One change made was the deletion of the term "project" and insertion of the term "pipeline" to make the section more precise. However, the section was not expanded to further define the phrase "unreasonable obstruction to fishing and shipping operations". The rulemaking will allow the determination of what constitutes an unreasonable obstruction on a case-by-case basis. It does not set a rigid definition of what constitutes an unreasonable obstruction that fits all situations.

There was a suggestion to require continuous monitoring of pipeline operations by the Bureau of Land Management as part of section 3340.1(a)(8). This provision was not considered necessary because the U.S. Coast Guard and the U.S. Geological Survey already monitor pipelines on a continuing basis. Should a leak be found, the various emergency provisions would come into effect. Should damage result from the leak, the Outer Continental Shelf Lands Act, as amended, provides several funds for clean-up and compensation. Since all of these provisions are covered by other regulations and other sections of this rulemaking, it was decided not to repeat the provisions in this section.

There was a suggestion to exempt common carriers from the requirements of section 3340.1(a)(9) to furnish the authorized officer with copies of contracts for transportation. This suggestion was not adopted since it is the intent of the section to obtain needed information only upon request.

There were several recommendations to amend section 3340.1(a)(10) to specifically exempt common carrier oil pipelines from the requirements to purchase crude oil. The language of the section parallels the language of the Outer Continental Shelf Lands Act, as amended, and has not been changed. The section is phrased as an either/or provision and should not cause any operational problems. A primary intent of this section is to draw attention to the authority of the Federal Energy Regulatory Commission to regulate common carriers on the OCS.

A sentence was added to section 3340.1(c) that authorizes temporary cessation of use for proper maintenance when a pipeline segment becomes corroded or otherwise worn and needs replacing. This provision is needed to cover this specific situation.

A recommendation was made that emphasis be given State involvement in the granting process by requiring that a copy of the application required by section 3340.2–1 be funished an affected State. This recommendation was not adopted since sections 3340.2–2(c) and (d) and the policy of involving States through the intergovernmental planning program already give adequate opportunity for an affected State to be a part of the process. A related suggestion to make approval of an application dependent upon compliance with State law and regulations was not accepted. The provisions of sections 3340.2–2(c) and (d) describe and require involvement by an affected State in the approval of any grant that will subsequently cross or affect the coastal zone of a State

The map scale notation in section 3340.2–1(b)(1) was inadequate in the proposed rulemaking and has been corrected in the final rulemaking to make it clear that the map scale is to be 1 inch to 4,000 feet

A comment was received that recommended deletion of the requirement to specify the diameter of the pipeline in the application. This recommendation was not adopted because a considerable amount of detail is required to properly evaluate an

application and clear it through the many approving agencies. Further, if the estimate of the diameter of the pipeline is incorrect or is revised an amended application can be filed.

One of the comments suggested that the application show the complete route of the proposed pipeline, through State as well as Federal lands. This suggestion was adopted and section 3340.2–1(b)(4) has been amended to reflect the change.

One comment suggested that the application map show geologic features which might affect construction and operation. This suggestion was not adopted since it is already a part of the detailed instructions for filing an application. In addition to the map accompanying the application described in section 3340.2–1(b), the applicant must submit other maps showing geologic hazards, locations of archeological resources, etc.

A comment noted that the wording of section 3340.2–1(e)(2) was ambiguous as to when and how "safety, envionmental and economic factors" would be considered in approving or denying an application. The placing of this phrase is confusing and more properly belongs in the section 3340.2–2 which deals with approval action and, in fact, is already incorporated by reference in section 3340.2–2(a). The last sentence of this section which deals with the decision on the application was also moved to the approval section for clarity. In connection with moving language from section 3340.2–1 to section 3340.2–2, it was decided to rearrange section 3340.2–2 so that the approval action follows a natural sequence in the final rulemaking, making the whole process clearer.

One comment objected to the use of the word "may" in section 3340.2–2(a) as it applies to the actions, consultation efforts, etc., carried on by the authorized officer in considering an application. The wording has not changed since the conditions and issues involved vary greatly among applications and need to be handled on a case-by-case basis. The use of the word "shall" would require State and Federal consultation, public hearings, etc., for every application, even though analysis might indicate no environmental or other concerns sufficient to warrant such commitments of time and effort.

A recommendation was made that the Director prepare an environmental assessment before approving a grant for pipeline right-of-way. This recommendation was adopted but the balance of the recommendation which suggested referencing the National Environmental Policy Act and the Coastal Zone Management Act and spelling out the focus of such an assessment was not adopted. The phrase "in accordance with applicable policies and guidelines" is an adequate statement of the requirements governing the preparation of the environmental assessment and no further change is needed.

Reference to the intergovermental planning program has been added to the newly numbered section 3340.2–2(a) as suggested in a number of comments. The addition of the reference serves to re-emphasize the Department of the Interior's commitment to involve the affected States in policy and planning decisions. The addition also addresses the request of one State that it be involved in the annual review of rights-of-way grants. The intergovernmental planning program will provide an adequate vehicle for continuous input by the States

One comment characterized the consistency provisions of section 3340.2–2(d) as "a weak attempt to circumvent the intent of the Coastal Zone Management Act." The consistency provisions refer to the intergovernmental planning program and require that the entire pipeline be described so it can be reviewed. An affected State will have early and ample opportunity to evaluate the right-of-way proposal in terms of consistency with its coastal zone plan. Further, the U.S. Geological Survey regulations deal with gathering lines normally described in development and production plans. A major pipeline can proceed only through the granting of a right-of-way covered by an application filed with the Bureau of Land Management. A consistency determination is made only when a pipeline comes ashore or if a pipeline application is submitted as part of a development or production plan.

One comment suggested that the authorized officer be required to approve any application for a grant found to be in compliance with all pertinent law and regulations. The approval language of the rulemaking is consistent with the provisions of the Outer Continental Shelf Lands Act, as amended, in that it allows discretion for approving grants for pipeline rights-of-way. For this reason, the suggestion was not adopted.

The section covering construction procedure has been renumbered 3340.3 in the final rulemaking. One comment suggested that the word "significant" be added in section 3340.3(b) to modify the changes in conditions which may be grounds for altering the grant. The suggestion was adopted.

It was suggested in one of the comments that the requirement to "construct the pipeline within 5 years" be expanded to avoid the unlikely situation where a grant would be forfeited at the end of the fifth year if the pipeline was not quite finished. The wording has not been changed because this provision has never caused any operational problems and should not in the future.

A suggestion was received to limit abandonment requirements to those specified in section 3340.1(a)(6). Section 3340.5 has been revised to reference the earlier section.

Several comments objected to the provisions in section 3340.6 requiring prior approval of a change in the use or flow of a pipeline covered by a grant. The requirement has not been changed because the information is needed if the authorized officer is to be able to carry out responsibilities under the law and regulations.

One comment questioned the authority of the Secretary of the Interior to require bonding for pipeline right-of-way grants. While there is no express authority in the Outer Continental Shelf Lands Act, as amended, requiring bonding, the general grant of authority in section 5(e) of the Act allowing the Secretary to issue appropriate regulations is the basis for the bonding requirement. Without the protection afforded by bonding, it is questionable that the Secretary of the Interior could adequately carry out his responsibilities to manage the resources and protect the environments of the Outer Continental Shelf. Several comments questioned whether it was the intent of the rulemaking to require separate bonds for a lease and a pipeline right-of-way grant. That is the intent of the rulemaking. The rulemaking also requires the posting of a bond for existing rights-of-way not presently bonded.

The provisions for reimbursement of costs contained in section 3340.8 have been deleted from the final rulemaking. This very complicated issue needs further study before a final decision is made on how cost recovery will be applied to the outer continental shelf. If it is decided that cost recovery should be applied, the regulations of this part will be amended.

Editorial changes and corrections have been made throughout the rulemaking as necessary.

The principal authors of this final rulemaking are William J. Quinn, Division of Minerals Program

Development and Analysis, Hans L. Larsen and Chris Oynes, Division of Mineral Resources, Robert C. Bruce, Office of Legislation and Regulatory Management, all of the Bureau of Land Management, and Sandra E. Seim, staff assistant to the Assistant Secretary for Land and Water Resources.

It is hereby determined that the publication of this document is not 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 significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.), Part 3300, Group 3300, Subchapter C, and Part 2880, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations are amended as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

June 25, 1979.

PART 2880 [Amended]

1. Part 2880 is amended by the deletion of subpart 2883.

2. Part 3300 is revised to read as follows:

Group 3300—Outer Continental Shelf Minerals and Rights-of-way Management

PART 3300—OUTER CONTINENTAL SHELF MINERALS AND RIGHTS-OF-WAY MANAGEMENT, GENERAL

Subpart 3300—Outer Continental Shelf Minerals and Rights-of-way Management, General.

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Authority: 43 U.S.C. 1331 et seq.

Subpart 3300—Outer Continental Shelf Mineral and Rights-of-way Management, General

§ 3300.0–1 Purpose.

The purpose of these regulations is to establish the procedures under which the Secretary of the Interior will exercise the authority granted to administer a leasing program for minerals and grant rights-of-way on the submerged lands of the Outer Continental Shelf.

§ 3300.0–2 Policy.

The management of Outer Continental Shelf resources is to be conducted in accordance with the findings, purposes and policy directions provided by the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1332, 1801, 1802), and other Executive, legislative judicial and Departmental guidance. The Secretary of the Interior shall consider available environmental information in making decisions affecting Outer Continental Shelf resources.

§ 3300.0–3 Authority.

The Outer Continental Shelf Lands Act as amended, (43 U.S.C. § 1331 et seq.) authorizes the Secretary of the Interior to issue, on a competitive basis, leases for oil and gas, sulphur, geopressured-geothermal and associated resources, and other minerals in submerged lands of the Outer Continental Shelf. The act authorizes the Secretary of the Interior to grant rights-of-way through the submerged lands of the Outer Continental Shelf. The Energy Policy and Conservation Act of 1975 (42 U.S.C. 6213), prohibits joint bidding by major oil and gas producers.

§ 3300.0-5 Definitions.

As used in this part, the term:

(a) "Act" refers to the Outer Continental Shelf Lands Act of August 7, 1953 (43 U.S.C. 1331 et seq.) as amended.

(b) "Director" means the Director, Bureau of Land Management.

(c) "OCS" means the Outer Continental Shelf, as that term is defined in 43 U.S.C. 1331(a).

(d) "Secretary" means the Secretary of the Interior.

(e) "Bureau" means the Bureau of Land Management.

(f) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shore lines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454(b)(1));

(g) "Affected State" means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of the act, any State—

(1) the laws of which are declared, pursuant to section 4(a)(2) of the act, to be the law of the United States for the portion of the Outer Continental Shelf on which such activity is, or is proposed to be conducted;

(2) which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of the act;

(3) which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the Outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the Outer Continental Shelf; or

(5) in which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities;

(h) "Marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, conditions, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the Outer Continental Shelf;

(i) "Coastal environment" means the physical atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, conditions, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

(j) "Human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the Outer Continental Shelf;

(k) "Mineral" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and such other minerals as are disposable under mineral laws applicable to the public lands.

(l) "Authorized officer" means any person authorized by law or by delegation of authority to or within the Bureau of Land Management to perform the duties described in this part.

§ 3300.0-6 Cross references.

(a) For Geological Survey regulations governing exploration, development and production on leases, see 30 CFR 250 et seq.

(b) For multiple use conflicts see the Environmental Protection Agency listing of ocean dumping sites—40 CFR 228.

(c) For related National Oceanic and Atmospheric Administration programs see:

(1) Marine sanctuary regulations, 15 CFR 922;

(2) Fishermen's Contingency Fund, 50 CFR 296;

(3) Coastal Energy Impact Program, 15 CFR 931;

(d) For Federal Maritime Commission regulations on the oil spill liability of vessels, see 46 CFR 544.

(e) For Coast Guard regulations on oil spill liability of operators, see 33 CFR 135-6.

(f) For Coast Guard regulations on port access routes, see 33 CFR 164.

(g) For compliance with the National Environmental Policy Act, see 40 CFR 1500-08.

(h) For Department of Transportation regulations on offshore pipeline facilities, see 49 CFR 195.

(i) For Department of Defense regulations on military activities on offshore areas, see 32 CFR 252.

§ 3300.1 Leasing maps and diagrams

(a) Any area of the OCS which has been appropriately platted as provided in paragraph (b) of this section, is subject to lease for any mineral not included in a subsisting lease issued under the act or meeting the requirements of subsection (a) of section 6 of the act. Before any lease is offered or issued an area may be (1) withdrawn from disposition pursuant to section 12(a) of the act, or (2) designated as an area or part of an area restricted from operation under section 12(d) of the act.

(b) The Bureau shall prepare leasing maps and official protraction diagrams of areas of the OCS. The areas included in each mineral lease shall be in accordance with the appropriate leasing map or official protraction diagram.

§ 3300.2 Information to States.

(a) The information covered in this subsection is prepared by or directly obtained by the Director. Such information is typically not considered to be proprietary or privileged, with the primary exception of specific tract nominations by industry received in response to a Call for Nominations and Comments issued by the Secretary. All other proprietary and privileged information is obtained by or under the control of the U.S. Geological Survey which is responsible for its release in accordance with its regulations (see 30 CFR 250, 251, 252).

(b) The Director, in conjunction with the Director, U.S. Geological Survey, shall prepare an index to OCS information (see 30 CFR 252.5). The index shall list all relevant actual or proposed programs, plans, reports, environmental impact statements, nominations information, environmental study reports, lease sale information and any similar type of relevant information including, modifications,

comments and revisions, prepared by or directly obtained by the Director under the act. The index shall be sent on a regular basis to affected States and, upon request, it shall be sent to any affected local government. The public shall be informed of the availability of the index.

(c) Upon request, the Director shall transmit to affected States, local governments or the public, a copy of any information listed in the index which is subject to the control of the Bureau in accordance with the requirements and subject to the limitations of the Freedom of Information Act (5 U.S.C. 552) and regulations implementing said Act, and the regulations contained in 43 CFR Part 2, except as provided in (d) below.

(d) Upon request, the Director shall provide relative indications of interest on tracts nominated as well as any comments filed in response to a Call for Nominations and Comments for a proposed sale. However, no information transmitted shall identify any particular tract with the name of any particular party so as not to compromise the competitive position of any participants in the nominating process.

§ 3300.3 Helium.

(a) Each lease issued or continued under these regulations shall be subject to a reservation by the United States, under section 12(f) of the act, of the ownership of and the right to extract helium from all gas produced from the leased area.

(b) In case the United States elects to take the helium, the lessee shall deliver all gas containing helium, or the portion of gas desired, to the United States at any point on the leased area or at an onshore processing facility. Delivery shall be made in the manner required by the United States to such plants or reduction works as the United States may provide.

(c) The extraction of helium shall not cause a reduction in the value of the lessee's gas or any other loss for which he is not reasonably compensated, except for the value of the helium extracted. The United States shall determine the amount of reasonable compensation. The United States shall have the right to erect, maintain and operate on the leased area any and all reduction works and other equipment necessary for the extraction of helium. The extraction of helium shall not cause substantial delays in the delivery of natural gas produced to the purchaser of that gas.

§ 3300.4 Payment.

(a) Payments of bonuses, including deferred bonuses, first year's rental, other payments due upon lease issuance, filing charges and fees, annual rentals and costs for grants of pipeline rights-of-way shall be made to the manager of the appropriate OCS field office. All payments shall be made by cash, check or bank draft payable to the Bureau of Land Management, unless otherwise directed by the Secretary.

(b) All other payments required by a lease or the regulations in this part shall be payable to the United States Geological Survey.

Subpart 3310—Leasing Program

§ 3310.0-5 Definitions.

As used in this subpart, the term—"Affected State" and "affected States" means Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, California, Oregon, Washington, and Alaska.

§ 3310.1 Receipt and consideration of nominations; public notice and participation.

(a) During preparation of a proposed 5-year leasing program, the Secretary shall invite and consider suggestions and relevant information for such program from Governors of affected States, local government, industry, other Federal agencies, including the Attorney General in consultation with the Federal Trade Commission, and all interested parties, including the general public. This request for information shall be issued as a notice in the Federal Register. Local governments wishing to respond to such request shall first submit their responses to the Governor of the State in which the local government is located.

(b) The Secretary shall send letters to the Governors of the affected States requesting them to identify specific laws, goals, and policies which they believe should be considered by the Secretary in connection with the leasing program. The Secretary shall also request from the Secretary of Energy information on regional and national energy markets, on OCS production goals and on transportation networks.

§ 3310.2 Review by State and local governments.

(a)(1) The Secretary shall prepare a proposed leasing program. At least 60 days prior to publication of the proposed program in the Federal Register, a copy of the draft of the proposed program shall be forwarded to the Governor of each affected State for comment. The Governor may solicit comments from local governments in his or her State which the Governor determines will be affected by the proposed program.

(2) The Secretary shall reply in writing to any comment on the draft of the proposed program from the Governor of an affected State which is received at least 15 days prior to the submission of the proposed program to the Congress and publication in the Federal Register. All such correspondence between the Secretary and Governor of such State shall accompany the proposed program when it is submitted to the Congress.

(b) The proposed leasing program shall be submitted to the Governors of the affected States for review and comment at the time it is submitted to the Congress and the Attorney General and published in the Federal Register. The Governor of an affected State shall, upon request from any local government affected by the program, submit a copy of the proposed program to such local government. Comments and recommendations on any aspect of the proposed program may be submitted by a State or local government to the Secretary within 90 days after the date of its publication in the Federal Register. Comments and recommendations from local governments shall be submitted first to the Governor of the State in which the local government is located.

(c) At least 60 days prior to approving the final leasing program and any later significant revision, the Secretary shall submit it to the President and the Congress, together with any comments. The Secretary shall indicate in such submission why any specific recommendation of the Attorney General or of a State or local government was not accepted.

§ 3310.3 Periodic consultation with interested parties.

The Secretary shall provide for periodic consultation with State and local governments, existing and potential oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in any activity in or on the OCS, including those involved in fish and shellfish recovery, and recreational activities. This consultation shall take place primarily through appropriate public notice as described in §§ 3310.1 and 3310.2 and through the OCS Advisory Board and its committees, on a regional and national basis. Meetings of the OCS Advisory Board shall be held on specific

issues as required by the Board's charter.

§ 3310.4 Consideration of coastal zone management program.

In the development of the leasing program, consideration shall be given to the coastal zone management program being developed or administered by an affected coastal State under section 305 or 306 of the Coastal Zone Management Act of 1972 as amended, (16 U.S.C. 1454, 1455). Information concerning the relationship between a State's coastal zone management program and OCS oil and gas activity shall be requested from the Governors of the affected coastal States and from the Secretary of Commerce prior to the development of the proposed leasing program at the time information is requested under § 3310.1 of this title.

Subpart 3312—Reports From Federal Agencies

§ 3312.1 General.

For oil and gas lease sales shown in an approved leasing schedule and as the need arises for other mineral leasing, the Director shall request the Director, Geological Survey, to prepare a report describing the general geology and potential mineral resources of the area under consideration. The Director shall request other interested Federal agencies to prepare reports describing, to the extent known, any other valuable resources contained within the general area and the potential effect of mineral operations upon the resources or upon the total environment or other uses of the area.

Subpart 3313—Call for Nominations and Comments

§ 3313.1 Nominations of tracts.

(a) The Director may receive and consider tract nominations or requests describing areas and expressing an interest in leasing of minerals.

(b) In accordance with an approved program and schedule for the leasing of lands which may contain oil and gas, the Director shall issue Calls for Nominations and Comments on tracts for the leasing of such minerals in specified areas. The Call for Nominations and Comments shall be published in the Federal Register and may be published in other publications as desirable. Nominations and comments on tracts shall be addressed to the manager of the appropriate OCS office, with copies to the Director and to the Director and the Regional Conservation manager of the Geological Survey. The Director shall also request comments on tracts which should receive special concern and analysis. For an oil and gas lease sale call area, the Director may request comments concerning geological conditions, including bottom hazards; archaeological or cultural sites on the seabed or nearshore; multiple uses of the proposed leasing area, including navigation, recreation and fisheries; and other socioeconomic, biological and environmental information.

§ 3313.2 Tracts near Coastal States.

(a) At the time nominations are solicited for leasing of tracts within 3 geographical miles of the seaward boundary of any coastal State, the Secretary shall provide the Governor of that State information required under section 8(g)(1) of the act. The Director shall furnish information identifying the areas for leasing as well as all relevant available environmental data for such areas (see 30 CFR 251.14).

(b) After receipt of nominations for tracts within the area described in (a) hereof, the Secretary shall inform the Governor of those tracts that are to be given further consideration for leasing. The Secretary shall enter into consultation with the Governor to determine whether the area may contain oil or gas pools or fields underlying both the OCS and lands subject to the jurisdiction of the State.

(c) After selection for leasing of those tracts which may have oil or gas pools or fields underlying both the OCS and lands under State jurisdiction, the Secretary shall offer the Governor an opportunity to enter into an agreement for the equitable disposition of revenues from such tracts under section 8(g)(2) of the act.

(d) If no agreement can be reached within 90 days of the Secretary's offer, the tracts may be leased and all revenues deposited in a separate Treasury account pending equitable disposition of the revenues under sections 8(g) (3) and (4) of the act.

Subpart 3314—Tentative Tract Selection

§ 3314.1 General.

(a) The Director, in consultation with the Director, Geological Survey and other appropriate Federal agencies, shall recommend to the Secretary tracts for further environmental analysis and consideration for leasing. The Director, on his or her own motion, in consultation with the Director, Geological Survey, may include in the recommendation tracts which have not been nominated. In making a recommendation, the Director shall consider all available environmental information, multiple-use conflicts, resource potential, industry interest and other relevant information. Comments received from States and local governments and interested parties in response to Calls for Nominations and Comments shall be considered in making recommendations.

(b) After tracts have been tentatively selected, the Director shall evaluate fully the potential effect of leasing on the human, marine and coastal environments, and develop measures to mitigate adverse impacts, including lease stipulations. The views and recommendations of Federal agencies, State agencies, local governments, organizations, industries, and the general public shall be utilized, as appropriate. The Director may hold public hearings on the environmental analysis after appropriate notice.

(c) In general, the Director shall seek to inform the public as soon as possible of tract additions or deletions that occur after the tentative selection of tracts.

§ 3314.2 Tract size.

A tract selected for leasing shall consist of a compact area not exceeding 5760 acres, unless the authorized officer finds that a larger area is necessary to comprise a reasonable economic production unit.

Subpart 3315—Lease Sales

§ 3315.1 Proposed Notice of Sale.

(a) The Director shall in consultation with appropriate Federal agencies develop measures, including lease stipulations and conditions, to mitigate adverse impacts on the environments. For oil and gas lease sales, appropriate proposed stipulations and conditions shall be contained in the proposed notice of lease sale.

(b) A proposed notice of lease sale shall be submitted to the Secretary for approval. All comments and recommendations received and the Director's findings or actions thereon, shall also be forwarded to the Secretary.

(c) Upon approval by the Secretary, the proposed Notice of Sale shall be sent to the Governor of any affected State and be published in the Federal Register.

§ 3315.2 State comments.

(a) Within 60 days after notice of a proposed lease sale, a Governor of any affected State or any affected local government in such State may submit recommendations to the Secretary regarding the size, timing or location of

the proposed lease sale. Prior to submitting recommendations to the Secretary, any affected local government shall forward such recommendation to the Governor.

(b) The Secretary shall accept such recommendations of the Governor and may accept recommendations of any affected local government if he determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. A determination of the national interest shall be based on the findings, purposes and policies of the act.

(c) The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.

§ 3315.3 Department of Energy review.

The Secretary shall allow 30 days for review of the lease terms and conditions by the Secretary of Energy, unless there is an agreement that a shorter period provides a reasonable opportunity for review.

§ 3315.4 Notice of sale.

(a) Upon approval of the Secretary, the Director shall publish the notice of lease sale in the Federal Register as the official publication, and may publish the notice in other publications. The publication in the Federal Register shall be at least 30 days prior to the date of the sale. The notice shall state the place and time at which bids shall be filed, and the place, date and hour at which bids shall be opened. The notice shall contain a description of the areas to be offered for lease and any stipulations, terms and conditions of the sale.

(b) Tracts shall be offered for lease by competitive sealed bidding under conditions specified in the notice of lease sale and in accordance with all applicable laws and regulations. Suggested formats for bidder submissions and joint bidder's statements appear in Appendix A and B of this part.

(c) The notice of lease sale shall contain a reference to the OCS lease form which shall be issued to successful bidders.

(d) With the approval of the Secretary, the Director may defer any part of the payment of the cash bonus according to a schedule announced at the time of the notice of lease sale. Payment shall be made no later than 5 years after the date of the lease sale. The schedule shall contain provisions for guaranteed payment of a deferred bonus.

(e) In order to obtain statistical information to determine which bidding alternatives best accomplish the purposes and policies of the act, the Director may, until September 18, 1983, require each bidder to submit bids for any OCS area in accordance with more than one of the bidding systems described in section 8(a)(1) of the act. No more than 10 percent of the tracts offered each year shall contain such a requirement. Leases may be awarded using a bidding alternative selected at random for statistical purposes, if it is otherwise consistent with the purposes and policies of the act.

Subpart 3316—Issuance of Leases

§ 3316.1 Qualifications of lessees.

(a) In accordance with section 8 of the act, leases shall be awarded only to the highest responsible qualified bidder.

(b) Mineral leases issued pursuant to section 8 of the act may be held only by: (1) citizens and nationals of the United States, (2) aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20); (3) private, public or municipal corporations organized under the laws of the United States or of any State or of the District of Columbia or territory thereof, or (4) associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States.

§ 3316.2 Lease term.

(a) All oil and gas leases shall be issued for an initial period of 5 years, or not to exceed 10 years where the authorized officer finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water or other unusually adverse conditions.

(b) An oil and gas lease shall continue after such initial period for as long as oil or gas is produced from the lease in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted. The term of an oil and gas lease is subject to further extension as provided in § 3319.9 of this title.

(c) Sulphur leases shall be issued for a term not to exceed 10 years and so long thereafter as sulphur is produced from the leasehold in paying quantities, or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon.

(d) Other minerals leases shall be issued for such term as may be prescribed at the time of offering the leases in the notice of lease sale.

§ 3316.3 Joint Bidding Provisions.

§ 3316.3-1 Definitions.

The following definitions shall be applicable to § 3316.3 of this title:

(a) *"Single bid"* means a bid submitted by one person for an oil and gas lease under section 8(a) of the act.

(b) *"Joint bid"* means a bid submitted by two or more persons for an oil and gas lease under section 8(a) of the act.

(c) *"Average Daily Production"* is the total of all production in an applicable production period which is chargeable under § 3316.3-3 of this title divided by the exact number of calendar days in the applicable production period.

(d) *"Barrel"* means 42 United States gallons.

(e) *"Crude Oil"* means a mixture of liquid hydrocarbons including condensate that exists in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities, but does not include liquid hydrocarbons produced from tar sand, gilsonite, oil shale, or coal.

(f) *"An Economic Interest"* means any right to, or any right dependent upon, production of crude oil, natural gas, or liquefied petroleum products and shall include, but not be limited to, a royalty interest, or overriding royalty interest, whether payable in cash or in kind, a working interest, a net profits interest, a production payment, or a carried interest.

(g) *"Liquefied Petroleum Products"* means natural gas liquid products including the following: ethane, propane, butane, pentane, natural gasoline, and other natural gas products recovered by a process of absorption, adsorption, compression, or refrigeration cycling, or a combination of such processes.

(h) *"Natural Gas"* means a mixture of hydrocarbons and varying quantities of nonhydrocarbons that exist in the gaseous phase.

(i) *"Oil and Gas Lease"* means an oil and gas lease either offered or issued pursuant to the provisions of the act.

(j) *"Owned"* means:

(1) *With respect to crude oil*—having either an economic interest in or a power of disposition over the production of crude oil;

(2) *With respect to natural gas*—having either an economic interest in or

a power of disposition over the production of natural gas; and

(3) *With respect to liquefied petroleum products*—having either an economic interest in or a power of disposition over any liquefied petroleum product at the time of completion of the liquefaction process.

(k) *"Prior Production Period"* means the continuous six month period of January 1 through June 30 preceding November 1 through April 30 for joint bids submitted during the six month bidding period from November 1 through April 30, and means the continuous six month period of July 1 through December 31 preceding May 1 through October 31 for joint bids submitted during the six month bidding period from May 1 through October 31.

(l) *"Production"*—(1)*of crude oil* means the volume of crude oil produced worldwide from reservoirs during the prior production period. The amount of such crude oil production shall be established by measurement of volumes delivered at the point of custody transfer (e.g., from storage tanks to pipelines, trucks, tankers, or other media for transport to refineries or terminals) with adjustments for

(i) Net differences between opening and closing inventories, and

(ii) Basic sediment and water;

(2) *Of natural gas* means the volume of natural gas produced worldwide from natural oil and gas reservoirs during the prior production period, with adjustments, where applicable, to reflect

(i) The volume of gas returned to natural reservoirs; and

(ii) The reduction of volume resulting from the removal of natural gas liquids and nonhydrocarbon gases.

(3) *Of liquefied petroleum peoducts* means the volume of natural gas liquids produced from reservoir gas and liquefied at surface separators, field facilities, or gas processing plants worldwide during the prior production period; these liquefied petroleum products include the following:

(i) *Condensate*—natural gas liquids recovered from gas well gas (associated and non-associated) in separators or field facilities;

(ii) *Gas Plant Products*—natural gas liquids recovered from natural gas in gas processing plants and from field facilities. Gas plant products shall include the following as classified according to the standards of the Natural Gas Processors Association (NGPA) or the American Society for Testing and Materials (ASTM):

(A) Ethane—C^2H^{60}

(B) Propane—C^3H^{80}

(C) Butane—C^4H^{10} including all products covered by NGPA specifications for commercial butane.

(1) Isobutane,

(2) Normal butane,

(3) Other butanes—all butanes not included as isobutane or normal butane;

(D) Butane-Propane Mixtures—All products covered by NGPA specifications for butane-propane mixtures;

(E) Natural Gasoline—A mixture of hydrocarbons extracted from natural gas, which meet vapor pressure, end point, and other specifications for natural gasoline set by NGPA;

(F) Plant Condensate—A natural gas plant product recovered and separated as a liquid at gas inlet separators or scrubbers in processing plants or field facilities; and

(G) Other Natural Gas Plant Products meeting refined product standards (i.e., gasoline, kerosene, distillate, etc.).

(m) *"Six Month Bidding Period"* means the six month period of time

(1) From May 1 through October 31; or

(2) From November 1 through April 30, respectively.

§ 3316.3-2 Joint bidding requirements.

(a) Any person who submits a joint bid for any oil and gas lease during a 6 month bidding period shall have filed under oath with the Director a Statement of Production of crude oil, natural gas, and liquefied petroleum products, hereinafter referred to as a Statement of Production, no later than 45 days prior to the commencement of the applicable six month bidding period, except that for the bidding period of November 1, 1978, through April 30, 1979, no joint bid may be considered at any sale unless statements of production from all parties to that bid have been received in the office of the Director, Bureau of Land Management (Attention 722), Washington, D.C. 20240, by close of business on Friday before the sale. Statements of Production shall be filed with the Director, Bureau of Land Management (attention 722), Washington, D.C. 20240. A Statement of Production shall state whether or not the person filing the Statement of Production was chargeable in accordance with § 3316.3-3 of this title with an average daily production in excess of 1.6 million barrels of crude oil, natural gas, and liquefied petroleum products for the prior production period. The Director shall, no less than semi-annually, publish in the Federal Register a "List of Restricted Joint Bidders," to be effective immediately upon publication and to continue in force and effect until a subsequent list is published. The List of Restricted Joint Bidders shall be made up of those persons who in the judgment of the Director, based on information available to him, including, but not limited to, sworn Statements of Production, are chargeable under § 3316.3-3 of this title with an average daily production in excess of 1.6 million barrels of crude oil, natural gas, and liquefied petroleum products for the prior production period.

(b) When a person is placed on the List of Restricted Joint Bidders the Director shall serve that person either personally or by certified mail, return receipt requested, with a copy of the Director's Order placing that person on the List of Restricted Joint Bidders. Any appeal from that Order or from an adverse effect of that Order shall be made in accordance with the provisions of 43 CFR Part 4.

(c) The submission of a Statement of Production or of a detailed Report of Production under § 3316.4(g) of this title which misrepresents the chargeable production of the reporting person shall constitute failure to comply with these regulations and any lease awarded in reliance on that Statement or Report of Production may be canceled, pursuant to section 8(o) of the act and regulations issued thereunder as having been obtained by fraud or misrepresention.

(d) The Secretary may exempt a person from the provisions of §§ 3316.3-2(a), 3316.3-4, 3316.4(g) and 3319.1(b) of this title if it is found, on the record, after an opportunity for an agency hearing, that lands being offered have extremely high cost exploration and development problems and that exploration and development will not occur on such lands unless the exemption is granted.

§ 3316.3-3 Chargeability for production.

(a) As used in this section the following definitions shall control:

(1) *"Person"* means a natural person or company.

(2) *"Company"* means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any group of persons whether incorporated or not; it also means any receiver, trustee in bankruptcy, or similar official acting for such a company.

(3) *"Subsidiary"* means a company 50 percent or more of whose stock or other interest having power to vote for the election of directors, trustees, or other similar controlling body of the company is directly or indirectly owned, controlled, or held with the power to vote by another company; a subsidiary shall be deemed a subsidiary of the other company owning, controlling, or

holding 50 percent or more of the stock or other voting interest.

(4) *"Security or securities"* means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) A person filing a Statement of Production under § 3316.3–2 of this title shall be charged with the following production during the applicable prior production period:

(1) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products which it owned worldwide;

(2) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by every subsidiary of the reporting person;

(3) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by any person or persons of which the reporting person is a subsidiary; and

(4) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by any subsidiary, other than the reporting person, of any person or persons of which the reporting person is a subsidiary.

(c) A person filing a Statement of Production shall be charged with, in addition to the production chargeable under paragraph (b) of this section, but not in duplication thereof, its proportionate share of the average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by every person: (1) Which has an interest in the reporting person, and (2) in which the reporting person has an interest, whether the interest referred to in paragraphs (c) (1) and (2) of this section is by virtue of ownership of securities or other evidence of ownership, or by participation in any contract, agreement, or understanding respecting the control of any person or of any person's production of crude oil, natural gas, or liquefied petroleum products, equal to said interest. As used in paragraph (c) of this section "interest" means an interest of at least 5 percent of the ownership or control of a person.

(d) All measurements of crude oil and liquefied petroleum products under this section shall be at 60° F.

(e)(1) For purposes of computing production of natural gas under § 3316.3–2 of this title, chargeability under this section, and reporting under § 3316.4(g) of this title, 5,626 cubic feet of natural gas at 14.73 pounds per square inch (msl) shall equal one barrel.

(2) For purposes of computing production of liquefied petroleum products under § 3316.3–2 of this title, chargeability under § 3316.4(g) of this title, 1.454 barrels of natural gas liquids at 60° F shall equal one barrel of crude oil.

§ 3316.3–4 Bids disqualified.

The following bids for any oil and gas lease shall be disqualified and rejected in their entirety:

(a) A joint bid submitted by 2 or more persons who are on the effective List of Restricted Joint Bidders; or

(b) A joint bid submitted by 2 or more persons when 1 or more of those persons has not filed the required Statement of Production pursuant to § 3316.3–2 of this title for the applicable 6-month bidding period, or when 1 or more of those persons has failed or refused to file a detailed Report of Production when required to do so under § 3316.4(g) of this title, or

(c) A single or joint bid submitted pursuant to an agreement (whether written or oral, formal or informal, entered into or arranged prior to or simultaneously with the submission of such single or joint bid, or prior to or simultaneously with the award of the bid upon the tract) which provides (1) for the assignment, transfer, sale, or other conveyance of less than a 100 percent interest in the entire tract on which the bid is submitted, by a person or persons on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to another person or persons on the same List of Restricted Joint Bidders; or (2) for the assignment, sale, transfer or other conveyance of less than a 100 percent interest in any fractional interest in the entire tract (which fractional interest was originally acquired by the person making the assignment, sale, transfer or other conveyance, under the provisions of the Act) by a person or persons on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to another person or persons on the same List of Restricted Joint Bidders; or (3) for the assignment, sale, transfer, or other conveyance of any interest in a tract by a person or persons not on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to 2 or more persons on the same List of Restricted Joint Bidders; or (4) for any of the types of conveyance described above in paragraph (c) (1), (2), or (3) where any party to the conveyance has not filed a Statement of Production pursuant to § 3316.3–2 of this title for the applicable 6 month bidding period. Assignments expressly required by law, regulation, lease, or stipulation to lease shall not disqualify an otherwise qualified bid; or

(d) A bid submitted by or in conjunction with a person who has filed a false, fraudulent or otherwise intentionally false or misleading Statement of Production or detailed Report of Production.

§ 3316.4 Submission of bids.

(a) A separate sealed bid shall be submitted for each tract unit bid upon as described in the notice of lease sale. A bid may not be submitted for less than an entire tract.

(b) Each bidder shall submit with the bid, a certified or cashier's check or bank draft on a solvent bank, or cash, or any other form of payment approved by the Secretary for one-fifth of the amount of the cash bonus, unless otherwise stated in the Notice of Sale.

(c) If the bidder is an individual a statement of citizenship shall accompany the bid.

(d) If the bidder is an association (including a partnership), the bid shall also be accompanied by a certified copy of the articles of association or appropriate reference to the record of the Bureau in which such a copy has already been filed, with a statement as to any subsequent amendments.

(e) If the bidder is a corporation, the following information shall be submitted with the bid:

(1) A certified copy of the articles of incorporation and a copy either of the minutes of the meeting of the board of directors or of the bylaws indicating that the person signing the bid has authority to do so, or,

(2) In lieu of such a copy, a certificate to that effect signed by the secretary or the assistant secretary of the corporation over the corporate seal, or appropriate reference to the records submitted to the Bureau in connection with which such articles and authority have been previously furnished.

(3) The bid shall be executed in conformance with corporate requirements.

(f) Bidders should be aware of the provisions of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

(g) Every joint bid submitted for any oil and gas lease shall be accompanied by a sworn statement by each joint bidder stating that the bid is not disqualified under § 3316.3–4(c) of this title.

(h) To verify the accuracy of any statement submitted pursuant to § 3316.3–2 of this title and paragraph (g) of this section, the Director may require the person submitting such information to: (1) submit no later than 30 days after receipt of the request by the Director, a detailed Report of Production which shall list, in barrels, the average daily production of crude oil, natural gas and liquefied petroleum products chargeable to the reporting person in accordance with § 3316.3–3 of this title for the prior production period, and (2) permit the inspection and copying by an official of the Department of the Interior of such documents, records of production of crude oil, natural gas and liquefied petroleum products, analyses and other material as are necessary to demonstrate the accuracy of any statement or information upon which any information in any Statement of Production or Report of Production was based or from which it was derived.

(i) No bid for a lease may be submitted if the Secretary finds, after notice and hearing, that the bidder is not meeting due diligence requirements on other OCS leases.

§ 3316.5 Award of leases.

(a) Sealed bids received in response to the notice of lease sale shall be opened at the place, date and hour specified in the notice. The opening of bids is for the sole purpose of publicly announcing and recording the bids received and no bids shall be accepted or rejected at that time.

(b) The United States reserves the right to reject any and all bids received for any tract, regardless of the amount offered.

(c) In the event the highest bids are tie bids, the tie bidders (unless they would be disqualified under § 3316.1(b) of this title, or disqualified under § 3316.3–4 of this title if their bids had been joint bids) may file with the Director, within 15 days after notification, an agreement to accept the lease jointly; otherwise all bids shall be rejected.

(d) Pursuant to section 8(c) of the act, the Attorney General may review the results of the lease sale prior to the acceptance of bids and issuance of leases.

(e) If the authorized officer fails to accept the highest bid for a lease within 60 days after the date on which the bids are opened, all bids for that lease shall be considered rejected.

(f) Written notice of the authorized officer's action shall be transmitted promptly to those bidders whose deposits have been held. If a bid is accepted, such notice shall transmit 3 copies of the lease to the successful bidder. The bidder shall be required, not later than the 15th day after receipt of the lease to execute the lease, pay the first year's rental, pay the balance of the bonus bid, unless deferred, and file a bond as required in § 3318.1 of this title. Deposits and any interest due shall be refunded on rejected bids.

(g) If the successful bidder fails to execute the lease within the prescribed time or otherwise comply with the applicable regulations the deposit shall be forfeited and disposed of as other receipts under the act.

(h) If, before the lease is executed on behalf of the United States, the land which would be subject to the lease is withdrawn or restricted from leasing, all deposits and any interest due shall be refunded.

(i) If the awarded lease is executed by an agent acting on behalf of the bidder, the lease shall be accompanied by evidence that the bidder authorized the agent to execute the lease. When three copies of the lease are executed and returned to the authorized officer, the lease shall be executed on behalf of the United States, and one fully executed copy shall be transmitted to the successful bidder.

(j) No lease or permit shall be issued for any area within 15 statute miles of the boundaries of the Point Reyes Wilderness in California unless the State of California allows exploration, development or production activities in the adjacent navigable waters of the State under section 11(h) of the act.

§ 3316.6 Lease form.

Oil and gas leases and leases for sulphur shall be issued on forms approved by the Director. Other mineral leases shall be issued on such forms and may be prescribed by the Secretary.

§ 3316.7 Dating of leases.

All leases issued under the regulations in this part shall be dated and become effective as of the first day of the month following the date leases are signed on behalf of the lessor. When prior written request is made, a lease may be dated and become effective as of the first day of the month within which it is so signed.

Subpart 3317—Rentals and Royalties

§ 3317.1 Rentals.

(a) An annual rental shall be due and payable, in advance, at the rate specified in the oil and gas lease, on the first day of each lease year prior to discovery of oil or gas on the lease.

(b) The owner of any lease created by the segregation of a portion of a producing lease and on which segregated portion there is no production, actual or allocated, shall pay an annual rental for such segregated portion at the rate per acre specified in the lease. This rental shall be payable each lease year following the year in which the segregation became effective and prior to a discovery on such segregated portion.

(c) Annual rental paid in any year shall be in addition to, and shall not be credited against, any royalties due from production.

(d) An annual rental on a lease for a mineral other than oil or gas, shall be due and payable, in advance, on the first day of each lease year prior to discovery in paying quantities, at a rate specified in the lease form.

§ 3317.2 Royalties.

(a) Royalties on oil and gas shall be at the rate specified in the lease, unless the Secretary, in order to promote increased production on the leased area through direct, secondary or tertiary recovery means, reduces or eliminates any royalty set forth in the lease.

(b) The royalty on sulphur shall be not less than 5 percent of the gross production or value of the sulphur at the wellhead.

§ 3317.3 Minimum royalty.

For leases which provide for minimum royalty payments, each lessee shall pay the minimum royalty specified in the lease at the end of each lease year beginning with the first lease year following a discovery on the lease.

§ 3317.4 Effect of suspensions on royalty and rental.

(a) If under the provisions of 30 CFR 250.12 (c), (d)(1), or (d)(4), the Director, Geological Survey, with respect to any lease, directs the suspension of both operations and production, or, with respect to a lease on which there is no producible well, directs the suspension of operations, no payment of rental or minimum royalty shall be required for or during the period of suspension.

(b) The lessee shall not be relieved of the obligation to pay rental, minimum royalty or royalty for or during the period of suspension if the Director,

Geological Survey: (1) under the provisions of 30 CFR 250.12(d)(1) approves, at the request of a lessee, the suspension of operations or production, or both, or (2) under the provisions of 30 CFR 250.12(d)(3) suspends any operation, including production.

(c) If the lease anniversary date falls within a period of suspension for which no rental or minimum royalty payments are required under paragraph (a) of this section, the prorated rentals or minimum royalties are due and payable as of the date the suspension period terminates. These amounts shall be computed and notice thereof given the lessee. The lessee shall pay the amount due within 30 days after receipt of such notice. The anniversary date of a lease shall not change by reason of any period of lease suspension or rental royalty relief resulting therefrom.

Subpart 3318—Bonding

§ 3318.1 Acceptable bonds.

(a) The successful bidder, prior to the issuance of an oil and gas or sulphur lease, shall furnish the authorized officer a corporate surety bond in the sum of $50,000 conditioned on compliance with all the terms and conditions of the lease. Such bond shall not be required if the bidder already maintains or furnishes a bond in the sum of $300,000 conditioned on compliance with the terms of oil and gas and sulphur leases held by the bidder on the OCS for the area in which the lease to be issued is situated.

(b) For the purposes of this section, there are four areas: (1) the Gulf of Mexico; (2) the area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii; (3) the area offshore the Coast of Alaska; and (4) the area offshore the Atlantic Coast.

(c) A separate bond shall be required for each area. An operator's bond in the same amount may be substituted at any time for the lessee's bonds.

(d) The amount of bond coverage on leases for other minerals shall be determined by the Director at the time of the offer to lease and shall be stated in the notice of lease sale.

(e) If, as the result of a default, the surety on a Mineral Lease Bond makes payment to the United States of any indebtedness under a lease secured by the bond, the face amount of such bond and the surety's liability shall be reduced by the amount of such payment.

(f) A new bond in the amount of $300,000 shall be posted within 6 months, or such shorter period as the authorized officer may direct after a default. In lieu of the $300,000 bond required in this paragraph, a separate bond for each lease may be filed within the time period authorized. Failure to post a new bond shall, at the discretion of the authorized officer, be the basis of cancellation of all leases covered by the defaulted bond, except to the extent a separate bond in lieu of the $300,000 bond required by this paragraph has been filed within the time authorized.

§ 3318.2 Form of bond.

All bonds furnished by a lessee or operator shall be in a form approved by the Director.

§ 3318.3 Additional bonds.

The authorized officer may require additional security in the form of a supplemental bond or bonds or to increase the coverage of an existing bond if, after operations or production have begun, such additional security is deemed necessary.

Subpart 3319—Assignments, Transfers, and Extensions

§ 3319.1 Assignment of leases or interests therein.

(a) Subject to the approval of the authorized officer, leases, or any undivided interest therein, may be assigned in whole, or as to any officially designated subdivision, to anyone qualified under § 3316.1(b) of this title to hold a lease.

(b) An assignment shall be void if it is made pursuant to any prelease agreement described in § 3316.3–4(c) of this title that would cause a bid to be disqualified.

(c) Any approved assignment shall be deemed to be effective on the first day of the lease month following its filing in the appropriate office of the Bureau, unless at the request of the parties, an earlier date is specified in the approval.

(d) The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.

(e) The assignee shall be liable for all obligations under the lease subsequent to the effective date of an assignment, and shall comply with all regulations issued under the act.

§ 3319.2 Requirements for filing of transfers.

(a)(1) All instruments of transfer of a lease or of an interest therein as to any officially designated subdivision, including operating rights, subleases and assignments of record interest, shall be filed in triplicate for approval within 90 days from the date of final execution. They shall include a statement over the transferee's own signature with respect to citizenship and qualifications similar to that required of a lessee and shall contain all of the terms and conditions agreed upon by the parties thereto. Carried working interests, overriding royalty interests or payments out of production may be created or transferred without requirement for filing or approval.

(2) An application for approval of any instrument required to be filed shall not be accepted unless accompanied by a nonrefundable fee of $25. Any document not required to be filed by these regulations but submitted for record purposes shall be accompanied by a nonrefundable fee of $25 per lease affected. Such documents may be rejected at the discretion of the authorized officer.

(b) An attorney in fact, in behalf of the holder of a lease, operating rights or sublease, shall furnish evidence of authority to execute the assignment or application for approval and the statement required by § 3316.4 of this title.

(c) Where an assignment creates a segregated lease, a bond shall be furnished in the amount prescribed in § 3318.1 of this title. Where an assignment does not create separate leases, the assignee, if the assignment so provides and the surety consents, may become a joint principal on the bond with the assignor.

(d) An heir or devisee of a deceased holder of a lease, or any interest therein, shall be recognized as the lawful successor to such lease or interest, if evidence of status as an heir or devisee is furnished in the form of: (1) a certified copy of an appropriate order or decree of the court having jurisdiction of the distribution of the estate or, (2) if no court action is necessary, the statements of two disinterested parties having knowledge of the facts or a certified copy of the will.

(e) In addition to the requirements of paragraph (d) of this section, the heirs or devisees shall file statements that they are the persons named as successors to the estate with evidence of their qualifications as provided in § 3316.4 of this title.

(f) In the event an heir or devisee is unable to qualify to hold the lease or interest, the heir or devisee shall be recognized as the lawful successor of the deceased and be entitled to hold the lease for a period of not to exceed 2 years from the date of death of the predecessor in interest.

(g) Each obligation under any lease and under the regulations in this part shall inure to the heirs, executors, administrators, successors, or assignees of the lessee.

(h) Where the proposed assignment or transfer is by a person who, at the time of acquisition of an interest in the lease, was on the List of Restricted Joint Bidders, and that assignment or transfer is of less than the entire interest of the assignor or transferor, to a person or persons on the same List of Restricted Joint Bidders, the assignor or transferor shall file a copy, prior to approval of the assignment, of all agreements applicable to the acquisition of that lease or a fractional interest.

§ 3319.3 Attorney General review.

Prior to the approval of an assignment or transfer, the Secretary shall consult with and give due consideration to the views of the Attorney General. The Secretary may act on an assignment or transfer if the Attorney General has not responded to the request for consultation within 30 days of said request.

§ 3319.4 Separate filings for assignments.

A separate instrument of assignment shall be filed for each lease. When transfers to the same person, association or corporation, involving more than one lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee shall be sufficient.

§ 3319.5 Effect of assignment of particular tract.

(a) When an assignment is made of all the record title to a portion of the acreage in a lease, the assigned and retained portions become segregated into separate and distinct leases. In such a case, the assignee becomes a lessee of the Government as to the segregated tract that is the subject of assignment, and is bound by the terms of the lease as though the lease had been obtained from the United States in the assignee's own name, and the assignment, after its approval, shall be the basis of a new record. Royalty, minimum royalty and rental provisions of the original lease shall apply separately to each segregated portion

(b) For assignments of a portion of an oil and gas lease approved after the effective date of ths section, each segregated lease shall continue in full force and effect for the primary term of the original lease and so long thereafter as oil or gas is produced from that segregated portion of the leased area in paying quantities or drillng or well reworking operations as approved by the Secretary are conducted.

(c) For those assignments approved prior to the effective date of this section, each segregated lease shall continue in full force and effect for the primary term of the original lease and so long thereafter as oil and gas may be produced from the original leased area in paying quantities or drilling or well reworking operations, as approved by the Secretary, are conducted.

§ 3319.6 Extension of lease by drilling or well reworking operations.

The term of a lease shall be extended beyond the primary term so long as drilling or well reworking operations are approved by the Secretary according to the conditions set forth in 30 CFR 250.35.

§ 3319.7 Directional drilling.

In accordance with an approved exploration plan or development and production plan, a lease may be maintained in force by directional wells drilled under the leased area from surface locations on adjacent or adjoining land not covered by the lease. In such circumstances, drilling shall be considered to have commenced on the leased area when drilling is commenced on the adjacent or adjoining land for the purpose of directional drilling under the leased area through any directional well surfaced on adjacent or adjoining land. Production, drillling or reworking of any such directional well shall be considered production or drilling or reworking operations on the leased area for all purposes of the lease.

§ 3319.8 Compensatory payments as production.

If an oil and gas lessee makes compensatory payments as provided in 30 CFR 250.33 and if the lease is not being maintained in force by other production of oil or gas in paying quantities or by other approved drilling or reworking operations, such payments shall be considered as the equivalent of production in paying quantities for all purposes of the lease.

§ 3319.9 Effect of suspensions on lease term.

(a) If the Director, Geological Survey, directs the suspension of either operations or production, or both, under the provisions of 30 CFR 250.12 (c), (d)(1) or (d)(4) with respect to any lease in its primary term, the primary terms of the lease shall be extended by a period equivalent to the period of the suspension.

(b) If the Director, Geological Survey, orders or approves the suspension of either operations or production, or both, under the provision for 30 CFR 250.12 (c), (d)(1), or (d)(4) with respect to any lease extended beyond its primary term, the term of the lease shall not be deemed to expire so long as the suspension remains in effect.

Subpart 3320—Termination of Leases

§ 3320.1 Relinquishment of leases or parts of leases.

A lease or any officially designated subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, with the appropriate OCS office of the Bureau. No filing fee is required. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and the surety to make all payments due, including any accrued rentals, royalties and deferred bonuses and to abandon all wells and condition or remove all platforms and other facilities on the land to be relinquished to the satisfaction of the Director, Geological Survey.

§ 3320.2 Cancellation of leases.

(a) Any nonproducing lease issued under the act may be cancelled by the authorized officer whenever the lessee fails to comply with any provision of the act or lease or applicable regulations, if such failure to comply continues for 30 days after mailing of notice by registered or certified letter to the lease owner at the owner's record post office address. Any such cancellation is subject to judicial review as provided in section 23(b) of the act.

(b) Producing leases issued under the act may be cancelled by the Secretary whenever the lessee fails to comply with any provision of the act, applicable regulations or the lease only after judicial proceedings as prescribed by section 5(d) of the act.

(c) Any lease issued under the act, whether producing or not, shall be canceled by the authorized officer upon proof that it was obtained by fraud or misrepresentation, and after notice and opportunity to be heard has been afforded to the lessee.

(d) Pursuant to section 5(a) of the act, the Secretary may cancel a lease when: (1) continued activity pursuant to such lease would probably cause serious harm or damage to life, property, any mineral, national security or defense, or to the marine, coastal or human environment; (2) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and (3) the advantages of continuing such lease or permit in force. Procedures and conditions contained in 30 CFR 250.12 shall apply as appropriate.

Subpart 3321—Section 6 Leases

§ 3321. Effect of regulations on lease.

(a) All regulations in this part, insofar as they are applicable, shall supersede the provisions of any lease which is maintained under section 6(a) of the act. However, the provisions of a lease relating to area, minerals, rentals, royalties (subject to sections 6(a)(8) and (9) of the act), and term (subject to section 6(a)(10) of the act and, as to sulfur, subject to section 6(b)(2) of the act) shall continue in effect, and, in the event of any conflict or inconsistency, shall take precedence over these regulations.

(b) A lease maintained under section 7(a) of the act shall also be subject to all operating and conservation regulations applicable to the OCS. In addition, the regulations relating to geophysical and geological exploratory operations and to pipeline rights-of-way are applicable, to the extent that those regulations are not contrary to or inconsistent with the lease provisions relating to area, the minerals, rentals, royalties and term. The lessee shall comply with any provision of the lease as validated, the subject matter of which is not covered in the regulations in this part.

§ 3321.2 Leases of other minerals.

The existence of a lease that meets the requirements of section 6(a) of the act shall not preclude the issuance of other leases of the same area for deposits of other minerals. However, no other lease of minerals shall authorize or permit the lessee thereunder unreasonably to interfere with or endanger operations under the existing lease. No sulphur leases shall be granted by the United States on any area while such area is included in a lease covering sulphur under section 6(b) of the act.

Subpart 3331—Studies

§ 3331.1 Environmental studies.

(a) The Director shall conduct a study of any area or region included in any lease sale in order to establish information needed for assessment and management of impacts on the human, marine and coastal environments which may be affected by OCS oil and gas activities in such area or region. Any study shall, to the extent practicable, be designed to predict environmental impacts of pollutants introduced into the environments and of the impacts of offshore activities on the seabed and affected coastal areas.

(b) Studies shall be planned and carried out in cooperation with the affected States and interested parties and, to the extent possible, shall not duplicate studies done under other laws. Where appropriate, the Director shall, to the maximum extent practicable, enter into agreements with the National Oceanic and Atmospheric Administration in executing the environmental studies responsibilities. By agreement, the Director may also utilize services, personnel or facilities of any Federal, State or local government agency in the conduct of such study.

(c) Any study of an area or region required by paragraph (a) of this section for a lease sale shall be commenced not later than six months prior to holding a lease sale for that area. The Director may utilize information collected in any prior study. The Director may initiate studies for areas or regions not identified in the leasing program.

(d) After the leasing and developing of any area or region, the Director shall conduct such studies as are deemed necessary to establish additional information and shall monitor the human, marine and coastal environments of such area or region in a manner designed to provide information which can be compared with the results of studies conducted prior to OCS oil and gas development. This shall be done to identify any significant changes in the quality and productivity of such environments, to establish trends in the areas studies, and to design experiments identifying the causes of such changes. Findings from such studies shall be used to recommend modifications in practices which are employed to mitigate the effects of OCS activities and to enhance the data/information base for predicting impacts which might result from a single lease sale or cumulative OCS activities.

(e) Information available or collected by the studies program shall, to the extent practicable, be provided in a form and in a timeframe that can be used in the decisionmaking process associated with a specific leasing action or with longer term OCS minerals management responsibilities.

Subpart 3340—Grants of Pipeline Rights-of-way on the Outer Continental Shelf

§ 3340.0-1 Purpose.

(a) The purpose of these regulations is to provide the procedure for the granting and administering of rights-of-way for the transportation of minerals by pipeline through the OCS.

(b) Compliance with the regulations of this subpart does not supersede the requirements of complying with the regulations of the Department of Transportation, the Department of the Army and the Federal Energy Regulatory Commission.

§ 3340.0-2 Policy.

The respective Bureau of Land Management OCS offices shall, as appropriate, engage in transportation planning in advance of receipt of an application for a right-of-way. The intergovernmental planning program or similar process shall be used to involve relevant parties in this advanced planning.

The construction of gathering lines may be approved by the Director, Geological Survey, in accordance with the provisions of 30 CFR 250.18 and 250.68.

§ 3340.0-5 Definitions.

As used in this subpart, the term "right-of-way" includes the site on which the pipeline and associated structures are situated which shall not exceed 200 feet in width for pipelines unless safety and environmental factors during construction and operations require a greater width and shall be limited to the area reasonably necessary for pumping stations or other accessory structures. It does not include gathering lines and associated structures constructed for the purpose of conveying production for gathering, storage or treating of the production from a lease or leases.

§ 3340.1 Nature of grant.

(a) An applicant, by accepting a right-of-way grant, agrees and consents to comply with the requirements set out below.

(1) The holder shall comply with all existing regulations and with all existing and future regulations which the Secretary determines to be necessary and proper in order to provide for the prevention of waste, the conservation of the natural resources of the OCS and the protection of correlative rights therein. The holder shall comply with all stipulations which the authorized officer attaches to the right-of-way grant for the purpose of assuring maximum environmental protection. The holder shall utilize the best available and safest technologies, such as the safest reasonable pipeline burial techniques, which the Secretary determines to be economically feasible.

(2) The holder shall pay the United States or its lessees or right-of-way holders, as the case may be, the full value for all damages to the property of the United States or its said lessees or right-of-way holders, and shall indemnify the United States against any and all liability for damages to life,

person or property arising from the occupation and use of the area covered by the right-of-way grant.

(3) The authorized officer shall be kept informed at all times of the holder's address, and, if a corporation, of the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice. In the construction, operation and maintenance of the pipeline, the holder shall not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin and shall require an identical provision in all subcontracts.

(4) The granting of the right-of-way shall be subject to the express conditions that the rights granted shall not prevent or interfere in any way with the management, administration of, or the granting, either prior or subsequent to the right-of-way grant, of other rights by the United States. Moreover, the holder agrees to allow the occupancy and use by the United States, its lessees or other rights-of-way holders of any part of the right-of-way grant not actually occupied or necessarily incident to its use for any necessary operations involved in the management, administration or the enjoyment of such other granted rights.

(5) For the first calendar year or fraction thereof, and thereafter annually, the holder shall pay the Bureau, in advance, an annual rental of $15 for each statute mile or fraction thereof, traversed by the right-of-way and $75 for each area applied for as a site for an accessory to the right-of-way, including, but not limited, to a platform. Payments may be on an annual basis, for a 5-year period or for multiples of the 5-year period.

(6) Upon abandonment, relinquishment, revocation or termination of the right-of-way grant, the holder shall remove any platforms, structures, domes over valves, the pipe, taps and valves along the right-of-way which would present any hazard to navigation or fishing, unless this requirement is waived in writing by the authorized officer. In order to secure a waiver the holder shall demonstrate to the satisfaction of the authorized officer, that any abandonment in place, shall not constitute an unreasonable hazard to navigation, fishing or the marine environment, that the line has been purged to remove materials that, if released, could be harmful to the marine environment. The holder shall also demonstrate to the satisfaction of the authorized officer that all open ends of the pipe have been plugged and buried to a minimum cover of three feet or such other depth as may be required by the authorized officer.

Any improvement required to be removed shall be removed by the holder within one year of the effective date of the relinquishment, revocation, termination or abandonment. All such structures, accessories thereto, or improvements not removed within the time provided herein, shall become the property of the United States but that shall not relieve the holder of liability for the cost of their removal or for restoration of the site. Any application for relinquishment of a right-of-way shall be filed in accordance with § 3340.5 of this title.

(7) The holder shall suspend operations of any pipeline for a period of time specified by the authorized officer upon a determination by the authorized officer that continued operation would threaten or result in serious, irreparable, or immediate harm to life (including fish and other aquatic life), to property, to mineral deposits or the marine, coastal or human environments. The authorized officer may, to aid in the determination, request and consider the views and recommendations of appropriate Federal and State agencies. The authorized officer may also suspend operations if the holder fails to comply with applicable law, regulations or terms of the grant. The Secretary may cancel a grant under section 5(a)(2) of the act.

(8) The holder shall operate and maintain the pipeline in such a manner so as not to pose an unreasonable obstruction to fishing and shipping operations.

(9) The holder shall furnish the authorized officer, within 30 days of request, all data as to maximum design capacity of the pipeline, average product quantity being moved as of the time of request and copies of all contracts for transportation existing at the time of request.

(10) The holder shall assure that such oil or gas pipelines shall, at the option of the Federal Energy Regulatory Commission, either transport or purchase oil or natural gas produced from submerged lands in the vicinity of the pipeline without discrimination and in such proportionate amounts as the Federal Energy Regulatory Commission, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste.

(11) The holder shall provide open and nondiscriminatory access to the pipeline to both owner and nonowner shippers.

(12) The holder shall comply with the provisions of section 5(f)(1)(B) of the act, under which the Federal Energy Regulatory Commission may order an expansion of the throughput capacity of a pipeline which is authorized after September 18, 1978, and which is not located in the Gulf of Mexico or the Santa Barbara Channel.

(b) Failure to comply with the act, regulations or any conditions prescribed by the Secretary as to the right-of-way and the survey, location and width of a pipeline shall be grounds for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States District Court having jurisdiction under the provisions of section 23 of the act.

(c) Any right-of-way granted under the provisions of this subpart shall be for so long as the pipeline is properly maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant. Temporary cessation or suspension shall not terminate the grant. Where pipeline segments become corroded or otherwise worn and need replacement, proper maintenance may be performed under a temporary cessation of use. If the purpose of the grant ceases to exist or use of the pipeline is permanently discontinued for any reason, the grant shall be subject to forfeiture.

§ 3340.2 Application procedures.

§ 3340.2-1 Applications.

(a) No special form of application is required. The application shall be filed in triplicate in the OCS office having jurisdiction of the lands covered by the application. It shall specify that it is made pursuant to the act and these regulations and that the applicant agrees that if the right-of-way grant is approved, the grant shall be subject to the terms and conditions of the regulations in this part. It shall also state the primary purpose for which the right-of-way is to be used. If the right-of-way has been utilized prior to the time the application is made, the application shall state the date such utilization commenced and by whom, and the date applicant obtained control of the improvement. A nonrefundable filing fee of $100 and the rental required herein under § 3340.1(a)(5) of this title, shall accompany the application. A separate application shall be filed for each right-of-way.

(b) Each copy of the application shall be accompanied by a map, showing the

center line of the right-of-way, properly identified so that the right-of-way can be accurately located by a competent engineer. The map shall comply with the following requirements:

(1) The scale shall be at least 1":4,000', or such other scale as may be determined by the authorized officer.

(2) Distances of the center line of the right-of-way and grid references for all turning points shall be given either on the margin of the map or on an attached sheet or sheets with the courses referred to the true or grid meridian, either by deflection from a line of known bearing or by independent observation and calculated distances in feet and decimals.

(3) The total distance and width of the right-of-way shall be given, and the diameter of the pipeline specified.

(4) The initial and terminal points of the right-of-way and any continuation into State jurisdiction shall be accurately located by grid references, even though the right-of-way may have an onshore terminal point.

(5) Each copy of the map shall bear upon its face a signed certificate of the engineer who made the map that the right-of-way is accurately represented upon the map, and the design characteristics are in accordance with Department of Transportation regulations.

(c) Rights-of-way issued pursuant to section 5(e) of the act may be acquired or held only by citizens and nationals of the United States, aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. § 1101(a)(20), private, public or municipal corporations organized under the laws of the United States, the District of Columbia, or of any State, or territory thereof, or associations of such citizens, nationals, resident aliens or private, public or municipal corporation, States or political subdivision of States.

(d)(1) An individual applicant shall submit with the application a statement of citizenship or nationality. An applicant who is an alien lawfully admitted for permanent residence in the United States shall also submit with the application evidence of such status.

(2) If the applicant is an association (including a partnership), the application shall also be accompanied by a certified copy of the articles of association or appropriate reference to the record of the Bureau in which such a copy has already been filed, with a statement as to any subsequent amendments.

(3) If the applicant is a corporation, the following additional information shall be submitted with the application:

(1) a statement certified by the secretary or assistant secretary of the corporation with the corporate seal, showing the state in which it is incorporated and the name of the person(s) authorized to act on behalf of the corporation, or

(2) in lieu of such a statement, an appropriate reference to statements or records previously submitted to the Bureau (including material submitted in compliance with prior regulations).

(e)(1) An applicant shall show the extent to which the right-of-way applied for invades or crosses mineral leases, rights-of-way or Geological Survey easements other than the applicant's own. The application shall contain a statement that a copy of the application has been delivered personally or by registered or certified mail to each lessee or right-of-way grant holder whose lease or right-of-way is so affected. When the statement is filed, no final action shall be taken on the right-of-way grant application until 30 days have elapsed after the date of service of such papers, in order to afford the parties concerned ample opportunity to comment on the granting of the right-of-way. A copy of the comments shall be filed with the authorized officer for his consideration.

(2) If the authorized officer determines that a change in the application as filed should be made based on the comments received, the authorized officer shall notify the applicant that an amended application shall be filed subject to changes which the authorized officer stipulates. The authorized officer shall determine whether the applicant shall deliver copies of the amended application to other parties for comment pursuant to 3340.2–1 of this title.

§ 3340.2–2 Approval action.

(a) In considering the application for a right-of-way, the authorized officer shall consider the potential effect of the pipeline on the human, marine and coastal environments, life, including aquatic life, property and mineral resources in the entire area during construction and operational phases. The authorized officer shall prepare an environmental analysis in accordance with applicable policies and guidelines. To aid in the evaluation and determinations, the authorized officer may request and consider views and recommendations of appropriate Federal agencies, may hold public meetings after appropriate notice, and may consult, as appropriate, with State agencies, organizations, industries and individuals. The authorized officer shall attach, as a condition to approval, special stipulations and conditions necessary to protect human, marine and coastal environments, life, including aquatic life, property and mineral resources, located on or adjacent to the proposed right-of-way. In approving the pipeline right-of-way, consideration shall be given to any recommendation of the intergovernmental planning program, or similar process, for the assessment and management of OCS oil and gas transportation.

(b) If the right-of-way as applied for crosses any area withdrawn from disposal or restricted from oil and gas activities, it shall be rejected unless the Federal agency in charge of such withdrawn or restricted area gives its consent to the granting of the right-of-way. In such case the applicant, upon request filed within 30 days after receipt of the rejection notice, shall be allowed an opportunity to file an amended application rerouting the proposed right-of-way so as to eliminate the conflict.

(c) Should the proposed route of the right-of-way adjoin and subsequently cross any State submerged lands, the applicant shall submit to the authorized officer evidence that the State or States so affected have reviewed the application, and shall submit any comment received, including any recommendations to relocate the route, if such relocation is considered necessary. In the event of a State recommendation to relocate the proposed route, the authorized officer shall coordinate with the appropriate State officials all applications for right-of-way grants that pass from Federal to State submerged lands.

(d) If an application is for a grant for a right-of-way affecting any land or water use in the coastal zone of any State with a coastal zone management program approved under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), then the application shall not be approved unless it is consistent with the approved coastal zone management program or until the Secretary of Commerce makes a finding that the right-of-way will be consistent with the objectives or purposes of the Coastal Zone Management Act of 1972, or is necessary in the interest of national security. However, if the application is for a grant for a right-of-way that has been described in detail in an approved development and production plan, then the application may be approved without a further finding of consistency with any approved coastal zone management program or a further finding on the part of the Secretary of Commerce. (See 30 CFR 250.34–2)

(e) If the application and other required information are found to be in compliance with applicable law and regulations, the right-of-way may be granted. If the application is rejected, the decision shall be in writing and shall state the reasons for the decision.

§ 3340.3 Construction.

(a) Failure to construct the pipeline within 5 years from the date of the grant shall be deemed to be an abandonment of the grant and deemed to be a forfeiture. Proof of construction shall be submitted to the authorized officer within 90 days after completion of construction of the pipeline. Such proof shall consist of drawings of the pipeline as built, in triplicate; a signed certificate by the engineer that the pipeline is accurately represented; grid references for all turning points on the line; and other data as required by the authorized officer. If there is substantial deviation from the right-of-way as shown on the original map, the unused portion of the grant shall be relinquished and maps, in triplicate, of the location of the right-of-way as constructed shall be furnished to the authorized officer as soon as possible after the deviation is determined to be necessary or advisable. Any deviation made prior to approval of such supplemental plat shall be at the risk of the holder.

(b) Right-of-way grants shall be reviewed annually prior to commencement of construction of any pipeline. Any significant change in conditions subsequent to the granting of a right-of-way but prior to commencement of construction may be grounds for a request to alter the grant by the authorized officer. The authorized officer shall give consideration to any recommendation of the intergovernmental planning program or similar process.

§ 3340.4 Assignment of right-of-way.

(a) Assignment may be made of a right-of-way grant in whole or of any lineal segment thereof, subject to the approval of the authorized officer. Any such proposed assignment shall be filed in triplicate, accompanied by an application for approval in which the assignee shall make the showing required by § 3340.2–1(c) of this title and agree to the terms and conditions prescribed in § 3340.1(a) of this title.

(b) Any proposed assignment, in whole or in part of any right, title or interest in a right-of-way grant, shall be accompanied by the same showing of qualifications of the assignees as is required of an applicant, and shall be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way grant. No transfer shall be recognized unless and until it is first approved, in writing, by the authorized officer. A nonrefundable fee of $25 shall acompany the application for the approval of an assignment.

§ 3340.5 Relinquishment of rights-of-way.

A right-of-way grant or a portion thereof may be surrendered by the record holder by filing a written relinquishment, in triplicate, with the authorized officer. A relinquishment shall take effect on the date it is filed subject to the satisfaction of all requirements for abandonment in § 3340.1(a)(6) of this title.

§ 3340.6 Change of use or flow.

(a) A change may be made by the holder in the use of the pipeline or direction of flow from that specified in the approved permit only if prior approval is obtained from the Department of Transportation and the authorized officer. Application for such a change shall be filed not less than 15 working days in advance of the proposed change of use or flow.

(b) Each application shall specify whether the change is to be temporary or permanent, and any technical changes necessary to accommodate the change.

(c) Each application shall demonstrate that the pipeline is physically and technically adaptable to the proposed change without adverse environmental effects.

§ 3340.7 Bonding.

(a) Prior to the issuance of a right-of-way grant the applicant shall furnish the authorized officer a corporate surety bond in the sum of $300,000 conditioned on compliance with all the terms of the grant. A similar bond shall be furnished for all previously issued rights-of-way within 90 days of the effective date of this section. Such bond shall not be required if the applicant already maintains or furnishes a bond in the sum of $300,000 conditioned on compliance with the terms of all right-of-way grants held by the applicant on the OCS for the area in which the grant to be issued is situated. This bond shall be in addition to any bond required of a lessee in subpart 3318 of this title.

(b) For the purposes of this section, there are four areas: (1) the Gulf of Mexico; (2) the area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii; (3) the area offshore the Coast of Alaska; and (4) the area offshore the Atlantic Coast.

(c) A separate bond shall be required for each area.

(d) If, as the result of a default, the surety on a right-of-way grant bond makes payment to the Government of any indebtedness under a grant secured by the bond, the face amount of such bond and the surety's liability shall be reduced by the amount of such payment.

(e) A new bond in the amount of $300,000 shall be posted within 6 months or such shorter period as the authorized officer may direct after a default. Failure to post a new bond shall, at the discretion of the authorized officer, be the basis of cancellation of all grants covered by the defaulted bond.

Appendix A

Suggested Bid Form. It is suggested that bidders submit their bids to the Manager, Outer Continental Shelf Office, in the following form:

Oil and Gas Bid

The following bid is submitted for an oil and gas lease on the tract of the Outer Continental Shelf specified below:

Tract No.....
Total amount bid.....
Amount per acre/hectare.....
Amount of cash bonus submitted with bid.....

Proportionate Interest of Company(ies) Submitting Bid

Qualification No.....
Company.....
Percent interest.....
Address.....
Signature...(Please type signer's name under signature)

Appendix B

Required Joint Bidder's Statement. In the case of joint bids, each joint bidder is required to execute a joint bidder's statement before a notary public and submit it with his bid. A suggested form for this statement is shown below.

Joint Bidder's Statement

I hereby certify that

_____ (entity submitting bid) is eligible under 43 CFR 3316.3 to bid jointly with the other parties submitting this bid.

_____
Signature (Please type signer's name under signature)

Sworn to and subscribed before me this _____ day of _____ 19____.

_____
Notary Public
State of.....
County of.....

[FR Doc. 79-20172 Filed 6-28-79; 8:45 am]
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Friday
June 29, 1979

Federal Register

Part X

Department of Defense

Corps of Engineers

Environmental Quality Policy and Procedures

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

[33 CFR Part 230]

Environmental Quality: Policy and Procedures for Implementing NEPA (ER 200-2-2)

AGENCY: U.S. Army Corps of Engineers.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes policy and provides procedural guidance for the Civil Works Program of the U.S. Army Corps of Engineers to supplement the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, November 29, 1978 (40 CFR Parts 1500–1508). The proposed regulations as set forth below will supersede the existing Corps of Engineers NEPA Regulation (ER 1105–2–507, 15 April 1974) (33 CFR 209.410).

DATE: Comments should be submitted in writing on or before July 29, 1979.

ADDRESS: Comments should be addressed to HQDA (DAEN–CWR–P) Washington D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Richard L. Makinen, Office of Environmental Policy, Directorate of Civil Works HQDA (DAEN–CWR–P) Washington D.C. 20314, (202) 272–0121.

SUPPLEMENTARY INFORMATION: This proposed revision has been prepared to provide one basic NEPA regulation for use by all Corps of Engineers Civil Works installations. It incorporates CEQ regulations by direct citiation or quotation, as appropriate, and expands where necessary to further clarify Corps of Engineers implementing procedures. CEQ regulations will not be reprinted with this regulation. Refer to 43 FR 55978 et seq., (November 29, 1978) for the full text of the CEQ regulations.

Dated: June 25, 1979.

For The Chief Of Engineers.

Thorwald R. Peterson,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

Accordingly, we propose to amend 33 CFR by deleting Section 209.410 and adding a new Part 230 to read as follows:

1. 33 CFR 209.410 deleted and reserved.

PART 230—POLICY AND PROCEDURES FOR IMPLEMENTING NEPA (ER 200-2-2)

Sec.

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230.20 Adoption of EIS.
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230.23 Predecision referrals.
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Appendix A—Organization and content of EIS for feasibility studies.
Appendix B—Environmental operating procedures and documents for regulatory functions.
Appendix C—Processing procedures for corps EIS.
Appendix D—Categorical exclusions for real estate management and disposal actions.

§ 230.1 Purpose.

This regulation provides policy and procedural guidance to supplement the Council on Environmental Quality (CEQ) final regulations implementing the procedural provisions of NEPA (40 CFR 1500–1508, November 29, 1978).

§ 230.2 Applicability.

This regulations is applicable to all OCE elements and all field operating agencies having responsibility for preparing and processing environmental documents in support of Civil Works functions.

§ 230.3 References.

(a) Executive Order 11514, Protection and Enhancement of Environmental Quality, 5 March 1970, as amended by Executive Order 11991, 24 May 1977 (42 FR 26967, 25 May 1977).

(b) Executive Order 11593, Protection and Enhancement of the Cultural Environment, 13 May 1971 (36 FR 8921, 15 May 1971).

(c) Executive Order 11988, Floodplain Management, 24 May 1977 (42 FR 26951, 25 May 1977).

(d) Executive Order 11990, Protection of Wetlands, 24 May 1977 (42 FR 26961, 25 May 1977).

(e) Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

(f) Clean Water Act (formerly known as the Federal Water Pollution Control Act) 33 U.S.C. 1344 (hereinafter referred to as Section 404).

(g) Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

(h) Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 *et seq.*

(i) Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

(j) Federal Water Project Recreation Action Act, 16 U.S.C. 668aa–668ee.

(k) Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*

(l) Historic Sites Act 1935, as amended, 16 U.S.C. 461.

(m) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.*

(n) Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1401 et seq.

(o) National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq. (hereinafter referred to as NEPA).

(p) National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 et seq.

(q) Preservation of Historic and Archeological Data Act of 1974, as amended, 16 U.S.C. 469 et seq. (Also referred to as the "Reservoir Salvage Act" of 1960, as amended).

(r) River and Harbor Act, March 3, 1899 (30 Stat. 1151, 33 U.S.C. 401 and 403) and (30 Stat. 1152, 33 U.S.C. 407).

(s) Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271 et seq.

(t) "Navigable Waters, Discharge of Dredged or Fill Material," (40 CFR 230.1–230.8), Environmental Protection Agency.

(u) "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act of 1969," (40 CFR 1500–1508, 29 November 1978), Council on Environmental Quality.

(v) "Protection of Historic and Cultural Properties" (36 CFR 800, 30 January 1979), Advisory Council on Historic Preservation.

(w) Regulatory Programs of the Corps of Engineers, 33 CFR 320–329.

(x) CEQ memorandum of 30 August 1976, Analysis of Impacts on Prime and Unique Farmlands in EIS.

(y) ER 200–2–1.

(z) ER 310–1–5.

(aa) ER 1105–2–50.

(bb) ER 1105–2–200 (Series).
(cc) ER 1105–2–129.
(dd) ER 1105–2–460.
(ee) ER 1105–2–502.
(ff) ER 1105–2–811.
(gg) ER 1105–2–903.
(hh) ER 1105–2–920.
(ii) ER 1105–2–921.
(jj) ER 1130–2–401.
(kk) ER 1130–2–405.
(ll) ER 1130–2–406.
(mm) ER 1130–2–412.
(nn) ER 1130–2–413.
(oo) ER 1165–2–400.
(pp) EP 1165–2–501.

§ 230.4 Definitions.

(Refer to applicable Corps of Engineers Regulations and 40 CFR 1508.)

§ 230.5 Policy.

The U.S. Army Corps of Engineers, under the direction and supervision of the Secretary of the Army, will continue to implement vigorously the National Environmental Policy Act of 1969, applicable environmental statutes and the regulations of the Council on Environmental Quality in carrying out its Civil Works mission consistent with statutory responsibilities and other essential considerations of national policy. From the initiation of project planning through design, construction and operation and maintenance, and in developing decisions in the regulation of activities affecting navigable waters of this country, environmental values will be given equal consideration with economic, social and technical factors to insure decisions in the public interest. To this end, the Corps will:

(a) Follow a systematic interdisciplinary approach to integrate the natural and social sciences and the environmental design arts in planning and decisionmaking.

(b) Undertake early and continuing interchange of views with concerned agencies, groups and the public by the use of the scoping process.

(c) Integrate the requirements of NEPA with other planning and environmental review and consultation requirements.

(d) Prepare, and make available to the public, environmental documents for all Corps actions and activities except for actions which are categorically excluded. Documents shall be clear, concise, emphasize significant issues and be supported by necessary evironmental analysis.

(e) Explore, study and analyze all reasonable alternatives, including non-structural alternatives, with a view to selecting a plan or approving an action that can best satisfy specified needs.

(f) Identify and make provisions for preserving unique cultural and biological resources, such as historic and archeological sites and threatened, endangered, and otherwise species and their habitats.

(g) Utilize regulatory authorities to protect the waters of the United States including their adjacent wetlands and apply the same environmental criteria to Corps actions and activities.

(h) Implicit in this policy are four general environmental objectives:

(1) To preserve unique and important ecological, aesthetic, and cultural values of our national heritage.

(2) To conserve and use wisely the natural resources of our nation for the benefit of present and future generations.

(3) To restore, maintain, and enhance the natural and man-made environment in terms of its variety, beauty, and other measures of quality.

(4) To create new opportunities for the American people to use and enjoy their environment.

§ 230.6 Specific actions normally requiring an EIS.

Listed below are types of Corps of Engineers action which normally require the preparation of an EIS.

(a) *Legislation.* A legislative EIS will be prepared to accompany a bill or legislative proposal to Congress recommended by or with significant cooperation and support of the Corps of Engineers (exclusive of appropriations) significantly affecting the quality of the human environment. Legislative EIS's shall be prepared to conform to the requirements of these regulations except as provided in 40 CFR 1506.8(b).

(b) *Feasibility Studies.* Feasibility studies are planning actions conducted in accordance with the ER 1105–2–200 series of regulations. Studies resulting in recommendations by the reporting officer are documented in feasibility reports, which include Survey Reports, Phase I General Design Memorandum (GDM) and Detailed Project Reports (DPR). A concise EIS shall be contained within the Main Report of feasibility documents. ER 1105–2–920 and Appendix A of these regulations provide guidance on the organziation and contents of reports and EIS's for feasibility studies, respectively.

(1) *Survey Studies.* Survey studies are undertaken in response to specific Congressional Resolutions or by an item in an Act and, if completed through Stage 3 planning, result in a Survey Report.

(2) *Phase I Advanced Engineering and Design (AE&D).* Phase I AE&D studies bridge the gap between the time of Congressional authorization based on a Survey Report and the initiation of detailed engineering and design studies. The purpose of the study is to identify and evaluate changes since authorization in order to either affirm the appropriateness of the authorized plan in light of current conditions and criteria, or reformulate the authorized plan if changes are significant. Such studies are documented in a Phase I General Design Memorandum (GDM). If the Phase I GDM indicates that the proposed project should be implemented essentially as authorized and no significant changes have occurred in conditions or criteria, no additional EIS is required. An analysis supporting this conclusion will be included in the report in place of the EIS, with reference to the filing dates and where and how copies of the final EIS may be obtained. A draft and final EIS supplement will be prepared if the Phase I GDM results in significant changes in the authorized plan of if new criteria or significant impacts are identified which were not covered in the original final EIS. A new draft and final EIS will be prepared if the Phase I GDM indicates that the magnitude of the proposed changes and required environmental analyses of the reformulated plan is substantial and was not covered in the original final EIS. EIS supplements or supplemental information reports to the final EIS (as appropriate) will be utilized for compliance with Section 404(r) for those studies in which findings on the Section 404(b)(1) evaluation were not previously made. Additional EIS supplements may be required to accompany Phase I GDM supplements if significant impacts resulting from changes to the authorized plan are identifiable during the later phases of AE&D.

(3) *Continuing Authorities Studies.* Continuing authorities studies are prepared under one of the following authorities for authorization by the Chief of Engineers or the Secretary of the Army:

Sec. 205, Flood Control Act of 1948 (Small flood control projects).

Sec. 208, Flood Control Act of 1954 (Snagging and clearing for flood control).

Sec. 107, River and Harbor Act of 1960 (Small navigation projects).

Sec. 103, River and Harbor Act of 1962 (Small beach erosion projects).

Sec. 111, River and Harbor Act of 1968 (Mitigation for navigation shore damages).

Sec. 202, Water Resources Development Act of 1976 (Drift and debris removal—Commercial harbors).

Such studies result in Detailed Project Reports (DPR) which serves as a general design memorandum and provides the basis for approval of a project for construction. An EIS will normally be prepared and included in the DPR. However, if it is determined that the proposed action will not significantly affect the quality of the human environment, an Environmental Assessment (§ 230.8) and Finding of No Significant Impact (FONSI, § 230.9) will be included in the DPR in a place of an EIS.

(c) *Projects in a Construction Status.* EIS for previously authorized projects or seperable project features or units, or major rehabilitation projects in a construction category will be prepared and processed in accordance with the guidance contained in 40 CFR 1502. No administrative action concerning the proposed project shall be undertaken until a final EIS or EIS supplement (as appropriate) has been filed with EPA and a Record of Decision issued. (40 CFR 1506.1(a).

(d) *Operation, and Maintenance (O&M).* EIS covering the operation and maintenance activities of completed projects will be prepared and processed in accordance with the guidance contained in 40 CFR 1502 and the following:

(1) *Priorities.* Priority effort will be assigned to any remaining O&M actions recurring annually involving dredging and disposal operations for which a final EIS has not been filed. A lesser priority effort will be assigned to any remaining O&M actions on completed flood control and multi-purpose projects. No EIS are required for completed projects turned over to local interests for O&M. Program EIS, as discussed in paragraph 11 of these regulations, may be used where the completed projects serve the same general purpose or are closely associated geographically and involve similar and/or cumulative environmental impacts.

(2) *EIS Supplements and Assessments.* Once a final EIS is filed addressing an O&M activity, no additional EIS are required unless significant impacts resulting from changes in the method of operation or disposal are proposed and were not covered in the final EIS. EIS supplements (draft and final) as discussed in § 230.12 shall be used to identify, assess and evaluate the significant impacts resulting from these changes, and be filed in advance of the commencement of operations. If the impacts of the proposed changes are not significant, the Environmental Assessment prepared for the proposed changes, together with the FONSI, will provide the basis for a determination that an EIS is not required.

(3) *Management Actions.* Certain administrative actions regarding utilization of project resources, such as fish and wildlife management programs, vegetative and forest management programs, and pesticide and aquatic plant control programs, may lead to significant effects on the environment and therefore would require separate consideration. These actions may have been discussed in general terms in the final EIS on the project; however, based on the environmental assessment, an EIS supplement may still be required for proposed management actions that are determined by the reporting officer to significantly affect the quality of the human environment or to significantly affect future land or resource use. Management actions normally requiring an environmental assessment include public use area modifications and/or relocations, habitat improvement projects, and modifications to existing project structures and facilities. If further survey, studies, investigations or consulation indicates that any of the management actions discussed above may have a significant environmental effect, an EIS supplement will be prepared and circulated in accordance with § 230.12 of these regulations. Management actions categorically excluded include landscaping, routine maintenance activities for recreation areas, etc.

(e) *Regulatory Permits.* See Appendix B.

(f) *Real Estate Management and Disposal Actions.* (1) Certain minor real estate management and disposal actions involving the utilization and disposal of project resources, including the granting, renewal, amendment, and termination of minor leases, permits, licenses, and easements, have been determined to be "categorically excluded" from environmental assessment or impact statement preparation requirements because these actions do not individually or cumulatively have a significant effect on the human environment. Categorically excluded actions for which environmental assessments or impact statements need not be prepared are listed in Appendix D.

(2) Environmental assessments will be prepared in accordance with § 230.8 for all real estate management and disposal actions not categorically excluded by Appendix D. If the environmental assessment indicates that a proposed action is not a major Federal action and will not have a significant effect on the quality of the human environment, a FONSI will be prepared to accompany the action through the decision-making and approval process. If the environmental assessment indicates that a proposed action is a major Federal action and will have a significant effect on the quality of the human environment, an EIS will be prepared in accordance with 40 CFR 1502. Actions normally requiring the preparation of an environmental assessment and/or EIS include:

(i) Disposal of a Civil Works project or major portions of project properties.

(ii) Grants of easements for oil and gas pipelines involving significant disturbances to earth, air or water.

(iii) Major interchanges of land with other Federal agencies.

(iv) Major disposals of real property for public port and industrial purposes.

(v) Grants of easements for major road rights-of-way involving significant disturbances to earth, air or water.

(vi) Grants of leases or easements for major sewage or water treatment facilities and land fills.

§ 230.7 Specific actions excluded from statements.

(a) *Emergency Actions.* (1) Emergency and disaster recovery actions performed under Public Law 99, 84th Congress, 69 Stat. 186, 33 U.S.C. 701n, except that for major post-flood rehabilitation actions (levee modification or realignment), an environmental assessment will be undertaken to determine the environmental effects of the proposed action. The environmental assessment together with FONSI will be prepared and circulated in accordance with § 230.9. If the environmental assessment determines that the proposed action significantly affects the quality of the human environment, an EIS will be prepared. No action performed pursuant to this authority, that has the effect of restoring the facilities substantially as they existed prior to the disaster, shall be deemed as a major Federal action significantly effecting the quality of the human environment.

(2) Emergency Bank Protection for Highways, Highway Bridge Approaches and Public Works, Section 14, FCA of 1946, 60 Stat. 653, 33 U.S.C. 701r;

(3) Emergency snagging and clearing accomplished under Section 3, R&HA of 1945, as amended, 59 Stat. 23, U.S.C. 603a;

(4) Emergency actions directed by the Federal Disaster Assistance 93-288 Administration (FDAA) under the provisions of Public Law except where FDAA determines that an environmental statement is required, the reporting

officer will provide all necessary information to FDAA upon request.

(5) See Appendix B for emergency regulatory permit actions.

(6) Other emergency actions, as determined by the reporting officer, which do not permit delays necessary to process environmental statements such as emergency dam, stilling basin or lock inspection, sunken vessel removal from navigable waters, etc.

(b) *Other Actions.* (1) Feasibility studies in which either the selected plan falls entirely within the authority of another Federal agency or the study does not result in recommendations for Corps implementation.

(2) Real estate and management disposal actions categorically excluded (Appendix D).

§ 230.8 Environmental assessments.

Environmental assessments will be prepared and processed for those actions which are normally covered by an Assessment, actions which normally require an EIS but under certain situations are not considered to be a significant action as discussed in § 230.6, and for those emergency actions discussed in § 230.7 where sufficient time exists or where rehabilitation measures are planned. A separate Environmental Assessment is not required for those actions discussed in § 230.6 where an EIS will normally be prepared or for actions categorically excluded discussed in § 230.7 and Appendix D. The reporting officer is recognized as the responsible Corps NEPA Official who will make the determination to prepare an Environmental Assessment or EIS. If information for an Assessment is undertaken by an outside consultant, the reporting officer is responsible for independent verification and use of the data, analysis of the environmental issues, and take responsibilities for the scope and content of the Environmental Assessment. Preparation of an environmental assessment shall follow the format for an EIS as outlined in 40 CFR 1502 and, as a minimum, shall address the need for the action, alternatives, environmental impacts of the proposed action and alternatives, consultation with others, and an analysis of whether or not the proposed action will significantly affect the quality of the human environment.

§ 230.9 Finding of no significant impact (FONSI).

A FONSI will be prepared by the reporting officer or delegated official to accompany an Environmental Assessment prepared for a proposed action when, as a result of the analysis included in the Environmental Assessment, it is concluded that an EIS or EIS supplement will not be prepared. The FONSI will be based on the information obtained during the environmental assessment and other pertinent data obtained from cooperating Federal agencies having jurisdiction by law on special expertise and the interested public. It shall briefly describe the proposed action or alternatives under consideration and the factors that were considered in making a determination that an EIS was not required. The FONSI should not directly duplicate any of the information contained in the Assessment but incorporate it by reference. It will be signed and placed in the project file and together with the Assessment be made available to the public upon request. See Appendix B for regulatory functions. Where a determination has been made based on an Environmental Assessment that an EIS will not be prepared and the action is similar to those Corps actions listed in § 230.6 which normally require an EIS or where the nature of the proposed action is without precedent, the unsigned FONSI together with the Assessment will be circulated for review and comment to the concerned agencies and the public for a 30-day period. After review of the comments received, the reporting officer may sign the FONSI and place it in the project file, or prepare an EIS, as appropriate. No administrative action may be undertaken on the proposed action until the FONSI is signed. A record of decision, as discussed in § 230.17 is not required for actions covered by an Environmental Assessment.

§ 230.10 Scoping.

Early agency and public participation planned and incorporated into the conduct of all Corps EIS actions will be referred to as "scoping". This is a mandatory process and shall begin as soon as practicable after a determination is made to prepare an EIS. For those actions discussed in § 230.6 where an EIS will normally be prepared, the scoping process will be initiated when the EIS preparation commences. The notice of intent for these studies will be prepared in accordance with ER 200-2-1 with special reference to 40 CFR 1507.3(e) on the timing of the notice for the Survey Studies. For all other Corps actions listed in § 230.6, the scoping process will begin at the earliest time practicable preceded by the notice of intent. The provisions of 40 CFR 1501.7 shall be applied in the development of an EIS for the proposed action. The use of scoping meetings is optional. However, meetings are encouraged where public input to the EIS is not generally obtained by regular communication, notices, etc. Such input could include public perception of the action, identification of major issues and environmental values, and development of alternatives and mitigation plans. No formal scoping process need be undertaken for those Corps actions categorically excluded or for actions which do not normally require an EIS. However, coordination with Federal agencies having jurisdiction by law or special expertise will be required during the preparation of the Environmental Assessment to identify issues relating to compliance with environmental review and consultation requirements.

(a) *Lead Agencies.* Where another Federal agency is directly involved with the Corps in an action or group of actions directly related to each other because of their functional interdependence or geographical proximity, consideration should be given to the designation of a lead agency to assume responsibility for the preparation of an EIS to cover all of the Federal actions involved. This determination should be accomplished by letter or memorandum of agreement between the district or division engineer and the regional office of the agency following the procedures outlined in 40 CFR 1501.5(c). If the question of lead agency designation cannot be resolved by the district or division engineers, the administrative record will be forwarded to HQDA (DAEN-CWZ-P) WASH DC 20314 requesting resolution by CEQ as outlined by 40 CFR 1501.5(e) and (f).

(b) *Joint Lead Agencies.* The use of a joint lead agency designation with another Federal agency as provided for in 40 CFR 1501.5(b) may also be utilized in certain Corps actions, primarily regulatory, where more than one agency is involved in the environmental review and approval or authorization of the proposed action. This joint lead determination should be documented by letter or memorandum prior to initiation of EIS preparation.

(c) *Cooperating Agencies.* As soon as practicable after a determination has been made to prepare an EIS and the lead agency designation issue resolved (if appropriate), the district/division engineer shall request any other Federal agency having jurisdiction by law or special expertise with respect to any environmental effect involved in the proposal to become a cooperating agency. This request, usually directed to the regional office of the agency, may be

accomplished by invitation to participate in the scoping process or by a separate letter requesting coordination. In the case of feasibility studies where the scoping process is integrated within the Corps planning process, a separate letter will be required. For Corps actions where an EIS will not be required, or for those actions discussed in paragraph 6 where an EIS is normally prepared or the nature of the action is without precedent, coordination with Federal agencies having jurisdiction by law or special expertise will be requested by separate letter or public notice at the time the Environmental Assessment is initiated. See § 230.25 for a listing of Federal agencies and applicable environmental review and consultation requirements. Duties and responsibility of cooperating agencies are outlined in 40 CFR 1501.6.

(d) *Corps as a Cooperating Agency.* Where the Corps is not the lead or joint-lead agency for a proposed action, and has been requested to become a cooperating agency, reporting officers shall participate and review the EIS work of the lead agency relevant to the Corps area of expertise or jurisdiction by law (i.e., flood control, navigation, hydropower and regulatory functions). This coordination will insure that the draft EIS produced will satisfy the procedural and statutory requirements of the Corps and could possibly be adopted as a Corps EIS in accordance with 40 CFR 1506.3. Duties and responsibilities of a cooperating agency are discussed in 40 CFR 1501.6(b) and (c). In more complex actions where the Corps has been asked to participate beyond routine coordination and review and involves reimbursement of non-routine services (requests for personnel, etc.), or where more than one district or division may be involved, a memorandum of agreement with the lead agency should be prepared.

(e) *Notice of Intent.* A notice of intent to prepare a draft EIS for publication in the Federal Register is discussed in ER 200–2–1. A notice is not required for actions not requiring an EIS. A notice is not required for court ordered revisions or supplements where the action preempts the scoping process by defining the required revisions.

§ 230.11 Tiering and program EIS.

Tiering, as discussed in 40 CFR 1502.20 and 1508.28 may be undertaken in certain types of Corps actions where the use of a broad programmatic EIS to be followed with site specific EIS supplements will concentrate on the significant decision-making issues at each level or stage of phased implementation and environmental review. The initial program EIS must present sufficient information regarding the expected impacts of the proposed action so that the decision makers can make a reasoned judgment on the merits of the action at the present stage of planning or development and exclude from consideration issues already decided or not ready for decision. The program EIS should identify data gaps and discuss future plans to supplement the data and prepare and circulate site specific EIS supplements, as appropriate at each stage of phased implementation or major Corps decision points.

§ 230.12 Draft, final, and supplemental EIS and information reports.

EIS will be prepared in draft and final form for those proposed actions listed in § 230.6 and for other significant actions where the reporting officer makes a determination that an EIS is required, except for emergency actions discussed in § 230.7 which do not permit delays necessary to process EIS, categorical exclusions, and for legislative EIS as provided in 40 CFR 1506.8. Filing, timing, availability and processing of Corps EIS are discussed in § 230 .13, .14 and .15, and Appendix C, respectively. EIS will be prepared by the reporting officer who is recognized as the responsible Federal official within the meaning of Section 102(2)(c) of NEPA except for such changes as reviewing authorities may deem necessary in the original proposal and covering EIS, to be consistent with the policies of the Chief of Engineers and the Secretary of the Army.

(a) *Supplements.* A Supplement to the draft or final EIS on file will be prepared whenever significant impacts resulting from changes in the proposed plan recommended for approval or project modifications on authorized or completed projects relevant to significant environmental concerns. Supplements will also be required when new significant impact information, criteria or circumstances relevant to environmental considerations impact on the recommended plan or proposed actions. A supplement to a draft EIS will be prepared, filed and circulated in the same manner as the original draft EIS. Appropriate chapters in the final EIS and Record of Decision will address the new information or changes contained in the draft supplement. A supplement to a final EIS will be prepared and filed first as a draft supplement and then as a final supplement. Both documents will be filed and circulated in the same manner as the original draft and final EIS. Supplements will follow the same format as EIS outlined in 40 CFR 1502 and Appendixes A and B and review time limits discussed in § 230.14(b). Supplements should only be concerned with and discuss the significance of the changes, new information, criteria or circumstances relevant to environmental or other concerns which impact or have a bearing on the proposed action. References to the draft or final EIS being supplemented should be used to eliminate repetitive discussions in order to focus on the important issues and impacts. Page length will vary with the scope and complexity of the proposed changes or circumstances. The transmittal letter to EPA as well as the cover sheet shall clearly identify the title and purpose of the document as well as the title and filing date of the previous EIS being supplemented and how copies can be obtained. The Record of Decision for the final supplement will be signed by the appropriate Corps official after the final supplement has been on file for 30 days. Supplements will be listed in a separate category in EPA's weekly notice of EIS availability published in the Federal Register.

(b) *Supplemental Information Reports.* Whenever it is only necessary to provide supplemental information to a point of concern discussed in the final EIS (and such point of concern was considered in making the decision on the proposed action), a supplemental information report will be prepared and filed with EPA. A separate category of information reports will be listed in EPA weekly list of EIS availability published in the Federal Register. The report will be circulated for information to concerned agencies and the interested public who provided comments on the draft and/or final EIS at the same time it is filed with EPA. No administrative waiting periods are required. Reporting offices will provide eight (8) copies of the report to appropriate elements within OCE or to the division engineer, as appropriate, for filing with EPA. Reporting officers may also publish periodic informational fact sheets on long-term, complex EIS or other new environmental or project information which would not normally require an EIS to keep the public informed on the status of the proposed action. These documents will not be filed with EPA.

§ 230.13 Filing requirements.

Draft and final EIS, supplements and supplemental information reports shall be filed with EPA no earlier than they are also circulated to all parties on the project mailing list. Five (5) copies should be sent to: Director, Office of Environmental Review (A–104)

Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Reporting officers shall file draft EIS and draft supplements directly with EPA. Final EIS and final supplements shall be filed by appropriate elements within OCE for Survey Reports, Phase I GDM and DPR requiring OCE approval or Congressional authorization. Division engineers shall file final EIS and final supplements for Phase I GDM delegated to the division engineer for approval, projects in a construction category, completed projects in operations and maintenance, and real estate actions, except that final EIS for projects in AE&D or construction to be submitted to Congress pursuant to Section 404r of the Clean Water Act will be filed by HQDA (DAEN–CWP) Washington DC 20314. Final EIS or supplements for permit actions will be filed by the district engineer. Supplemental information reports will be filed with EPA by the office filing the final EIS. OCE and/or division will notify field office counterparts when to circulate the final EIS or final supplement and will not file the final document with EPA until notified by the reporting officer that distribution of the document has been completed.

§ 230.14 Timing requirements.

EPA will publish a notice in the Federal Register each week (generally on Friday) of the EIS and EIS related reports filed during the preceding week. The date of this notice starts the review period. No administrative action will be taken regarding the proposed action sooner than 90 days after a draft EIS has been filed with EPA as noticed in the Federal Register, or sooner than 30 days after the final EIS has been filed with EPA and noticed in the Federal Register. The 30-day minimum period of review for the final EIS may run concurrently with the minimum 90-day period if the final EIS is filed within 90 days after a draft EIS is filed. However, reporting officers shall allow not less than 45 days for comment on the draft EIS. In unusually large or complex actions consideration should be given to a period longer than 45 days for review and comment on the draft EIS.

(a) *Expedited Filing.* In certain cases where the proposed action must be undertaken within critical time restraints or because of compelling reasons of national policy, a shortend review period may be recommended. In such cases, reporting officers will provide the necessary information and facts to HQDA (DAEN–CWZ–P) Washington DC 20314 for consultation with EPA for a reduction in the prescribed review periods. EPA may also extend the review periods on certain actions as described in 40 CFR 1506.10(d).

(b) *Timing Requirements on Supplements.* The minimum periods of review for draft and final supplements before an administrative action can occur is 45 and 30 days, respectively. However, no decision on the action shall be made sooner than 90 days after the draft supplement has been filed with EPA. Draft and final supplements covering project design changes or actions not having a bearing on the overall project for which a final EIS has been filed, will observe the minimum review periods for only those actions addressed in the supplement and not curtail other ongoing or scheduled actions on the overall project. No minimum administrative waiting periods are required for supplemental information reports discussed in § 230.12(b).

(c) *Administrative Actions.* Administrative actions are defined as report or permit approval (where the report, project, or permit approval is contingent upon 30-day FEIS review), initial land acquisition or award of the initial construction or maintenance contract.

(d) *Other.* Final EIS included within Corps Survey and legislative Phase I GDM circulated by OCE for Departmental review to concerned Federal agencies and the affected State(s) will be given a 90-day review period. All other parties on the mailing list not contacted by OCE will be given the normal 30-day review period.

§ 230.15 Availability.

Draft and final EIS and supplements, except for certain appendixes as provided in 40 CFR 1502.18(d), shall be made available to all agencies, groups and individuals on the project mailing list in accordance with 40 CFR 1502.19. Copies will also be furnished in response to requests from the public. All parties not receiving a complete set of appendixes shall be advised of the location of a complete set such as (local public libraries, planning agencies, etc.) or how they may be obtained, including the cost. In certain cases the reporting officer may circulate the EIS summary in lieu of the entire EIS. However, the procedures outlined in 40 CFR 1502.19 must be carefully followed. The district engineer should consult with the division engineer prior to using this procedure. Single copies will be furnished without charge to individuals on the project mailing list and the individuals requesting copies. For multiple copy request, reproduction costs may be recouped from the requestor but shall not be greater than the actual costs of reproducing copies required to be sent to other Federal agencies. Copies of comments received from other Federal agencies on a draft EIS prior to the availability of the final EIS and other related EIS documents shall be made available to the requestor in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552).

§ 230.16 Comments.

Reporting officers shall request the comments of all Federal and state agencies having jurisdiction by law or special expertise with respect to any environmental impact involved, or which is authorized to develop and enforce environmental standards, when the draft EIS or draft supplement is circulated for review in accordance with § 230.13. Comments will also be requested from all other parties on the project mailing list and from State and local clearinghouses in accordance with OMB Circular A–95 (Revised). Reporting officers shall maintain and periodically update the project mailing list and provide timely notices of NEPA related public meetings, workshops, etc. and the availability of environmental documents to all those parties on the list as well as notifying the general public through such means as newspapers or other local media.

(a) *Time Extensions.* Requests for extension of time to review and comment on an EIS, either oral or written, will be considered on a case by case basis. Timeliness of distribution of the document, prior agency involvement in the proposed action, and the action's scope and complexity will be used in making this determination. A lack of response may be presumed to indicate that the agency contacted has no comment to make, except that Federal agencies with jurisdiction by law, special expertise or authorized to enforce environmental standards shall be requested to comment even if the reply is that it has no comment. Time extensions of at least 15 days will be granted to timely requests for the entire draft EIS when only the summary was circulated.

(b) *Public Meetings and Hearings.* If a public meeting or hearing is held in connection with an EIS for a proposed action, the draft EIS will be made available to the public at least 15 days in advance of the meeting or hearing (unless the meeting is a scoping meeting as discussed in § 230.10). Public meetings or hearings, other than those

required by Corps regulations, will be at the option of the reporting officer and should be held whenever an exchange of views and information would be beneficial.

(c) *Comments Received on the Draft EIS.* A public response section shall be included in the main text of each EIS prepared by the Corps. In the draft EIS this section will briefly describe the public involvement program or scoping process undertaken during the conduct of the study and/or development of the EIS. Significant environmental concerns or issues related to the proposed action which surfaced and had a major influence on the proposed action and how such concerns were incorporated into the draft EIS will also be discussed in this section. A list of parties receiving copies of the draft EIS will be included in this section. In the final EIS this public response section will be expanded to include a brief discussion of substantive issues or new data requiring clarification or explanation having a direct bearing on the draft EIS or resulting in changes or modifications of the proposed action. Issues or questions may be appropriately consolidated or grouped, with the source of the comment identified. The discussion shall include references to appropriate paragraphs in the EIS and/or Main Report and Appendixes where a thorough analysis of the issues or revisions can be found. A list of parties providing comments on the draft EIS will be included in this Section. Copies of all letters received (or summaries thereof where numerous repetitive "form" letters are received), together with Corps responses, may be included in the main text of the EIS if a limited number are received, or included in an Appendix when a large number are received. In any case, all comments shall accompany the EIS whether or not the comment is thought to merit individual discussion in the main text. Use of the single-page correspondence-response reduced display format is recommended as a way to reduce reviewing time, assure all comments are responded to and make the review less confusing. Pages reproduced in this format should be placed in the EIS to read from left to right (normal left margin turned to become the top of the page). Reduction should be limited to one-half size in order to remain readable. A table of contents showing the commentor's name and the page(s) where the letter and responses are located will be placed at the beginning of the Section. Letters will be arranged as folllows: Federal, State, groups or organizations and the public. See Appendix A, paragraph 6i(6) for specific guidance on presenting comments on EIS for feasibility studies.

(d) *Comments Received On the Final EIS.* Letters of comment received during the 30-day review period on a final EIS will be answered by reporting officers on an individual basis. Responses shall indicate how each issue raised by the comments has been addressed citing authorities or reasons which support the Corps position. Five (5) copies of the incoming letters and the reporting officer's response will be submitted to the division engineer or appropriate element within OCE whoever filed the final EIS. After review of comments and responses, the District Engineer (in the case of certain permit actions), the Division Engineer or Director of Civil Works will sign the Record of Decision and approve the action and/or forward the action to higher authority. For permits follow 33 CFR 325.8 and App. B. After signature the Record of Decision will be returned to the reporting officer and copies provided to appropriate Corps offices. For final EIS to be submitted to Congress pursuant to Section 404(r) of the Clean Water Act, the package of comments and responses would be directed to HQDA (DAEN-CWP) WASH DC 20314. In the case of a letter recommending a referral under 40 CFR 1504, reporting officers will notify (DAEN-CWZ-P) and request further guidance. The Record of Decision will not be signed until the referred case is completed. No action will be taken on the proposal until the case is resolved.

(e) *Commenting on Other Agencies EIS.* District/division engineers shall review and comment on EIS prepared by other Federal agencies when the environmental impacts of the proposed action are related to the Corps jurisdiction by law or special expertise, as provided in 40 CFR 1503.2 and .3. Unless otherwise directed, the district/division engineer in whose area the proposal is located will review and provide comments directly to the appropriate agency within the time period specified. In the case of Federal, national or geographic program EIS; legislative; or other major policies; OCE may designate a district or division engineer to provide a coordinated agency reply to the agency or request review and comment from Corps field offices for a coordinated agency reply to be signed at OCE or higher level. Comments on another Federal agency EIS should be specific and may address either the adequacy of the EIS or the merits of the alternatives discussed, or both, relative to the Corps functional areas of responsibility and expertise (i.e. flood control, navigation, hydropower or regulatory functions). As a cooperating agency the Corps will always provide comments on another Federal agency EIS even if the response is no comment. The specificity of comments in these cases are discussed in 40 CFR 1503.3.

"(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

"(d) When a cooperating agency with jurisdiction by law objects or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences."

One copy of all district/division comments on other Federal agency's draft EIS shall be furnished to HQDA (DAEN-CWR-P) WASH D.C. 20314. If comments are prepared on another agency's final EIS one copy shall also be furnished to Director, Office of Federal Activities, A-104, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of comments on state or local EIS which are unrelated to the Federal NEPA program will not be furnished to OCE or EPA.

§ 230.17 Record of decision.

A Record of Decision, as discussed in 40 CFR 1505.2 will be prepared to document the Corps final decision or recommendation to Congress on a proposed action requiring an EIS. The Record of Decision replaces the Statement of Findings (ER 1105-2-509) which is rescinded by this regulation. The Record of Decision will be signed at the level approving the action and/or filing the final EIS. For Corps Survey Reports, Phase I GDM and DPR requiring congressional authorization or OCE approval the Record of Decision will be signed by the Director of Civil Works after review of the comments received following the filing of the final EIS. For phase I GDM delegated to the division engineer for approval, projects in a construction category, completed projects in operations and maintenance and real estate actions, the Record of Decision will be signed by the Division Engineer. In the case of permit actions, see Appendix B. The reporting officer

preparing the EIS will be responsible for preparing the Record of Decision for signature of the Division Engineer or Director, as appropriate. It will accompany the letters of comment and responses received on the final EIS as discussed in § 230.16(d). In the case of Survey or phase I reports requiring Congressional authorization, the Record of Decision will be included within the final report of the Chief of Engineers when the recommended action is forwarded to Congress.

A Record of Decision is not required when a FONSI and environmental assessment has been prepared. The Record of Decision shall:

"(a) State what the decision was.

"(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations on national policy which were balanced by the agency making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation. (40 CFR 1505.2).

§ 230.18 Monitoring and mitigation.

For those cases involving the preparation of an EIS, reporting officers shall be responsible for preparing reports which will provide information on the current status of environmental monitoring and authorized mitigation measures undertaken on Corps projects and permit actions in accordance with 40 CFR 1505.3. These reports will be made available to cooperating and commenting agencies who proposed mitigation measures which were adopted. Reports will not be required for those Corps actions with a final EIS on file as of 30 July 1979 except where environmental monitoring and/or authorized mitigation measures were underway or established in the final EIS. The funding of environmental monitoring and authorized mitigation measures will be a part of the project cost. Budget requests will recognize the importance and timing of monitoring and mitigation features and include necessary funds to insure Phased project development.

§ 230.19 Integration with State and local procedures.

Reporting officers shall cooperate, to the fullest extent practicable, with State and local agencies to reduce duplication between Corps NEPA actions and those required by State and local requirements (40 CFR 1506.2(b), (c) and (d)). Normally, this cooperation will consist of providing information on regulatory responsibilities with respect to the proposed action to determine the extent and degree of involvement of the Corps and whether an assessment or joint EIS is desirable. If the proposed State or local action falls within the Corps' area of NEPA activities, the concerned reporting officer, as a joint lead agency, shall cooperate with the State or local agency in fulfilling State environmental impact statement requirements (if applicable) as well as Federal NEPA laws so that one document will comply with all applicable laws. An EIS produced as a joint Corps-State or local agency document will be prepared and processed in accordance with applicable sections and appendixes of these regulations.

§ 230.20 Adoption of EIS.

The Corps may adopt another Federal agency's draft or final EIS or portion thereof provided that it meets the standards for an adequate EIS under CEQ regulation 40 CFR 1500–1508.

"(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section.

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that the comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under part 1504, or when the Statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify." (40 CFR 1506.d).

Reporting officers wishing to adopt an EIS should submit necessary background information and EIS documents to HQDA (DAEN–CWR–P) WASH D.C. 20314 for a decision on the proposed action.

§ 230.21 Limitations on actions during the NEPA process.

Limitations on Corps action during the NEPA review process are discussed in § 230.14. State and local agencies and private applicants should be made aware of the early stage involvement provisions of 40 CFR 1506.1(b) with respect to the Corps foreseeable regulatory responsibilities (refer to Appendix B). If a reporting officer decides to prepare a programmatic EIS, the limitations set forth in 40 CFR 1506.1(c) will apply to the extent practicable but are not binding unless the program EIS is required by statute or ordered by the courts. Reporting officers will carefully review proposed interim actions to be undertaken while work on a program EIS is in progress so as not to prejudice the ultimate decision on the program.

"(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or design or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (e.g., long leadtime equipment and purchases options) made by nongovernmental entities seeking loan guarantees from the Administration." (40 CFR 1506.1)

§ 230.22 General considerations in preparing corps EIS.

EIS for Corps Civil Works activities shall be prepared and processed in accordance with Appendix A through D and pertinent Sections of this regulation, CEQ regulations implementing the procedural provisions of NEPA (40 CFR 1500–1508), and the following:

(a) *Interdisciplinary Preparation.* EIS shall be prepared using an interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts. (40 CFR 1502.6) Environmental investigations should be undertaken simultaneously with and to the same depth and scope as other study or project related investigations. EIS shall be coordinated with and reviewed by district and division counsel. A list of the names, expertise, experience, and professional discipline of the persons who were

primarily responsible for the preparation of the EIS shall be included. See paragraph 6b of Appendix A for guidance on format. (40 CFR 1502.17).

(b) *Incorporation by Reference.* EIS shall incorporate cited material into the main text of the EIS by the use of reference to eliminate excess bulk. Footnotes should not be used. References should be made by indicating an author's last name and date of the reference in parentheses at the appropriate location in the text. The list of references will be placed at the end of the EIS, or in the case of feasibility studies, incorporated by reference into the index as shown on page A–15. Only information sources actually cited in the text should appear in the reference list. The reference list shall include the author's name and the date and title of the publication. Personal communications should also be listed with the person's employing office, date of communication and type of communication (e.g., letter, telephone, interview, etc.). Cited material must be reasonably available for inspection by interested parties within the time allowed for comment (40 CFR 1502.21).

(c) *Incomplete or Unavailable Information.* Refer to 40 CFR 1502.22 (a) and (b) for guidance in preparing an EIS when there are data gaps or lack of information relevant to significant adverse impacts bearing on the decision on the action.

(d) *Methodology and Scientific Accuracy.* Methodologies, techniques, and other scientific sources used to arrive at information presented in the EIS or relied upon for conclusions shall be cited at appropriate locations in the EIS and included in the list of references. (40 CFR 1502.24).

(e) *Cost-Benefit Analysis.* In the case of feasibility studies, limited plan economic data will be displayed for the final array of alternatives in accordance with Appendix A. For other Corps actions, limited project economic data relevant to the choice among alternatives will be displayed, as appropriate (e.g. cubic yard cost for O&M dredging). When a cost-benefit analysis is prepared, the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities shall be discussed.

(f) *Contractural Relationships.* The use of outside professional services (contractors) for the preparation of Environmental Assessments and EIS for Corps actions shall be in accordance with 40 CFR 1506.5(c). The reporting officer shall assist the contractor in the preparation of the document and independently evaluate and be responsible for its scope, content and accuracy. The names of the person(s) responsible for this independent evaluation shall be included in the list of perparers as discussed in paragraph 7b of Appendix A. Reporting officers shall prepare and have contractors execute a disclosure statement specifying that they have no financial or other interest in the outcome of the project.

(g) *Use of Regulation.* This regulation shall become effective on 30 July 1979 and will be used for the preparation and processing of all NEPA related documents prepared for Civil Works activities except for the requirements of publishing a notice of intent to prepare a draft EIS (ER 200–2–1) which became effective 12 February 1979. Draft EIS and draft supplements filed with EPA after 30 July 1979 must comply with these regulations. Draft EIS and draft supplements filed with EPA before 30 July 1979 need not comply with these regulations nor do the finals prepared from these drafts (40 CFR 1506.12).

(h) *Responsible Officials.* Each reporting officer is considered as the designated Corps NEPA official who is responsible for agency compliance of NEPA related actions originating within their district/division boundaries. Reporting officers may also be designated as the responsible Corps official to provide agency views on other agency's EIS. At the Headquarters level, the Office of Environmental Policy Development HQDA (DAEN–CWR–P) WASH DC 20314 (phone number 202–272–0121) is responsible for overall review of Corps NEPA compliance and other questions concerning the requirements of this regulation. This office will serve as the central point of contact for information on Corps NEPA documents and the review of other agencies EIS unless otherwise delegated or where review arrangements with other agencies has been implemented.

§ 230.23 Predecision referrals.

(a) *Corps Actions Other than Regulatory Permits.* If the reporting officer determines after review of another agency's final EIS that the proposed action would be environmentally unsatisfactory with respect to the Corps area of expertise or jurisdiction by law, the case will be sent through division to reach (DAEN–CWZ–P) not later than 15 days after the final EIS was filed for review and processing to SACW for submittal to CEQ. The referral must be delivered to CEQ not later than 25 days after the final EIS was filed. The referral shall only be used after timely, but unsuccessful efforts have been undertaken to resolve the issue with the other agency. Such advice and/or a request for additional information to permit an analysis of the proposed action associated with the Corps area of expertise or regulatory responsibilities shall be contained in the reporting officers comments on the other agency's draft EIS. Every effort should be made to resolve the problem(s) prior to the preparation of the final EIS. However, if an agreement cannot be reached, the reporting officer shall prepare the referral in accordance with the procedures outlined in 40 CFR 1504.3. Corps actions referred to CEQ under this procedure by another Federal agency or by EPA under Section 309 of the Clean Air Act (42 U.S.C. 7609) shall be transmitted immediately to (DAEN–CWZ–P) for further guidance. Reporting officers receiving potential referral advice or requests for additional information from another Federal agency in comments on a draft EIS, shall, to the extent practicable, provide the necessary information and/or attempt to resolve the differences prior to filing the final EIS on the proposed action.

(b) *Predecision Referrals for Regulatory Permits.* See Appendix B.

§ 230.24 Agency decision points.

(a) *General.* The instructions contained in appendix C discuss the timing and integration of EIS preparation and processing in relation to major decision points in the Corps Civil Works Program. Analyses of environmental data obtained during the early stages of planning, project development, operations and maintenance, management and regulatory permit actions will provide the reporting officer with a basis to make a determination of the significance of the proposed action and whether an environmental assessment, EIS or EIS supplement will be required. In the case of an Environmental Assessment, the reporting officer or delegated official for certain permit actions will sign the FONSI based on the completed Environmental Assessment. Environmental Assessments and FONSIS prepared for actions other than regulatory which normally require an EIS or are without precedent shall be circulated for public review and comment for 30-days before the FONSI is signed by the reporting officer in accordance with 40 CFR 1501.4(e)(2). For regulatory functions see Appendix B. Determinations based on Environmental Assessments are reversible should controversy or other circumstances

occur which require as EIS on supplement to be prepared.

(b) *Feasibility Studies.* In the case of feasibility studies discussed in § 230.6(b), the EIS is an integral part of the Main Report and circulated to agencies and the public for review. This procedure insures that environmental data and analyses are given equal consideration with other factors and are made available to agency decisionmakers at the time when they will be of most value in reviewing and deciding on a proposed action. The Main report and EIS for Survey and Legislative Phase I reports will accompany the Final Report of the Chief of Engineers when the proposed action is forwarded for Executive review and ultimately to Congress for a decision. DPR and Phase I GMD approved at the OCE level will have the Director of Civil Works sign the Record of Decision. The Record of Decision for administrative Phase I reports will be signed by the Division Engineer.

(c) *Construction, O&M and Management Actions.* In the case of authorized and completed projects, EIS or EIS Supplements will be prepared early in the scoping process, circulated for review and comment, and made available to agency decisionmakers for review (including comments received) prior to reaching a decision on the proposed construction, maintenance, or management action. The Record of Decision as discussed in § 230.17 will be signed by the Corps official approving the action after the final EIS or supplement has been on file for 30 days. In the case of an Environmental Assessment, the reporting officer will sign the FONSI and approve the action based on the completed Environmental Assessment. No administrative action shall be taken on the proposed project until the Record of Decision or the FONSI has been signed.

(d) *Regulatory Permit Actions.* See Appendix B.

§ 230.25 Environmental review and consultation requirements.

(a) *General.* The following paragraphs list the principal environmental review and consultation requirements applicable to all Corps Civil Works actions. In accordance with 40 CFR 1502.25, the following procedures outline, how documents required to be prepared for applicable environmental review and consultation requirements are to be integrated with NEPA documents and how the applicable consultation or commenting process is to be undertaken concurrently with the circulation of the appropriate environmental document.

(1) *Clean Water Act of 1977, 33 U.S.C. 1251 et seq. (formerly known as the Federal Water Pollution Control Act Amendments of 1972).* Evaluation of the effects of the discharge of dredged or fill material into waters of the United States, including consideration of the Section 404 (b) (1) Guidelines, shall be included in Environmental Assessments, EIS, EIS Supplements or Supplemental Information Reports prepared for Corps actions, except for regulatory permit actions and actions categorically excluded. For regulatory permit actions compliance shall be in accordance with applicable provisions of 33 CFR 320–329. EIS documentation shall include the reporting officer's evaluation of each of the applicable factors from the Section 404 (b) (1) Guidelines together with the required determinations and findings. The Section 404 evaluation will be noted in the EIS summary and included as an Appendix to the draft Main Report and EIS or to the draft EIS or supplement as appropriate, and circulated for review and comment. This procedure will satisfy Section 404 of the Act, upon submittal of the EIS to Congress, in lieu of issuing a public notice and obtaining a State water quality certification. In the case of an Environmental Assessment prepared for a Corps action not requiring an EIS, compliance with Section 404 will be identified in the Assessment and the evaluation included as an Appendix. The final evaluation together with comments and responses for the coordination will be included with the final EIS or supplement. Interim policy guidance on compliance with applicable provisions of Section 404 of the Clean Water Act for Corps studies and projects in planning, design, construction and operations and maintenance has been provided.

(2) *Coastal Zone Management Act of 1972, as Amended, 16 U.S.C. 1451 et seq.* Proposed Corps projects and activities significantly affecting land or water uses in the Coastal Zone of a State or Territory must be coordinated with the appropriate State agency responsible for administering the State's approved Coastal Management Program. coordination should be initiated early in the planning or scoping process to insure compliance with the consistency provisions of the Act (Section 307). In the case of feasibility studies, the consistency determination shall be summarized in the Main Report noted in the EIS summary and fully included in an Appendix to Main Report, if necessary. In other Corps actions, except regulatory permits, the consistency determination will be noted in the EIS summary and fully included in an Appendix, if necessary. For regulatory permits, compliance with the Act will be in accordance with 33 CFR 325.2(b)(2). In the case of an Environmental Assessment, the consistency determination together with pertinent correspondence will be included with the document.

(3) *Endangered Species Act of 1973, as Amended, 16 U.S.C. 1531 et seq.* Reporting officers shall initiate early coordination with the appropriate Regional Director of the Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) to determine if any listed endangered or threatened species or species proposed for listing or their critical habitat may be present in the area of the proposed Corps action. The results of this coordination and/or consultation as required by Section 7 of the act, as amended, shall be included in the Environmental Assessment, draft EIS or EIS supplement prepared for the proposed action. Copies of pertinent correspondence, biological assessments, opinions, consultants reports or other related information shall be provided as an Appendix to the draft Main Report or draft EIS, as appropriate, with the conclusions and/or recommendation discussed briefly in the EIS summary and public response section. In the case of regulatory permits not requiring an EIS, the results of the coordination obtained by circulation of the public notice will be included within the final Environmental Assessment prepared for the proposed action.

(4) *Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq.* Reporting officers shall initiate early coordination with the appropriate Regional Director of the Fish and Wildlife Service (FWS), the appropriate National Marine Fisheries Service (NMFS) and the head of the agency responsible for fish and wildlife for the State in which the proposed action will occur. The results of this coordination shall be discussed briefly in the Environmental Assessment or draft EIS summary and public response section to identify the concerns of the fish and wildlife agencies when the draft report and EIS or draft EIS, as appropriate is circulated to agencies and the public for review and comment. In the case of feasibility studies the final fish and wildlife report will be included as an Appendix to the final Main Report and EIS when the reporting officer transmits the report to higher authority. In other Corps actions the final fish and wildlife report (if applicable) will be included as an Appendix to the final EIS prepared for the action, except for regulatory permit

actions which are coordinated and processed under provisions of 33 CFR 320.4(c). Planning aids and other detailed fish and wildlife data and information received from the FWS or NFFS should be referenced in the report or EIS as appropriate and need not be circulated with the documents.

(5) *Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1401 et seq.* Reporting officers will be responsible for compliance with Section 102 Guidelines of the Act for proposed Corps actions involving the transportation of dredged material by vessel for the purpose of dumping it in ocean waters pursuant to Section 103 of the Act. Interim policy guidance for Corps studies and projects on this matter has been previously provided. Guidance for Corps operations and maintenance actions is provided in 33 CFR 209.145. Guidance for Corps regulatory permits is provided in 33 CFR 320–329. In the case of feasibility studies, the evaluation of the need for ocean dumping including the availability of alternatives to ocean dumping will be incorporated into the main report as part of the multiobjective planning process, noted in the EIS summary and included as an Appendix to the Main Report. In other Corps actions, except regulatory permits, the evaluation and findings will be noted in the EIS summary and included as an Appendix to the EIS or EIS supplement, as appropriate. For regulatory permits, compliance with the Act will be in accordance with 33 CFR 320–329. In the case of an Environmental Assessment, the evaluation and finding, together with pertinent correspondence will be included within the document. Inclusion of the evaluation and findings in the EIS documents for Corps studies and projects circulated for public review and comment will satisfy the opportunity for public review. The public notice procedure used for regulatory permits will satisfy the opportunity for public review.

(6) *National Historic Preservation Act of 1966, as Amended, 16 U.S.C. 470 et seq. Archeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469 et seq. Also referred to as the "Reservoir Salvage Act". Executive Order 11593, Protection and Enhancement of the Cultural Environment, 13 May 1971.* Reporting officers shall coordinate with appropriate state historic preservation officers, the Heritage Conservation and Recreation Service, the Advisory Council on Historic Preservation, and other groups with cultural resources expertise to identify and determine potential effects of proposed Corps actions on significant cultural resources. The results of Corps studies and coordination related to cultural resources shall be included in Environmental Assessments, EIS and EIS supplements in accordance with ER 1105–2–460. In the case of regulatory permits, all policies related to cultural resources are provided in 33 CFR 325.

(7) *Executive Order 11988, Floodplain Management, 24 May 1977.* Policy guidance implementing the executive order for all Corps Civil Works actions is contained in ER 1165–2–26, dated 15 May 1979. The results of the required assessment and evaluation together with the determination and finding shall be discussed briefly in the EIS or Environmental Assessment summary and public response section and included as an Appendix, if necessary, for all Corps actions except for feasibility studies, regulatory permits and actions categorically excluded. In the case of feasibility studies, implementation of the Executive Order will be incorporated into the Main Report as part of the multiobjective planning process, noted in the EIS summary and included as an Appendix to the main report, if necessary. Existing policies and procedures related to regulatory permits 33 CFR 320–329 fulfill the requirements of the Executive Order and should continue to be followed.

(8) *Executive Order 11990, Protection of Wetlands, 24 May 1977.* Reporting officers will be responsible for compliance with applicable provisions of the Executive Order. Interim policy guidance on this matter has been previously provided. In the case of feasibility studies the results of the analyses and findings related to wetlands will be incorporated into the Main Report as part of the multiobjective planning process, noted in the EIS summary and included as an Appendix to the Main Report, if necessary. In other Corps actions, except regulatory permits, the analyses and findings will be noted in the EIS summary and included as an Appendix to the EIS or EIS supplement, as appropriate. For regulatory permits, compliance with the Executive Order will be in accordance with 33 CFR 320–329. In the case of an Environmental Assessment, the analyses and finding, together with pertinent correspondence will be included within the document. Inclusion of the analyses and findings in the EIS documents for Corps studies and projects circulated for a public review and comment will satisfy the opportunity for early public review requirements of Section 2(b) of the Executive Order. The opportunity for early public review through publication of a Public Notice will satisfy the requirements of this section in the case of regulatory permits.

(9) *Analysis of Impacts on Prime and Unique Farmlands in EIS, CEQ Memorandum, 30 August 1976.* Reporting officer will be responsible for including an analysis of the effects of proposed actions on prime and unique farmland in the course of preparing environmental documents. Interim policy guidance on this matter has been previously provided. In the case of feasibility studies, the results of the evaluation will be incorporated into the Main Report as part of the multiobjective planning process, noted in the EIS summary and discussed in the appropriate sections of the EIS. In all other Corps actions the results of the evaluation will be noted in the EIS or Environmental Assessment summary and discussed in the appropriate sections of the text.

(10) Other environmental laws, Executive Orders, etc. as may be required by the proposed action.

Appendix A.—*Organization and Content of EIS for Feasibility Studies*

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1. *Purpose.* This appendix provides guidance on the organization and content of Environmental Impact Statements (EIS) incorporated into Corps feasibility reports, including Survey Report, Phase I General Design Memorandum (GDM) and Detailed Project Reports (DPR).

2. *References.*

a. 40CFR 1500–1508
b. ER 1105–2–32
c. ER 1105–2–50
d. ER 1105–2–200
e. ER 1105–2–210
f. ER 1105–2–220
g. ER 1105–2–230
h. ER 1105–2–240
i. ER 1105–2–250
j. ER 1105–2–920
k. ER 1105–2–921

3. *Background.*

a. The Corps multiobjective planning process (ER 1105-2-200 series) integrates the substantive requirements of NEPA, the U.S. Water Resource Council's Principles and Standards (P&S), and related environmental policies. Thus, feasibility reports documenting the results of studies conducted in accordance with the ER 1105-2-200 series will address the concerns of NEPA as integral parts of the report. The organization of feasibility reports reinforces this concept by including a concise, succinct EIS within the Main Report (ER 1105-2-920). The EIS will be based on and supported by analyses and conclusions documented in the Report, with a focus on the specific concerns identified in CEQ regulation implementing NEPA's procedural provisions (40 CFR 1500-1508).

b. The following paragraphs present the page limit, organization and content requirements for EIS included in feasibility reports. Requirements of 40 CFR 1500-1508 are incorporated by reference where applicable.

4. *Page Limits*

a. Reference: 40 CFR 1500.4(a), 1502.7, 1502.11, 1502.12, 1502.15, and 1502.17.

b. EIS prepared for feasibility studies will not duplicate lengthy documentation of the substantive requirements of NEPA contained elsewhere in the Main Report and Appendixes. An OCE analysis has indicated that an EIS, extracted from Main Report discussions addressing NEPA requirements, will average about 35 pages. Based on this analysis, and in accordance with CEQ objective to reduce paperwork, EIS included in Feasibility Reports will not normally exceed 50 pages (single-spaced typed, pages numbered sequentially).

c. Whenever an EIS is expected to exceed 50 pages, the District Engineer shall consult with and request the approval of the Division Engineer to exceed 50 pages. If required, such consultation shall occur prior to the Stage 3 Checkpoint Conference for a Draft EIS, and not later than 60 days prior to forwarding the Final Report to the Division Engineer for a Final EIS. Approval to exceed 50 pages should be granted only in cases of unusual plan complexity or extensive public controversy.

5. *EIS Organization.*

a. Reference: 40 CFR 1502.10.

b. The EIS will consist of ten primary parts, including a cover sheet, list of preparers, table of contents, six chapters, and a combined index, references and appendixes table. Various subchapter discussions are required in each of the six chapters.

6. *EIS Contents.*

a. *Cover Sheet.*

(1) Reference: 40 CFR 1502.10(a) and 1502.11.

(2) An example cover sheet is presented on page A-9.

b. *List of Preparers.*

(1) Reference: 40 CFR 1502.6, 1502.10(h), 1502.17 and 1507.2(a).

(2) An example List of Preparers is presented on page A-10. The study manager, an EIS coordinator and any consultant(s) should be identified in the list, as appropriate.

c. *Table of Contents.* (1) Reference: 40 CFR 1502.10(c).

(2) Inasmuch as the EIS is included in the Main Report, page numbers cited in the EIS Table of Contents will be the Report page numbers. For example, if the last page of a Draft Main Report is numbered 96, the first page cited in the Table of Contents for the Draft EIS would be 97.

d. *Summary.* (1) Reference: 40 CFR 1502.2(d), 1502.10(b), 1502.12, 1502.16(c), 1502.20, 1502.25, 1506.2(d), 1506.3(d) and 1506.10(b)(2).

(2) This chapter will inform the reader of the major factors which were considered in and influenced planning related decisions. It shall be presented in the following four discussions.

(3) Major Conclusions and Findings. Present the rationale for the study's NED Plan, EQ Plan, and tenatively selected plan in a Draft EIS; the rational for study's NED Plan, EQ Plan, selected plan and recommended plan in a Final EIS; and other major conclusions and findings of the District Engineer (for example, Section 404, E.O. 11988 and E.O. 11990 findings).

(4) Areas of Controversy. Describe any issues that were the subject of major disagreement among public interests during the course of the study. Describe the outcome of any resolved controversies.

(5) Unresolved Issues. Describe any unresolved major disagreements among study areas interests and actions being taken to resolve disagreements.

(6) Relationship to Environmental Requirements. Describe the relationship of each plan included in the Stage 3 final array of alternatives to the requirements of environmental laws, executive orders and other policies; the objectives of Federal, State and local land use plans, policies and controls applicable to the study area and other related State and Local plans and laws; and any Federal requirements for permits, license and other entitlements needed to implement the detailed plans. A table similar to that presented on the page A-11 example is recommended for this presentation.

(7) References to adoption of a previously prepared EIS and supplementing an EIS under the tiering concept (see 40 CFR 1502.20), and references to an EIS meeting the criteria of 40 CFR 1506.3(d) or 1506.10(b)(2) should be included in this chapter, as appropriate.

e. *Need for an Objectives of Action.*

(1) Reference: 40 CFR 1502.4(a), 1502.10(d) and 1502.13.

(2) This chapter will explain to the reader why the Corps became involved in the study and what public concerns and consequent planning objectives were identified as the basis for plan formulation. It shall be presented in the following three discussions.

(3) Study Authority. Identify the study's authorizing document and summarize the Congressonal intent for undertaking the study.

(4) Public Concerns. Describe the public concerns and related resource management needs (problems and opportunities) which were identified in the study.

(5) Planning Objectives. State the planning objectives which were derived from the aformentioned resource management needs and employed in plan formulation.

f. *Alternatives.* (1) Reference: 40 CFR 1502.1, 1502.2(e), 1502.4(a), 1502.10(e), 1502.14, 1502.16(h), 1502.23, 1505.1(e) and 1508.27.

(2) This chapter will provide the reader with a cursory understanding of possible solutions considered, and the assessment and evaluation of the most responsive solutions (detailed plans). It shall be presented in the following four discussions.

(3) Plans Eliminated From Further Study. Briefly describe each plan considered in late Stage 2 planning but not included in the Stage 3 final array of alternatives. Present the rationale for eliminating such plans.

(4) Without Conditions (No Action). Briefly describe the without conditions that are expected to occur in the absence of any Federal action to address the planning objectives. If non-Federal actions to address the planning objectives are included in the without conditions assumptions (as in the case of water supply and power-related planning objectives), describe such actions and identify the agency(ies) or group(s) responsible for their implementation and any mitigation requirements of such actions.

(5) Plans Considered in Detail. Briefly describe each plan included in the Stage

3 final array of alternatives. Summarize each plan description, implementation responsibilities (Federal and non-Federal), and any mitigation requirements (including fish and wildlife "compensation," cultural resources "data recovery," endangered species "conservation," etc.). Identify the designated NED and EQ Plans, and the selected, or tentatively selected, plan.

(6) Comparative Impacts of Alternatives. Describe in a comparative form, the impacts of the detailed plans on significant resources, and plan economic characteristics (i.e. total costs, net benefits, benefit-cost ratio). A table similar to that presented on the page A–12 example is recommended for this presentation.

(7) Plan location maps, section views, the study's System of Accounts and other graphics and tables presented elsewhere in the Report should be referenced in the EIS to avoid duplication.

g. *Affected Environment.* (1) Reference: 40 CFR 1502.10(f) and 1502.15.

(2) This chapter will briefly describe study area existing and without conditions in the following discussions:

(3) Environmental Conditions. Briefly describe the major characteristics of the study area's natural and human resources to provide the reader with a general understanding of physical, ecological, social, cultural and economic conditions. This discussion will normally not exceed one page.

(4) Significant Resources. Describe each significant resurce included in the Comparative Impacts of Alternatives discussion, including its location, quantity and quality. This discussion should explain to the reader what is significant and why it is significant. In Identifying resources included in this discussion, consideration should be given to the following criteria for resource significance:

(a) Resources identified in the laws, regulations, guidelines or other institutional standards of national, regional and local public agencies should be considered significant (e.g. sites listed on the National Register of Historic Places, species inclueded in State "endagnered species" lists, natural open space identified in local land use plans, etc.) Resources identified in the guidelines of certain private groups may also be considered (e.g. bird species on the National Audubon Society's "Blue List", historic properties of the National Trust for Historic Preservation, etc.).

(b) Resources meeting certain study-specific technical criteria for measuring characteristics that may be critical to resource existence should be considered significant. Technical criteria may include, but are not limited to, measurement of resource scarcity, fragility, resiliency, reproducibility and tolerance. For example, spawning habitat for a study area fish species may be abundant at a regional level but scarce in a local study area.

(c) Resources specifically identified as a concern by public interests should be considered significant. For example, a local farm association may identify certain tracts of productive agricultural land as important to the community's economic well-being.

(d) Resources which, if effected by a plan, would violate an institutional standard, meet a study-specific technical criterion, or become the subject of public concern should be considered significant. For example, a currently abundant game habitat could become scarce due to the effect of a certain plan.

h. *Environmental Effects.* (1) Reference: 40 CFR 1502.9(a), 1502.10(g), 1502.16 and 1502.22.

(2) This chapter will briefly describe the effects of each detailed plan on the previously described significant resources. Its purpose is to provide the reader with a more detailed description of the impacts described in the Comparative Impacts of Alternatives discussion.

(3) Discussion in this chapter should be subheaded with the names of the previously described significant resources to assist the reader in quick and easy reference. For example, if a study's significant resources were identified as shown on the page A–12 example (listed as column headings), the subheadings in this chapter would be "Blue River Wetlands," "Fort America Historic Site," etc. When using this approach, the discussion under each subheading will describe the effects of each plan on the subject resource. Plans with no effect on a resource should be noted.

(4) If an effect is described as being adverse, the discussion of that effect shall include an indication of the completeness and availability of information in accordance with 40 CFR 1502.22. If information related to an adverse effect meets the criteria stated in 40 CFR 1502.22(b) (1) and (2), the discussions required in 1502.22(b) shall be included in the EIS before it is made available to the public.

(i) *Public Involvement.* (1) Reference: 40 CFR 1502.9(b), 1502.10(i), 1503.1, 1503.4 (a) and (b), 1506.6 and 1506.9.

(2) The chapter will briefly describe public involvement in the study to inform the reader of how public views guided and were incorporated into the study's decision-making process. It shall be presented in the following four discussions.

(3) Public Involvement Program. Briefly describe the means used to involve the public in the study and the major results of such involvement, including scoping acitivites.

(4) Required Coordination. Briefly describe any remaining required coordination with other agencies or groups, particularly coordination that is to be satisfied by circulation of the EIS for review and comment.

(5) Statement Recipients. List agencies, groups and individuals to whom copies of the EIS are sent. If a list of individuals receiving the EIS is extensive the word "Individuals" may be entered at the end of the list, followed by a reference to the Report Appendix and page number(s) presenting the full list of individuals.

(6) Public Views and Response. In a draft statement, briefly describe public views that had a major influence on the study and how such views were incorporated into the study's decision-making process. In a final statement, include this draft statement discussion and a brief discussion of all substantive comments received on the draft which resulted in major changes in the study's decision factors (as described in the EIS Chapter 1 Summary) or those items specified in 40 CFR 1503.4(a)(1)–(3) and (5). Such changes should also be noted in appropriate discussions elsewhere in the final statement. The discussion will include references to other paragraphs and pages in the Main Report and Appendixes which present more thorough analyses of EIS comments and the District's response, and the full text of comments received. Copies of comments shall not be included directly in the EIS but rather incuded in the Public Views and Response Appendix in accordance with ER 1105–2–920, Appendix B, paragraph 3b(1).

j. *Index, References and Appendixes.* (1) Reference: 40 CFR 1500.4(j), 1502.10(j) and (k), 1502.18, 1502.21 and 1506.4.

(2) An index, list of references and appendixes will be combined as shown on the page A–13 example table. The purpose of the table is to provide the reader with an alphabetized subject index with references to the EIS Main Report and Report Appendixes for each subject.

(3) Inclusion of a reference in the table will constitute incorporation of the cited material into the EIS by reference. No other lists of reference, bibliographies or other appendixes shall be included in the EIS.

Draft Environmental Impact Statement

Proposed Plan for Recreational Navigation and Wetland Habitat at Port Anytown, American County, Virginia

The responsible lead agency is the U.S. Army Engineer District, Gotham. The responsible cooperating agency is the U.S. Fish and Wildlife Service.

Abstract: Port Anytown is a small community in American County at the mouth of the Blue River. The Gotham District has investigated public concerns of the Port Anytown study area related to inadequate facilities for recreational navigation and the decline of the Blue River wetlands. Of the eleven plans initially considered, four were selected for detailed study. Plan 1, consisting of navigation channels and extensive breakwaters, would meet all navigation needs and destroy the wetlands. Plan 2, consisting of navigation channels and wetland acquisition, would meet some navigation needs and preserve the wetlands. Plan 3, consisting of wetland acquisition and management would not meet navigation needs and enhance the wetlands. Plan 4, consisting of navigation channels, limited breakwaters and wetlands acquisition, would meet most navigation needs and preserve the wetlands. Plan 4 has been tentatively selected based on its performance in addressing the identified public concerns and its net positive contributions to the goals of National Economic Development and Environmental Quality.

Send your comments to the district engineer by 1 January 1980. If you would like further information of this statement, please contact: Mr. John Smith, U.S. Army Engineer District, Gotham, 100 Main Street, Gotham, Virginia 10101. Commercial Telephone: (800) 555–1212 FTS Telephone: 555–1212.

List of Preparers

The following people were primarily responsible for preparing this Environmental Impact Statement:

Name	Expertise	Experience	Professional discipline
Mr. William Brown	Ichthyology	2 years, lab assistant, American Biology Company; 4 years, EIS studies, Gotham District.	Fisheries biologist.
Dr. Richard Green (consultant)	Archeology	17 years, Professor of Prehistoric Archeology, Anytown University	Archeologist.
Mr. Thomas Jones (study manager)	Civil engineering.	5 years, civil engineer, Ubildum, Inc.; 3 years, planner, Gotham District	Engineer.
Mr. John Smith (EIS coordinator)	Mammalogy	6 years, EIS studies, Gotham District	Wildlife biologist.
Ms. Mary White	Water chemistry	3 years, EIS studies, Gotham District	Chemist.
Mr. Michael Yost	Industrial economics.	2 years, industrial site analyst, Bencos Consultants; 6 years, economic studies, Gotham District.	Economist.

Relationship of Plans to Environmental Requirements

[Name of Selected, or Tentatively Selected, Plan]

	Plan 1	Plan 2	Plan 3	Plan 4
Federal Policies				
Fish and Wildlife Coordination Act	All plans in full compliance			
Federal Water Project Recreation Act	Full compliance	Full compliance	Partial compliance—cost-sharing undetermined.	Full Compliance.
Water Resources Planning Act of 1965	All plans in full compliance			
National Historic Preservation Act of 1966	All plans in partial compliance—Advisory Council comments requested on this EIS			
Wild and Scenic Rivers Act	Etc.	Etc.	Etc.	Etc.
National Environmental Policy Act				
Federal Water Pollution Control Act Amendment of 1972.				
Coastal Zone Management Act of 1972				
Endangered Species Act of 1973				
Floodplain Management (E.O. 11988)				
Protection of Wetlands (E.O. 11990) etc.				
State and Local Policies				
(List appropriate state and local policies and laws, e.g., a State "NEPA").				
Land Use Plans				
(List appropriate Federal, State and local land use plans, policies and control not previously listed, e.g., a State CZM plan).				
Required Federal Entitlements				
(List Federal permits, licenses and other entitlements needed to implement the plan, e.g., NPDES permit from EPA).				

NOTES.—The compliance categories used in this table were assigned based on the following definitions: (a) Full compliance—All requirements of the policy and related regulations have been met. (b) Partial compliance—Some requirements of the policy and related regulations remain to be met. (c) Noncompliance—None of the requirements of the policy and related regulations have been met.

Comparative Impacts of Alternatives

[Name of Selected, or Tentatively Selected, Plan]

Base condition and alternatives	Blue River wetlands	Fort America historic site	Endangered yellow trout habitat	Blue River class "A" water quality	Marina-related employment	Plan economics
Base Condition	Available: 1,000 acres	Available: site on National Register of Historic Places (NRHP).	Available: 10 acres.	Available: 15 rivers-miles.	Available: 10 full-time equivalent (FTE) employees.	Not applicable.
Without condition (no action)	Available: 200 acres. Impact: 0 acres/year.	Available: site on NRHP. Impact: None.	Available: 10 acres. Impact: 0 acres/year.	Available: 10 rivers-miles. Impact: 0 river-miles/year.	Available: 10 FTE employees. Impact: 0 FTE employees/year.	Costs: $0. B/C ratio: None. Net benefit: $0.
Plan 1	Available: 0 acres. Impact: −350 acres/year.	Available: site on NRHP. Impact: loss of base condition visual setting due to unavoidable introduction of visible elements.	Available: 0 acres. Impact: −10 acres/year.	Available: 0 river-miles. Impact: −10 river-miles/year.	Available: 40 FTE employees. Impact: +27.5 FTE employees/year.	Costs: $0.6 mill. B/C ratio: 1.13. Net benefits: +$110,000/year.
Plan 2	Available: 200 acres. Impact: 0 acres/year.	Available site on NRHP. Impact: none.	Available: 0 acres. Impact: −10 acres/year.	Available: 10 river-miles. Impact: 0 river-miles year.	Available: 20 FTE employees. Impact: +9.5 FTE employees/year.	Costs: $7.9 mill. B/C ratio: 0.56. Net benefits: +$347,000/year.
Plan 3	Available: 1,500 acres. Impact: +775 acres/year.	Available: site on NRHP. Impact: none.	Available: 10 acres. Impact: 0 acres/year.	Available: 10 river-miles. Impact: 0 river-miles/year.	Available: 10 FTE employees. Impact: 0 FTE employees/year.	Costs: $2.4 mill. B/C ratio: 1.42. Net benefits: +101,000/year.
Plan 4	Available: 200 acres. Impact: 0 acres/year.	Available: site on NRHP. Impact: none.	Available: 8 acres. Impact: −2 acres/year.	Available: 10 river-miles. Impact: 0 river-miles/year.	Available: 40 FTE employees. Impact: +27.5 FTE employees/year.	Costs: $0.4 mill. B/C ratio: 1.37. Net benefits: +$153,000/year.

NOTES.—(1) Base condition year—1990. (2) Period of analysis—100 years.

Table 3.—*Index, References and Appendixes*

[Name of Selected, or Tentatively Selected, Plan]

Subjects	Study documentation		
	Environmental Impact statement	Main report (References incorporated)	Report appendixes (References incorporated)
Affected environment	Pp. 21–25 para. 4.01–4.14	Pp. 22–29, para. 57–72	App. A, pp. A–11–A–143.
Alternatives	Pp. 13–20, para. 3.01–3.17	Pp. 35–97, para. 86–211	App. B, pp. B–3–B–210.
Areas of controversy	Pp. 6–7, para. 1.05–1.07	P. 4, para. 9–10; pp. 63–64, para. 115–121.	App. C, pp. C–5–C–17; App. X, pp. X–10–X–22.
Comparative Impacts of alternatives	Etc.	Etc.	Etc.
Cover Sheet			
Environmental conditions			
Environmental effects			
List of preparers			
Major conclusions and findings			
Need for and objectives of action			
Planning objectives			
Plans consisted in detail			
Plan eliminated from further study			
Public concerns			
Public involvement			
Public involvement program			
Public views and responses			
Relationship to environmental requirements			
Required coordination			
Resource No. 1			
Resource No. 2			
Significant resources			
Statement recipients			
Study authority			
Summary			
Table of contents			
Unresolved issues			
Without conditions (no action)			

NOTE.—Replace, in alphabetical sequence, with the subject titles developed for significant resources (see paragraph 6g).

Appendix B.—*Environmental Operating Procedures and Documents for Regulatory Functions*

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Higher Authority is Decision Maker	23b	B-16
Predecision Referrals by Corps Regulatory Permits	24	B-16
Monitoring	25	B-16

1. *Introduction.* Because of the diverse geographic areas and types of activities covered by this regulation, it is likely that interpretive problems may arise from time to time. In keeping with Executive Order 12044 and the policy stated in the CEQ regulation implementing NEPA (40 CFR 1500.2), where interpretive problems arise and consideration of all other factors does not give a clear indication of a reasonable interpretation, the interpretation which results in the least paperwork and delay will be used consistent with the spirit and intent of NEPA.

2. *General.* This appendix provides guidance on the environmental requirements of 40 CFR 1500–1508 for Corps Civil Works field operating agencies with regulatory permits responsibilities. Where guidance in this appendix is not specific, the reader is referred to the basic regulation. Where guidance is not specific in both this appendix and in the basic regulation, the reader is referred to 40 CFR 1500–1508.

3. *Pre-Application Planning.* The District staff element having responsibility for administering, processing, and enforcing Federal laws and regulations relating to the Corps of Engineers regulatory program shall be available to advise potential applicants of studies or other information foreseeably required for later Federal action. The district engineer shall establish local procedures and policies including appropriate publicity programs which will allow potential permit applicants to contact the district engineer or the staff element to request pre-application consultation. Upon receipt of such request, the district engineer will assure the conduct of an orderly process which may involve other staff elements and affected agencies (Federal, State, or local) and the public. This early process should be brief but thorough so that the applicant may begin to access the viability of some of the more obvious alternatives as he prepares his permit application. The applicant, at this stage, should be made aware of the full range of alternatives (as discussed in paragraph 14b(5) of this appendix) which the Corps must consider in its decision making process. Whenever the district engineer becomes aware of planning for work which may require a Department of the Army permit and which would involve the preparation of an environmental document, he shall contact the principals involved to advise them of the requirement for the permit(s) and the attendant public interest review including the development of an environmental document. Whenever a potential permit applicant indicates the intent to submit an application for work which may require the preparation of an environment document, a single point of contact shall be designated within the District staff to effectively coordinate the regulatory process and all attendant reviews, meetings, hearing, and other actions leading to a decision by the district engineer.

The staff coordinator shall maintain an open relationship with each applicant or his consultants so as to assure that the applicant is fully aware of the substance (both quantitative and qualitative) of the data required by the district engineer for his use to preparing an Environmental Assessment or an Environment Impact Statement. The actual development of the scope of data required in individual cases should be the product of the formal "scoping" process discussed elsewhere in these regulations.

4. *Development of Information and Data.* The district engineer may require the applicant to furnish appropriate information that the district engineer considers necessary to allow preparation of an Environmental Assessment or an Environmental Impact Statement, including appropriate data necessary for the district engineer to properly evaluate reasonable alternatives to the applicant's proposal and to fully describe all such reasonable alternatives in the appropriate environmental document. The applicant should be advised that there is no assurance that favorable action will ultimately be taken on the application. In such situations where relevant information is missing or incomplete and the costs of obtaining it are exorbitant or the means to obtain it are not known, the district engineer should include a "worst-case" analysis (see 40 CFR 1502.22) in the appropriate environmental document if he believes the applicant's proposal may be approved. The district engineer may require the applicant to furnish any additional information the district engineer considers necessary to allow him to assess the impacts of the applicant's proposed project and to evaluate alternatives under paragraph 14b(5) of this appendix. The district engineer shall assure the conduct of an independent evaluation of the information submitted and shall be responsible for its accuracy.

5. *Emergency Action.* Emergency regulatory permit actions will be processed in accordance with 33 CFR 325.

6. *Elimination of Duplication with State and Local Procedures.* See paragraph 19 of basic regulation.

7. *Preliminary Assessment.* The purpose of the Preliminary Assessment is to allow for the district engineer to make an initial determination that the applicant's proposal is a candidate for either a categorical exclusion, an Environmental Assessment or an EIS. The district engineer, at the earliest practicable time prior to the issuance of the public notice, shall make a Preliminary Assessment of impacts of the applicant's proposed project should it be approved and make a preliminary determination as to whether the project falls under a categorical exclusion (see paragraph 8a of this appendix) or whether the quality of the human environment would be significantly affected. This Preliminary Assessment will normally be based on experience with similar type activities performed in the past. A statement of the district engineer's preliminary determination shall be included in the public notice. This includes those actions covered by 40 CFR 1501.4(e)(2). This preliminary determination will be reconsidered as additional information is developed.

8. *Proposals Having No Significant Environmental Impact.* If the district engineer's final determination after

consideration of all additional information (including responses to the public notice) is that the applicant's proposed work will not significantly affect the quality of the human environment, he shall proceed as follows:

a. *Categorical Exclusion.* If the resulting impact is considered to be insignificant; and

(1) There are no substantive objections to the applicant's proposal;

(2) The applicant's proposal is routine in nature; or

(3) The applicant's proposal is similar to those previously approved in the past; the action will qualify as categorical exclusion subject to the definition found in 40 CFR 1508.8. A Finding of No Significant Impact (FONSI) need not be prepared for proposals falling into this category.

9. *Environmental Assessment.*

a. 40 CFR 1508.19 states:

" 'Environmental Assessment': (a) means a concise public document for which a Federal agency is responsible that serves to:

"(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

"(2)Aid an agency's compliance with the Act when no environmental impact statement is necessary.

"(3) Facilitate preparation of a statement when one is necessary.

"(b) Shall include brief discussions of the need for the proposal, of alternatives as required by Sec. 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted."

b. The Environmental Assessment shall be prepared as soon as practicable after all relevant information has been made available to the district engineer, prior to preparation of the Finding of Fact, and not sooner than after the comment period for the public notice announcing receipt of the permit application. The alternative portion of the Environmental Assessment shall follow paragraph 14b(5) of this appendix. However, when the Environmental Assessment confirms the Preliminary Assessment that the impact of the applicant's proposal is not significant and there are no "unresolved conflicts concerning alternative uses of available resources. . ." (Section 102(2)(E) of NEPA), the Environmental Assessment need not include a discussion on alternatives to the proposal. The Environmental Assessment shall provide information on which a permit decision may be based. It shall not be used to justify a decision.

c. When an EIS is not prepared, and there are "unresolved conflicts concerning alternative use of available resources. . ." the Environmental Assessment must address all the alternatives that go before the ultimate decision maker. When an EIS is prepared, an Environmental Assessment is not required.

d. For regulatory permits, the Corps action is issuance of a permit or issuance of a permit with conditions. For regulatory permits, denial of a permit application is considered "no action" on the part of the Corps.

e. If information for an assessment is undertaken by an outside consultant or prepared by the applicant, the district engineer is responsible for independent verification and use of the data, evaluation of the environmental issues, and for the scope and content of the Environmental Assessment. Preparation of an Environmental Assessment shall be based on considerations discussed in 40 CFR 1501, 1506 and 1508 and the instructions contained in paragraph 8 of the basic regulation.

f. When the Preliminary Assessment has determined the need for an EIS, an Environmental Assessment need not be prepared. The draft EIS will serve as the Environmental Assessment.

g. The document shall conclude with a FONSI (see 40 CFR 1508.13) or a determination that an EIS is required.

10. *Finding of No Significant Impact (FONSI).* If upon conclusion of the procedures outlined in paragraphs 7 and 9 of this Appendix, and a categorical exclusion is not appropriate, the district engineer determines that a permit is warranted and that its impact is not significant, he shall prepare a FONSI which shall be incorporated into the Finding of Fact required by 33 CFR 325. The document shall be dated, signed, and placed in the record. Where the district engineer has delegated authority to sign permits on his behalf, he may similarly delegate the signing of the FONSI. The FONSI will be based on, but need not be limited to, information obtained during the Environmental Assessment and other pertinent data obtained from cooperating Federal agencies having jurisdiction by law or special expertise, the interested public, the applicant, and Corps' expertise. It shall briefly describe the proposed action and the factors that were considered in making a determination that an EIS was not required. The FONSI should not duplicate any of the information contained in the assessment but incorporate it by reference. It shall be signed and placed in the permit file. 33 CFR 325 states: "The District Engineer will publish monthly a list of permits issued or denied during the previous month. This list will identify each action by public notice number, name of applicant, and brief description of activity involved. This list will be distributed to all persons who received any of the public notices listed." A notice that such Findings of Fact for those permits listed in this notice are available to the public upon written request shall be incorporated in this public notice.

11. *Environmental Impact Statement.* When the district engineer concludes that the applicant's proposed activity may significantly affect the quality of the human environment and the district engineer believes that a permit may be warranted, the district engineer shall prepare an EIS as lead agency or one of the lead agencies. When the Corps is either a joint lead or cooperating agency and the Corps permit action alone will significantly affect the quality of the human environment, the district engineer shall document this determination in the permit file. In cases where a Corps EIS is required, the district engineer will require the applicant to furnish appropriate additional information that the district engineer considers necessary to allow preparation of that EIS. The district engineer should assist the applicant by outlining the types of information required and include the applicant in the scoping process with a view that the scope of the material to be submitted by the applicant will be sufficient. The scoping process should develop the topical scope of the pending EIS and allow the applicant to be thereby advised of the data and information required by the district engineer. The scoping process shall be conducted by the element within the district that is responsible for preparing the EIS. In any case, the regulatory permit action officer handling the permit action shall take part in the scoping process. Early draft submittals of data may be made by the applicant to the district engineer for advisory review by appropriate disciplines either within the district engineer's staff or other agencies. This suggestion envisions Corps or agency mark-up and informal comment and return to the applicant within brief time schedules to avoid unnecessary delays in the preparation process.

Where the district engineer directly contracts the preparation of an EIS, the provisions of 40 CFR 1506.5(c) shall be followed. Where the information base required for an EIS is prepared by a

contractor employed by the applicant with a view that the resulting information will meet the district engineer's request for additional information which may be used by the district engineer in preparation of an EIS, the applicant may unilaterally choose the contractor. However, the district engineer may require the applicant to resubmit any previously submitted data which the district engineer considers inadequate or inaccurate. The district engineer must specify the portion of information which is in contention. In all cases, the district engineer shall ensure the conduct of an independent evaluation of the information submitted and be responsible for its accuracy. This shall be documented in the record. Both the names of the preparers and those responsible for the independent evaluation shall be included in the EIS (see 40 CFR 1506.5). If the district engineer has previously announced a preliminary determination that no EIS would be required, he shall issue a supplemental public notice to advise the public of the changed determination and to begin the scoping process outlines in the basic regulation. In addition, if the district engineer has previously announced his intent to prepare an EIS, the district engineer may at any time determine an EIS is no longer required due to (1) an error in the original determination, (2) reduced scope of the proposal, (3) receipt of additional information, or (4) sufficient evidence in the record to support denial of the proposal. If the EIS process in curtailed, the district engineer shall notify in writing the Office, Chief of Engineers, the appropriate Corps division office, the Environmental Protection Agency and the public of his determination. An EIS process may follow through the completion of the final EIS stage even though denial of the application is anticipated if the record is not sufficient to support denial without completion of the final EIS process or if, in the district engineer's opinion, the public interest would be better served if the EIS process were completed. If the case will be elevated to higher authority for decision, the EIS process must be completed.

12. *Corps as Cooperating Agency.* If another agency is the lead agency as set forth by the CEQ regulations (40 CFR 1501.5 and 1508.16), the district engineer will coordinate with that agency as a cooperating agency under 40 CFR 1508.5 to insure that that agency's resulting EIS adequately describe the impacts of the activity which is subject to Corps permit authority. Any previously prepared EIS will be referenced in the public notice announcing the permit application and a statement included that the effects of the proposed activity on the environment as outlined therein will be carefully considered in the evaluation of the permit application.

When the Corps is a cooperating agency because of a regulatory permit action, the district engineer will, in accordance with 40 CFR 1501.6(b)(4) "make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability" provided the request pertains to the Corps permit action covered by the EIS. Beyond this, Corps staff support will generally be made available to the lead agency to the extent practicable with its own responsibilities, under a written agreement with the lead agency which will provide for reimbursement of funds for Corps manpower expended.

If the district engineer thinks a public hearing should he held and another agency is lead agency, he shall request the lead agency hold a joint public hearing and provide reasons why the joint hearing will be helpful.

13. *Time limits.* If, in addition to time requirements the district engineer might otherwise set, the Corps is asked by an applicant to set time limits for the various stages in the NEPA process under 40 CFR 1501.8, the district engineer shall set time limits in accordance with the guidelines presented in 40 CFR 1501.8. These time limits shall be set in the best judgement of the district engineer based on past experience. While they should be adhered to as closely as possible, time limits are to be considered as projected milestones or target dates. Because problems unforeseen during the scoping process occasionally arise, and because the district engineer's concern is for an adequate NEPA document, any time limits set cannot be considered absolutely binding. When the Corps is a cooperating agency in a permit related action, the district engineer will make every reasonable effort to adhere to the time limits imposed by the lead agency.

14. *Organization and Content of EIS.*

a. *General.* This section gives detailed information for preparing environmental impact statements for regulatory permit applications that significantly affect the quality of the human environment.

b. *Format.*

(1) *Cover Sheet.*

(a) Ref. 40 CFR 1502.11.

(b) The "person at the agency who can supply further information" (40 CFR 1502.11(c)) is the regulatory action officer handling that permit action.

(c) The cover sheet shall identify the EIS as a Corps permit action and state the authorities (Sections 9, 10, 404, 103, etc.) under which the Corps is exerting its jurisdiction.

(2) *Summary.* In addition to the requirements of 40 CFR 1502.12, this section shall identify the proposed action as a Corps permit action stating the authorities (Sections 9, 10, 404, 103, etc.) under which the Corps is exerting its jurisdiction; it shall also summarize the purpose and need for the proposed action as described in paragraph 14(b)(4) below, and it shall briefly state the beneficial/adverse impacts of the proposed action.

(3) *Table of Contents.*

(4) *Purpose of and Need for the Proposal.* This section shall briefly recognize that every application has both an applicant's purpose and need and a public purpose and need. These may be the same when the applicant is a governmental body or agency. In most instances when an EIS is required and the applicant is not a governmental body or agency, the applicant is a member of the private enterprise sector engaged in providing a good or service for profit. At the same time, the applicant is requesting a permit to perform work which, if approved, is considered in the public interest (i.e., provides a public benefit). This public benefit shall be stated in as broad, generic terms as possible. For instance, the need for a water intake structure requiring a Corps permit as part of a fossil fuel power plant shall be stated as the need for energy and not be limited to the need for cooling water. In a similar way, the need for housing near canals or near marinas, etc., shall be expressed as the need for shelter and not as the need for recreation near water.

(5) *Alternatives.*

(a) Ref. 40 CFR 1502.14

(b) *Alternatives to be considered.* The EIS shall document all reasonable alternatives which would satisfy the purpose and need (as described in paragraph 14b(4) above) for which the applicant has submitted his proposal and for which the district engineer believes a permit may be warranted. The EIS (or EIS supplement) must address all the reasonable alternatives that go before the ultimate decision maker (see 40 CFR 1505.1(e)). If the decision maker's proposed action on a permit applicant was not included as one of the alternatives in the final EIS and it differs substantively from those alternatives which were discussed, a supplement to the final EIS as discussed in paragraph 19 of this appendix, must be prepared and circulated. However,

new alternatives or combinations of alternatives not previously discussed in a draft EIS may be included in the final EIS. Alternatives not discussed in the draft or final EIS must be discussed in a draft and final supplement to the final EIS.

The alternative section shall discuss the environmental impacts of the applicant's proposal and alternatives in comparative form. A chart is highly recommended as a means of providing easy, side by side, analysis of the impacts of the proposal and its alternatives. In depth evaluation will normally be limited to those reasonable alternatives which are both practical and:

(i) Within the capability of the applicant and within the jurisdiction of the Corps of Engineers. (These alternatives may encompass the Corps alternative to issue the permit as requested or to issue with mitigating conditions. It may also encompass the alternative to deny the permit with a view toward the applicant's accomplishment of his objective by some other means or at some other site still within Corps jurisdiction.)

(ii) Within the capability of the applicant but outside the jurisdiction of the Corps of Engineers. (This alternative may include denial of the permit with a view toward the applicant's accomplishment of his objective outside of Corps jurisdiction.)

(iii) Reasonably foreseeable, beyond the capability of the applicant but *within* the jurisdiction of the Corps of Engineers. (This alternative may include the do-nothing or deny alternative, with a view toward the satisfaction of the public and/or private need by some other entity beyond the control of the applicant but within the jurisdiction of the Corps of Engineers.)

(iv) Reasonably foreseeable, although beyond both the capability of the applicant *and* outside the jurisdiction of the Corps of Engineers. (This alternative may include the do-nothing or deny alternative, with a view toward the satisfaction of the public and/or private need by some other entity beyond the control of the applicant or the scope of the Corps of Engineers.)

The EIS should clearly identify alternatives discussed in detail by the above categories.

(c) *Disclosure of Preferred Alternative.* For regulatory permit actions, the Corps takes an impartial position whether to issue or deny a particular application until the public interest review is complete. At no time is the Corps a proponent of any action. It simply determines whether or not certain actions proposed by applicants are in the public interest and under what circumstances such proposals, if modified, would be in the public interest. Therefore, the EIS will contain no Corps of Engineers preferred alternative. The Corps' actual decision that has been made by the final decision maker will then be stated in the Record of Decision. This does not negate the requirement under 40 CFR 1505.2(b) for the district engineer to objectively state the "environmentally preferred alternative."

(d) *Mitigation.* Guidance on mitigative measures which may be considered when evaluating permit applications is given in 33 CFR 325.12.

(6) *Affected Environment.* Ref. 40 CFR 1502.15

(7) *Environmental Consequences.*

(a) Ref. 40 CFR 1502.16

(b) Ref. to 33 CFR 325 for definitions of primary effects, secondary effects, and other impacts.

(c) Except for Federal projects meeting the requirements of Section 404(r) of the Clean Water Act, the Section 404(b)(1) evaluation under the Clean Water Act shall be placed in the permit record and not the EIS.

(8) *List of Preparers.* Ref. 40 CFR 1502.17

(9) *Public Involvement.*

(a) References: 40 CFR 1502.9(b), 1502.10(i), 1503.1, 1503.4, 1506.6, and 1506.9.

(b) This section shall briefly describe the public involvement in the EIS process. It shall (i) briefly state the means used to involve the public including the scoping process, any public hearings held, etc., (ii) briefly state the Federal, State, and local agencies, organizations, and individuals (in this order) to whom copies of the statement have been sent, (iii) if a final EIS include copies of the public's comments on the draft EIS and the Corps responses to those comments. This portion may include any responsible opposing views as well as the Corps responses to those issues raised. See paragraph 16c, "Response to Comments", of basic regulation.

(10) *Appendixes.* The appendix portion of the EIS should contain background and supporting data and studies while the text of the EIS should contain data stating baseline information and anticipated impacts of the proposal. One guideline to be used in this regard is to place the data in the EIS text itself when to do otherwise would cause the reader to refer frequently to the appendix in order to understand the EIS text. Any remaining information not able to be incorporated by reference in accordance with 40 CFR 1502.21 should be placed in the appendix. Placing as much data, studies, etc., into the draft EIS appendixes, within the above guidance, has the additional advantage that such information need only be referred to in the final EIS, not additionally reproduced in the final EIS.

(11) *Index.* The index of an EIS is to be designed to provide for easy reference to items discussed in the main text of the EIS. These items are to be listed in the index in alphabetical order and page(s) and paragraph number(s) given for each item. The index shall be placed at the very end of the EIS document.

15. *Notice of Intent.* The district engineer shall also announce, in the Federal Register his intent to prepare a Draft Environmental Impact Statement in accordance with ER 200-2-1. Notices of Intent announcing proposed EIS's for regulatory permit actions shall identify the action as a regulatory permit action in the title of the notice as listed in the Table of Contents to the Federal Register.

16. *Public Notice Announcing Availability of Draft EIS.* Upon preparation of the draft EIS, a public notice shall be issued summarizing the facts of the case and announcing the availability of the draft EIS. A copy of that notice shall be furnished to all recipients of the draft EIS including the Council on Environmental Quality (CEQ).

17. *Public Hearing.* If a public hearing is to be held pursuant to 33 CFR 327, and a draft EIS is to be considered at the public hearing, the district engineer will make the draft EIS available to the public at least 15 days in advance of the hearing (unless the purpose of the hearing is to provide information for the draft EIS). If a hearing request is received from another agency having jurisdiction as provided in 40 CFR 1406.6(c)(2), the district engineer shall initiate coordination for a joint hearing with that agency whenever appropriate. Unless the district engineer concurs that such a hearing is required under 33 CFR 327 he will not independently conduct a hearing.

18. *Final EIS.* a. The EIS is not a decision document and the filing of a final EIS is not to be considered a decision on a permit application. Nor is an EIS to be prepared to justify a decision. An EIS is prepared to provide information on which a decision is based. Filing the final EIS is merely one of the administrative steps which must be taken when processing a permit application which may significantly

affect the quality of the human environment. The decision on the permit application cannot occur until 30 days after the final EIS has been noticed in the Federal Register by EPA.

b. *Public Notices.* In order to notify the interested public of their opportunity to comment on the final EIS, the district engineer shall issue a public notice when the filing notation has been published in the Federal Register. This notice shall be furnished to all parties receiving any earlier notices, all parties receiving copies of the draft EIS and to all others who have expressed an interest in the application as well as those parties listed in 40 CFR 1506.6 as appropriate. The public notice should include:

(1) A brief summary of the application (applicant, work, date(s) of other notice(s), date of draft EIS, date(s) of hearing(s) if held;

(2) Opportunity to comment to the district engineer on the final EIS until the deadline date projected by the 30-day wait period required by NEPA which began with notation in the Federal Register that the FEIS had been filed;

(3) A statement that the comments received on the final EIS will be evaluated and considered in arriving at a final decision on the application; and

(4) Information on how interested parties can obtain or have access to the final EIS.

19. *EIS Supplement.* (a) 40 CFR 1502.9(c)(1) states that agencies "shall prepare supplements to either draft or final environmental impact statements if:"

(1) "the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or"

(2) "there are significant new circumstances, or information relevant to environmental concerns and bearing on the proposed action on its impacts."

(b) A supplement to a draft EIS will require a 45-day minimum comment period. The final EIS will encompass all information presented in both the draft EIS and the supplement to the draft EIS.

(c) A supplement to a final EIS will be prepared as both a draft supplement to the final EIS and a final supplement to the final EIS. The required 45-day and 30-day comment periods, respectively, will be undertaken within the minimum 90-day overall waiting period required before final action can be taken. See 40 CFR 1502.9(c)(4).

(d) Supplements will be prepared in the EIS format described in paragraph 14 of this appendix. References to the draft or final EIS being supplemented should be used extensively to eliminate repetitive discussion. The supplements should primarily be concerned with and should discuss the significance of impacts resulting from the changes, new information, or circumstances relevant to the environmental or other concerns which impact or have a bearing on the applicant's proposal.

20. *Filing Requirements.* District engineers will file draft and final EIS and draft and final supplements to an EIS directly with EPA. Five (5) copies shall be sent to Director, Office of Environmental Review (A-104), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Draft and final EIS's and any appropriate supplements shall be mailed to all parties on the permit mailing list at the same time they are mailed to EPA for filing. Three 3 (copies) of each draft and final EIS and supplements, when appropriate, shall be forwarded to HQDA (DAEN-CWO-N) WASH DC 20314. The transmittal letter to OCE shall include the status of the permit application, a lists of the objectors, the issues involved, whether the case is in litigation and a preliminary determination whether the permit decision will be made at the district level. 40 CFR 1506.10 describes the timing of an agency action when an EIS is involved.

21. *Expedited Filing.* 40 CFR 1506.10 provides information on allowable time reductions and time extensions associated with the EIS process. When an applicant's proposed action must be undertaken within critical time restraints or because of compelling reasons of national policy, a shortened review period may be recommended. In such cases, the district engineer will provide the necessary information and facts to HQDA (DAEN-CWZ-P) WASH DC 20314 (with copy to DAEN-CWO-N) for consultation with EPA for a reduction in the prescribed review periods.

22. *Record of Decision.* In those cases involving an EIS, the Findings of Fact will constitute the Record of Decision and shall incorporate the requirements of 40 CFR 1505.2. The Record of Decision is not to be included when filing a FEIS. The Record of Decision is not to be prepared nor signed until 30 days after the FEIS has been noticed in the Federal Register by EPA.

23. *Predecision Referrals by Other Agencies for Regulatory Permits.* The District Engineer receiving potential referral advice or requests for additional information from another Federal agency in comments on a draft EIS invoking the procedures of 40 CFR 1504, shall, to the extent practicable, provide the necessary information and/or attempt to resolve the differences prior to filing the final EIS on the proposed action.

a. *District Engineer is Decision-Maker.* Where the district engineer is the final decision-maker under 33 CFR 325, the district engineer will await the 30 day waiting period following filing the final EIS with EPA, prepare his preliminary final decision on the permit case, and notify the other agency and CEQ of this step. The referring agency will then have 25 calendar days from date of such notification to actually refer the case to CEQ under 40 CFR 1504 if it so chooses.

b. *Higher Authority is Decision-Maker.* Where the district engineer is not the final decision-maker but higher authority becomes decision-maker as specified by 33 CFR 325, the district engineer will await the 30 day waiting period following the filing of the final EIS with EPA and forward the case, with his recommendations, to higher headquarters for resolution of the issues between the other(s) Federal agency(ies) in accordance with 33 CFR 325. The district engineer shall note in his report that there is a potential CEQ referral. When the case has reached the Corps' final decision-maker under the Corps referral process, 33 CFR 325, that decision-maker will prepare his final decision and notify both CEQ and the agency considering invoking the CEQ referral process that the case may now be referred to CEQ under 40 CFR 1504. The referring agency will have 25 calendar days from date of such notification to refer the case to CEQ if it so chooses.

24. *Predecision Referrals by Corps Regulatory Permits.* If the reporting officer determines after review of another agency's final EIS that the proposed action would be environmentally unsatisfactory with respect to the Corps area of expertise or jurisdiction by law, the case will be sent through division to reach HQDA (DAEN-CWZ-P), copy to DAEN-CWO-N, not later than 15 days after the final EIS was filed for review and processing to SACW for submittal to CEQ. The referral must be delivered to CEQ not later than 25 days after the final EIS was filed. The referral shall only be used after timely, but unsuccessful efforts have been undertaken to resolve the issue with the other agency. Such advice and/or a request for additional information to permit an analysis of the proposed action associated with the Corps area of expertise or regulatory responsibilities shall be contained in the reporting officers comments on the other

agency's draft EIS. Every effort should be made to resolve the problem(s) prior to the preparation of the final EIS. However, if an agreement cannot be reached, the reporting officer shall prepare the referral in accordance with the procedures outlined in 40 CFR 1504.3.

25. *Monitoring.* Monitoring compliance with permit requirements shall be carried out as deemed necessary under 33 CFR 325. For these permit actions for which an EIS has been prepared and the Corps is the lead agency, the district engineer shall, upon written request, make available to the public the results of relevant monitoring. Appropriate mitigating and other conditions shall be a part of the permit as specified in 33 CFR 325. For those permit actions for which an EIS has been prepared and the Corps is the lead agency, the district engineer shall, upon written request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which the Corps adopted in making its permit decision.

Appendix C

Processing Corps EIS

EIS prepared for Corps Civil Works actions will be processed in accordance with the instructions contained in this Appendix and applicable paragraphs in the regulation.

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1. *Survey Studies.* Environmental considerations shall be integrated into the multiobjective planning process in accordance with the ER 1105-2-200 series. Documentation and related processing requirements based on 40 CFR 1500-1508 are discussed below for the three planning stages.

a. *Stage 1 Planning.* No separate, formal NEPA-related documents are required during Stage 1 Planning. Environmental considerations will be included in the Reconnaissance Report (See ER 18-2-2, ER 1105-2-210 and ER 1105-2-920).

b. *Stage 2 Planning.* Environmental considerations will be included in Stage 2 documentation submitted to Division for the Stage 2 Checkpoint Conference (See ER 18-2-2, ER 1105-2-210 and ER 1105-2-920).

c. *Stage 3 Planning.* A Draft Survey Report, consisting of a draft of the Main Report (which includes a Draft EIS) and Appendixes, will be submitted to Division to accomplish Milestone 06 (See ER 18-2-2, ER 1105-2-210 and ER 1105-2-920). Distribution of the Draft Survey Report to concerned public agencies, private groups and individuals and filing of the Draft Survey Report with EPA (Milestone 09) will be accomplished at least 15 days before the Stage 3 Public Meeting is conducted.

(1) The number of copies of the Draft Survey Report to be distributed to accomplish Milestone 09 is as follows:

(a) Three (3) copies to HQDA (DAEN-CWP-E, C or W, as appropriate) WASH DC 20314.

(b) Three (3) copies to the appropriate division engineer (not applicable to NED and POD).

(c) Five (5) copies to EPA for filing (See paragraph 13).

(d) One or more copies to public agencies, private groups and individuals, as appropriate.

(2) Reporting officers shall insure that the Draft Survey Report will be filed with EPA no earlier than they are also circulated to all parties on the study mailing list.

(3) The complete Draft Survey Report, including all report Appendixes, will be provided in the distribution required by paragraphs 1c(1) (a)-(c) above. All other parties on the study mailing list will receive, as a minimum, the draft of the Main Report (which includes a Draft EIS) and the report appendix titled Public Views and Responses (See ER 1105-2-920, Appendix B, paragraph 3). In cases where the other report Appendixes are exceedingly voluminous, consideration should be given to including in the distribution only those Appendixes that will be of particular interest to each recipient. For example, it may not be necessary to provide a state fish and game agency with a copy of the Social and Cultural Resources Appendix. If this approach is used, an annotative Bibliography of Report Appendixes (citing the title, preparation date and cost and a summary of the contents for each Appendix, as well as instructions for obtaining copies of Appendixes) should be attached to the Report. In any case, Appendixes will be provided upon request.

(4) A news release announcing the availability of the draft may be issued by the reporting officer releasing the document.

d. *Division Review.* After the Stage 3 public meeting and public review of the Draft Survey Report, the reporting officer will finalize the Survey Report, including preparation of the final EIS. In accordance with paragraph 16c all comments and appropriate responses will be included in the Public Views and Responses Appendix. Significant issues and/or substantive comments received will be discussed in the Public Involvement chapter in the main text of the final EIS. The Final Survey Report, which will include the Final EIS as a part of the Main Report will be submitted to the division engineer for review, approval and transmittal to the Board of Engineers for Rivers and Harbors (BERH) (Milestone 10). Although the EIS in the main report is identified as a "final" at this stage of processing, it should be clear to all those receiving a copy that is an "Interim Document Under Agency Review—Subject to Revision" and will become the agency's final EIS when it is filed with EPA after BERH review.

e. *BERH Review.* BERH will review the EIS at the same time as it reviews the Final Survey Report. Comments received during BERH review will be properly noted and included within the Public Views and Responses Appendix. If BERH review requires minor revisions to the plan as recommended by the reporting officers, pertinent changes to the EIS shall be noted in the BERH report or an addendum to the EIS. If BERH action results in major revisions to the plan, an addendum to the EIS reflecting pertinent changes in the EIS will be prepared by BERH (with assistance from the reporting officer, as required) and will be attached to the BERH report. This addendum "package" will include an appropriate abstract on the cover page and a summary to support the rationale for the recommended changes. The text of the addendum shall include necessary information and analyses to form the basis for the recommended changes. It should make reference to chapters in the EIS where a comparison of the changes with the previous recommendations and alternatives plans can be found.

f. *Departmental Reviews.* The Main Report including the final EIS, together with the proposed report of the Chief of Engineers and the BERH report, will be filed with EPA at the same time as it is circulated for 90-day Departmental review to the concerned state(s) and Federal agencies at the Washington level (Milestone 13). Reporting officers will circulate the Proposed Chief's report and BERH report and final EIS to all parties on the project mailing list not

contacted by OCE allowing the normal 30-day period of review. Copies of report appendixes circulated with the draft need not be circulated with the Main Report and final EIS except for the Public Views and Responses Appendix which shall accompany all final EIS. Letters of comment received in OCE on the Main Report and final EIS together with responses will accompany the final Chief's Report to ASA (CW) for further review and processing. Letters of comment received by the reporting officer will be answered on an individual basis with five (5) copies provided to the appropriate element within OCE (Milestone 15).

g. *Executive Reviews.* After completion of review, the Chief of Engineers will sign his final report, which shall include a Record of Decision, and transmit the report and accompanying documents to ASA (CW). ASA (CW) will transmit the entire report to the WRC for technical review. After technical review the WRC will prepare its findings and return the report to ASA (CW) who will transmit the report to OMB requesting its views in relation to the program of the President (Milestone 16). After OMB provides its views, ASA (CW) will transmit the report to Congress (Milestones 17–19).

2. *Continuing Authority Studies.* a. *General.* The Detailed Project Report (DPR) as discussed in paragraph 6b(3), is the decision document for Continuing Authority Studies and will be prepared in draft and final format including a draft and final EIS or Environmental Assessment and FONSI (as appropriate) within the bound document. The DPR should follow the format of a survey report as discussed in ER 1105–2–920. The organization, format and content of the EIS will be in accordance with the guidance in Appendix A. If an environmental assessment and FONSI are used, they will be prepared in accordance with paragraphs 8 and 9 and included within the DPR in place of the EIS.

b. *Preparation and Draft Review.* As soon as practicable after initiation of the study, a Notice of Intent, as discussed in paragraph 10d, will be prepared and published in the Federal Register if the reporting officer determines that an EIS will be prepared for the proposed action. Following the essential planning stage documentation, the reporting officer will prepare the draft DPR including the draft EIS within the DPR, and circulate it to agencies, groups and individuals on the mailing list for review and comment. Five (5) copies shall be sent directly to EPA for filing in accordance with paragraph 13. Six (6) copies will be transmitted to higher authority (three to HQDA (DAEN–CWP–E, C, or W as appropriate) WASH DC 20314, and three to the division engineer). Reporting officers shall insure that the draft will be filed with EPA no earlier than they are also circulated to all parties on the mailing list. If a late stage public meeting is held in connection with the proposed action, the draft should be available to the public at least 15 days before the meeting. A news release announcing the availability of the document may also be issued when the draft is filed with EPA.

c. *Agency Review.* After review and evaluation of comments received the reporting officer will finalize the DPR, including preparation of the final EIS within the DPR. Comments and responses will be handled in accordance with paragraph 16c and Appendix A. Eleven (11) copies of the Final DPR will be transmitted to the division engineer for review and approval of the technical aspects of the proposed action. After review the division engineer will transmit eight (8) copies of the Final DPR to HQDA (DAEN–CWP–E, C or W as appropriate) WASH DC 20314 for further processing. Appropriate elements within OCE will review the Final DPR and file it with EPA in accordance with paragraph 13. Reporting officers will be advised when OCE review is completed so that the Final DPR will be filed with EPA no earlier than they are also circulated to all parties on the mailing list.

d. *Final Review.* Letters of comment on the Final DPR including the final EIS, will be answered by the reporting officer on an individual basis. Five (5) copies of the incoming letters and the reporting officer's reply, together with a draft of the Record of Decision, will be submitted through division to the Appropriate element within OCE who filed the Final DPR. After review of the comments and responses, the Director of Civil Works will sign the Record of Decision and approve the project.

3. *Phase I Advanced Engineering and Design.* a. The Phase I General Design Memorandum (GDM), as discussed in paragraph 6b(2), is the decision document at this phase of post-authorization planning. It will follow the format prescribed for survey reports as discussed in ER 1105–2–920 for OCE approval or congressional action, except that an abbreviated Phase I GDM may be used for those actions approved by the division engineer. During Stage 3 of the Phase I study, the reporting officer will review the EIS that was filed when the project was authorized and made a determination that either the EIS is adequate, will require a supplement, or a new EIS is needed, as appropriate. If the Phase I review indicates that the environmental conditions, criteria and effects of the plan as proposed have not changed significantly from that which was authorized, and were adequately and fully covered in the EIS, no new EIS documentation will be required. If the review indicates that there are significant impacts resulting from changes in the project which would significantly affect the quality of the human environment, or if new circumstances, conditions or criteria have occurred which were not covered in the previous EIS, a draft and final supplement prepared in accordance with paragraph 12 will be included within the draft and final Phase I GDM. However, if the review indicates that the original final EIS is generally not in consonance with the current guidelines and the magnitude of the proposed changes and required environmental analyses of the reformulated plan is substantial and was not covered in the original final EIS, a new draft and final EIS will be prepared. Projects administratively combined and approved by OCE for Phase I and II planning will undergo a similar review, and EIS documentation as necessary will be prepared.

(1) *Legislative Phase I GDM.* Phase I GDM prepared for congressional action which require BERH and Departmental review will be processed similar to survey reports as discussed in paragraphs 1c, d, e, f and g of this Appendix, except that the EIS documentation may vary from reaffirmation of the existing final EIS on file, to supplements to the final EIS, or to the preparation of a new draft and final EIS.

(2) *Administrative Phase I GDM.* Based on the reporting officers review of the EIS filed when the plan was authorized, a reaffirmation, supplement, or new EIS will be prepared to accompany the Phase I GDM which the division engineer has approval authority.

b. *Preparation and Draft Review.* The organization and content for EIS or EIS supplements included with the Phase I GDM will follow the guidance in Appendix A. A Notice of Intent, as discussed in paragraph 10d will be prepared and published in the Federal Register if the reporting officer determines that a draft supplement or EIS will be prepared. The Draft Phase I GDM including the draft supplement or EIS within the Main Report, will be circulated to agencies, groups and individuals on the project mailing list and five (5) copies shall be sent directly

to EPA for filing in accordance with paragraph 13. For Legislative Phase I GDM, six (6) copies will be transmitted to higher authority (three to HQDA (DAEN-CWP-E, C, or W as appropriate) WASH DC 20314, and three to the division engineer). For Administrative Phase I GDM, three (3) copies will be transmitted to the division engineer. Reporting Officers shall insure that the Draft Phase I GDM will be filed with EPA no earlier than they are also circulated to all parties on the project mailing list. If a public meeting is held in connection with the proposed action the draft should be available to the public at least 15 days before the meeting. A news release announcing the availability of the draft may also be issued when it is filed with EPA.

c. *Agency Review.* After review and evaluation of comments received the reporting officer will finalize the Phase I GDM including preparation of the final supplement or EIS within the Main Report. Comments and responses will be handled in accordance with paragraph 16c and Appendix A. Eleven copies of the Final Phase I GDM will be transmitted to the division engineer for review and processing. Depending on the level of approval of the proposed action, either eight or three copies will be sent to HQDA (DAEN-CWP-E, C, or W as appropriate) WASH DC 20314, and three or eight for the division engineer. After review the division engineer will file the Final Phase I GDM with EPA in accordance with paragraph 13 for those administrative Phase I actions which the division engineer has approved authority. Copies of the transmittal letter will be provided to OCE and the reporting officer. Appropriate elements within OCE will review the Final Phase I GDM and file it with EPA for those legislative Phase I GDM requiring Congressional action.

d. *Final Review.* Letters of comment on the Final Phase I GDM will be answered by the reporting officer on an individual basis. Five (5) copies of the incoming letters with the reporting officer's reply together with a draft of the Record of Decision will be submitted to the appropriate Corps office which file the Final. After review of the comments and responses the appropriate Corps Official will sign the Record of Decision and approve the action.

4. *Projects in a Continuing Construction Category.* a. *General.* Reporting officers will review the existing EIS covering the proposed construction project to determine that the environmental affects of the proposed project have not changed significantly or no new circumstances have occurred during Phase II detailed engineering and design. If the review indicates that there are significant impacts resulting from changes in the proposed project or new circumstances have occurred, a supplement as discussed in paragraph 12 will be prepared. EISs for projects in a construction category without an EIS having been previously filed will be prepared in accordance with 40 CFR 1502.

b. *Preparation and Draft Review.* As soon as practicable after the reporting officer makes a determination to prepare an EIS or EIS supplement for the proposed construction project, a Notice of Intent (as discussed in paragraph 10d) will be prepared and published in the Federal Register. Following the guidance discussed in 40 CFR 1502, the reporting officer will prepare the draft EIS and circulate it to agencies, groups and individuals on the project mailing list for review and comment. Five (5) copies shall be sent directly to EPA for filing in accordance with paragraph 13. Six (6) copies will be transmitted to higher authority (three to HQDA (DAEN-CWO-C) WASH DC 20314, and three to the division engineer). Reporting officers shall insure that the draft EIS will be filed with EPA no earlier than they are also circulated to all parties on the project mailing list. If a public meeting is held in connection with the proposed action the draft EIS should be made available to the public at least 15 days before the meeting. A news release announcing the availability of the draft EIS may also be issued when the draft EIS is filed with EPA.

c. *Agency Review.* After receipt and evaluation of comments received the reporting officer will prepare the final EIS. Eight (8) copies of the final EIS will be transmitted to the division engineer for review and processing. After review the division engineer will file the final EIS with EPA in accordance with paragraph 13. A copy of the final EIS and transmittal letter will be provided DAEN-CWO-C and the reporting officer. The division engineer shall insure that the final EIS is filed no earlier than it is also circulated by the reporting officer to all parties on the project mailing list.

d. *Final Review.* Letters of comment on the final EIS will be answered by the reporting officer on an individual basis. Five (5) copies of the incoming letters and the reporting officer's reply together with a draft of the Record of Decision will be submitted to the division engineer. After review of the comments and responses, the Division Engineer will sign the Record of Decision. The original Record of Decision will be returned to the reporting officer with a copy provided to DAEN-CWO-M.

5. *Completed Projects in an Operation and Maintenance Category.* a. *General.* Reporting Officers will review scheduled operation and maintenance (O&M) activities to determine if the final EIS filed when the project was authorized adequately discusses the proposed action. If the review indicates that the environmental effects of the O&M actions have not changed significantly, or no new circumstances have occurred, no additional EIS documentation will be required. If the review indicates that there are significant impacts resulting from changes in the proposed O&M action or new circumstances have occurred, an EIS supplement will be prepared. If the impacts are not significant an Environmental Assessment and FONSI will be prepared. Projects completed prior to NEPA will require EIS or assessments covering the proposed O&M activity as discussed in paragraph 6d. Consideration should be given to the use of a program EIS to group similar types of O&M activities as discussed in paragraph 11. Separate O&M EIS should be prepared where the activity is unique or where substantial environmental controversy presently exists or can reasonably be expected to exist. EIS documentation for actions associated with the management of Corps projects are discussed in paragraph 6d(3) and 6f.

b. *Preparation and Draft Review.* As soon as practicable after the reporting officer makes a determination to prepare an EIS or EIS supplement for the proposed O&M action a Notice of Intent (as discussed in paragraph 10d) will be prepared and published in the Federal Register. Following the guidance discussed in 40 CFR 1502, the reporting officer will prepare the draft EIS and circulate it to agencies, groups and individuals on the project mailing list for review and comment. Five (5) copies shall be sent directly to EPA for filing in accordance with paragraph 13. Six (6) copies will be transmitted to higher authority (three to HQDA (DAEN-CWO-M) WASH DC 20314, and three to the division engineer). Reporting officers shall insure that the draft EIS will be filed with EPA no earlier than they are also circulated to all parties on the project mailing list.

c. *Agency Review.* After receipt and evaluation of comments received the reporting officer will prepare the final EIS. Eight (8) copies of the final EIS will be transmitted to the division engineer for review and processing. After review

the division engineer will file the final EIS with EPA in accordance with paragraph 13. A copy of the final EIS and transmittal letter will be provided DAEN–CWO–M and the reporting officer. The division engineer shall insure that the final EIS is filed no earlier then it is also circulated by the reporting officer to all parties on the project mailing list.

d. *Final Review.* Letters of comment on the final EIS will be answered by the reporting officer on an individual basis. Five (5) copies of the incoming letters and the reporting officer's reply together with a draft of the Record of Decision will be submitted to the division engineer. After the review of the comments and responses, the Division Engineer will sign the Record of Decision. The original Record of Decision will be returned to the reporting officer with a copy provided to DAEN–CWO–M.

6. *Regulatory Permits.* See Appendix B.

7. *Real Estate Management and Disposal Actions.* a. *General.* Whenever the reporting officer determines that a proposed real estate management and disposal action is a major Federal action having a significant effect upon the human environment, and EIS will be prepared and processed as follows:

b. *Preparation and Draft Review.* As soon as practicable after the reporting officer makes a determination to prepare an EIS for the proposed action, a Notice of Intent (as discussed in paragraph 10d) will be prepared and published in the Federal Register. Following the guidance discussed in 40 CFR 1502, the reporting officer will prepare the draft EIS and circulate it to agencies, groups and individuals on the project mailing list for review and comment. Five (5) copies shall be sent directly to EPA for filing in accordance with paragraph 13. Six (6) copies will be transmitted to higher authority (three to HQDA (DAEN–REM–I) WASH DC 20314, and three to the division engineer). Reporting officers shall insure that the draft EIS will be filed with EPA no earlier than they are also circulated to all parties on the project mailing list.

c. *Agency Review.* After receipt and evaluation of comments received, the reporting officer will prepare the final EIS. Eight (8) copies of the final EIS will be transmitted to the division engineer for review and processing. After review, the division engineer will file the final EIS with EPA in accordance with paragraph 13. A copy of the final EIS and transmittal letter will be provided DAEN–REM–I and the reporting officer. The division engineer shall insure that circulation of the final EIS by the reporting officer will be completed no later than when it is filed with EPA.

d. *Final Review.* Letters of comment on the final EIS will be answered by the reporting officer on an individual basis. Five (5) copies of the incoming letters and the reporting officer's reply together with a draft of the Record of the Decision will be submitted to the division engineer. After review of the comments and responses and approval of the action, the division engineer will sign and Record of the Decision. The original Record of Decision will be returned to the reporting officer with a copy provided to DAEN–REM–I.

8. *EIS Processing Instruction for ASA (CW) Review.* a. *Survey Reports.* The division engineer shall provide one copy of the Main Report and EIS together with all appendixes to Assistant Secretary of the Army (Civil Works) Pentagon, Room 2E 570, WASH DC 20310 at the time the report is transmitted to BERH and OCE. The transmittal letter will indicate if any agencies or organized groups expressed environmental opposition to the project. OCE will provide ASA (CW) one copy of the Main Report and final EIS, the proposed Chief's report and the BERH report when the documents are circulated for departmental (state and agency) review and filed with EPA. Upon completion of Departmental review) the final report of the Chief of Engineers together with the Main Report and final EIS (including comments received during Departmental review) will be forward to ASA (CW) for further review and processing to Congress.

b. *Phase I GDM.* For legislative Phase I GDM, the division engineer will provide one copy of the Phase I GDM and EIS or EIS supplement together with all appendixes to Assistant Secretary of the Army (Civil Works) Pentagon, Room 2E 570, WASH DC 20310 at the time the report is sent to OCE. The transmittal letter will include the same information as provided for survey reports dicussed above. OCE will provide ASA (CW) one copy of the Phase I GDM and EIS or EIS supplement, proposed Chief's report and BERH report (if applicable) when the final is filed with EPA. Upon completion of review the final report of the Chief of Engineers together with the Phase I GDM and EIS or EIS supplement (including comments received on the final) will be forwarded to ASA (CW) for further review and processing to Congress. For administrative Phase I GDM approved by the Division Engineer or OCE, no copies need to be provided to ASA (CW).

c. *DPR, Construction, Operations and Maintenance, Real Estate and Permit Actions Processed at the District or Division Level.* ASA (CW) will not require copies of draft or final EIS or EIS supplements prepared for these actions.

Appendix D

Categorical Exclusions for Real Estate Management and Disposal Actions

In accordance with 40 CFR 1508.4 the following actions, which individually or cumulatively have no significant impact on the quality of the human environment, are excluded from the requirement for preparation of an Environmental Assessment or EIS. However, reporting officers may require Environmental Assessments or EIS on excluded actions if, in their view, environmental review and analysis prior to reaching a decision on the action is in the best public interest.

1. Grant of leases and licenses for:

a. Agricultural and grazing purposes.

b. Public park and recreational purposes.

c. Commercial concession purposes.

d. Private recreational purposes.

e. Miscellaneous purposes of a minor nature such as lakeshore protection and improvements, steps, lights, etc.

f. Use and occupancy of existing buildings, facilities, and real property.

2. Grants of leases, licenses, permits and easement, for use of excess or surplus real property.

3. Grants of leases for Government-owned housing.

4. Exchanges of excess real property and interests therein for property required for project purposes.

5. Grant of easement for rights-of-way which do not involve significant disturbances to earth, air, or water:

a. Minor access roads or streets.

b. Electric power, telephone, telegraph and other communication lines.

c. Minor oil and gas pipelines; water, sewer, and irrigation pipelines, pumping plants and appurtenant facilities.

d. Minor canals, ditches, dikes, retarding structures, etc. used in connection with fish and wildlife conservation and development programs.

6. Grants of consents to use Government-owned easement areas.

7. Grants of licenses issued pursuant to the Secretary of the Army's general administrative authority which do not involve significant disturbances to earth, air or water:

a. Telephone and telegraph facility purposes.

b. Removal of sand, gravel, rock, and other borrow material.

c. Oil and gas seismic and gravity meter survey and exploration purposes.

8. Grants of permits for archeological and historical investigations.

9. Renewal and minor amendment of existing leases, licenses, easements, permits, consents, and other documents evidencing authority to use Government-owned real property.

10. Reporting excess or surplus real property to the General Services Administration for disposal.

11. Disposal of lands or release of deed restrictions to cure encroachments.

12. Disposal of excess easement areas to the underlying fee owner.

13. Disposal of existing buildings and improvements for off-site removal.

14. Sale of existing cottage site areas.

15. Return of Public Domain lands to the Department of the Interior.

16. Transfer or permit of lands to other Federal agencies (NEPA compliance is the responsibility of the other Federal agency).

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Federal Register

Part XI

Department of the Interior

Office of Surface Mining—Reclamation and Enforcement

Training Programs for Blasters and Members of Blasting Crews and Certification Programs for Blasters

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Ch. VII]

Training Programs for Blasters and Members of Blasting Crews and Certification Programs for Blasters.

AGENCY: Office of Surface Mining—Reclamation and Enforcement, U.S. Department of the Interior.

ACTION: Reproposed rules for Subchapter M.

SUMMARY: The Office of Surface Mining—Reclamation and Enforcement is seeking comments on reproposed rules which would implement Sections 515(b)(15)(D) and 719 of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. Section 515(b)(15)(D) requires that all blasting operations be conducted by trained and competent persons as certified by the regulatory authority. Section 719 requires the promulgation of regulations requiring the training, examination, and certification of persons engaged in or directly responsible for blasting or the use of explosives in surface coal mining and reclamation operations.

DATES: Comments must be received at the addresses below on or before August 28, 1979, by no later than 5:00 p.m. For public hearings dates, see Public Hearings.

ADDRESSES: Written comments must be mailed to Office of Surface Mining, U.S. Department of the Interior, P.O. Box 7267, Benjamin Franklin Station, Washington, D.C. 20044, or must be hand-delivered to Office of Surface Mining, Room 135, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240. All comments will be available for inspection at Room 135, South Interior Building. For public hearings addresses, see Public Hearings.

FOR FURTHER INFORMATION CONTACT: David R. Maneval, Assistant Director, Technical Services and Research, Office of Surface Mining, U.S. Department of the Interior, Telephone: 202–343–4264.

SUPPLEMENTARY INFORMATION: On September 18, 1978, the Office published proposed regulations in 43 FR 41934–41936, governing certification and training of blasters and blaster learners. As a result of comments received and other factors, the Office has concluded that these regulations should be reproposed. A detailed preamble accompanies these reproposed rules to explain the rationale and supporting source material for the substantial changes made in this Subchapter. The Office is particularly grateful to those who took the time and effort to review the previously proposed rules and submit comments. The comments are helpful in redrafting this portion of OSM regulations, and the preamble to reproposed Subchapter M contains discussions of changes made in response to public comments.

Compliance With 43 CFR Part 14

Department regulations at 43 CFR Part 14 implementing Executive Order 12044 (March 23, 1978) became effective on January 26, 1979. Section 14.1 provides in subsection (c)(2) that

> The procedures of this part are applicable to all rules developed after the effective date of the part. It is also applicable to rules in development on the effective date of the part, except that, if a step in the development process (such as issuance of a notice of proposed rulemaking) has been completed, this part does not require that this or earlier steps be repeated or taken.

The proposed rules for Subchapter M being published today are in fact a reproposal of the Subchapter M rules first proposed on September 18, 1978 (43 FR 41661–41940). As noted elsewhere in this preamble, an environmental impact statement and regulatory analysis were prepared for the September 18, 1978, rulemaking. To the extent determined by OSM to be necessary, those documents analyzed issues relevant to Subchapter M. In addition, as explained in the preamble to the permanent program rules, 44 FR 14908, March 13, 1979, the public had numerous and lengthy opportunities to comment during that rulemaking proceeding.

These prior administrative actions followed by OSM in developing regulations for training, examination and certification of blasters, consistent with 43 CFR 14.1, have sufficiently fulfilled all provisions of 43 CFR insofar as they are applicable to this stage of the rulemaking process. Other requirements of 43 CFR Part 14, insofar as they are applicable to promulgating final rules for Subchapter M, will be fulfilled.

Public Comment Period

The comment period on these reproposed rules will extend until August 28, 1979. All written comments must be received at the addresses given above by 5:00 p.m. on that date. Comments received after that hour will not be considered or included in the administrative record for the final rulemaking.

The Office cannot ensure that written comments received or delivered during the comment period to locations other than those specified above will be considered and included in the administrative record for the final rulemaking.

Availability of Copies

Copies of these reproposed regulations are available for inspection, and copies may be obtained from the following offices:

OSM Headquarters, U.S. Department of the Interior, South Building, Room 120, 1951 Constitution Ave., N.W., Washington, D.C. 20240, 202–343–4728.
OSM Region I, Thomas and Hill Building, 1st Floor, 950 Kanawha Boulevard East, Charleston, West Va. 25301, 304–342–8125.
OSM Region II, Suite 500, 530 Gay Street, S.W., Knoxville, Tenn. 37902, 615–637–6060.
OSM Region III, Federal Building and U.S. Courthouse, Room 502, 46 East Ohio Street, Indianapolis, Ind. 46204, 317–269–2600.
OSM Region IV, Scarritt Building, 5th Floor, 818 Grand Avenue, Kansas City, Mo. 64106, 816–374–2618.
OSM Region V, Post Office Building, 1823 Stout Street, Denver, Colorado 80202, 303–837–5511.

Public Hearings

Public hearings on these regulations will be held on July 31, 1979, to hear all those who wish to testify. The hearings will be held at the following locations and will begin at 9:30 a.m. local time at each location.

Washington—Department of the Interior Auditorium, 18th and C St., N.W., Washington, D.C.
Charleston—Holiday Inn, Charleston House, 600 Kanawha Blvd. East, Charleston, West Virginia
Knoxville—5th Floor Conference Room, 530 Gay Street, Knoxville, Tennessee
Indianapolis—Indiana World War Memorial Auditorium, 431 North Meridian St., Indianapolis, Indiana
Kansas City—Room 140, Federal Building, 601 E. 12th Street, Kansas City, Missouri
Denver—Room 269, Post Office Building, 1823 Stout Street, Denver, Colorado

Persons wishing to testify at the public hearings on these reproposed regulations should contact the appropriate persons listed below under Public Meetings.

Individual testimony at these hearings will be limited to 15 minutes. The hearings will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful and would facilitate the job of the court reporter. Submission of written statements in advance of the hearings would greatly assist OSM officials who will attend the hearings. Advance submissions will give these officials an

opportunity to consider appropriate questions which could be asked to clarify or to request more specific information from the person testifying.

Each public hearing will continue on the day identified above until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard following the scheduled speakers. The hearings will end after all persons scheduled to testify and persons present in the audience who wish to speak have been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned unless they are present in the audience at the time all scheduled speakers have been heard.

The hearing located in Kansas City, Missouri, will follow the above procedure with one exception. If the hearing which commences at 9:30 a.m. is adjourned before 7:00 p.m., an evening session will commence at 7:00 p.m. and end after all persons scheduled to testify and persons present in the audience who wish to speak have been heard.

Public Meetings

Representatives of the Office will be available to meet between July 2, 1979 and August 28, 1979, at the request of members of the public, State representatives, industry officials, labor representatives, and environmental organizations to receive their advice and recommendations concerning the content of these reproposed regulations.

Persons wishing to meet with representatives of OSM during this time period may request a meeting at the Washington office or any of the five regional offices. Persons to contact to schedule or attend such meetings are as follows:

Washington—(202) 343-6101, Jean McIntyre
Charleston—(304) 345-4720, Lynne McKenzie
Knoxville—(615) 637-8060, Ext. 209, Robert Stansfield
Indianapolis—(317) 269-2600, Nona Daily
Kansas City—(816) 374-2193, Kerry Cartier
Denver—(303) 837-5656, Nancy FitzSimmons

OSM representatives will be available for such meetings between 9:00 a.m. and noon and 1:00 and 4:00 p.m., local time, Monday through Friday, excluding holidays, at these locations. All such meetings are open to the public. Advance notices of the meetings will be publicly posted where the meeting is scheduled. A written summary of the nature of the meeting will be a part of the administrative record and will be available to the public.

Public Comments

Written and oral comments should be as specific as possible. The Office will appreciate any and all comments, but those most useful and likely to influence decisions on these regulations will be those which include a rationale based on fact, not opinion, for any given recommendation.

Government Accounting Office (GAO) Review

OSM is considered an independent Federal regulatory agency for purposes of 44 U.S.C. Sections 3502 and 3512 (30 U.S.C. Section 1211(e)). As a result, all of its regulations which impose recordkeeping and reporting requirements on members of the public, as defined by GAO regulations, must be submitted to GAO for clearance before becoming final (4 CFR Part 10). To assist the Office and GAO in analyzing the recordkeeping and reporting burdens and possible duplication created by these proposed rules, the public is specifically requested to consider portions of these regulations which impose recordkeeping and reporting requirements. Specific comments concerning these recordkeeping and reporting requirements, including cost estimates and man-hour requirements, as well as whether other Federal agency recordkeeping or reporting requirements are being duplicated, would greatly assist the Office in determining whether the requirements should be modified.

Regulatory Analysis

The Final Regulatory Analysis (RA) which accompanied the permanent regulatory program of the Surface Mining Control and Reclamation Act of 1977 was published in March, 1979. The RA analyzed two of the issues discussed in the preamble to reproposed Subchapter M, and the RA has been appropriately referenced in the discussion of those issues. Since the economic impacts of alternatives to be considered in implementing the final rules of Subchapter M are not considered to be significantly different, the Office is of the opinion that no additional analyses of this type will be necessary.

Environmental Impact Statement

The Office has determined that environmental impacts resulting from the blaster training and certification program are not significant enough to warrant an environmental impact study.

Subchapter M—Training Programs for Blasters and Members of Blasting Crews, and Certification Programs for Blasters

Subchapter M has been substantially changed from the proposed rules (43 FR, pp. 41934-41936, September 18, 1978) due to comments received and for the following reasons:

1. To limit Office requirements for training, examination, and certification so that only those requirements necessary to implement the Act are imposed.
2. To eliminate duplication of effort and to more appropriately apportion responsibility in developing and administering training and certification programs for persons engaging in or directly responsible for blasting or use of explosives in surface coal mining and reclamation operations.
3. To make affected portions consistent with the Equal Employment Opportunity Commission (EEOC) Uniform Guidelines on Employee Selection Procedures (43 FR, p. 38290, August 25, 1978).
4. To make the appeals system for decisions on suspension and revocation of blasters' certificates consistent with Section 526(e) of SMCRA and 43 CFR Part 4.

I. Limiting Training, Examination, and Certification Requirements

Some proposed decisions to limit Office requirements for training, examination, and certification were necessary to comply with the EEOC Uniform Guidelines on Employee Selection Procedures. These limitations are discussed under item III of the preamble to this Subchapter.

The following discussions explain how and why other specific rules are proposed for adoption to limit Office requirements for training, examination, and certification.

A. Training and certification of blasting crews [Sections 850.11(b), 850.12(c), 851.13(a) in previously proposed rules]

Comments from industry have indicated that many blasting crew members are short-term laborers who perform routine labor tasks such as filling in blast holes or carrying explosive materials from the truck. These laborers "bid" (apply) for other jobs in the coal mining operation as opportunities become available to them and have little interest in continuing to work on blasting crews. Commenters point out that to require formal training and examination for these workers would result in an expensive and

ongoing training program which would duplicate much of what MSHA already requires.

Some commenters indicated the OSM could certify blaster learners, but suggested excluding one or more various groups of laborers who—

1. Load, unload, or transport explosives;

2. Place stemming in boreholes;

3. Cover Primacord with earth, and hand explosives to certified persons loading holes; and

4. Engage in inventory and restocking.

These commenters alleged that certification of everyone who engages in blasting or use of explosives is not necessary to ensure compliance with Office blasting requirements. Also, requiring operators to use only certified people to perform the laborer tasks listed above will restrict flexibility and adversely affect safety and efficiency. The high rate of turnover in these groups, many of whom leave their jobs after a short time, makes it administratively impractical and expensive to require certification and also creates a shortage of qualified people to conduct blasting.

Other commenters asserted that OSM's only concern should be that blasting operations be directly supervised by a certified blaster. Certification of blaster learners, as that term was defined in the previously proposed rules, is unnecessary and would create excessive, continuing training and certification programs for people who have no intention of continuing to work in blasting.

One commenter stated that various certifications, based only on the "need-to-know" for each job, assure better training for the job through experience and would not be disruptive for existing operations. For example, the person who loads holes needs only to understand the serious consequences of failure to follow established procedures set up by the blaster-in-charge.

One commenter averred that certifying "learners" places undue hardships on many individuals, especially those in smaller operations who assist in blasting activities only when needed. This commenter believes MSHA-required training is enough instruction to ensure that temporary laborers can safely assist in blasting activities and that certifying everyone who works on blasting is too restrictive for efficient surface coal mining and reclamation operations and is not necessary for safety.

MSHA requires, under 30 CFR 48.1–48.32, comprehensive health and safety training programs for new miners, newly employed experienced miners, experienced miners assigned to new tasks, and short-term, specialized (blasting) contract wokers who work at surface and underground mines. MSHA training programs include the following provisions which are relevant to the question of whether OSM should require that members of blasting crews be trained before assuming such duties:

1. All new miners must successfully complete training in health and safety aspects of assigned tasks and in hazard recognition (particularly hazards related to explosives) before assumption of duties

2. Newly employed experienced miners must successfully complete training in health and safety standards pertinent to assigned tasks and in hazard recognition (particularly hazards related to explosives) before assumption of duties.

3. Each miner must receive a minimum of 8 hours' annual refresher training which includes mandatory health and safety requirements related to the miner's tasks and a review and instructions on the hazards related to explosives.

4. Miners assigned to new work tasks (e.g., mobile equipment operators or blasting operations) cannot perform the new tasks until task training has been completed. Task training includes—

a. Health and safety aspects and safe operating procedures for work tasks, equipment, or machinery,

b. Supervised practice during nonproduction, and

c. Supervised operation during production.

5. Specialized short-term contract workers, such as drillers and blasters, must receive, at least once, the same training as newly employed experienced miners. Thereafter, these workers must be provided "hazard training" by the operator, at least annually. Such training includes hazard recognition and avoidance, health and safety standards, safety rules, and safe working procedures.

6. Each mine operator must have an MSHA-approved training plan containing the foregoing elements. Depending on circumstances and conditions at the mine, the MSHA Training Center Chief may require additional training. For example, if new miners are to be assigned other than simple tasks which require only oral instruction, or if new miners are not to receive continuous direct supervision, MSHA can require task training and additional formal instruction before these new miners commence their work duties. MSHA retained this flexibility in training requirements so that all miners will receive whatever training is needed to perform their tasks safely, regardless of the size, conditions, and type of mining operations where they are employed.

After review of MSHA training requirements and review of all public comments, the Office is of the opinion that formal training, examination, and certification of blasting crew members may not be necessary to ensure that blasting in surface coal mining and reclamation operations meets Office standards. It is reproposed that the following conditions and requirements of proposed Subchapter M, together with the MSHA training requirements described above, would meet the intent of the Act that blasting activities in surface coal mining and reclamation operations be conducted and controlled by competent blasting personnel who know how to use explosives to accomplish coal recovery and, at the same tme, protect the public safety and environment, in accordance with Office blasting standards.

1. Blasters-in-charge would be required to pass a national, rigorous, validated qualifying examination and meet valid experience requirements which cover all knowledge, skills, and abilities necessary to implement Office blasting standards.

2. Blasting crews would be limited to 12 crew members, under the *direct* supervision of a certified blaster-in-charge.

3. A primary specific duty of the blaster-in-charge would be to ensure that crew members are given adequate instruction and/or on-the-job training to perform their tasks in accordance with Office standards. The operator would also be held responsible for providing such training.

4. The blaster-in-charge would be required to be tested and certified as to whether he or she can properly instruct crew members to perform assigned tasks in accordance with Office requirements.

5. The blaster-in-charge would be held responsible for making and implementing decisions regarding blast design and execution which affect Office standards.

6. The experience requirements for blaster certification will be determined through validity studies. The Office expects that different types, as well as length, of experience will be required. When the operators are aware of this, they will be much more likely than previously to have an on-the-job apprentice program for potential future blasters; and those crew members who

perform the varied and more difficult blasting tasks will be better trained than before these reproposed rules were promulgated.

7. Under the reproposed rules, the regulatory authority would, upon request, provide training materials and would provide instructor training. Whenever resources permit, the regulatory authority would conduct training courses in blasting for employees, especially those of small operators. These courses would be broken down into units which teach simple to complex blasting tasks. Thus, the regulatory authority will make available, but will not require, any training for blaster helpers.

However, operators and blasters-in-charge will need blaster assistants who can perform more complex blasting tasks without continuous supervision during blast preparation. It will be too time-consuming and inefficient for the blaster-in-charge to continuously instruct and watch every blasting crew member. Operators will also be aware of the need for future certified blasters—unless enough certified people are available, operators will find themselves very restricted in preparing and executing shots. The obvious solution to these problems will be the selection of those motivated and able crew members for formal training course, as well as varied blasting tasks. As a result, those crew members who actually work full-time in blasting operations will be far better trained than if OSM required, as in the previously proposed rules, an "introductory" course and accompanying test for all blasting workers.

Additionally, after examining the major alternatives as to who must be certified to ensure that blasting is conducted in accordance with Office standards, the Office proposes to select the least costly alternative that meets the basic requirements of Section 719 of the Act. (See pp. 126–127 of the final Regulatory Analysis, OSM–RA–1.)

B. Training of blasters [Section 850.11(c) in previously proposed rules]

The Office proposes to delete the requirement that applicants for blaster certification present proof of completion of MSHA training. Since the examination for blasters will cover all skills and knowledge necessary to conduct blasting in accordance with Office standards, the Office believes the requirement to present such proof is unnecessary.

II. Program Responsibilities.

A. Section 850.4 [Section 850.3 in previously proposed rules]

A number of changes are proposed in assigning responsibilities for implementing training and certification programs for blasters. This reproposed allocation of function represents the most efficient and effective way to implement the mandates of Section 515(b)(15)(D) and Section 719 of the Act. (See p. 128 of the final Regulatory Analysis, OSM–RA–1.)

1. It is proposed that the Director is responsible for developing, through validity studies, all experience requirements for certification and recertification, as well as standardized course materials. Since sound validity studies require large representative samples and since such work is costly, the Office has consolidated responsibility for all Office-imposed training course development and test development under the Director. National studies will have readily available large samples and will prevent costly duplication of effort through regional or State studies. If States impose additional examination requirements, they will be responsible for developing valid examinations and valid training materials to cover those requirements and for making such training materials available upon request.

2. It is proposed that the responsibility of the regulatory authority to train all would-be blasters (blaster learners) be deleted. As in the previously proposed rules, no specific training would be required for blaster certification. Certification would be granted instead on the basis of experience and examination scores. Many practicing blasters may need no formal training to meet those requirements, others may need training in some areas, and still others may need training in all areas to enable them to pass the examination.

To accommodate individual training needs and to provide the flexibility necessary for efficient and timely delivery of needed training, it is proposed that responsibilities be assigned differently. Instead of providing or supervising all training as proposed in the earlier regulations, the regulatory authority would be responsible for—

a. Making training materials available, upon request;

b. Providing instructor training; and

c. Conducting blaster training, whenever resources permit, especially for employees of small operators.

Since potential blasters may need few or many portions of the training (which can be divided into units), and since the regulatory authority may not be able to meet all immediate training needs of operators who want employees certified quickly, this system would enable operators to provide their own training by obtaining standardized course materials and instructor training from the regulatory authority. These training materials would also be made available to educational institutions and commercial trainers, so it would be possible for operators to contract for such courses. The Office is concerned only that blasters meet minimum examination requirements—where, when, and how the individual is trained makes no difference, as long as necessary skills, knowledge, and ability are demonstrated to meet Office blasting standards.

By removing the restrictions that the regulatory authority must either conduct or supervise all blaster training, the Office provides flexibility in sources and amount of training. Thus, operators can acquire, through various ways, the amount of training they need at the time it is needed. At the same time, the Office does not propose to change the level of competence required for certification.

III. EEOC Uniform Guidelines on Employee Selection Procedures

At the time the Office was drafting the proposed rules (published on September 18, 1978), the EEOC was in the process of issuing the final rules of the Uniform Guidelines on Employee Selection Procedures (published August 25, 1978). The Uniform Guidelines are applicable to any Office certification requirements, since certification (or lack of it) will determine whether persons can or cannot be employed in blasting activities of surface coal mining and reclamation operations.

The fundamental principle underlying the Uniform Guidelines is that employment policies and practices which have adverse impact on employment opportunities of any race, sex, or ethnic group are illegal unless justified by business necessity. If an adverse impact results from any selection procedure (e.g., employment tests or experience requirements), it must be justified on grounds of business necessity. Normally such justification is in the form of validation data which demonstrates the relation between a selection procedure and performance on the job.

The Office will have no control over potential adverse impact in application of its certification requirements for

blasters under State programs. It is, therefore, necessary (and logical personnel practice) that all selection procedures imposed by the Office be validated in accordance with the Guidelines prior to their imposition. Selection procedures to be validated will include reasons for revocation and suspension of blaster certificates, as well as requirements to be met prior to certification, since revocation and suspension are also bases for employment decisions.

Proposed revisions in Subchapter M which were necessary to comply with the Guidelines are as follows:

A. Sections 850.4(a)(1) and (2) [Section 850.3(a) in previously proposed rules]

The Director would be responsible for establishing "valid" examination and experience requirements for certification. Validity studies, accomplished through acceptable methods of the psychological profession, would be conducted by the Director to establish such requirements as are essential for job performance. The Office anticipates completion of these studies before or by January 1980, when the examination and experience requirements will be made available to regulatory authorities.

B. Sections 850.4(b)(2) and (6) [Sections 850.4(b)(2) and 850.4(c)(2) in previously proposed rules]

The date on which certification requirements must be implemented by regulatory authorities would be moved to June 3, 1980, for Federal lands. For non-Federal and non-Indian lands, certification requirements would be effected when blasting is conducted under permits issued under Subchapter G of the Office's final regulations. Validity studies, on which examination, experience requirements, and training courses will be based, cannot be completed in less than 6 months' time. The Office estimates that examination and training materials will not be ready for use by regulatory authorities until January 1980. Thus, the new dates will allow approximately 5 months to train and examine blasters before certification requirements are effected.

C. Sections 850.13(c) [Section 850.11(c) in previously proposed rules] and 850.14(b) [Section 851.12(b) in previously proposed rules]

Commenters proposed adding or deleting various subjects to be included in the examination and training courses for blasters. The Office declined to accept such suggestions since, under the EEOC Uniform Guidelines, such subjects must be determined through appropriate validity studies. OSM proposes to change the requirements as to the content of training courses and the national examination to that effect. Lists of such subjects have been deleted in these reproposed rules. Contents of training courses and the standardized national examination would be required by the regulations to cover all "skills, knowledge, and abilities developed through validity studies as necessary for performance as a blaster-in-charge."

D. Section 850.14(a) [Section 851.11(d) in previously proposed rules]

It is proposed that the 2-year experience requirement for certification in the proposed rules be changed to "types and length of experience required by the office." Length and types of experience necessary for performing as a blaster-in-charge who can meet the Office's performance standards in blasting activities will also have to be determined through validity studies.

Several comments were submitted to the Office regarding the blaster certification requirement in the proposed rules for "two years" experience in blasting as applicable to surface coal mining operations." Some commenters thought the length of experience excessive; others thought it insufficient. Still other commenters pointed out that relevant experience could be acquired through employment in other than surface coal mining and reclamation operations, (e.g., construction or quarry blasting) and that to exclude such experience as "qualifying" is unnecessarily restrictive. The rationales to lengthen, shorten, or broaden the 2-year experience requirement are all reasonable. However, they do not sufficiently establish job-relatedness as required by the EEOC Guidelines. Thus, though all such comments were considered, the experience requirements will still have to be determined through technically valid studies, conducted and documented in accordance with the Guidelines.

Commenters suggested that the examination be oral or "hands-on" or that a grandfather clause for those with years of experience be inserted because many competent blasters do not have the necessary reading and writing skills to pass an examination, though they are fully competent to conduct blasts at surface coal mines. Other commenters complained that the examination subjects listed in the proposed rules were unnecessarily extensive to prove such competence.

The Office does not propose to specify examination methodology in reproposed Subchapter M. Since the examination will be developed through technically correct validation studies, it would—

1. Test only the knowledges and skills necessary to implement Office blasting performance standards, and

2. To the exent possible, be administered through methods which eliminate the testing of reading and writing skills, except as those skills are necessary to perform tasks required of a blaster-in-charge in implementing Office blasting standards.

One commenter suggested that several tests would have to be developed since blasting conditions vary considerably among mine types and locations. Other commenters asserted that only the regulatory authority, rather than the Director, has authority to design blaster examinations.

In answer to these related comments, the stated purpose set forth in Section 102(a) of the Act is to establish a nationwide program to protect public safety and the environment from adverse effects of surface coal mining and reclamation operations. Under Section 201(c)(2), the Secretary is authorized to issue regulations necessary to carry out the purposes and provisions of the Act. Thus, the Secretary's authority to establish a national examination as a minimal requirement toward that purpose is clearly established. However, it does not preclude the authority of States, acting as regulatory authorities, to add examination requirements they consider necessary. States are also subject to the requirements of the EEOC Uniform Guidelines on Employee Selection Procedures. Therefore, any State examinations or other State certification requirements imposed must be supported by appropriate validation studies.

As for differing regional tests, if Office validity studies indicate there are fewer, more, or different skills or knowledges necessary for job performance in meeting Office blasting standards, those differences will have to be imposed by the Office for the appropriate region or State. The concept of a "national" examination means that the Office will develop and impose minimal examination requirements to blast in surface coal mining and reclamation operations anywhere in the United States. If data indicate regional differences for competence, those differences must be imposed.

E. Sections 850.14 (e) (2) and (3) [Sections 851.12(a) and 851.13(b) in previously proposed rules]

A number of comments from industry and from three States were received on the question of whether blasters need to be recertified every 3 years and/or examined every 6 years. These comments can be grouped according to the following substantive alternatives which they proposed:

1. Do not require recertification at all;
2. Do not require recertification if the certified individual has continued to work as a blaster;
3. Require recertification only if a certificate has lapsed, is suspended, or if a blaster has numerous violations;
4. Require retraining every 3 years without reexamination, or require reexamination if the blaster is not retrained every 3 years;
5. Require retraining but no reexamination.

Commenters did not give any rationale to support most of these alternatives except to express their opinion that "there is no need" to retrain, reexamine, or recertify.

Some basis was offered for alternative 2 in that it seems logical that a blaster who has been certified through examination and experience which prove competency and who continues to work successfully does not need further training every 3 years. Regulations and state-of-the-art do not change that rapidly in blasting. However, the Office believes that some minimal experience requirement (to be determined through validity studies) during a 3-year period is probably necessary to retain competency. Thus, the 3-year recertification requirement is proposed because OSM believes it is necessary as a check on whether a certified blaster has had enough experience during those 3 years to retain competence at the level certified.

The 6-year reexamination and the experience requirements are both subject to EEOC Guidelines and will be determined through validity studies which prove a logical relationship between these requirements and job performance.

OSM does not propose to adopt alternatives 1–5 because they were based only on opinions without supporting rationale as to what experience or knowledge each commenter thinks necessary to retain competence. There is no literature on which to base such opinions.

The EEOC Guidelines make it necessary to settle these issues through appropriate validation. If validity studies prove absolutely no necessity for either the experience requirement for recertification or the 6-year reexamination to ensure retention of competence, OSM will want to change both requirements. However, every indication at this time suggests that such studies will not refute the need for some experience during a 3-year period or the need for at least minor reexamination every 6 years.

F. Section 850.14(f)(1) [Section 851.13(d) in previously proposed rules]

The Office proposes to change the grounds for suspension or revocation of certification to make them specifically job-related, as follows:

1. "Noncompliance with any order of the regulatory authority" would be changed to "noncompliance with any *blasting-related* order of the regulatory authority." Noncompliance with orders that do not specifically affect performance as a blaster-in-charge are not job-related and are, therefore, not a justifiable basis for revoking or suspending certification. (Commenters supported this change.)

2. "Violation of the provisions of *any* State or Federal explosive law or regulation" would be changed to "Violation of the provisions of any Federal blasting * * * law * * * that affects implementation of Office blasting regulations." The blaster-in-charge would be responsible to the Office only for implementing Office blasting regulations. (A State regulatory authority may add more stringent standards.) Since knowledge of *all* Federal explosives laws is not necessary for job performance in accordance with Office standards, violation of laws that do not affect those standards is not job-related or certification-related and cannot be a reason for suspension or revocation. (Commenters also supported this change.)

3. "Unlawful user of, or is addicted to, alcohol, narcotics, or other dangerous drugs" would be changed to "Proof of addiction to alcohol, narcotics, or other dangerous drugs, or proof that the certified balster has used such drugs in the workplace."

As commenters pointed out, unlawful use may or may not be job-related. The term "unlawful user" could include the certified individual who consumes one beer annually, but resides in a county which prohibits any consumption of alcoholic beverages. Such an individual would hardly be unfit or incompetent to conduct blasting based on the one-beer-per-year consumption quota. On the other hand, addiction to drugs or use of drugs in the workplace is obviously related to job performance.

G. Section 850.14(g) [Section 851.13(c) in previously proposed rules]

The previously proposed rules, under Section 851.13(c), required reexamination prior to recertifying individuals whose certification has been suspended. Since the examination will cover only the implementation of applicable laws and regulations necessary to meet Office (or State) blasting standards, it would be of little use to reexamine the individual whose certification had been revoked for such reasons as "willful misrepresentation" or use of drugs in the workplace. The Office, therefore proposes to change this requirement for reexamination to apply only to "any individual whose certification has been suspended or revoked because of violation of any applicable Federal or State blasting or explosives law or regulation" before being recertified.

IV. Appeals

A. Section 850.14(f)(1) [Section 851.15 in previously proposed rules]

Commenters questioned the authority of the director to act as the appellate review entity where certification has been suspended or revoked by a State regulatory authority. These commenters requested the Section be amended to provide the right of appeal to the State regulatory authority and/or to a State court of competent jurisdiction. The Office agrees with these comments and has reproposed this Section (formerly § 851.15(a)) to allow appeal to the State regulatory authority where it is the agency suspending or revoking certification. This change would make the regulations consistent with Section 526(e) of the Act, which requires that "Action of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law."

Where the Office is the authority revoking or suspending certification, an entirely new appeals procedure is being proposed to provide review of revocations or suspensions by the Office of Hearings and Appeals as provided in 43 CFR, Part 4. This change was made to assure separation of review procedures from the initial decision maker.

B. Section 850.14(f)(2) [New Section]

This Section would provide for immediate suspension of certification and is proposed to take care of situations where the Office or regulatory authority determines that danger or

harm to public health or safety may result from continuation on the job by a blaster. This proposed addition was made to correct an omission in the proposed rules. To prevent depriving a blaster of his or her means of livelihood for an unduly long period of time, the section would require that a hearing be conducted within 20 days of immediate suspension.

C. Section 850.14(h) [New section]

To assure fairness in matters of suspension and revocation of certification, a new Paragraph (h) was proposed to provide, as a specific duty of the regulatory authority, the determination of the length of suspension and revocation and the severity of any other penalties. This change was made to provide due process by clarification, prior to certification, of the consequences of violating the conditions of certification.

V. Other Issues

A. Section 850.4(c)(2) [Section 850.3(c)(2) in previously proposed rules]

One commenter indicated that § 850.3(c)(2) was unclear as to whether certification will be required for every State or whether the Federal certification will be effective in all States. In response to this comment, reproposed § 850.4(c)(2) has been revised to clarify that a Federal or State certification must be accepted by another State before a blaster can work in that State. In this way, Federal certification or the certification of one State cannot be interpreted to apply in another State without its acceptance by that State. In keeping with the Act, the regulations would set forth minimum standards for certification for all regulatory authorities. State regulatory authorities have the option of imposing stricter standards. Therefore, it is left to a State to determine whether the certification of another jurisdiction is sufficient to meet its standards for certification. In any event, OSM could not legally compel States to accept reciprocity.

B. Section 850.5 Definitions

Several commenters objected to the use of "blaster learner" in the previously proposed rules and suggested eliminating it altogether or replacing it with "assistant blaster" or "blaster." The commenters pointed out that "blaster learner" is a misnomer in that many people who perform simple blasting tasks are not learning to become blasters. They contend also that use of the term may humiliate persons who have performed blasting tasks for many years, but do not have the ability or education to become certified blasters.

The Office proposes to adopt these suggestions on the merit of their rationale. It is proposed that the term "blaster learner" be deleted altogether, and a definition of "blasting crew" be substituted in Section 850.5. In other parts of Subchapter M, the term "member of blasting crew" would replace the term "blaster learner" in referring to persons who work under the direct supervision of a certified blaster-in-charge in preparing for and executing blasting in surface coal mining and reclamation operations.

C. Section 850.14(e)(4) [Section 851.12(b) in previously proposed rules]

One commenter suggested that employers be required to maintain records of blasters' training and certification, rather than have certified blasters carry the certificate on the job at all times. This commenter asserted that if the employer retains the records of training and certification, inspection will be facilitated and loss of certificates will be less likely.

The Office notes that these proposed regulations do not require training and, therefore, training records would not be required for inspection. Moreover, the blaster's certificate is proof of certification which he or she would be required to show, upon request, to any duly authorized representative of the regulatory authority or Office.

The Office proposes not to require employers to maintain records of blaster certification. The regulatory authority would (since it is the issuing authority) maintain certification records. These records are not needed for inspections as long as the blaster can show certification. The Office does not want to impose on employers an unnecessary burden. However, nothing in the regulations would prevent employers who wish to do so from holding, as a condition of employment, a copy of the employee's certification.

As for the issue of the security of the certificate from on-the-job loss, the certificate is no more susceptible to being lost than is any other certificate such as a driver's license.

D. Section 850.14(e)(1) [Section 851.12(b) in previously proposed rules]

One commenter requested that the requirement for a photo on the blaster's certificate be deleted. This commenter argued that the photo requirement would increase the cost of licensing. The cost will come from laminating pictures, more paperwork, and the cost of opening smaller offices to conduct the licensing procedure.

The Office notes that many States already require a photo. The cost is not significant and is to be borne by the regulatory authority. The Office proposes to retain the requirement for a photo since the blaster bears considerable responsibility for protecting the public safety and minimizing adverse environmental effects; and the process of obtaining false certification must be discouraged as much as possible. The Office believes that a photo on the certificate is a proven and effective deterrent to obtaining or transferring illegal certificates.

E. Section 850.12(b) [Sections 851.11 and 851.14(d)(1) in previously proposed rules]

This Section lists the responsibilities of the blaster-in-charge.

Commenters objected to the requirement in the previous proposal that a blaster-in-charge "fire all blasts." They asserted that, in many mining operations, actual firing of the shot must be performed only by union employees and would conflict with the supervisory role of the blaster-in-charge. The Office agrees with these comments and proposes to require instead that the blaster-in-charge be present at the site when the blast is detonated.

One commenter suggested that the responsibilities of the blaster-in-charge be limited to the use of explosives "at the blast site," since the blaster-in-charge cannot be responsible for or provide supervision of work performed away from the "use area." Additionally, the blasting site is the only place explosives are "used" in surface coal mining and reclamation operations. The Office agrees with this rationale and proposes to adopt the suggested change. The responsibilities of the blaster-in-charge are now limited to the direct supervision of blast design, preparation, and execution *at the blast site.*

One commenter suggested deleting the requirement in previously proposed Section 851.14(d)(1) that the blaster-in-charge "shall be on the actual site of the blasting operation and directly supervise" each crew member. The commenter asserted that such a requirement would preclude any work by crew members if the blaster-in-charge left the immediate area for even a few moments.

The Office accepts this rationale and proposes to delete the requirements that the blaster-in-charge be on the actual site at all times. However, the rules would still make the blaster-in-charge

responsible for *direct* supervision of crew members. *Direct* does not imply that *every movement* or action *of crew members* must be observed. It implies, instead, that the blaster-in-charge supervises, instructs, and checks the work of assistants *without intervening persons.* The blaster-in-charge is directly responsible for the blast and must therefore provide direct supervision of crew members' work. When such supervision is provided, actual presence of the blaster-in-charge at all times may not be necessary, as for example in the case of drilling holes, when the blaster-in-charge can assure correct spacing and size upon return from a temporary absence.

F. Sections 850.12(a)(4) and 850.12(b)(5) [Section 851.14(d)(1) in previously proposed rules]

In the previously proposed rule, § 851.14(d)(1), a blasting crew could not exceed six members. Some commenters wanted no limit to crew size, asserting that such limitations interferred with operator's flexibility and were not necessary for public safety. Other commenters wanted a ratio of one crew member to one certified blaster to ensure maximum safety.

It is proposed that crew size be limited to 12 members, to be directly supervised by a certified blaster-in-charge. The reproposed regulations would require that permission to use a larger crew because of unusual circumstances or mining methods must be obtained from the regulatory authority and be granted only if the operator can assure the regulatory authority that the blaster-in-charge can provide direct supervision to all crew members. Such exceptions would be granted by the regulatory authority on a case-by-case basis; the operator and blaster-in-charge are still held responsible for ensuring that Office blasting specifications are met. These changes should provide the flexibility needed by industry and at the same time maintain strict control over the preparation and execution of blasting.

To eliminate ambiguity in application of the term, one commenter suggested further limiting the definition of "blasting crew" to "persons engaging in or responsible for conducting blasting or use of explosives *at one operational pit* of a surface mine." This commenter pointed out that a blasting crew could be construed as a group of persons conducting blasting operations at two pits several miles apart. The proposed addition precludes dispersal of the crew and ensures supervision by the blaster-in-charge in a limited area.

The Office proposes to adopt this suggestion on the basis of its rationale and has added the phrase "at one operational pit" to the definition of blasting crew under Section 850.5 and also added it to the restrictions imposed on operators and blasters-in-charge in Section 850.12 regarding the size and use of blasting crews.

G. Section 850.12(a) [New Section]

This Section would list the responsibilities of the operator in the use of certified blasters and blasting crews. Its purpose is to make the operator responsible for ensuring that a properly certified blaster, supervising only one crew, is responsible for each shot fired, and for proper size and adequate training of blasting crews.

H. Proposed New Section [Not Proposed to be Adopted]

One commenter suggested that "public awareness" classes in blasting be offered to citizens who live near blasting areas. These classes would serve to educate the public and promote better relations between the mine operators, the regulators, and the local residents. According to the commenter, in the State of Kentucky, recurring complaints were cut by 80 percent after the public was provided understanding of what effect blasting will have on them and their homes.

While the suggestion has merit, this type of public relations, as a regulatory requirement, is not necessary to accomplish the purposes of the Act to protect the public and the environment from adverse effects of surface coal mining and reclamation operations. Mine operators could undertake this type of public relations on their own. Moreover, the Act does not authorize or fund training for the public.

Regulation Drafters

This reproposed portion of OSM's program regulations has been drafted by professional staff in the Office of Surface Mining. Assistant Director David R. Maneval has been responsible for its preparation and content.

Dated: June 22, 1979.

Joan Davenport,

Assistant Secretary for Energy and Minerals.

It is proposed to add Part 850 to Title 30 CFR to read as follows:

SUBCHAPTER M—TRAINING PROGRAMS FOR BLASTERS AND MEMBERS OF BLASTING CREWS, AND CERTIFICATION PROGRAMS FOR BLASTERS

PART 850—PROGRAMS

Sec.

850.1 Scope.
850.2 Objective.
850.4 Responsibilities.
850.5 Definitions.
850.12 General program requirements.
850.13 Required elements for training programs.
850.14 Required elements for certification programs.

Authority: Sections 102, 201, 501(b), 515, 516, and 719 of Public Law 95-87, 91 Stat. 448, 449, 468, 486, 495, and 526 (30 U.S.C. 1202, 1211, 1251, 1265, 1266, and 1309).

§ 850.1 Scope.

This Part establishes program requirements for—

(a) The training of persons to engage in and conduct blasting or to use explosives in surface coal mining and reclamation operations;

(b) The examination and certification of persons engaging in and directly responsible for blasting or the use of explosives in surface coal mining and reclamation operations; and

(c) Conditions and restrictions for operators' use of certified blasters and blasting crews in surface coal mining and reclamation operations.

850.2 Objective.

The objective of this Part is to establish training and certification programs which ensure that all blasts in surface coal mining and reclamation operations are designed, prepared, executed, and supervised by trained and competent persons who meet the requirements of these regulations as they relate to blasting in surface coal mining and reclamation operations.

850.4 Responsibilities.

(a) The Director of the Office is responsible for—

(1) Establishing technically valid national examinations for blaster certification and recertification which cover all skills, knowledge, and abilities necessary to meet the requirements of §§ 816.61-68, 817.61-68 of this chapter, and Part 850 regarding blasting and the use of explosives in surface coal mining and reclamation operations. The Director also establishes requirements governing the administration and security of those examinations;

(2) Establishing valid national experience requirements for blaster certification and recertification; and

(3) Developing training course materials which cover all skills, knowledge, and abilities to meet the requirements of §§ 780.13, 816.61-68, 817.61-68 of this chapter, and Part 850; making such materials available upon request; and updating such materials as Federal regulations change and as

significant developments in the state-of-the-art occur.

(b) Each Regional Director of the Office is responsible for—

(1) Reviewing training, examination, certification, revocation, suspension, and appeals programs proposed by States under 30 CFR Part 731;

(2) Examining, certifying, and recertifying applicants, and revoking or suspending certification in a State which does not have an approved State program after June 3, 1980; and performing those functions for blasters who work on Federal lands after a valid national examination is available, where no cooperative agreement is in effect;

(3) Monitoring approved State training, examination, certification, revocation, suspension, and appeals programs to ensure compliance with the requirements of this Part;

(4) Collecting any data required by the Director regarding blaster training, examination, certification, revocation, suspension, and appeals programs conducted in support of the Act;

(5) Providing Office-developed training course materials, upon request;

(6) Assisting operators by providing instructor training for potential instructors and, when resources permit, conducting blaster training courses in a State which does not have an approved State program after June 3, 1980, and performing those functions for persons working on Federal lands after valid training courses are available, where no cooperative agreement is in effect; and

(7) Ensuring that any person who performs as blaster-in-charge in surface coal mining and reclamation operations in a State which does not have an approved State program after June 3, 1980, or a blaster-in-charge who works on Federal lands after June 3, 1980, where no cooperative agreement is in effect, is properly certified.

(c) Each State is responsible for—

(1) Preparing and submitting to the Regional Director, under 30 CFR Part 731, a State plan for examining, certifying, revoking, and suspending certification, appealing revocation or suspension, promoting and providing training which meets the requirements of this Part;

(2) In accordance with an approved State program, requiring that any person who performs as blaster-in-charge in surface coal mining and reclamation operations in the State be certified by the State (or, if acceptable to a State, certified, in accordance with this Part, by the Federal Government or another State);

(3) Administering a certification program for blasters under an approved State program;

(4) Developing training course materials which cover any State-imposed requirements for blaster certification (e.g., knowledge of State laws);

(5) Providing to any surface coal mine operator, upon request, training course materials the mastery of whose content ensures the ability to comply with the requirements of applicable State and Federal laws;

(6) Assisting operators by conducting instructor training for potential instructors of blasting courses and, where resources permit, conducting blaster training courses; and

(7) Collecting, maintaining, and providing the Office with data on training, test results, and other information the Office may require with respect to a State program.

§ 850.5 Definitions.

As used in this Part—(a) *Blaster* means a person who is certified to prepare, execute, and supervise blasts at the blast site in surface coal mining and reclamation operations.

(b) *Blaster-in-charge* means a properly certified person designated by the responsible management official of the operator conducting surface coal mining and reclamation operations to be responsible for ensuring that blasting operations at the blast site are conducted in compliance with the blasting standards set forth in these regulations.

(c) *Blasting crew* means 12 or fewer persons engaged in preparation for and execution of a blast at one operational pit, under the direct supervision of a blaster-in-charge.

§ 850.12 General program requirements.

(a) Operators shall—(1) Designate a blaster-in-charge for each blast to be detonated in surface coal mining and reclamation operations;

(2) Ensure that the designated blaster-in-charge is properly certified in accordance with the time requirements established in 30 CFR 850.12(b)(1).

(3) Ensure that all employees who perform blasting tasks under the supervision of a blaster-in-charge have adequate training in compliance with the standards of these regulations and any additional applicable State regulations;

(4) Limit the size of a blasting crew to 12 or fewer persons, supervised by a properly certified blaster-in-charge at one operational pit at the blast site, in preparing for and executing a blast. The regulatory authority may, in individual cases, approve a larger blasting crew, due to unusual circumstances or mining methods. Permission to use a larger blasting crew may be granted by the regulatory authority only if the operator ensures that the blaster-in-charge can provide adequate direct supervision to crew members and remain in control of blast design, preparation, and execution so that blasting complies with Office and applicable State regulations; and

(5) Ensure that a blaster-in-charge supervises no more than one crew at any given time.

(b) The blaster-in-charge shall—

(1) Be certified by June 3, 1980, for all blasting operations conducted on Federal lands or, for non-Federal and non-Indian lands, before any blasting operations are conducted under a permit issued in accordance with Subchapter G under a State or Federal program;

(2) Ensure that blast design and execution meet Office standards prescribed in 30 CFR 816.61–68 or 817.61–68 and Part 850 and any applicable additional State standards;

(3) Directly supervise blast preparation and execution at the blast site to ensure that such standards are met;

(4) Be present at the site when the blast is detonated;

(5) Ensure that all members of blasting crews under his or her supervision have adequate training to perform assigned tasks in compliance with the standards prescribed in applicable State and Federal regulations; and

(6) Limit to 12 or fewer the number of persons to be supervised at any given time in preparing and executing a blast at one operational pit at the site in surface coal mining and reclamation operations. Permission to use a larger blasting crew can be granted by the regulatory authority under § 850.12(a)(4).

(c) The blaster-in-charge may authorize members of the blasting crew to perform general blasting operations, to load and unload explosives at the blasting site, prepare explosives for use in blasting, transport explosives at or near the jobsite, load explosives into drill holes, and stem or otherwise prepare explosives for detonation. However, each of these assigned duties shall be performed only after instructions from and under the direct supervision of the blaster-in-charge. The blaster-in-charge retains full responsibility for all blasting and use of explosives, including, but not limited to, keeping blasting logs and records, supervising the blasting-related activities of the workers in his or her charge, and ensuring all persons under

his or her supervision have the necessary training to perform safely their assigned duties in accordance with applicable State and Federal blasting regulations.

§ 850.13 Required elements of training programs.

(a) Training course materials which cover all blasting regulations in 30 CFR Chapter VII and other relevant Federal regulations shall be developed and made available by the Office for use in State programs.

(b) The regulatory authority shall provide for a blaster training program which includes—

(1) Development of training course materials which cover all applicable State regulations for blasting in surface coal mining operations;

(2) Conducting instructor training courses;

(3) Making available, upon request, Office-developed and State-developed blaster training course materials; and

(4) Conducting, as resources permit, blaster training courses, especially for employees of small operators.

(c) Training courses for persons who want to be certified as blasters shall include all skills, knowledge, and abilities determined through validity studies as necessary for performance as a blaster-in-charge.

(d) The regulatory authority shall encourage on-the-job training and experience for potential blasters in a variety of the tasks listed in 30 CFR 850.12(c), so they can subsequently meet the experience requirements for blaster certification.

§ 850.14 Required elements of certification programs.

(a) Each applicant for blaster certification shall be required to pass a national qualifying examination established by the Office and shall present acceptable proof of types and length of experience required by the Office.

(b) Examinations may vary among State programs, depending on State requirements that are in addition to the requirements imposed by the Office. However, the standardized national examination established by the Office shall be included in each State examination and shall include questions designed to test all skills, knowledge and abilities determined through validity studies as necessary for performance as a blaster-in-charge.

(c) Each applicant for blaster's certification shall receive written notification from the regulatory authority, within 30 days of examination, as to the applicant's certification status.

(d) Applicants who fail to qualify in the examination may reapply for examination by submitting a new application to the examining authority after a 30-day period from notification of failure.

(e) *Terms and conditions of certification.* (1) Certification shall be for a period of 3 years and shall be made only to a person who passes the required Office and State examinations and presents acceptable proof of required experience. The certificate shall include the person's name, address, photograph, and signature.

(2) Each certified blaster shall apply for recertification every 3 years to the regulatory authority. To be recertified, persons shall meet any experience requirements imposed by the Office or State.

(3) Each certified blaster who fails to obtain recertification at the end of 3 years shall be required to apply for reexamination and shall meet experience standards. In any event, reexamination is required every 6 years.

(4) Each certified blaster shall, upon request, exhibit his or her blaster's certificate to any duly authorized representative of the regulatory authority or the Office.

(5) Certification shall not be reassigned or transferred.

(f) *Suspension or revocation.* (1) Under a Federal program, the Secretary may suspend or revoke a blaster's certificate following notice and an opportunity for a hearing pursuant to 43 CFR Part 4. A State regulatory authority may suspend or revoke a certificate in accordance with hearing procedures provided in the approved State plan. Any regulatory authority may revoke a blaster's certificate for any of the following reasons:

(i) Noncompliance with any blasting-related order of the regulatory authority.

(ii) Violation of the provision of any Federal blasting or explosives law or regulation that affects implementation of blasting regulations in 30 CFR Chapter VII.

(iii) Proof that false information was willfully given or misrepresentation willfully made to obtain the certification.

(iv) Proof of addiction to alcohol, narcotics, or other dangerous drugs, or proof that the certified blaster has used such substances in the workplace.

(v) Proof that the certified blaster participated in assigning or transferring certification to a person other than the person to whom the regulatory authority issued it.

(2) In any instance where the regulatory authority considers continued blasting by the blaster involved to be a threat to public safety or the environment, certification shall be suspended until completion of a hearing. In such event, a hearing shall be conducted within 20 days of the notice of suspension.

(g) Any certified blaster whose certification has been revoked because of violation of any applicable Federal or State blasting or explosives law or regulation shall be required to pass a qualifying examination before being recertified.

(h) The length of suspension or revocation and the severity of any other penalties for offenses which provoke such actions shall be determined by the regulatory authority.

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Friday
June 29, 1979

Part XII

Department of Health, Education, and Welfare

Food and Drug Administration

Polychlorinated Biphenyls (PCB's); Reduction of Tolerances

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 109

[Docket No. 77N-0080]

Polychlorinated Biphenyls (PCB's); Reduction of Tolerances

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The Food and Drug Administration (FDA) is reducing the tolerances for unavoidable residues of the industrial chemicals polychlorinated biphenyls (PCB's) in several classes of food. Specifically, the agency is reducing the tolerances in milk and dairy products from 2.5 parts per million (ppm) to 1.5 ppm (fat basis), in poultry from 5 ppm to 3 ppm (fat basis), in eggs from 0.5 ppm to 0.3 ppm, and in fish and shellfish from 5 ppm to 2 ppm.

DATES: Effective August 28, 1979; objections on or before July 30, 1979.

ADDRESS: Written objections to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard N. Pippin, Bureau of Foods (HFF-312), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-245-3092.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 1, 1977 (42 FR 17487), FDA proposed to reduce the temporary tolerances for unavoidable residues of PCB's in several classes of food. The agency received over 100 comments on the proposal from interested individuals, consumer groups, businesses, trade associations, State government agencies, and others. The agency has considered these comments and is now issuing a final order reducing the PCB tolerances as originally proposed. Following a brief discussion of the background, this document will respond to the comments the agency received and explain the agency's reasons for adopting the reduced tolerance levels.

I. Background

PCB's are a class of toxic industrial chemicals that have become persistent and ubiquitous environmental contaminants as a result of past widespread, uncontrolled industrial use. As explained in the preamble to FDA's proposal initiating this rulemaking proceeding (see 42 FR 17489), one result of PCB contamination of the environment has been contamination of certain foods. In the Federal Register of July 6, 1973 (38 FR 18096), FDA issued regulations to deal with the problem of PCB contamination of food. Among those regulations was one establishing temporary tolerances for unavoidable PCB residues in various categories of food. Those original tolerances are now codified in § 109.30 (21 CFR 109.30). The order FDA is issuing in this document reduces certain of those tolerances.

FDA's authority to issue tolerances for unavoidable food contaminants is derived from sections 402(a)(2)(A) and 406 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(2)(A) and 346). Section 402(a)(2)(A) deems food adulterated, and thus prohibited from interstate commerce, if it contains "any added poisonous or added deleterious substance" that is unsafe within the meaning of section 406. Section 406 deems any added poisonous or deleterious substance to be unsafe unless its presence in the food is required in the production thereof or cannot be avoided by good manufacturing practice. Section 406 also authorizes the agency to promulgate regulations limiting the quantity of such a required or unavoidable substance that can be present legally in food. Such limits, called tolerances, are to be set by FDA at the level found necessary to protect the public health, taking into account the extent to which the substance is required or unavoidable and the other ways the consumer may be affected by the same or other poisonous or deleterious substances. Once a regulation establishing a tolerance has been promulgated for a particular poisonous or deleterious substance, food containing that substance in an amount exceeding the tolerance is deemed adulterated under section 402(a)(2)(A).

One of the primary purposes of section 406 of the act is to enable FDA to deal effectively with environmental contaminants such as PCB's. These substances often enter food as a result of events beyond the reasonable control of the food manufacturer or processor and, once in the food, usually cannot be removed by good manufacturing practice. For example, in the case of PCB's, some species of fish have become contaminated to varying degrees as a result of the dumping of PCB-containing industrial waste into the nation's waters (see the Federal Register of March 18, 1972 (37 FR 5705)). Once the contamination occurs, there is little that can be done to remove the PCB's from the water or from the fish; their presence is, in that sense, unavoidable. Because the initial contamination of fish with PCB's cannot be avoided (nor the PCB's processed out), the only way to avoid PCB's in fish is to remove fish from commerce if it contains PCB's above a given tolerance level. The degree of avoidance accomplished by this method is, of course, a function of the level at which the tolerance is set. In this way, it is theoretically possible to avoid PCB's in fish absolutely by removing from commerce all fish that contain any amount of PCB's.

Section 406 of the act authorizes FDA to make a practical judgment in dealing with such environmental contaminants: Based on an assessment of the degree to which the contaminant poses a threat to consumers, the agency can decide to tolerate the contaminant's presence in food up to a level the agency considers appropriate to protect the public health, taking into account, among other factors, the extent to which the presence of the contaminant is unavoidable. In making this judgment, the agency's paramount concern is protection of the public health: The tolerance cannot be set above the level the agency finds necessary to protect the public health adequately. But in determining what tolerance level provides an adequate degree of public health protection, FDA is required by section 406 to consider the extent of unavoidability—in the case of PCB contamination of fish, the amount of PCB-contaminated fish that must be disposed of to reduce human exposure to PCB's to a tolerable level. As a practical matter, of course, a tolerance, if it is to be enforceable, cannot be set below the level at which the contaminant can be reliably measured for enforcement purposes by available analytical methods.

The toxicological data available on PCB's make it clear that, in an ideal situation, it would be preferable not to have PCB's in food at any level. As discussed more fully below, the data do not permit the identification of any level of PCB exposure that can be said to provide an absolute assurance of safety. It is equally clear, however, that the reduction of PCB exposure from food sources to zero, or to a level approaching zero, would require elimination of large amounts of food, especially fish. Hence, in deciding the appropriate levels for PCB tolerances under section 406, FDA has had to make some extraordinarily difficult judgments. It has had to decide, in effect, where the proper balance lies between providing an adequate degree of public health

protection and avoiding excessive losses of food to American consumers.

The comments received on the proposal reveal that by far the most controversial aspect of this rulemaking proceeding is the balancing judgment FDA made in proposing to reduce the PCB tolerance in fish from 5 to 2 ppm. Some comments argued that the proposed reduction would cause an excessive loss of food and significant adverse economic impact without providing any significant increase in public health protection. Other comments argued the converse, i.e., that the proposed reduction to 2 ppm would not adequately protect the public health and that the tolerance should be reduced to 1 ppm (the lowest level at which PCB residues in fish can be reliably measured for enforcement purposes), despite the additional losses of food that a reduction to 1 ppm would cause. In each case, the comments bolstered their arguments by contending that FDA has either overestimated or underestimated the toxicity of PCB's and the impact of the proposed reduction of the tolerance in terms of food loss and adverse economic consequences.

The comments criticizing the proposed reduction of the fish tolerance highlight the difficulty of the judgment FDA must sometimes make in establishing tolerances. Not only must FDA make a qualitative judgment about the proper balance between adequate public health protection and excessive loss of food, it also must often make that judgment on the basis of data that are incomplete, or even in dispute, and that can easily lead reasonable people to differing conclusions. As the comments illustrate, it is nearly always possible to conduct additional studies and investigations to refine further the knowledge of a substance's toxicological profile, the incidence and degree of human exposure to it, and the impact a given tolerance reduction will have on the food supply. As an agency whose first responsibility is to protect the public health, however, FDA must act on the basis of the information available to it, even when the information is incomplete. Neither the agency nor the public can afford to wait until every uncertainty is resolved. See *Ethyl Corp. v. Environmental Protection Agency*, 541 F. 2d 1, 24–29 (D.C. Cir.) (*en banc*), *cert. denied*, 426 U.S. 941 (1976).

In the case of PCB's, even though there are obvious shortcomings in the available data, which are discussed below, FDA considers the data to provide a more than adequate basis for the exercise of its judgment in reducing the PCB tolerances. There would be no advantage in delaying this action because it will take years to resolve certain of the shortcomings in the data on PCB's, if they can be resolved at all. For example, no chronic toxicity studies have been performed on the specific, chemically distinct composition of PCB's found in fish residues. Even if such studies were begun immediately, it would be 3 to 4 years before results could be available. That plainly is too long to wait to take action necessary for the protection of the public health.

Because of the emphasis the comments placed on the proposed reduction of the fish tolerance, this document reviews the basis on which the reduction was proposed and explains why, after considering the comments, the agency has decided to promulgate the reduction as proposed. After discussing the fish tolerance and the major points raised about it in the comments, this document responds to the remaining comments received on other aspects of the proposal.

II. The Tolerance for Fish and Shellfish

In the preamble to the April 1, 1977 proposal, the agency discussed new toxicity data that had become available after the original PCB tolerances were promulgated in 1973 (42 FR 17488–9). In contrast to the data underlying the original tolerances, which consisted primarily of data from retrospective studies of humans in Japan who were exposed to high doses of PCB's and showed acute toxic effects from the exposure (42 FR 17487–8), the new toxicity data consist primarily of animal studies showing an association between PCB exposure and serious subchronic and chronic toxicities, including adverse reproductive effects, tumor production, and, possibly, carcinogenicity, as well as effects on numerous biochemical systems (42 FR 17488–9). Although the data do not fully resolve such important questions as the carcinogenicity of PCB's, they lead to the conclusion that neither "no effect" nor "allowable daily intake" levels for PCB's can be established with any confidence and that, from a toxicological point of view, human exposure to PCB's should be reduced.

The preamble to the proposal also discussed data FDA had gathered on human exposure to PCB's, especially from dietary sources (42 FR 17489–90). These data show that the current incidence of PCB contamination of food has declined significantly in comparison to that on which the original PCB tolerances were based (see 37 FR 5705). Indeed, the new data show that fish are the only food group in which detectable levels of PCB contamination are now routinely found.

Based on the declining incidence of PCB contamination, which means that PCB's are avoidable in food to a greater degree now than they were earlier, as well as the new toxicity data suggesting chronic toxic effects, FDA decided the PCB tolerances should be reduced.

In the preamble to the proposal, the agency analyzed the new toxicity and exposure data as they bore specifically on the tolerance for PCB's in fish (42 FR 17492–3). The agency concluded that reduction of the tolerance from 5 to 2 ppm was necessary to protect the public health adequately, even though that reduction would result in the estimated loss of a minor percentage of marine fish (approximately 0.2 percent) and up to 25 percent of freshwater fish shipped interstate (the loss of marine and freshwater fish having a combined landed value of approximately $8 million per year). The agency concluded that the increment of public health protection afforded at least theoretically by a further reduction of the tolerance to 1 ppm did not justify such a reduction in light of the substantially greater loss of food that would result (a combined landed value, marine and freshwater, of approximately $18 million per year).

As noted, a large majority of the comments on the proposal dealt with some aspect of the agency's proposal to reduce the fish tolerance to 2 ppm. Some of the comments agreed that the proposal struck a proper balance between the need to protect the public health and the need to avoid excessive loss of food. Other comments argued that the tolerance should be reduced to 1 ppm in light of the new toxicity data on PCB's, despite any additional loss of food that might result.

Most of the comments on the fish tolerance, however, were submitted by members of the fishing industry, by trade associations, and by agencies of State governments involved in commercial fishing matters, who argued that reduction of the tolerance to 2 ppm is not justified. Some of these comments contended that the health hazard presented by occasional consumption of fish containing 5 ppm PCB's is not significant and that any reduction in risk to consumers accomplished by reducing the tolerance to 2 ppm would be minor. These comments also argued that any such risk reduction would be outweighed by the resulting adverse economic consequences, which some argued would be far in excess of those cited by the agency in its proposal. In support of the latter argument, some of these comments estimated the impact a

2 ppm tolerance would have not only on the commercial fish catch, but also on employment and income in the fishing and related industries and on recreational fishing. Arguing that the States would curtail recreational fishing in certain areas if the tolerance were reduced to 2 ppm, the comments projected large losses of sales among those supplying boats, licenses, tackle, and bait to sport fishers.

Due to the large volume of comments challenging the proposed reduction of the fish tolerance, the agency has carefully reassessed the justification for lowering the tolerance from 5 to 2 ppm. It has reviewed the toxicological data and has attempted to estimate in quantitative terms the degree to which lowering the tolerance would reduce risk to consumers. In addition, it has re-examined the question of how much additional loss of fish would occur as a result of the proposed reduction. Based on its reassessment, the agency concludes that reduction of the tolerance for PCB's in fish to 2 ppm strikes the proper balance between the need to protect the public health and the need to avoid unnecessary loss of food. Hence, the reduced tolerance is being promulgated as proposed.

A. Risk Reduction

As noted earlier in this preamble, the proposal to reduce the fish tolerance was based in part on new toxicity data showing a relation between PCB exposure and an increased incidence of various subchronic and chronic toxic effects, including adverse reproductive effects, tumor production, and, possibly, carcinogenicity (42 FR 17487–9). The proposal itself noted certain factors that complicate the evaluation of PCB toxicity (e.g., varying degrees of toxicity among the several forms of PCB's, the presence of toxic impurities such as chlorinated dibenzofurans in commercial preparations of PCB's, the differences in chemical composition between commercial PCB's and PCB residues in fish, and varying susceptibilities of different animal species to the toxic effects of PCB's); these complicating factors were also pointed out in some of the comments received on the proposal.

Notwithstanding these factors, however, there is little genuine dispute over the fact that exposure to PCB's must be considered to pose a risk of serious, chronic toxic effects in humans. The toxicological judgment that flows from this fact—i.e., that a reduction in human exposure to PCB's will reduce this risk—was an important part of the agency's rationale for proposing to reduce the fish tolerance. Nothing in the comments and nothing discovered during FDA's reassessment of the toxicity data alters the validity of that fundamental judgment. The agency therefore concludes that it is important as a matter of public health protection to minimize human exposure to PCB's.

The real question raised by the comments is whether the degree of risk reduction accomplished by lowering the fish tolerance to 2 ppm is sufficient to justify the increased loss of food that the lower tolerance will cause. This is an extremely difficult question because it is not now possible for toxicologists to quantify precisely, on the basis of toxicity data derived from animal studies, the risks posed to humans. Using classical toxicological methods, the most that can be done reliably is to make qualitative judgments about risks: A statistically significant increased incidence of adverse effects in animals is good evidence of a risk to humans, and, generally, the greater the incidence of effects in animals, the greater the risk to humans (Ref. 43). Having identified the risk of a chronic toxic effect from exposure to a substance, classical toxicological principles lead to the conclusion that reduction in exposure will reduce the risk (Ref. 44). Again, there is no evidence that these principles do not apply to PCB's.

Scientists have recently developed methods, incorporating mathematical extrapolation models, for making quantitative estimates of risks to humans based on toxicity data from animal studies. These risk assessment methods do not purport to quantify precisely the expected human risk, but rather attempt to estimate in quantitative terms an upper limit on the risk to humans that can be expected from a given level of exposure to a toxic substance, assuming humans are no more susceptible to the effects of the substance than are the most susceptible members of the animal species for which toxicity data are available. These risk assessments can be useful as a means of comparing risks at various exposure levels and illustrating the toxicological judgment that a reduction in exposure will reduce risk. Because of all the problems inherent in extrapolating from animal data to the expected human experience, however, the numbers produced by a risk assessment must be interpreted cautiously: They are estimates of upper limits on risk and, though potentially useful for comparative purposes, cannot be said to quantify actual human risk precisely. These assessments attempt to avoid underestimating human risk, but even that cannot be guaranteed. The Work Group on Risk Assessment of the Interagency Regulatory Liaison Group (IRLG) has recently prepared a report that discussess many of the principles involved in risk assessment.

As part of its review of the toxicological justification for reducing the fish tolerance, the agency has performed a risk assessment aimed at comparing the estimated risks associated with PCB exposure at the various levels of exposure that would result from different tolerance levels. The written report on this risk assessment has been made a part of the record of this proceeding as Reference 45.

As explained in that report, the risk assessment involved the use of the most recent available data on the incidence of PCB contamination of fish to calculate the level of exposure to PCB's that could be expected to result from tolerance levels of 5, 2, and 1 ppm (Table 4, Ref. 45). These calculations were based on the assumption that under a given tolerance level, no fish containing PCB's in an amount above that level would be consumed. It is true, of course, that an FDA tolerance level directly affects only fish shipped in interstate commerce, but States often adopt FDA's tolerance levels for application to intrastate and recreational fishing. Thus, even if the exposure calculations used in the risk assessment (Table 4, Ref. 45) do somewhat overstate the absolute amounts of exposure reduction, they nevertheless demonstrate that a reduction of the PCB tolerance for fish would result in a significant reduction of PCB exposure (e.g., for heavy consumers of the affected species, reduction of the fish tolerance from 5 to 2 ppm reduces exposure from an estimated 20.1 micrograms (μg) per day to an estimated 14.9 μg per day). Such significant reductions in PCB exposure from fish are especially important in terms of risk reduction because fish are the only food group in which detectable levels of PCB's are still regularly found.

Based on the calculations of exposure at various tolerance levels and toxicity data from animal studies, the agency used a linear extrapolation method to estimate the upper limits on certain risks posed by exposure to PCB's. This analysis resulted in estimates of significant potential risk to humans who consume PCB-contaminated fish on a continuing basis, especially fish contaminated at or above the 5 ppm level (Tables 6 and 7, Ref. 45). For example, using the total malignancy data from the National Cancer Institute (NCI) Bioassay (Ref. 19), it is estimated

that the upper limit on the lifetime risk of cancer for heavy consumers of fish most affected by the tolerances is 9.8 incidences of cancer per 100,000 of the population, assuming the tolerance is 5 ppm; 7.2 per 100,000, assuming the tolerance is 2 ppm; and 4.4 per 100,000, assuming the tolerance is 1 ppm (Table 6, Ref. 45). Stated another way, it is estimated that the upper limit on the number of new cancers per year among heavy consumers of fish most affected by the tolerances is 46.8, assuming a tolerance of 5 ppm; 34.3, assuming a tolerance of 2 ppm; and 21, assuming a tolerance of 1 ppm (Table 7, Ref. 45).

As explained in the report (Ref. 45), the utility of this risk assessment for evaluating actual risk to humans from exposure to PCB's is extremely limited. This is due both to difficulties inherent in making such extrapolations from animals to humans and, perhaps more importantly in this instance, to gaps and uncertainties in the data available for this particular risk assessment. For example, the toxicity studies on which the risk assessment is based used commercial preparations of PCB's, which are chemically different from the PCB residues found in fish and which contain small amounts of highly toxic impurities (e.g., dibenzofurans) not known to be present in fish residues. Also, in making the exposure estimates required for the risk assessment, it was necessary to use existing data on the numerical distribution of PCB levels in fish and rely on the assumption that the effect of a given tolerance level is to remove from commerce all fish containing PCB's exceeding the tolerances. It is possible that neither the assumption nor the data precisely reflect what actually occurs.

For these reasons and others discussed in the report (Ref. 45), the risk assessment does not provide a basis for precise quantification of the amount of risk reduction accomplished by reducing the fish tolerance. Despite the limitations inherent in the risk assessment, however, the agency regards it as illustrative of the basic validity of the toxicological rationale for reducing the tolerance for PCB's in fish: Reduction of the tolerance will result in a significant reduction in risk among those who consume PCB-contaminated fish. FDA considers this risk reduction to be of significant public health value, even though it cannot be precisely quantified.

B. Loss of Food

In the preamble to the proposal, the agency estimated that the loss of food from commercial channels resulting from a 2 ppm tolerance for PCB's in fish would be approximately $8 million in landed value, compared to approximately $1 million for the 5 ppm tolerance and $18 million for a 1 ppm tolerance. The estimated $8 million loss resulting from a 2 ppm tolerance encompassed a negligible percentage of the marine fish catch (about 0.2 percent) and about 25 percent of the freshwater catch (42 FR 17492).

The agency arrived at these figures by assuming that all fish containing PCB's above the tolerance would be removed from both interstate and intrastate commerce ("Economic Impact Assessment for Proposed Reduction of Temporary Tolerances for Polychlorinated Biphenyls in Food," Ref. 39). There are several difficulties inherent in this assumption. On the one hand, it may tend to overstate the loss because (a) some states may not apply FDA's reduced tolerance to intrastate fish, (b) some violative fish will be part of nonviolative lots, and (c) some violative lots may enter commerce undetected. On the other hand, it may tend to understate the loss because once the violative percentage of a given species reaches a certain level, commercial fishers may stop fishing that species altogether. Some of the comments cited these difficulties in support of arguments that FDA had either overestimated or underestimated the amount of fish that would be lost as a result of a 2 ppm tolerance. Despite its acknowledged limitations, adoption of the assumption is a necessary and reasonable method for dealing with the uncertainties inherent in predicting the impact of a tolerance reduction. None of the comments suggested an alternative method for estimating the amount of fish that would be removed from commerce as a result of the proposed tolerance reduction.

Because of the comments it received questioning the justification for the proposed reduction in the fish tolerance, the agency has re-examined its projections of the food loss expected to result from such a reduction. The projections made in the preamble to the proposal were based on data obtained in 1974 on the levels of PCB's in commercial fish, primarily from the Great Lakes (Ref. 39). In making those original projections, the agency was forced to rely on the assumption that PCB levels in freshwater fish nationwide were as high as those found in the Great Lakes. FDA now has more recent and more representative data on PCB levels in commercial fish, which it obtained through a nationwide sampling program conducted in 1978 and 1979. Based on these more recent data, the value of the fish projected to be lost at tolerance levels of 5 ppm and 2 ppm is substantially less than was projected in the proposal. The loss projected under a 1 ppm tolerance would remain about the same (Table B, "Regulatory Analysis for Final Regulation for Reduction of Temporary Tolerances for Polychlorinated Biphenyls in Food," Ref. 46). Specifically, the amount of commercial fish now projected to be lost as a result of a 2 ppm tolerance is about $5.7 million (expressed in 1974 dollars) compared to the previously estimated $8 million; the current estimated loss of fish under a 5 ppm tolerance is about $0.6 million (compared to the previously estimated $1.1 million). Under a 1 ppm tolerance, however, the projected fish loss, using the new sampling data on PCB levels, is about $16 million (compared to the previously estimated $18 million). The percentage of the freshwater fish catch now estimated to be lost under a 2 ppm tolerance is 14 percent (compared to the 25 percent that had been estimated from the 1974 data); under a 1 ppm tolerance, the currently estimated loss of freshwater fish is 35 percent (compared to the previously estimated 43 percent) (Ref. 46).

As noted earlier in this preamble, many of the comments argued that the impact of the proposed tolerance reduction must be measured not only by the amount of the resulting fish loss but also by other economic impacts, such as potential unemployment and loss of income in the fishing industry and postulated disruption of the recreational fishing industry (e.g., reductions in boat, tackle, and bait sales). The comments provided figures ranging into the hundreds of millions of dollars on the total economic value of these industries and, without offering any further analysis, contended that the impact on them would be "severe" or "major." The predicted impact on recreational fishing was premised on the possibility that State governments would severely curtail recreational fishing if the tolerance were reduced to 2 ppm.

In establishing a tolerance for PCB's in fish, FDA must take into account the amount of fish a given tolerance would remove from commerce. Section 406 of the act, however, neither requires nor authorizes FDA to weigh secondary economic impacts when it considers the level at which a tolerance should be set. Consideration of such impacts would be inconsistent with the paramount concern of section 406, which is protection of the public health, and would complicate the decisionmaking process under section 406 in a way

Congress did not intend. Obviously, consideration of the amount of food loss caused by a tolerance helps to ensure that the direct economic consequences of the tolerance (in this case, decreased sales and employment in the commercial fishing industry) will not be disproportionate to the increased degree of public health protection accomplished by the tolerance; but the agency considers secondary economic consequences, such as potential impact on the recreational fishing industry, totally beyond the scope of section 406.

None of this should suggest that the agency is unaware of, or unconcerned about, the economic consequences of its actions. It is keenly aware that actions it takes to protect the public health can have adverse economic consequences, both direct and indirect, and that these consequences can sometimes be felt with particular severity in certain narrow segments of the economy. For example, some of the comments on the proposal argue that the impact of a 2 ppm PCB tolerance for fish will be especially severe for small-scale, freshwater fishers who specialize in certain species that happen to be heavily contaminated. The agency acknowledged this possibility in the preamble to the proposal (42 FR 17492).

In the present case, however, the agency has reason to believe that the claims of adverse economic impact are exaggerated. Based on the 1978/1979 data on PCB levels in freshwater fish, a 2 ppm tolerance will remove from commerce about $5.7 million worth of commercial fish. Although it is possible that fishing for certain heavily contaminated freshwater species may cease entirely in locations where PCB contamination is concentrated, at least some affected fishers—both commercial and sport—can be expected to adjust to the reduced tolerance by increasing their catch of other species or transferring their activities to other, less contaminated locations within their current area of operation.

In evaluating claims of economic impact, it is theoretically and pragmatically sound to take into account the motives and opportunities for adaptive behavior by affected individuals and firms. If the public demand for commercially caught fish remains stable or increases, and if the attractions of sport fishing remain strong, it can be expected that some fishing activity will shift to species that are not contaminated above the tolerance. Over time, the shifts will become easier as the levels of PCB contamination decline because more and more species will have average PCB levels well below 2 ppm. Over the long term, the adjustments will help to minimize the net economic impact of the tolerance reduction on both individual fishers and the overall commercial freshwater fishing industry.

None of the comments attempted to quantify in dollar terms the impact of the tolerance reduction on the recreational fishing industry, but several postulated a "severe" or "major" impact premised on voluntary decisions by individuals not to fish and mandatory curtailments of recreational fishing by State authorities. FDA is in no better position than were those submitting the comments to make precise predictions about the future behavior of individuals and State agencies. However, the agency considers the premises underlying the projections of "major" or "severe" impact to be somewhat speculative and of questionable validity. As noted, to the extent that the behavior of individual recreational fishers is affected by the tolerance reduction at all, they, as much as commercial fishers, can be expected to adjust to the tolerance by shifting their activities to the less contaminated species and locations. Also, even if State agencies decide that some curtailment of recreational fishing is necessary in light of the reduced tolerance, it is reasonable to expect that their actions will be tailored by species and location. In the past, the most common response of State agencies to FDA's PCB tolerance for fish has not been the mandatory curtailment of recreational fishing. Instead, they have issued warnings concerning particular species and locations and made suggestions regarding both limitations on consumption of particular species and methods of preparing and cooking fish that minimize the amount of PCB's actually consumed from contaminated fish. Thus, there is little reason to believe that a 2 ppm tolerance will lead to widespread, mandatory curtailment of recreational fishing and the resulting drastic economic impact the comments postulate.

C. Conclusion

Based on the data now before it, the agency concludes that a reduction of the fish tolerance from 5 to 2 ppm will result in a meaningful decrease in the risk experienced by consumers from exposure to PCB's. Some reduction of the tolerance is clearly in order because the toxic effects associated with exposure to PCB's are serious and irreversible; and, due to declining levels of PCB contamination, the current 5 ppm tolerance permits contamination that can fairly be termed "avoidable"—even among the more highly contaminated commercial species most likely to be affected by a reduced tolerance, only a minor percentage (about 1.5 percent) contain PCB's at levels as high as 5 ppm (Table A, Ref. 46). The agency's judgment is that the balance between public health protection and loss of food is properly struck by a 2 ppm tolerance. As noted, as 2 ppm tolerance effects a meaningful decrease in risk to consumers while still excluding from commerce only a relatively small amount of food (about $5.7 million landed value in 1974 dollars).

Several comments argued that an adequate degree of public health protection can be provided only by lowering the fish tolerance to 1 ppm, the lowest level at which PCB's can be reliably measured in fish for enforcement purposes. Indeed, as one would expect, the risk assessment performed by the agency, and discussed above, indicates that the estimated risks that might be experienced by consumers of contaminated fish would be reduced even further by a reduction of the tolerance to 1 ppm (Tables 6 and 7, Ref. 45). Based on the evidence now before it, however, the agency does not consider a reduction to 1 ppm necessary or appropriate in light of the policy of section 406 of the act.

The risk assessment the agency made incorporated several conservative assumptions that were designed to avoid understatement of the human risk. Thus, it is expected that the actual risk experienced by consumers of the 12 more heavily contaminated species covered by the risk assessment is less than that estimated. Moreover, the average consumer, who eats fish from a variety of freshwater and marine sources, will actually experience a far lower level of PCB exposure and a correspondingly lower degree of risk than those whose fish consumption is concentrated among the more heavily contaminated (predominantly freshwater) species. For these reasons, notwithstanding the quantified risk estimates produced by the risk assessment, the agency reaffirms the conclusion it expressed in the preamble to the proposal: The 2 ppm tolerance provides an adequate degree of protection for all but those who consume above-average amounts of freshwater fish taken from contaminated waters (42 FR 17493).

In the agency's judgment, the additional increment of public health protection that might be provided by reducing the tolerance to 1 ppm does not justify the additional loss of food that

would result. First, as discussed above, the agency estimates that under a tolerance of 1 ppm, approximately $16 million worth of the commercial fish catch would be violative and thus, presumably, removed from commerce. This is nearly triple the $5.7 million worth estimated to be violative under a 2 ppm tolerance. It is far more likely under a 1 ppm tolerance than under a 2 ppm tolerance that the more heavily contaminated species of freshwater fish would be violative in percentages high enough to put an end to their commercial exploitation and, possibly, force some segments of the freshwater fishing industry to cease operations completely. Thus, the actual loss of food resulting from the 1 ppm tolerance could greatly exceed even the $16 million landed value (1974 dollars) estimated above.

Second, for the average consumer, current exposure to PCB's in fish is at a tolerably low level, when considered in light of the criteria of section 406 of the act, without a 1 ppm tolerance. The average consumer eats a modest amount of fish from a variety of sources, both freshwater and marine, most of which yield fish with PCB levels below 1 ppm. Because their exposure is thus low to begin with, they are adequately protected by a 2 ppm tolerance, which ensures that they will not be exposed to the unusually high levels of PCB's found in some species of fish. The slight additional protection these average consumers might gain from a 1 ppm tolerance does not justify the significantly greater impact such a tolerance would have on the availability of food. On the other hand, atypical heavy consumers (e.g., the Great Lakes sport fisher who catches and consumes large quantities of the contaminated species) would likely not be adequately protected by even a 1 ppm tolerance because of the amount of fish they eat and because those fish are seldom affected by FDA tolerances (either because they are sport fish or are from intrastate commercial channels and, in either case, are outside FDA's jurisdiction). Protection of these consumers depends on actions by State authorities.

Finally, though the new toxicity data on PCB's clearly support the need to reduce exposure to this contaminant, the uncertainties in the data (discussed above) cast some doubt on the degree to which consumers are at risk from extremely low levels of PCB exposure, and therefore weigh against lowering the tolerance to 1 ppm. If, for example, more definitive and incriminating data on the reproductive risks posed by PCB's are forthcoming, the agency might consider establishing a 1 ppm tolerance despite the effect that would have on the availability of food.

For these reasons, the agency concludes that at this time a 1 ppm tolerance would not strike the proper balance between protection of the public health and the need to avoid excessive loss of food.

Though FDA considers 2 ppm to be the appropriate tolerance level for PCB's in fish under the criteria imposed by section 406 of the act, the agency is concerned about the health of certain groups that may not be adequately protected by a 2 ppm, or even a 1 ppm, tolerance. As noted, sport fishers and others who consume abnormally large amounts of the more highly contaminated species may be at risk from PCB's regardless of any tolerance FDA establishes. (The agency's risk assessment, using data from a study of Lake Michigan sport fish eaters, estimated that the upper limit on the lifetime risk of cancer for heavy eaters of sport fish from Lake Michigan is about 12 to 14 times greater than the corresponding risk for heavy eaters of those commercial fish most affected by a PCB tolerance, even assuming the tolerance remained at 5 ppm (Table 6, Ref. 45).) Those individuals, whose high exposures to PCB's tend to result from localized conditions and fishing practices beyond the control of FDA, should take steps to reduce their exposure to PCB's. FDA urges State and local health officials to evaluate the situation in their own localities and determine what steps, if any, they can take to address these special situations. In the past, some State and local agencies have made FDA's tolerance level for PCB's applicable to fish in intrastate commerce and have issued advisories to sport fishers warning that consumption of certain species of fish should be minimized and suggesting other ways in which PCB exposure could be reduced. These agencies should review their past actions in light of the current state of knowledge about PCB's and make the changes or take the additional steps that may now be appropriate. FDA will cooperate with these agencies, as it has in the past, by providing technical advice and assistance. FDA is sending letters to the governors of States most affected by PCB's in fish, discussing the agency's concerns about aspects of the PCB problem that may require an up-to-date review in their States.

The agency is advising that State health departments be particularly concerned about women of childbearing age, especially pregnant and lactating women, who may have consumed, or are consuming, higher than normal amounts of PCB-contaminated fish. Data that were discussed in the preamble to the proposal (42 FR 17488-9) suggest an association between PCB exposure and reproductive disfunction in rats and monkeys. They also show acute toxic effects in the nursing offspring of maternal monkeys that had been exposed to toxic levels of PCB's. Data gathered by FDA since it issued the proposal in 1977, and discussed in the report on FDA's risk assessment on PCB's (Ref. 45), establish more clearly the link between PCB exposure and adverse reproductive effects in the rhesus monkey. They also confirm the earlier data showing acute toxic effects in the nursing offspring of PCB-exposed maternal monkeys. As explained in the risk assessment report (Ref. 45), it is not possible at this time to determine with confidence the significance of these data in terms of human risk. There have been no reports of human reproductive abnormalities or overt toxic effects in nursing human infants that can be attributed to PCB's. That fact is of only limited significance, however, because epidemiological studies adequate to detect such adverse effects in humans have not been conducted.

An additional reason for concern in this area is that PCB's ingested by human mothers are found, and to some extent are concentrated, in human breast milk (see the discussions in the preamble to the proposal and in the risk assessment report (Ref. 45)). In a recent nationwide survey, consisting of 1,038 samples of human breast milk collected in 44 States, the mean concentration of PCB's was estimated to be in the range of 1.00 to 1.10 ppm (on a fat basis) (Ref. 45). Though the data are scanty, it is reasonable to assume that among women who consume above-average amounts of PCB-contaminated fish, or who are exposed to PCB's from other sources, the levels of PCB's in breast milk are significantly higher. As noted, it is not now possible to determine the significance of these facts in terms of increased risk to the nursing infant.

In sum, although the agency concludes that a 2 ppm tolerance for PCB's adequately protects most consumers, women of childbearing age, especially pregnant and lactating women, are among those who should be careful to avoid abnormally high exposure to PCB's in fish. They can avoid such exposure by minimizing consumption of both commercial and noncommercial fish from waters known to be contaminated with PCB's and avoiding

entirely those species of sport fish known to contain high levels of PCB's (e.g., coho and chinook salmon from the Great Lakes, and freshwater trout, striped bass, and catfish from some locations). State and local governments have the important role of advising consumers about conditions in particular localities.

The agency is aware that its decision to set the fish tolerance for PCB's at 2 ppm, rather than leaving it at 5 ppm or reducing it further to 1 ppm, is inherently judgmental in character. Section 406 of the act provides no formula for balancing public health protection against loss of food, and, hence, there is no way for the agency's decisions under section 406 to be arrived at mechanically or quantitatively or to appear clear-cut in every case. In this case, for example, forceful arguments have been made in the comments in support of both a 5 ppm and a 1 ppm tolerance, but those arguments all reflect the subjective judgments of those who made them. In the end, the agency has been mandated by the Congress to make its own informed judgment about what is necessary to protect the public health. It has done that here in setting the fish tolerance at 2 ppm.

The statute provides an opportunity for a public hearing on the agency's order lowering the PCB tolerance for fish. Such a hearing would provide persons adversely affected by the order an opportunity to present any additional evidence they may have bearing on the matters that influenced the agency's judgment. As always, the agency is prepared to reevaluate its position in light of evidence adduced at a hearing.

D. Other Comments on the Fish and Shellfish Tolerance

In addition to the points addressed above, the comments raised several other points relating to the tolerance for fish and shellfish:

1. One comment recommended that FDA review its entire mechanism for handling recurrent problems of environmental contaminants in fish. The comment stated that the PCB tolerance should remain at 5 ppm for marine fish because the levels in those fish are low enough that a reduction to 2 ppm would have no increased protective effect, but would result in economic problems that are unnecessary for species with only occasional high PCB levels. The comment stated further that tolerances should be set for freshwater fish based on their individual place in the market—their tonnage, distribution patterns, and consumption patterns. When such factors combine to present a risk, it was argued, the tolerance should be applied selectively to both the species and the body of water.

The individualized approach to establishing and enforcing tolerances for enviornmental contaminants suggested by this comment is not feasible because the necessary species-by-species, location-by-location data on PCB occurrence do not exist. Furthermore, many lots of fish, as currently packaged and shipped, do not bear the water-of-origin information required for the recommended regulatory approach. These limitations make it necessary for the agency to establish tolerances for fish on a generic basis. The result is a uniform regulatory approach for all species, which provides clear and fair rules for all segments of the fishing industry and is necessary to ensure that uncertainties and limitations in data will not result in increasing human exposure to PCB's. To the extent that certain species only occasionally have PCB levels above 2 ppm, the economic impact of the reduced tolerance will be slight.

2. One comment stated that any FDA regulatory action regarding PCB's in fish should apply to sport fish as well as commercial fish.

FDA's regulatory authority extends only to foods shipped in interstate commerce and clearly does not extend to fish caught and consumed by individual sport fishers. FDA cooperates with the State agencies who have authority over sport fishing by sharing data and views regarding toxicological, analytical, and compliance matters, but FDA has no direct control over the regulatory approaches adopted by the States. As noted, however, the agency urges State and local health officials to look closely at the PCB problem in their areas and take whatever steps they find necessary to address those aspects of the PCB problem, such as the exposure of sport fishers, that are beyond FDA's authority.

3. One comment requested reconsideration of the proposal to reduce the fish tolerance on the ground that overall ingestion of PCB's is reportedly declining. Because levels in other foods have already decreased considerably, it was argued, there is less need to lower the fish tolerance.

The agency is aware that PCB levels in foods other than fish have declined and that overall PCB intake is lower than it was in 1973, when the original temporary tolerances were established. However, as discussed in the preamble to the proposal and in section II of this preamble, toxicological considerations now make it desirable to reduce dietary exposure to PCB's even further. Reduction of the tolerance for PCB's in fish will be an especially effective step toward accomplishing that goal, because fish are the one remaining significant source of dietary exposure to PCB's.

4. One comment contended that fish products are being subjected to an entirely different regulatory standard than are poultry products, with no reasonable basis for the different treatment. The comment stated that the emphasis in establishing 2 ppm as the tolerance for fish appears to have been safety to the consumer despite a considerable economic impact. Yet, it argued, the higher level of 3 ppm for poultry is based on economic considerations relating to feed contamination, apparently without public health considerations. The comment went on to state that the average per capita consumption of fish is 19 grams (g) per day compared to 63 g per day for poultry products. According to the comment, this means that under the proposed tolerances, and assuming maximum permissible levels in all foods, the average person will receive five times as much PCB's from poultry as from fish.

The agency does not agree with the comment's contention that the considerations involved in establishing the tolerances for poultry and fish result in different or conflicting regulatory approaches for these products. First, the 3 ppm tolerance for poultry is based on PCB residues in the fat of the bird, not in all the edible tissue as it is for fish. Poultry generally averages about 10 percent fat; hence, the 3 ppm tolerance is comparable to a level of about 0.3 ppm for the entire edible portion. Thus, even taking into account the higher average level of chicken consumption and assuming all foods contain maximum permissible amounts of PCB's, poultry will actually be regulated at a level that will result in a substantially lower intake of PCB's from poultry than from fish. Second, data show that detectable PCB residues occur so infrequently in poultry that exposure to PCB's from that source is already at an insignificant level. Hence, further reduction of that tolerance would not significantly reduce dietary exposure to PCB's and would not enhance protection of the public health. Fish data, on the other hand, show frequent occurrence of PCB residues at significant levels, so that reduction of the tolerance will result in increased protection for consumers of fish.

As explained in the preamble to the proposal (42 FR 17491–2), the agency selected 3 ppm (fat basis) as the

tolerance for PCB's in poultry to allow for the regular use of poultry feed contaminated up to, but not exceeding, the 0.2 ppm tolerance for PCB's in poultry feed. (0.2 ppm is the lowest feasible tolerance for PCB's in poultry feed because of limitations on analytical capability.) The 3 ppm level took into account the biomagnification of PCB's in poultry that results from regular feeding with poultry feed contaminated up to, but not above, 0.2 ppm. The agency reasoned that it would be inconsistent to set tolerances on two products at levels such that the use of one product that complies with the applicable tolerance causes the second product to be illegal and, thus, that it would be inappropriate to do so in the absence of other overriding considerations (e.g., safety). For the reasons stated in the preceding paragraph, the 3 ppm tolerance for poultry adequately protects the public health and is thus consistent as a matter of public health protection with FDA's other tolerances for PCB's.

5. One comment stated that any decision to lower the fish tolerance made in reliance on the regulation of point source discharges and manufacture of PCB's should not fail to consider the fact that PCB levels in contaminated waters are not expected to decline for many years.

The agency is aware that, despite Environmental Proctection Agency (EPA) antipollution activities and the resulting gradual decline in PCB levels in at least some contaminated waters, there will continue to be a significant occurrence of PCB's in fish for at least the next several years because of the stability and persistence of the PCB's now contaminating the environment. That fact was taken into account in deciding to reduce the tolerances.

6. One comment stated that, because pollution of water with PCB's is expected to continue, PCB levels in fish will continue to rise, and susceptible fish should be harvested now before the increased contamination makes them all inedible.

Although the levels of PCB's in waters currently contaminated may not decrease substantially in the near future, the agency does not expect those levels to increase, nor does it expect the levels of PCB's in fish to increase. Better control of PCB levels should result from efforts by the EPA and industry to control discharge of additional PCB's into the environment. Hence, even if it were possible to harvest whole species of fish now, that step would not have the effect of preventing increased future exposure to PCB's. Finally, FDA has no authority to regulate the pace at which particular species of fish are exploited commercially.

7. Several comments stated that the decision to reduce the tolerance for fish should be reconsidered and the current 5 ppm level reaffirmed because PCB's are being steadily eliminated from the environment and may be expected to disappear as a significant problem within the next decade.

The agency does not agree that PCB's can be expected to be an insignificant problem within 10 years. Although EPA's continuing activities have resulted in a significant decrease in the amount of PCB's being introduced into the environment, especially into water, the stability and persistence of these chemicals and the likelihood that some amount of additional contamination will continue to occur from waste disposal sites ensures that PCB contamination will remain a problem for the foreseeable future. Moreover, that PCB levels are declining (i.e., that PCB's are becoming more avoidable) is a reason to consider lowering the tolerance, not a justification for leaving it unchanged.

8. One comment argued that the decision to reduce the fish tolerance should be reconsidered because by lowering the fish tolerance, thereby preventing consumption of contaminated fish, some might be led to believe that the problem of exposure to PCB's had been solved. This misconception could in turn reduce the pressure to attack the real problem—pollution. However, the comment argued, if the environmental contamination itself is viewed as the "real" PCB problem of importance, changing the fish tolerance is almost irrelevant, given the small quantity of PCB's affected.

PCB contamination of the environment is itself an important part of the PCB problem because, as discussed in the preamble to the proposal (42 FR 17489–90), some human exposure to PCB's comes from the air and water, though the amount is probably minimal. EPA is addressing that part of the problem. However, FDA disagrees with the view that exposure to PCB's from dietary sources is insignificant in comparison to the amount of exposure from the air and water. The agency has based the proposed tolerance reductions on its conclusion that dietary exposures to PCB's pose significant risks to consumers, which can be reduced by reducing exposure. That there is some exposure to PCB's from other sources is not a good reason for withholding action that can significantly reduce dietary exposure.

9. Two comments requested FDA to hold a public hearing before finalizing reduction of the fish tolerance.

The agency does not consider a public hearing on the fish tolerance to be necessary or appropriate at this time. Tolerances are established under section 406 of the act under the formal rulemaking procedures set forth in section 701(e) of the act (21 U.S.C. 371(e)). Under those procedures, any person adversely affected by this order may file objections within 30 days and request an evidentiary hearing on the issues raised by those objections. The opportunity for a hearing ensures that all genuine, material issues relating to the PCB tolerances will be fully aired. Holding a hearing before issuing this order would only duplicate the opportunity for a public hearing already available in formal rulemaking and unnecessarily delay the proceedings.

10. One comment stated that the 5 ppm tolerance for PCB's in fish should be retained but requested that FDA provide guidance to State agencies regarding use or implementation of the 2 ppm tolerance if it is adopted.

As noted, FDA provides data and views to the States on a range of matters related to implementation of tolerances for PCB's in food and will continue to do so.

11. One comment asked whether procedures other than reducing the fish tolerance have been evaluated as alternative means of reducing intake of PCB-contaminated fish.

The agency has considered the use of general public warnings and/or labeling as ways to limit consumption of contaminated fish. Such approaches have been rejected, except as they apply to certain heavy consumers of contaminated sport fish (discussed above). A public warning about fish generally, or even about particular species of fish, would not be effective in protecting the general public from commercial fish because, assuming no changes are made in labeling, consumers have no way to determine the species or waters of origin of most commercially prepared fish products. In addition, general public warnings might unduly discourage consumption of fish, most of which is safe to eat and nutritious. Similarly, the requirement of warning labels on fish products in lieu of a tolerance, even on a species-specific basis, is not a sufficiently precise regulatory approach because not all fish from even the most heavily contaminated species contain levels of PCB's above the 2 ppm tolerance level.

Thus, as with general public warnings, warning statements on labels are likely to discourage consumption of safe fish.

12. Some comments contended that most Americans would probably prefer to be warned of the potential danger from PCB residues and retain the option of eating freshwater fish, rather than be deprived of any choice in the matter by having the fish removed from the market.

The agency acknowledges that some people would probably prefer to be left with the choice of whether to consume fish contaminated with PCB's above the 2 ppm level. As noted, however, the consumer of commercially marketed fish generally lacks the information on water-of-origin, size, and sometimes even species that is needed to control his or her intake of PCB's. Under these circumstances, there is no genuine opportunity to exercise informed choice. Moreover, the agency believes that as a general matter it is obligated under section 406 of the act to exercise its scientific judgment and determine what level of exposure, and thus what tolerance level, will provide an adequate degree of public health protection.

13. One comment referred to the agency's decision not to reduce the temporary tolerances for infant and junior foods and for animal feeds on the ground that the current tolerances are "at the lowest level at which PCB's can be reliably determined for enforcement purposes" and argued that lowering the tolerance for fish would probably create much greater economic hardship than would developing and using more sensitive analytical methods so that other tolerances could be lowered.

The agency acknowledges that the fish losses resulting from a 2 ppm fish tolerance would probably be greater than the costs of developing and using the more sensitive enforcement analyses that would be necessary for a reduction of the other tolerances. The occurrence of PCB residues in infant and junior foods and animal feeds is now so infrequent, however, that those foods do not contribute significantly to dietary exposure to PCB's. Thus, spending the resources to develop more sensitive methodology and thereafter reducing the tolerances for these foods would not significantly increase the protection of consumers, and it still would be necessary to reduce the fish tolerance. Because PCB's do occur consistently at significant levels in some fish, the reduction of the fish tolerance can provide increased protection for consumers.

14. Some comments included requests for compensation for commercial fishers and processors whose livelihoods are destroyed by reduction of the fish tolerance. One comment asked, in effect, that the effective date of the tolerance reduction be delayed for 10 years so fishers would have time to adjust economically.

For reasons discussed earlier in this document, the agency considers it unlikely that the reduction of the fish tolerance to 2 ppm will have the dire consequences on which these comments are premised. Moreover, FDA has neither the authority nor the resources to provide compensation for economic losses that might be suffered as a result of regulatory actions it takes. The proposed 10-year postponement of the effective date would be inconsistent with the agency's conclusion that a reduction of the tolerance is necesary to protect the public health.

15. A number of comments were concerned that if the 2 ppm tolerance for fish is adopted, FDA will close certain waters to fishing or prohibit fishing of certain affected species in certain waters. They requested that more studies be carried out before determining whether such steps should be taken.

The concern underlying these comments is misdirected. FDA does not have authority either to close waters to fishing or to prohibit harvesting or possession of fish. Any actions to close waters to fishing would have to be instituted by State agencies.

16. One comment suggested that if the 2 ppm tolerance is adopted, the counties affected should be allowed to conduct more comprehensive testing of residue levels in the fish before any ban or impoundment of fish in interstate commerce is imposed.

In enforcing the fish tolerance, FDA will sample and analyze individual lots of fish in interstate commerce and take regulatory action against lots, or the shippers of lots, that exceed the tolerance. There is nothing to prohibit any interested party, including local and State authorities, from conducting comprehensive testing of fish before shipment in interstate commerce and from withholding from commerce fish that exceed the tolerance.

17. One comment suggested that the proposed 2 ppm tolerance for PCB's in fish is inadequate for protection of public health. The comment stated that the tolerance levels must be based on the "no-effect" level observed in the most sensitive animal species for which toxicological data are available, and it suggested that the rhesus monkey is more sensitive to PCB's than the dog or rat.

This comment is based on an apparent misunderstanding of the toxicological rationale underlying the 2 ppm fish tolerance. In evaluating the safety of substances in food, FDA ordinarily attempts to determine the "no-effect" level for the substance, i.e., the highest level of exposure at which no adverse effect is observed in appropriate animal studies. It then uses appropriate safety factors to extrapolate the results of the animal studies to the human situation and determine safe levels of human exposure. In this case, however, the reduction of the fish tolerance is not based on any "no-affect" level. It is based instead on a body of data that associate PCB exposure with several serious chronic effects but that do not permit the establishment of "no-effect" levels for those effects. Thus, the comment's argument that one species is more sensitive to PCB's than another and that the tolerance should be based on the "no-effect" level observed in the most sensitive animal species is not relevant to the toxicological rationale the agency relies on for reducing the PCB tolerance to 2 ppm.

18. One comment disagreed with the proposal to establish a 2 ppm tolerance for fish instead of a 1 ppm tolerance. One ppm is the lowest level of PCB residues in fish for which there is analytical methodology suitable for enforcement purposes. The comment stated that toxicological information, especially that suggesting the carcinogenicity if PCB's, coupled with the presence of PCB residues in human milk, requires the lowest possible tolerance.

With respect to the carcinogenic potential of PCB's, NCI has concluded that PCB's (specifically, Aroclor 1254, the commercial PCB most similar chemically to the PCB residues in fish) are not carcinogenic in Fischer 344 rats under the conditions of the bioassay (Ref. 47). After thoroughly reviewing NCI's report, the Data Evaluation/Risk Assessment Subgroup of the Clearinghouse on Environmental Carcinogens accepted the report's conclusion that PCB's were not demonstrated to be carcinogenic in that study, but suggested that PCB's might act as a tumor promoter. For the reasons discussed in the preamble to the proposal (42 FR 17489), FDA considers the question of the carcinogenicity of the PCB's unresolved. For the purposes of its risk assessment on PCB's (Ref. 44), however, the agency treated the various PCB's as though they were carcinogenic,

and it considers the carcinogenicity of PCB's to be a matter worthy of further serious inquiry.

The agency has long been concerned with the exposure of nursing infants to PCB's in human breast milk. This, too, is an area in which more must be learned before definitive statements can be made about the incremental risks posed by this particular avenue of exposure. For reasons discussed earlier in this document, however, the agency considers a 2 ppm tolerance adequate to protect all but those who consume above-average amounts of the more heavily contaminated species.

III. Response to Comments on Other Aspects of PCB's

Following are the agency's responses to the comments that did not specifically address the reduction of the fish tolerance:

1. Some comments recommended that the government regulate PCB's only in the environment rather than in food products. Another comment suggested that the limits on PCB's in foods not be reduced until PCB levels have been reduced in the environment, where the foods are produced.

EPA has the authority to control environmental pollution and has already taken important steps to prevent further pollution by PCB's. Some environmental contamination with PCB's already exists, however, and will undoubtedly persist for some years. FDA would be failing in its duty to protect the public health if it withheld the actions necessary to minimize human exposure to PCB's from dietary sources until the long-term problem of environmental contamination has been solved.

2. One comment asserted that the primary toxicological basis upon which FDA established the temporary tolerances for PCB's in 1973 (38 FR 18096) consisted of two long-terms feeding studies in rats and dogs that were performed by the same testing laboratory and that demonstrated a "no-effect" level for PCB's at 10 ppm. This comment also suggested that these same two studies serve as the primary basis for the current proposal to reduce those original temporary tolerances. The comment stated that discrepancies and inconsistencies have recently been found in these two feeding studies, as well as in other unrelated studies from the same testing laboratory, which would indicate that toxic effects might actually have been produced in both rats and dogs at dietary levels as low as 1 ppm. The comment requests that FDA extend its audit of the testing laboratory in question to include a review of the data obtained in the two toxicity tests of PCB's in rats and dogs. The comment suggested that FDA reconsider the proposed temporary tolerances on the basis of a reevaluation of the data from the two long-term studies and, if judged necessary, propose new tolerances or reopen the matter for public comment.

Though the data from the two long-term toxicity studies of PCB's in rats and dogs referred to in the comment were considered, the human toxicological data formed the primary basis for developing the original temporary tolerances for PCB's. This fact was stated in the July 6, 1973 document establishing the tolerances and in the preamble to the April 1, 1977 proposal to reduce some of the tolerances.

The agency is aware that doubt has been cast on the validity of the two long-term toxicity tests of PCB's in rats and dogs referred to in the comment, as well as on the validity of numerous unrelated toxicity tests performed by the laboratory facility in question (Ref. 48). Therefore, the results from these two tests are no longer considered worthy of reliance and, as explained earlier in this document, these studies played no part in the agency's decision to lower the PCB tolerances.

3. One comment asserted that the agency's statement in the preamble to the proposal that it was unaware of any consumers who had suffered deleterious effects caused by PCB ingestion (42 FR 17491) is misleading, in that the statement actually reflects a lack of knowledge rather than awareness of the results of properly designed epidemiological studies.

In making this statement, the agency relied on the results of an epidemiological study carried out with sport fishers in Michigan that failed to establish a correlation in humans between the ingestion of PCB's and the occurrence of deleterious effects (Ref. 40). The study is discussed in the preamble to the proposal (42 FR 17492–3). The only purpose of the statement was to cite an instance in which relatively high exposure to PCB's in fish had not resulted in overt, *acute* toxic effects, such as occurred in the Yusho incident in Japan (42 FR 17488). The Michigan example was intended to illustrate the observation the agency made in the preamble to the proposal that the amount of PCB's in environmental samples required to cause Yusho-type effects is not known. This study has no direct bearing on the agency's conclusion that the chronic effects of PCB's require a reduction of the tolerances.

4. One comment opposed reduction of the temporary tolerance for PCB's in eggs on the ground that there are no substantial data that suggest that the current temporary tolerance is not sufficient to protect consumers of eggs. The comment contends that lacking such evidence, there is not justification for reducing the tolerance.

The agency acknowledges that the data indicate that eggs do not contribute measurably to dietary PCB exposure and that reduction of the egg tolerance will not significantly affect PCB intakes. However, tolerances established under section 406 of the act are intended to permit only those residues that are unavoidable. Because the available data indicate that residues above the analytical limits in eggs are avoidable and because no evidence was presented to the contrary, it is appropriate to reduce the temporary tolerance for PCB's in eggs as proposed.

5. One comment requested that the temporary tolerances for PCB's in animal feed be reduced, but it did not present a rationale to justify reduction.

The presence of PCB's in animal feed is of concern because PCB's transfer and accumulate in human food products derived from animals that consume contaminated feed. The tolerance for finished animal feed is currently set at 0.2 ppm—the lowest level at which available analytical methodology can measure PCB's in animal feed for enforcement purposes. It would serve no useful purpose to reduce the tolerance below this level in the absence of analytical methodolgy for enforcing a reduced tolerance. Moreover, in light of the rare occurrence of PCB's in animal feeds, the agency considers the 0.2 ppm level to provide an adequate degree of public health protection. For these reasons, the agency declines to reduce the tolerance for PCB's in finished animal feed.

IV. "Temporary" Status of the Tolerances

As currently codified in § 109.30, the tolerances for PCB's are designated as "temporary." The term "temporary" was used to reflect the fact that the tolerances are subject to revision as new data become available. In the preamble to the proposal for reducing the tolerances, the agency stated that it would retain the "temporary" designation because of the possibility that further downward revisions of the tolerances might be necessary (42 FR 17493). The agency has now reconsidered this use of the term "temporary" and has decided to abandon it. The term has never had any

legal significance as applied to tolerances established under section 406 of the act, and its use is not provided for in FDA's procedural regulations governing tolerance setting in Part 109 (21 CFR Part 109). When circumstances are changing so rapidly that a particular tolerance level is likely to be rendered inappropriate in the near future, the agency establishes an action level rather than a tolerance (see § 109.6(c) (21 CFR 109.6(c))). In the case of PCB's, however, the agency has concluded that formal tolerances are appropriate. The term "temporary" is being abandoned to avoid the suggestion that the legal status of the PCB tolerances is something other than that of a formal section 406 tolerance.

Any FDA tolerance, just like any other regulation, is "temporary" in the sense that it is subject to reevaluation and, if necessary, revision as new data become available. The agency will continue to monitor the PCB problem and, if appropriate in light of changing circumstances or new data, will propose revisions in the PCB tolerances.

V. Analytical Methodology

Section 109.30(b) has been revised to refer to FDA's updated compilation of analytical methodology for PCB's "Analytical Methodology for Polychlorinated Biphenyls, June 1979." There have been improvements in the analytical methodology for measuring PCB residues since 1973, and most of the revised procedures have now been published in scientific journals. A copy of each procedure or a reference to the appropriate journal is provided in the updated compilation. As stated in § 109.30(b), the compilation is available from the Hearing Clerk, Food and Drug Administration, Room 4–65, 5600 Fishers Lane, Rockville, MD 20857.

VI. References

The preamble to the proposal cited 42 references the agency relied on in developing the proposal and stated that those reference documents had been placed on file with the Hearing Clerk, FDA (42 FR 17493–4). The following additional references, which are cited in the foregoing preamble, have also been placed on file with the Hearing Clerk, FDA, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

43. DuBois, K. P. and E. M. K. Geiling, "Textbook of Toxicology," Oxford University Press, 1959, pp. 24–26.
44. Ariens, E. J., A. M. Simonis, and J. Offermeier, "Introduction to General Toxicology," Academic Press, 1976, pp. 124–31.
45. An Assessment of Risk Associated with the Human Consumption of Some Species of Fish Contaminated with Polychlorinated Biphenyls (PCB's), 1979, FDA document.
46. Regulatory Analysis for Final Regulation for Reduction of Temporary Tolerances for Polychlorinated Biphenyls in Food, 1979, FDA document.
47. National Cancer Institute Carcinogenesis Technical Report Series No. 38, 1978.
48. Letter from Donald Kennedy, Commissioner of Food and Drugs, to various clients of Industrial Bio-Test Laboratories, Inc., June 1977.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 306, 402(a), 406, 701(a), 701(e), 52 Stat. 1045–1046 as amended, 1049 as amended, 1055, 70 Stat. 919 as amended (21 U.S.C. 336, 342(a), 346, 371(a), 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 109 is amended in § 109.30 by revising the section heading and paragraphs (a)(1), (2), (3), (4), and (7) and (b) to read as follows:

§ 109.30 Tolerances for polychlorinated biphenyls (PCB's).

(a) * * *

(1) 1.5 parts per million in milk (fat basis).

(2) 1.5 parts per million in manufactured dairy products (fat basis).

(3) 3 parts per million in poultry (fat basis).

(4) 0.3 part per million in eggs.

* * * * *

(7) 2 parts per million in fish and shellfish (edible portion). The edible portion of fish excludes head, scales, viscera, and inedible bones.

* * * * *

(b) For determining compliance with the tolerances established in this section, a compilation entitled "Analytical Methodology for Polychlorinated Biphenyls, June 1979" is available from the Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Room 4–65, 5600 Fishers Lane, Rockville, MD 20857.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 30, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation will become effective for foods initially introduced into interstate commerce after August 28, 1979 except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced in the Federal Register.

(Secs. 306, 402(a), 406, 701(a), 701(e), 52 Stat. 1045–1046 as amended, 1049 as amended, 1055, 70 Stat. 919 (21 U.S.C. 336, 342(a), 346, 371(a), 371(e)))

Dated: June 26, 1979.

Donald Kennedy,

Commissioner of Food and Drugs.

[FR Doc. 79-20260 Filed 6-28-79; 8:45 am]

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Federal Register

Friday
June 29, 1979

Part XIII

Merit Systems Protection Board

Organization and Procedure

MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1200, 1201, and 1202

[Docket No. 79-1 Notice 2]

Organization and Procedure

AGENCY: Merit Systems Protection Board.

ACTION: Final Rules.

SUMMARY: On January 19, 1979, for the purpose of implementing its adjudicatory responsibilities under the Civil Service Reform Act of 1978 (Pub. L. 95-454), the Merit Systems Protection Board ("the Board") published interim regulations for immediate effect (44 FR 3946) relating to organization and procedures.

On March 23, 1979, the Board published significantly expanded proposed regulations inviting comment from interested persons through May 22, 1979 (44 FR 17968). The purpose of the regulations is to inform Federal agencies, employees, and other interested parties as to the procedures for processing appeals and cases of original jurisdiction before the Board.

Because of the need for immediate implementation of the provisions of the Civil Service Reform Act, and because the interim regulations by their own terms will expire, the Board has determined there is good cause for publication of these regulations for effect as of June 30, 1979.

EFFECTIVE DATE: June 30, 1979.

FOR FURTHER INFORMATION CONTACT: Alan Greenwald or Deborah House (202) 653-7101.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board was created by the President's Reorganization Plan No. 2 of 1978 and the Civil Service Reform Act of 1978 ("the Act"). One of the primary duties assigned to the Board under the Plan and the Act was the adjudication of employee appeals from certain agency actions as well as other matters brought before the Board by the Special Counsel or an agency for original determination.

The Reorganization Plan and the Act required the Board to undertake implementation of its adjudicatory operations immediately. Accordingly, on January 19, 1979, the Board published interim regulations in order to permit it to begin processing "new cases," i.e., those cases brought after the effective date of the Act. Those interim regulations will be superseded by these final regulations effective June 30, 1979.

On March 23, 1979, the Board published more extensive proposed regulations to permit public comment. In response, the Board received extensive comments from various Federal agencies, labor unions, other organizations, and private parties. These comments were carefully considered by the Board and, in many instances, the Board has adopted the suggestions made in whole or in part.

By far the largest volume of comments received by the Board criticized the regulations as being "overly complex" and "too legalistic." Further, many commentators asserted that the complexity of the regulations would be beyond the ready understanding of most Federal employees and consequently would discourage them from exercising their appeal rights. Moreover, it was submitted, the proposed regulations would hamper adjudication of appeals and therefore substantially delay processing. Finally, many commentators leveled criticism at the introduction of traditionally adjudicatory concepts, such as discovery and the issuance of subpenas, into the Board's procedures.

Based on a careful analysis of the legislative history of the Act, it is the Board's position that Congress intended it to function as a quasi-judicial agency and therefore it is essential that formalized procedures be implemented to process cases. This is particularly necessary given the Congressional mandate that employees receive full due process rights in the adjudication of their appeals. Accordingly, it was necessary to set forth required standards and procedures in some detail.

Moreover, it should be recognized that many of the "legalistic" concepts incorporated into the proposed regulations arose not out of Board policy, but from legislative mandate. The notions of subpena power, discovery, application of the "harmful error" concept and preponderance and substantial evidence standards are required by the Act. Therefore, the Board has no discretion in their implemantation and the regulations, accordingly, reflect these requirements.

This is not to say, however, that the Board is unsympathetic to the complaints of these commentators. For that reason substantial effort has been made to simplify the regulations. These efforts include: (a) putting the regulations into "plain" English to the extent possible and providing an explanation of legal terminology; (b) perfecting the form for appeal which employees themselves should be able to file easily; and (c) eliminating the requirement of service which will now be carried out by the Board.

It is hoped that these efforts are responsive to the criticisms received.

Section-by-Section Analysis of Comments and Changes

The following constitutes an analysis of the major comments received on a section-by-section basis, and a discussion of each substantive change made by the Board in the proposed regulations. Where the changes made to the sections are minor or technical in nature they have not been discussed.

Part 1201—Practices and Procedures

Section 1201.2 Original jurisdiction, definition and application.

Definitional language has been added to this section to clarify the meaning of "original" jurisdiction.

Section 1201.3 Appellate jurisdiction, definition and application.

(a) This section has been amended to reflect the Board's appellate jurisdiction over certain actions where the Office of Personnel Management (OPM) is the determining agency. The term "appellate jurisdiction" is used because the Board is reviewing an appeal from an agency action. Use of this term is not meant to indicate that the Board's review of the agency determination is limited to a traditional judicial appellate review.

A number of commentators requested that the Board also provide an itemized listing of the actions appealable to the Board under OPM regulations. Because such a listing would be subject to change by the issuance of OPM regulations, thus necessitating endless amendment to the Board's regulations, the Board determined that it would be inappropriate to accommodate this request. Accordingly, reference must be made to OPM regulations to determine whether a matter is appealable in instances where the Board's appellate jurisdiction is not determined by statute.

(b)(1) This subsection has been amended to reflect the limitations placed on appellate jurisdiction by collective bargaining agreements.

(b)(2) This subsection has been amended to make clear that the employee must make a selection of grievance or appeal procedures except in certain instances.

Section 1201.4 General definitions.

This section has been revised for purposes of clarification. Additionally, an amendment has been made to the definition of "appropriate field office" to make it clear that the filing of an action with a particular field office does not

mean that office will necessarily make the initial determination. This is particularly true in reduction-in-force cases where several appeals filed in different field offices as the result of a single agency action may be consolidated. Finally, the definitions of "party," "petition for appeal," "petition for review," "days" and "motions" have been added, reflecting several comments that the meaning of these terms was not clear.

Subpart B—Hearing Procedures for Appellate Cases.

General

Section 1201.12 Revocation, amendment or waiver of rules.

A significant number of comments were received on this section, most of which expressed concern that it allowed the Board or the presiding official, without notice, to change regulations in the course of a proceeding to the possible detriment of the parties. That was not the intent of the section, which instead was intended to indicate (1) that the Board might change these regulations in the future; and (2) that a presiding official has some flexibility in the application of these rules to a particular case under adjudication, specifically those of a procedural nature.

This section has now been amended to reflect these objectives more clearly. First, it indicates that the Board will not change its rules except in the manner prescribed by the Administrative Procedure Act. Second, it makes it clear that waiver of a rule by a presiding official is not permissible where the rule is based on a statutory provision. Rather, such waivers should be applied only to technical requirements such as time limitations, format of pleadings, etc., where good cause shown justifies such a waiver.

Petitions for Review of Agency Action, Pleadings

Section 1201.21 Notice of appeal rights.

As suggested, this section has been amended to add requirement (d) to the decision notice of the agency, to assist the employee in determining which procedure to use.

Section 1201.22 Filing of petitions for appeal and response.

The comments received on this section can be divided into three categories. First, some commentators asserted that the proposed regulations were unclear regarding when a petition for appeal or response would be considered officially filed with the Board. In response to this comment, the Board has added subsection (c) which requires that all mailings be made by certified mail. For purposes of timeliness, the date of mailing, as indicated on the receipt, will be considered the official date of filing with the Board. This method is necessary because postmarks used by the U.S. Postal Service do not consistently indicate the date of mailing. Filings which are personally delivered to the Board will be considered filed on the date of personal delivery. Because time periods are computed on the basis of the date of mailing, special provisions for overseas filings have been eliminated, since the date of the mailing, not the date of delivery, is controlling.

Second, numerous comments asserted that the five-day limit for agency response provided in the proposed regulations was totally unreasonable. The Board agrees. The proposed regulation contained a printing error changing the actual proposed period from 15 days to five days. In adopting the 15-day period, the Board recognizes that some may view this as unfair since the appellant has 20 days to file an appeal. However, the Board considers this difference to be reasonable since the agency will have perfected its record at the time the decision notice is issued.

It should be noted that the establishment of this 15-day period supersedes all previous interim directions of the Board.

Third, at the request of a number of commentators, the provisions of this section relating to the response of the agency have been placed in a new section, 1201.25, which deals only with that issue.

The Board also amended this section to provide that the time period for filing runs from the effective date of an action rather than the decision notice *or* the effective date. It is anticipated that this will decrease the number of reduction-in-force appeals because an employee may be offered acceptable alternative employment prior to the effective date, but after the decision notice.

Section 1201.23 Computation of time.

This section has been revised to clarify the method of computation.

Section 1201.24 Content of petition for appeal, request for hearing.

This section has been revised to make it clear that the right to appeal is a personal right which can only be exercised by the employee, a designated representative or a properly substituted party. This terminates the practice of accepting as appeals employee letters to Members of Congress or the President which are referred to the Board.

Additionally, paragraph (8) of subsection (a) was added at the request of the Federal Labor Relations Authority.

Section 1201.25 Content of agency response, request for hearing.

(a) This new subsection specifically sets forth what information should be contained in the agency response to a petition for appeal. As proposed, there was only a general reference to the agency response in section 1201.24.

(b) This subsection retains the provision that an agency request for a hearing may be granted at the discretion of the presiding official. A number of agencies commented that giving the appellant the right to a hearing, but not the agency, is unfair treatment.

In response, the Board notes that this regulation reflects 5 U.S.C. 7701(a)(1) which gives the right to a hearing only to the appellant. However, presiding officials, in their discretion, may grant an agency request for a hearing on the basis of the facts and circumstances at hand. Because these differ so widely, the Board has concluded it is not feasible to establish specific standards for the exercise of that discretion. However, as a matter of policy, the Board would disfavor the granting of such agency requests in order to permit the agency to complete an otherwise incomplete record.

Section 1201.26 Number of pleadings, provision for service.

This section has been amended to eliminate the proposed requirement that the parties be held responsible for service of pleadings. Many commentators asserted that this legalistic concept placed an unreasonable burden on all parties, especially appellants. Accordingly, the Board will assume the duty of serving pleadings on all parties.

One commentator suggested that service upon the representative be considered service upon the appellant. The Board believes that representatives do not always immediately notify the appellant of such service and this failure can result in detriment to the appellant. To avoid this problem, the Board has determined that it will make service upon the representative and the appellant.

To enable the Board to carry out this responsibility, parties will be required to file additional copies of pleadings with the Board. This eliminates the necessity of having the Board duplicate the pleadings.

Section 1201.27 Class actions.

The Board has amended this section to make it clear that, where appropriate, the Board will entertain class actions, placing general reliance on the guidance of the Federal Rules of Civil Procedure and related case law rather than setting out complicated regulatory procedures in these rules.

Parties, Practitioners, and Witnesses

Section 1201.31 Representation.

The Board believes that the term "conflict of interest" encompasses "conflict of position." Nonetheless, in deference to several requests that the latter term be added to subsection (b), this amendment has been made.

Since the new definition of "days" is calendar days, the seven-day period for objecting to the representative selected has been extended to 10 days. Consideration of this extension contemplates that a weekend period will be included in the calculation.

At least one commentator asserted that the time period proposed was insufficient, since the discovery of a conflict of interest (or position) understandably might not be made until late in a proceeding. This time period, similar to others established in the regulations, may be waived for good cause shown. This should remedy the problem.

Section 1201.32 Witnesses, right to representation.

This section is in accord with section 6(b) of the Administrative procedure Act (5 U.S.C. 555(b)) which provides the right to representation for witnesses compelled to testify before an agency. Since many witnesses will be required to testify because of their agency position, in fairness they should be permitted representation.

This is particulary appropriate since the testimony provided by a witness may have a later impact on that witness. Moreover, this representation has been previously permitted on an *ad hoc* basis without detrimental effect. Accordingly, the Board has rejected the requests that this provision be deleted.

In response to one request for clarification, it is the position of the Board that representation for witnesses may be supplied either by the agency at its discretion, if the witness is an employee, or by the witness at his/her own expense. The statute provides the Board with authority to award attorney fees only to the appellant.

Section 1201.33 Federal witnesses.

This section has remained essentially as proposed. Suggestions were made that agencies not be required to make employees available where "administratively impractical."

It is the position of the Board that every effort should be made by agencies to produce requested witnesses. However, as provided in this section, a sworn statement, answers to written interrogatories, deposition or affidavits will be accepted although they are not preferred.

It was also suggested that a standard of relevance should be set for requiring an agency to produce witnesses. The Board agrees with this suggestion and standards for the production of witnesses have been set forth in § 1201.41(b)(9).

Section 1201.34 Intervenors.

Several amendments have been made to this section in response to the comments received.

The first amendment adds a paragraph explaining intervention in plain English.

The second amendment clarifies how permissive intervention is to be requested and the general standard upon which it is to be granted. Whether permissive intervention is allowed will depend largely upon the facts presented. Therefore, it is not practical to enumerate instances in which it will be granted.

The third amendment provides that, except with some restrictions, intervenors will be treated as parties.

After reconsideration of this proposed section, the Board has made three other changes. First, it has removed the prohibition against a permissive intervenor's petitioning the Board for review of the initial decision. This was done because the initial determination may have a significant impact on the permissive intervenor. Second, the Board has made the disposition of motions for permissive intervention subject to interlocutory appeal procedures. Third, the Board has specified that individuals alleged to have committed prohibited personnel practices may request intervention.

Several commentators indicated concern that intervention would provide a forum for individuals desiring to publicize their objectives or that it would grant rights to parties who should not have them. It is the Board's position that implicit in the standard that permissive intervenors be "affected directly" by a proceeding is the notion that they must demonstrate the specific impact of the proceeding on their interests. This would not permit intervention merely on the basis of an allegation of impact or because the party seeking intervention might have a general interest in the outcome of the proceeding. Moreover, intervention would not be permitted where it would constitute a violation of another statute. This has been clarified by adding the language "and is otherwise appropriate under law" to § 1201.34(a).

One commentator questioned whether the term "person" as used with regard to permissive intervenors includes an agency. It is the determination of the Board that for purposes of this subsection the term would include an agency.

However, while an agency might have a general interest in the interpretation of a civil service law or regulation, it is the Board's position that, except in the most unusual circumstances, the statute contemplates that OPM will represent this interest. One exception might be where the interests of the agency are adverse to those of OPM.

Finally, the suggestion was made that parties to an appeal should be able to object to a motion for intervention. Under § 1201.55, it is made clear that objections to any motion may be submitted to a presiding official and, of course, this would include a motion for intervention.

Section 1201.35 Substitution.

In response to the comments received, this section has been amended in several ways.

First, it has been amended to track the Federal Rules of Civil Procedure by use of the terminology "proper parties" rather than "successor-in-interest." Second, it sets forth the manner in which substitution is accomplished. Third, a period of 90 days has been established for submission of a motion for substitution, tracking the one provided in the Federal Rules of Civil Procedure. However, this period, like any other time limitation established by regulation, may be waived for good cause shown.

Section 1201.36 Consolidation or joinder.

Subsection (a) of this section has been added to explain these legal concepts in plain English.

Section 1201.37 Fees.

Several amendments have been made to this section in response to the comments.

First, the time for filing a request for attorney fees and response has been

increased from seven days to 10, and the time runs from the date of finality as newly-defined in § 1201.113.

Second, a provision has been added to permit either party to petition for review of the determination of the presiding official. The time for filing this petition shall run from the date of receipt of the final decision.

Several agencies also made the suggestion that attorney fees should be awarded to the agency if the appeal was without merit. The Act authorizes payment of attorney fees only to the appellant. Accordingly, this suggestion must be rejected.

Finally, it was suggested that the Board establish specific standards for awarding attorney fees. Because of the changing nature of the law on this issue, it is the position of the Board that establishing such standards in regulation form would be impractical.

Presiding Officials

Section 1201.41 Presiding officials.

Subsection (a) of this section has been amended to reflect the instances in which the presiding official will exercise his/her authority.

In response to comments received by the Board, other amendments have been made.

First, standards for ordering the production of evidence and the appearance of witnesses have been added. Second, a provision allowing prehearing conferences has been added. Third, a general statement authorizing the presiding official to exercise authority in accordance with law has been added. Finally, a provision has been added authorizing the presiding official to hold a hearing on his/her own motion.

Section 1201.42 Disqualification of presiding official.

This section has been substantially revised to subject the disqualification issue to the interlocutory appeals procedure rather than treating it separately. This change is expected to provide greater consistency in the treatment of this issue as well as others certified to the Board in the course of a proceeding.

Section 1201.43 Sanctions.

This section has been amended in two regards. First, it has been revised to make it clear that these sanctions will not be imposed if the parties can demonstrate good cause for their failure to take an action. While the Board is sympathetic to the problems which may arise in the course of a proceeding, it is nonetheless its firm position that delay in the proceedings that harms other parties will not be tolerated.

Therefore, in order to avoid the imposition of these sanctions, all parties must meet the burden of moving forward in a manner consistent with these regulations.

Second, subsection 1201.43(d) has been eliminated since service will now be undertaken by the Board rather than the parties.

Hearings

Section 1201.51 Scheduling the hearing.

In response to the comments received, this section has been amended to delete the requirement that parties attend hearings. Additionally, the provision that the agency may be required to provide a hearing room has been clarified to indicate that the agency shall provide only the space, not other services such as a stenographer, etc. Finally, the requirement has been added that a request for postponement shall be supported by an affidavit setting forth the reasons therefor. Since Congress has mandated that adjudications receive expeditious treatment, the Board has rejected suggestions that the time for scheduling a hearing be extended beyond 15 days.

Section 1201.52 Public hearings.

This provision remains essentially unchanged. Several agencies suggested that a hearing be closed when it is in the best interest of the agency. The Board has rejected this suggestion because it has determined that the interests of the agency and the public coincide.

Section 1201.53 Transcript.

This section has been revised to clarify that a transcript will be made at each hearing and a copy provided to the appellant and the agency. Additionally, at the suggestion of several commentators, the Board has adopted an amendment allowing the time for submitting corrections to run from the receipt of the transcript by the parties.

Section 1201.55 Motions.

This section has been substantially revised to clarify the language and to specify that opposing parties shall always be given the opportunity to object to any motion.

Section 1201.56 Burden and degree of proof, affirmative defenses.

A number of commentators asserted that this proposed section appeared to place the burden of proof on the appellant. Since the statute requires precisely the opposite, the Board has made it clear that the burden of proof is on the agency. If the agency meets the burden of proof, the Board must sustain its decision. An exception to this rule occurs when the appellant can demonstrate one of three affirmative defenses. In that instance, the agency decision must be overturned even though the burden of proof has been met.

Finally, the reference to OPM regulations in proposed subsection (a)(1)(iii) has been removed in order to reflect the statutory language of 5 U.S.C. 7701(c)(2).

Evidence

Section 1201.61 Service of documents.

This section has been revised to indicate service will be made by the Board. Additionally, the subsection providing for service of certain medical evidence only to a physician designated by the appellant has been deleted in light of the trend to provide medical records directly to individuals to whom they pertain.

Section 1201.62 Admissibility.

Subsection (b) has been clarified to indicate that a description of excluded evidence or testimony shall be placed in the record. This will allow the Board to determine, on review, whether the evidence or testimony was properly excluded.

Section 1201.63 Production of evidence by order of presiding official.

This section remains as proposed. The suggestion of one commentator that the presiding official may request only "existing" evidence has been rejected by the Board. In some instances it may be necessary for the presiding official to request the submission of evidence which must then be compiled by the party. This is particulary true in mixed cases where evidence such as statistics on promotions, hirings, etc., might not be maintained by the agency, but is nonetheless essential to the processing of the case and therefore must be produced.

Section 1201.64 Production of statements.

This section has been revised for clarification and to indicate that the statements sought are those made by witnesses prior to testifying at the hearing.

Section 1201.65 Admission of facts and genuineness of documents.

This section has been revised to indicate that admissions are not

appropriate on issues of law, but rather on the application of law to fact. This provision as now written is in accordance with the Federal Rules of Civil Procedure.

Discovery

Section 1201.72 Explanation and scope.

This section has been revised to add a subsection explaining the notion of discovery in plain English.

Sections 1201.73 Orders for discovery; 1201.75 Rules governing discovery.

These sections have been revised to make clear that the presiding official will oversee and direct the discovery process. This has been determined by the Board to be necessary given the legalistic nature of the procedure as well as the necessity for expediting the process.

Subpenas

Sections 1201.81–1201.85

In response to the comments received a number of technical amendments have been made to these sections including:

(a) Addition of a requirement showing materiality for issuance of a subpena; and

(b) A clarifying statement that it is not necessary to demonstrate that voluntary compliance would not be made to a request for witnesses or other evidence in order to obtain a subpena.

Interlocutory Appeals

Sections 1201.91–1201.93

These sections replace proposed section 1201.91 which did not authorize interlocutory appeals unless specifically provided for by the regulations.

Upon reconsideration, the Board has determined that a general provision permitting interlocutory appeals would be productive. This change is required because the Board must provide immediate, precedent-setting interpretations of the Act and the regulations issued under the Act. Through the interlocutory appeals procedure, the Board expects that it will have many opportunities for such interpretations. These interpretations will provide guidance to presiding officials, agencies and appellants.

Several important elements of this procedure should be recognized.

First, the standards for determining whether a presiding official should certify a question to the Board parallel those of the Federal Rules of Civil Procedure. Accordingly, court interpretations of the Rules may be used as guidance on this issue.

Second, the section provides that where a presiding official determine an issue shall not be certified it may be submitted later to the Board in a petition for review. This provides the petitioner with an opportunity for Board consideration of an issue despite the initial determination that it should not be certified to the Board. Given the expeditied processing of Board cases this will allow the party seeking review to obtain prompt consideration of disputed issues.

Finally, this rule provides that the stay of a proceeding during an interlocutory appeal process will be at the discretion of the presiding official, unless overruled by the Board. The Board disfavors staying any case unless absolutely necessary. In most instances the pending determination of the Board on a certified issue should not impede continuation of the fact finding process. Thus, stays should be granted only when a Board determination is of such importance that the case cannot proceed without it. Moreover, by limiting the instances in which a stay is granted, the Board prevents use of the interlocutory appeal procedure as a delaying tactic.

Ex Parte Communications

Based on the experience of the Board and comments received, substantial efforts have been made to clarify the application of this provision. Ex parte communications are not prohibited in and of themselves, but only where the communication goes to the merits of the case or otherwise violates the rules. Presiding officials must be permitted sufficient flexibility to process cases while remaining insulated from parties who would improperly seek their action or advice. Two significant revisions have been made to this section to achieve these objectives.

First, the concept has been explained in plain English. Second, language has been added in both the explanation and § 1201.102 to make it clear that oral communications regarding procedural issues are prohibited if the regulations require that they be in writing. This provision specifically applies to motions which must be in writing.

It is the intent of the Board that application of this provision be made only to ensure the rights of the parties to a fair and impartial adjudication and not to hinder the proceedings.

Final Decisions

These sections have been revised to introduce the notion of constructive receipt. Under this concept, it will be presumed that parties have received a copy of the Board's determination five days after issuance. This will permit the presiding official to include a specific effective date in the initial decision. The Board has determined that application of constructive receipt is essential to put the parties on adequate notice of when a decision of the Board must be implemented. The presumed date of constructive receipt is subject to rebuttal.

Section 1201.111 Initial decision by the presiding official.

Few comments were received on this section. However, the Board has changed it in two specific regards. First, subsection (a) provides that "parties" refers to all parties to the appeal, both named parties and intervenors, whether permissive or of right. Second, subsection (b) has been expanded to provide that each initial decision shall contain among its elements a statement of further right to appeal. The Board rejected the suggestion of one commentator that the reference in subsection (a) to "recommend" decision be eliminated, since an administrative law judge is specifically required to render a recommended decision in Special Counsel cases under § 1201.129.

Section 1201.112 Jurisdiction of presiding official.

This section has been shortened substantially and the language simplified to accord with the numerous general objections to the complexity of the regulations as proposed. The Board declined to incorporate one suggestion that the request for attorney fees be available to agencies, since the Act provides only appellants may request attorney fees.

Section 1201.113 Finality of decision.

The Board received several comments suggesting restructuring of this section and § 1201.114. The Board has combined former § 1201.114 into a new subsection (e) of § 1201.113. Subsection (a) has been revised to indicate the period within which a party must file a petition for review or within which the Board must reopen in order to avoid finality under the 35-day rule. The latter is not to suggest, however, that the Board cannot reopen subsequent to finality but only that the final decision is subject to judicial review at that time. Subsections (b) and (c) have been changed to specify the finality date more precisely. Subsection (d) was added to indicate the possibility of extensions of time for filing a petition for review.

Section 1201.114 Filing of petition for review.

This section, formerly § 1201.116, has been placed ahead of former § 1201.115, for clarity and to achieve a more logical organization of the provisions. Subsection (a) was revised to include the Special Counsel as one who may file a petition for review.

Several commentators objected to the difficulty of determining the date of delivery under the proposed regulations. The Board resolved the problem by providing for a date of constructive receipt of the initial decision five days after issuance (which begins the computation of time for filing a petition for review). Subsection (a) has been amended to eliminate the provision that OPM could request review on the basis of "a more Government-wide policy directive" that was contained in § 1201.115(c).

In response to one comment, the new § 1201.115 has been revised to provide all parties with an opportunity to respond to a petition for review. Nonetheless, under § 1201.117, the Board may reopen a case on its own motion without providing an opportunity for comment.

Section 1201.118 Judicial review.

This section has been added to clarify the right to appeal a final Board decision under 5 U.S.C. 7703.

Subpart C—Actions Brought by the Special Counsel

Section 1201.121 Scope, compliance with Subpart B.

This section has been revised to clarify the scope of the regulations governing Special Counsel actions.

Section 1201.122 Filing and service in Special Counsel cases.

Subsection (a) of this section was added to provide that service of process will be required of both parties in Special Counsel cases.

As noted previously, the Board eliminated the service of process requirements from subpart B. However, in a Special Counsel action the exhibits and attachments may be volumninous and assembling copies necessary to effect service could work a hardship on the Board. Moreover, in a stay action, the time frame is so limited that service by the Board would not be practical. Finally, the Special Counsel is required to serve the employee named in a complaint brought under § 1207. Therefore, it is reasonable to require the employee to reciprocate. Accordingly, the Board determined to exercise its general regulatory authority under 5 U.S.C. 1205(g) to require the parties in Special Counsel actions to accomplish service of all complaints and requests, together with tabbed and numbered exhibits and attachments. Subsection (b) was added to set out the method of making service, whether by mail or in person.

Section 1201.123 Special Counsel complaints.

This section has been revised for clarification. In addition, the Board has expressly provided that it may require the filing of briefs by all parties involved in cases brought by the Special Counsel.

Section 1201.124 Rights of employees.

This section has been revised to set out more clearly the statutory rights of employees named in Special Counsel complaints.

Section 1201.125 Answer.

This section, formerly § 1201.124, has been redrafted for clarification. One commentator objected to the provision in subsection (1) that unanswered allegations be considered true. The Board has declined to adopt that view.

Section 1201.126 Final orders of the Board.

The Board redrafted this section in several regards. First, it makes clear in subsection (c) that the more flexible discipline afforded by 5 U.S.C. 1207 may be imposed in cases brought under 5 U.S.C. 7324. Second, subsection (d) has been revised to correct the erroneous reference to 5 U.S.C. 1508 that appeared in the proposed regulations at § 1201.125(d), and to limit the amount that can be withheld in accordance with the statutory provision. Third, it added subsection (e) to set forth sanctions available under the Federal Employees Flexible and Compressed Work Schedule Act. The Board considered and rejected the suggestion by OPM that the regulations specify that OPM may intervene in Special Counsel cases in the same manner as Board cases under 5 U.S.C. 7701. The statute does not confer such a right upon OPM; rather, 5 U.S.C. 1206(c)(1)(B) merely specifies that the Board may order corrective action only after the agency and OPM have had the opportunity to comment. As drafted, the provision follows the statute, and has been retained substantially as it appeared in § 1201.126(a) of the proposed regulations. However, a motion for permissive intervention by OPM may be granted by the Board.

Section 1201.127 Request for stay.

In this section the Board has set forth in considerably greater detail the procedures to be followed in filing and processing requests for stays, distinguishing between those requested under 5 U.S.C. 1208(a)(1), (b) and (c), and has emphasized the fact that the Board has broad discretion in the conduct of stay proceedings. Several commentators indicated general hostility to the stay procedures. These provisions are statutory and the summary proceeding provided under 5 U.S.C. 1206(a)(1) was carefuly considered by the Congress and does not, as one commentator suggested, constitute a "Star Chamber" proceeding.

Section 1201.128 Administrative appeal; judicial review.

This section sets forth the judicial review provisions appliable to Special Counsel actions, in addition to incorporating the proposed provisions regarding administrative review.

Section 1201.129 Special Counsel actions heard by an administrative law judge.

Subsection (b) has been revised to provide that the period for filing exceptions to a recommended decision of an administrative law judge in a Special Counsel action be extended from 20 to 30 days, and the computation of time has been clarified. The revised provisions also specifies that only parties to a Special Counsel action may file exceptions to a recommended decision of an administrative law judge.

Action Against Administrative Law Judges

Section 1201.132 Presiding official.

Subsection (c) has been changed to conform the length of time available for filing exceptions to the 30 days provided elsewhere in the regulations, and to compute the time for filing from the date of receipt of the recommended decision.

Removal From Senior Executive Service

Section 1201.142 Hearing procedures, referral of transcript.

This section has been revised to specify that the SES member is entitled to representation during the hearing. Additionally, the section has been expanded to make the proceeding one of record and to provide for referral of the record to the Special Counsel, the Board's Office of Merit Systems Studies and Review, OPM, and employing agency for any action appropriate.

Subpart D—Procedures for Cases Involving Allegations of Discrimination

These sections address appeals brought under 5 U.S.C. 7702 known as "mixed cases." These cases involve matters otherwise appealable to the Board where the appellant alleges discrimination as an affirmative defense to the action of the agency. These sections have been revised substantially on the Board's own initiative and to reflect the numerous comments received and on the Board's own iniative. The Board drafted them, mindful that the statutory provisions are extremely complex and the procedures somewhat overlapping and unclear. Accordingly, the regulations reflect a very conscious effort to set out all aspects of the mixed case process chronologically and in considerable detail. While there has been a concerted attempt to eliminate legalistic language whenever feasible, it has proven impossible to eliminate or simplify all legal concepts.

Section 1201.154 Time for filing petition.

This section was formerly part of the proposed § 1201.153. That section was divided into two parts for clarification. The largest number of comments received on proposed § 1201.153, however, were with regard to the provisions now contained in the new § 1201.154. These comments ranged from suggestions for technical changes to suggestions that the time for filing a discrimination appeal in the absence of an agency determination on a complaint be terminated at some point. The Act specifies that the appellant may file an appeal with the Board after filing a formal complaint with the agency, if the agency has not resolved the matter in 120 days. However, the Board, by regulation, is requiring that in those cases where the agency has taken no final action, the employee must file an appeal with the Board no later than one calendar year after the filing of the formal complaint in the agency. The Board has determined that this limitation is necessary because in its absence, the information necessary to adjudicate the case might be unavailable. Moreover, it is in accordance with the underlying premise of the Act that employee-agency disputes be resolved fairly and expeditiously.

The Board has also declined to follow the suggestions of many commentators that it incorporate into its regulations some sort of election of procedures concept whereby appellants would be precluded from raising their claims of discrimination before the agency as well as before the Board. While the Board is cognizant of the problems created by a multi-track system for the resolution of issues, it has nonetheless concluded that the statute does not permit it to limit an employee's request to combine a discrimination complaint with a matter otherwise appealable before the Board.

In addition, FLRA and OPM have expressed concern about the 120-day time limit on completion of negotiated grievance procedures before appeal rights to the Board arise. Both suggest that these negotiated procedures are difficult to complete within that time frame. In response, the Board has revised the provisions of this section to indicate it will review only a final decision under the negotiated grievance procedure, regardless of the time for processing.

Section 1201.155 Allegations of discrimination not raised in petition.

The Board received numerous comments on this subject, many adverse to the Board's decision to permit an appellant to raise a discrimination complaint at any time. The legislative history makes it clear that the Board is to be liberal in receiving discrimination complaints, and the Board has adopted a conforming policy position. The fact that regulations in effect prior to the Act treated the timeliness issue differently is without effect in light of the clear Congressional intent. Accordingly, that provision has been retained, with the exception that subsection (a) has been revised to state that the allegation may be raised at any time provided the appellant did not previously know of the discrimination. Subsection (a) also provides that the discrimination charge must be directly related to the adverse action. Subsection (b) has been expanded to provide that the presiding official must exercise his/her authority liberally in developing the record in cases where the issue of discrimination is raised during a proceeding under 5 U.S.C. 7701. This subsection also specifies that, upon agreement of the parties and determination by the presiding official that justice would be served thereby, a proceeding under 5 U.S.C. 7702 may be remanded to the agency for fact finding. Subsection (c), permitting agency response, has been retained. Such an agreement will place an appellant in the position he/she would have been in if he/she had filed a complaint with the agency prior to coming to the Board. The 120-day limitation on the removal assures the appellant that the agency will act on the matter within the same time period as it would have been required to do if the appellant had not filed with the Board. Because the right to appeal directly to the Board, rather than going through the agency, inures to the benefit of the appellant, remand to the agency constitutes a waiver of that right. Therefore, the appellant must be entirely willing to participate in the remand procedure before the Board will permit it.

Section 1201.158 Final decision, notice of judicial review. This section has been revised to reflect the 30-day period within which judicial review must be sought upon receipt of a final Board decision.

Review of Board Decision

Section 1201.161 Action by the Commission, finality and judicial review. This section has been revised to set out more fully the steps involved in the review of the Board's decision by the Equal Employment Opportunity Commission. Subsection (e) of this section has been expanded to indicate the steps the Board might take in the event the Commission requests it to develop additional evidence. Subsection (f) has been added to set out the right to judicial review upon conclusion of the Commission's review if the Commission concurs in the prior decision of the Board.

Section 1201.162 Board action on the Commission decision.

This section has been revised for clarification and subsection (b) has been added to indicate the right to judicial review if the Board concurs in or adopts the decision of the Commission.

Special Panel

Section 1201.172 Action by Special Panel.

This section has been revised to set forth in greater detail the chronology of actions to be taken by the Special Panel.

Subsection (a) indicates that the procedures to be followed by the Special Panel will be set by the Panel when and if one is convened under the statutory provisions. Subsection (c) has been added to indicate the right to judicial review of the final decision of the Special Panel.

Section 1201.173 Judicial review of cases decided under 5 U.S.C. 7702.

This section has been added to the regulations to set out the general provisions relating to judicial review of proceedings under 5 U.S.C. 7702 cases. Unlike the cases decided under 5 U.S.C. 7701, review lies in the appropriate

United States district court, under the various statutory provisions in 5 U.S.C 7702.

Subpart E—Enforcement of Final Orders

This section has been revised substantially to set forth the method by which a party may obtain enforcement of a Board order issued under its appellate or original jurisdiction.

It was the determination of the Board that intital review of a petition for enforcement issued under its appellate jurisdiction would be made in the field office which is more likely to have familiarity with the case. However, a petition for enforcement of an order under the Board's original jurisdiction would be reviewed by the Board itself, since it had originally processed the case. When the petition is submitted to a field office the determination of the Chief Appeals Officer is subject to a petition for review to be filed by the agency or the appellant with the Board. Further, it was the determination of the Board to permit field officials to undertake voluntary compliance with a Board order, but to reserve actual enforcement of that order to the Board itself.

Finally, the Board declined to amend § 1201.184 in accordance with the suggestion that a hearing should be a matter of right in an enforcement proceeding.

The Act does not impose a hearing requirement on the Board and, accordingly, the Board will retain discretion over whether to hold a hearing depending on the facts and circumstances presented.

Subpart F—Saving Provisions

The Board has added Subpart F, Savings Provisions, to give appellants notice of its interpretation of section 902 of the Act (5 U.S.C. 1101 note), and to assist in eliminating widespread public confusion on where to file appeals. In the interest of affording maximum rights to appellants, the Board has read the savings provisions broadly to apply to all cases pending in the administrative system on the effective date of the Act, including cases decided but not filed in court. Thus, for example, under the Board's interpretation of Section 902 of the Act, a case involving an adverse action taken in late December 1978 (pre-Act), appealed to the Board in mid-January, and decided in February would be subject to the same judicial review as was available at the time the appealable action arose. The Board has already taken this position in pending litigation with the full concurrence of the Department of Justice, and motions to dismiss old system cases from the courts of appeals have been filed. The Board intends to follow this procedure on all old system cases unless it is ordered to do otherwise by a court.

Appendix I

The Board received numerous comments on the appeals form, most of which were favorable to the concept. The form has been reorganized to place the section dealing with reduction in force actions at the end as Part IV, rather than in the middle as part III. The Introduction has been revised to emphasize that only those appealing RIF actions need complete Part IV, but that all appellants must complete Parts I through III. In addition, the certificate of service and references to it have been omitted in accordance with the Board's policy decision to effect service itself rather than imposing that obligation on individual appellants. Otherwise, the form remains substantially as proposed. The Board has arranged for these forms to be made available from the General Services Administration as soon as possible. However, copies of the form are being distributed to interested parties along with copies of these regulations. In the interim, photocopies of the form may be used by the agencies to distribute to potential appellants.

In consideration of the comments received and pursuant to the authority contained in 5 U.S.C. 1205(g), permitting the Board to "prescribe such regulations as may be necessary for the performance of its functions," 5 CFR Parts 1200–1202 are amended.

Issued on June 27, 1979, at Washington, D.C. by Order of the Board.

Ruth T. Prokop,

Chair, Merit Systems Protection Board.

Accordingly, 5 CFR is amended by revising Parts 1200–1202 as follows:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 1200—BOARD ORGANIZATION

Subpart A—General

Sec.

1200.1 The Board.
1200.2 The Chair, Vice Chair.

Subpart B—Offices of the Board [Reserved]

Authority: 5 U.S.C. 1101 et seq.

Subpart A—General

§ 1200.1 The Board.

The Merit Systems Protection Board ("The Board") is composed of three Members who are appointed by the President with the advice and consent of the Senate, and whose terms are for a period of seven years.

§ 1200.2 The Chair, Vice Chair.

One of the Members of the Board shall be appointed by the President, with the advice and consent of the Senate, to serve as the Chair and chief executive and administrative officer of the Board. From time to time, the President shall also designate one of the Members of the Board to serve as Vice Chair. In the absence or disability of the Chair, or when the Office of the Chair is vacant, the Vice Chair shall perform the functions vested in the Chair. During the absence or disability of both the Chair and Vice Chair, or when their offices are vacant, the remaining Board Member shall perform the functions vested in the Chair.

Subpart B—Offices of the Board [Reserved]

PART 1201—PRACTICES AND PROCEDURES

Subpart A—Jurisdiction and Definitions

Sec.

1201.1 General.
1201.2 Original jurisdiction: definition and application.
1201.3 Appellate jurisdiction: definition and application.
1201.4 General definitions.

Subpart B—Hearing Procedures for Appellate Cases

General

1201.11 Scope and policy.
1201.12 Revocation, amendment or waiver of rules.

Petitions for Review of Agency Action, Pleadings

1201.21 Notice of appeal rights.
1201.22 Filing of petitions for appeal and response.
1201.23 Computation of time.
1201.24 Content of petition for appeal, right to hearing.
1201.25 Content of agency response, request for hearing.
1201.26 Number of pleadings, provision for service.
1201.27 Class actions.

Parties, Practitioners, and Witnesses

1201.31 Representation.
1201.32 Witnesses; right to representation.
1201.33 Federal witnesses.
1201.34 Intervenors.
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Presiding Officials

1201.41 Presiding officials.
1201.42 Disqualification of presiding official.
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Hearings

1201.51 Scheduling the hearing.
1201.52 Public hearings.
1201.53 Transcript.
1201.54 Official record.
1201.55 Motions.
1201.56 Burden and degree of proof, affirmative defenses.
1201.57 Closing the record.

Evidence

1201.61 Service of documents.
1201.62 Admissibility.
1201.63 Production of evidence by order of presiding official.
1201.64 Production of statements.
1201.65 Admission of facts and genuiness of documents.
1201.66 Stipulations.
1201.67 Official notice.

Discovery

1201.71 Statement of purpose.
1201.72 Explanation and scope.
1201.73 Orders for discovery.
1201.74 Taking of depositions.
1201.75 Rules governing discovery procedures.

Subpenas

1201.81 Motions for subpenas.
1201.82 Motions to quash.
1201.83 Service.
1201.84 Return of service.
1201.85 Enforcement.

Interlocutory Appeals

1201.91 Explanation.
1201.92 Criteria for certification.
1201.93 Procedure.

Ex Parte Communications

1201.101 Explanation and definitions.
1201.102 Prohibition.
1201.103 Placement in the record; sanctions.

Final Decisions

1201.111 Initial decisions by presiding officials.
1201.112 Jurisdiction of presiding official.
1201.113 Finality of decision.
1201.114 Filing of petition for review.
1201.115 Contents of petition for review.
1201.116 Procedure for review or reopening.
1201.117 Board reopening and reconsideration of case.
1201.118 Judicial review.

Subpart C—Hearing Procedures for Original Jurisdiction Cases

Actions Brought by the Special Counsel

1201.121 Scope and compliance with subpart B.
1201.122 Filing and service in Special Counsel actions.
1201.123 Special Counsel complaints.
1201.124 Rights of employees.
1201.125 Answer.
1201.126 Final orders of the Board.
1201.127 Request for stay.
1201.128 Adminsitrative appeal, judicial review.
1201.129 Special Counsel actions heard by administrative law judge.

Actions Against Administrative Law Judges

1201.131 Procedures.
1201.132 Presiding official.
1201.133 Board jurisdiction.
1201.134 Filing of complaint.
1201.135 Procedure.
1201.136 Showing required.

Removal From the Senior Executive Service

1201.141 Right to hearing.
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Subpart D—Procedures for Cases Involving Allegations of Discrimination

1201.151 Scope and policy.
1201.152 Compliance with procedures under subpart B.
1201.153 Contents of petition.
1201.154 Time for filing petition.
1201.155 Allegations of discrimination not raised in petition.
1201.156 Time for processing appeals involving allegations of discrimination.
1201.157 Presiding official.
1201.158 Final decision, notice of judicial review.

Review of Board Decision

1201.161 Action by the Commission, finality and judicial review.
1201.162 Board action on the Commission decision.

Special Panel

1201.171 Referral of case to Special Panel.
1201.172 Action by Special Panel.
1201.173 Judicial review of cases decided under 5 U.S.C. § 7702.

Subpart E—Enforcement of Final Order

1201.181 Petition for enforcement.
1201.182 Compliance.
1201.183 Referral to the Board.
1201.184 Enforcement action by Board.

Subpart F—Saving Provisions

1201.191 Saving provisions.

PART 1201—APPENDIX I MERIT SYSTEMS PROTECTION BOARD APPEALS FORM

PART 1201—APPENDIX II APPROPRIATE FIELD OFFICE FOR FILING APPEALS

Authority: 5 U.S.C. 1101 et seq.

Subpart A—Jurisdiction and Definitions.

§ 1201.1 General.

The Board exercises two types of jurisdiction, original and appellate.

§ 1201.2 Original jurisdiction: Definition and application.

The Board has original jurisdiction over cases in which no formal agency action has been taken including:

(a) Actions brought by the Special Counsel;

(b) Requests for informal hearings in cases of persons removed from the Senior Executive Service;

(c) Employee disciplinary actions under the Federal Employees Flexible and Compressed Work Schedule Act; and

(d) Actions against administrative law judges.

§ 1201.3 Appellate jurisdiction: Definition and application.

(a) *Appellate jurisdiction generally.* The Board has appellate jurisdiction over cases specified in the Act where there have been prior actions within an agency. This includes certain decisions of the Office of Personnel Management relating to retirement and insurance benefits. This appellate jurisdiction includes:

(1) Removal or reduction-in-grade of competitive or preference eligible employees;

(2) Denial of within-grade step increases;

(3) Actions based upon removal, suspension for more than 14 days, reduction-in-grade or pay, or furlough for 30 days or less;

(4) Certain actions relating to the Senior Executive Service;

(5) Actions otherwise appealable to the Board involving an allegation of discrimination;

(6) Determinations relating to disability retirement, health insurance and annuities;

(7) Actions involving reinstatement of preference eligibles; and

(8) Those actions for which jurisdiction may be properly granted by regulations of the Office of Personnel Management (OPM).

(b) *Limitations on appellate jurisdiction; collective bargaining agreements and election of procedures;* (1) *Exclusive procedure.* Where an employee is covered by a collective bargaining agreement which provides exclusive negotiated grievance procedures for specific matters under 5 U.S.C. 7121, the employee may not appeal those matters to the Board.

(2) *Election of procedure.* Where a covered employee has initially elected to utilize a nonexclusive negotiated grievance procedure, he/she may not appeal the matter to the Board. This election, however, does not prohibit an employee from requesting Board review of a decision involving discrimination.

§ 1201.4 General definitions.

(a) *Presiding official.* Any person designated by the Board to preside over any hearing or to make a decision on the record, including an appeals officer, an administrative law judge, the Board, or any of the Members of the Board

(b) *The Act.* The Civil Service Reform Act of 1978 (Pub. L. 95-454).

(c) *Pleadings.* Briefs, motions, petitions and attachments.

(d) *Motions.* A request to a presiding official to take a particular action.

(e) *Appropriate field office.* That office listed in Appendix II in the area where the appellant's duty station was located when the agency action was taken. This does not however, limit the Board from transferring the matter for adjudication to another field office when to do so would facilitate processing.

(f) *Party.* An individual, agency, intervenor, the Office of Personnel Management, or the Special Counsel who is participating in an adjudication before the Board.

(g) *Petition for appeal.* The request filed with a Board field office for review of an agency action.

(h) *Petition for review.* The request filed with the three-member Board in Washington, D.C., for review of an initial decision of a presiding official.

(i) *Day.* Calendar day.

Subpart B—Hearing Procedures for Appellate Cases.

General

§ 1201.11 Scope and policy.

The rules in this subpart apply to appellate proceedings of the Board. These rules also apply to original jurisdiction proceedings of the Board except as otherwise provided in Subpart C. It is the policy of the Board that these rules shall be applied in a manner which expedites the processing of each case, but with due regard to the rights of all parties.

§ 1201.12 Revocation, amendment or waiver of rules.

The Board may revoke, amend or waive any of these regulations as they apply generally to all cases in accordance with the applicable procedures of the Administrative Procedure Act. A presiding official may waive a Board regulation in an individual case for good cause shown if application of the regulation is not required by statute.

Petitions for Review of Agency Action, Pleadings

§ 1201.21 Notice of appeal rights.

When an agency issues a decision notice to an employee on a matter appealable to the Board the agency shall provide:

(a) Notice of the time limits for appealing to the Board and the address of the appropriate Board office for filing the appeal;

(b) A copy of the Board's regulations;

(c) A copy of the appeal form contained in Appendix I; and

(d) Notice of any applicable rights to a grievance procedure.

§ 1201.22 Filing of petitions for appeal and response.

(a) *Place of filing.* Petitions and responses shall be filed at the appropriate Board field office.

(b) *Time of filing.* Petitions for appeal must be filed anytime during the period beginning with the day after the effective date of the action being appealed until not later than 20 days of the effective date. Responses to petitions for appeal must be filed within 15 days of receipt of the appellant's petition. The date of filing shall be determined by date of mailing indicated on the certified mail. If the filing is by personal delivery it shall be considered filed on the date it is received in the field office.

(c) *Method of filing.* Filing must be made either by personal delivery during normal business hours, to the appropriate Board field office or by certified mail addressed to that office.

§ 1201.23 Computation of time.

To compute the number of days for filing, the first day counted shall be the day after the event from which the time period begins to run and the last day of filing shall be included in the computation.

Example.—If an employee receives a decision notice which is effective on June 1, the 20 days for filing starts to run on June 2. The filing must be made by June 21. If June 21 is a Saturday, the last day for filing would be Monday, June 23.

§ 1201.24 Content of petition for appeal, right to hearing.

(a) *Contents.* Petitions for appeal must be filed by the employee, his/her designated representative or a party property substituted under § 1201.35. Petitions may use any format, including letter form, but must contain the following:

(1) The name of the appellant and the acting agency;

(2) The action taken by the agency and its effective date;

(3) A request for hearing if desired;

(4) A statement of the reasons why the appellant believes the agency action to be wrong;

(5) A statement of the action the appellant would like the presiding officer to order;

(6) The name of the appellant's representative, if any;

(7) Attachment of any relevant documents including the decision notice;

(8) A statement as to whether the appellant or anyone acting on his/her behalf has filed a grievance or complaint with any agency regarding this matter; and

(9) Signature by the appellant and representative, if any. Failure to raise a claim or defense in the petition shall not bar its submission later unless to do so would prejudice the rights of the other parties and unduly delay the proceedings.

(b) *Use of the form.* Completion of the form in Appendix I shall constitute compliance with subsection (a) of this section and § 1201.31 if a representative is designated in the form.

(c) *Right to hearing.* Under 5 U.S.C. 7701, an appellant has a right to a hearing. Alternatively, the appellant may choose to have the determination based on the record.

§ 1201.25 Content of agency response, request for hearing.

(a) *Content.* Agency response to petitions for appeal shall contain the following:

(1) The name of the appellant and the acting agency;

(2) A statement of the agency action taken against the appellant and the reasons therefor;

(3) A specific response to each allegation of the appellant's petition admitting, denying or explaining each in whole or in part;

(4) All documents contained in the agency record of the proceeding;

(5) Request for hearing and the reasons therefor; and

(6) Designation of and signature by the authorized agency representative.

(b) *Request for hearing.* The agency may request a hearing on the appeal which may be granted at the discretion of the presiding official.

§ 1201.26 Number of pleadings, provision for service.

(a) *Number.* One original and three copies of all pleadings and attachments must be filed with the field office.

(b) *Service.* The Board will forward ("serve") copies of all pleadings and attachments to the parties by certified mail, return receipt requested.

§ 1201.27 Class actions.

(a) *Petition.* One or more employees may file an appeal as representatives of a class of employees. The presiding official shall hear the case as a class action if he/she finds a class action will be the most efficient and fair way to adjudicate the appeal and will

adequately protect the interests of all parties.

(b) *Procedure.* The presiding official shall determine within 30 days whether to hear the appeal as a class action and will consider any opposition thereto.

(c) *Standards.* For the purpose of determining whether it is appropriate to treat an appeal as a class action, the presiding official will be guided but not controlled by the applicable provisions of the Federal Rules of Civil Procedure.

Parties, Practitioners and Witnesses

§ 1201.31 Representation.

(a) All parties to an appeal may be represented in any matter relating to the appeal. The parties shall designate their representatives, if any, in the petition for appeal or responsive pleading. Any subsequent changes in representation shall also be in writing and submitted to the presiding official.

(b) A party may choose any representative so long as the person is willing and available to serve. However, the other party or parties may challenge the representative on the grounds of conflict of interest or conflict of position. This challenge must be made by motion to the presiding official within 10 days after receipt of the notice of designation, and shall be ruled upon prior to consideration of the case on the merits. These procedures apply equally to original and subsequent designations of representatives. In the event the selected representative is disqualified, the party affected shall be given a reasonable time to obtain another representative.

(c) The presiding official, on his/her own motion, may disqualify a party's representative on the grounds described in subsection (b) above.

§ 1201.32 Witnesses; right to representation.

Witnesses shall have the right to representation when testifying.

§ 1201.33 Federal witnesses.

Every Federal agency shall make its employees available to furnish sworn statements or to appear as witnesses at the hearing when requested by the presiding official. When providing such statements or testimony, witnesses shall be in official duty status.

§ 1201.34 Intervenors.

(a) *Explanation.* Intervenors are persons who want to participate in a proceeding because they feel what takes place at the proceeding, or its outcome, may affect their rights or duties. Intervenors as a "matter of right" are those parties who have a statutory right to participate. "Permissive" intervenors are those parties who may be permitted to participate if the proceeding will affect them directly and is otherwise appropriate under law. A request to intervene may be made by motion to the presiding official under §1201.55.

(b) *Intervenors as a matter of right.* (1) The Director of OPM may intervene as a matter of right under 5 U.S.C. 7701(d)(1). Such intervention shall be made at the earliest practicable time.

(2) The Special Counsel may intervene as a matter of right under 5 U.S.C. 1206(i). Such intervention shall be made at the earliest practicable time.

(c) *Permissive intervenors.* (1) Any person may, by motion, request the presiding official for permission to intervene. The motion shall state the reasons why the person should be permitted to intervene.

(2) A motion for permission to intervene will be granted where the requestor will be affected directly by the outcome of the proceeding, including any person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b). Denial of a motion for permissive intervention may be appealed to the Board under § 1201.91.

(d) *Role of intervenors.* Intervenors will be considered full parties to the hearing and will have the same rights and duties as a party with two exceptions:

(1) Intervenors will not have an independent right to a hearing; and

(2) Permissive intervenors may participate only on the issues affecting them, as determined by the presiding official.

§ 1201.35 Substitution.

(a) If an appellant dies or is otherwise unable to pursue the appeal, the action shall be completed upon substitution of proper parties or by the representative of the original party. Substitution will not be permitted where the interests of the original party have terminated because of the death or other disability.

(b) A motion for substitution shall be filed by the representative or proper party within 90 days after the death of the appellant or other disabling event.

§ 1201.36 Consolidation or joinder.

(a) *Explanation.* (1) Consolidation may occur where two or more parties have cases united because they contain identical or similar issues. For example, individual appeals under a single reduction-in-force action might be consolidated.

(2) Joinder may occur where one person has two or more appeals pending and they are united for consideration. For example, a single appellant who has one appeal pending challenging a 30-day suspension and another appeal pending challenging a subsequent dismissal might have the cases joined.

(b) *Action by presiding official.* A presiding official may consolidate or join cases on his/her own motion or on the motion of a party if to do so would:

(1) Expedite processing of the cases; and

(2) Not adversely affect the interests of the parties.

§ 1201.37 Fees.

(a) *Attorney fees.* Except as provided in subsection (a)(1) of this section, the presiding official may require payment by the agency of reasonable attorney fees if the appellant is the prevailing party and payment is warranted in the interests of justice. This shall include but not be limited to any case in which a prohibited personnel practice was engaged in by the agency or any case in which the agency's action was clearly without merit.

(1) If an appellant is the prevailing party and the decision is based on a finding of discrimination prohibited under 5 U.S.C. 2302(b)(1), the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

(2) Requests for payment of attorney fees shall be made by motion within 10 days of final date of a decision under § 1201.113 in favor of the appellant. The agency may file a responsive pleading within 10 days of receipt of the motion. The ruling of the presiding official on such motions shall be made an addendum to the final decision. A petition for review by the Board of this issue alone shall be submitted within 30 days of the receipt of the presiding official's determination if the case is not reviewed or reopened.

(b) *Witness fees.* (1) Federal employees: Employees of a Federal agency testifying in any proceeding before the Board of making a statement for the record shall be in official duty status and shall not receive witness fees. Payment of travel and per diem expenses shall be governed by applicable law and regulations.

(2) Other witnesses. Witnesses who are not covered by subsection (b)(1) of this section are entitled to the same witness fees as those paid subpenaed witnesses under 28 U.S.C. 1821.

(3) Payment of witness fees. Witness fees shall be paid by the party requesting the presence of the witness and shall be tendered to the witness at the time the subpena is served, or, when

the witness appears voluntarily, at the time of appearance.

Presiding Officials

§ 1201.41 Presiding officials.

(a) *Exercise of authority.* Presiding officials may exercise authority as provided in paragraph (b) of this section upon their own motion or upon the motion of a party, as appropriate.

(b) *Authority.* Presiding officials shall conduct fair and impartial hearings and take all necessary action to avoid delay in the disposition of all proceedings. They shall have all powers necessary to that end unless otherwise limited by law, including but not limited to, the authority to:

(1) Administer oaths and affirmations;

(2) Issue subpenas in accordance with § 1201.81;

(3) Rule upon offers of proof and receive relevant evidence;

(4) Rule upon the institution of discovery procedures as appropriate under § 1201.73;

(5) Convene a hearing as appropriate, regulate the course of the hearing, maintain decorum and exclude from the hearing any disruptive persons;

(6) Exclude from the hearing any witness whose later testimony might be colored by testimony of other witnesses or any persons whose presence might have a chilling effect on testifying witness;

(7) Rule on all motions, witness and exhibit lists and proposed findings;

(8) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(9) Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material and nonrepetitious;

(10) Impose sanctions as provided under § 1201.43 of this part;

(11) Hold prehearing conferences for the settlement and simplification of issues; and

(12) File initial decisions.

§ 1201.42 Disqualification of presiding official.

(a) In the event that a presiding official considers himself/herself disqualified, he/she shall withdraw from the case, stating on the record the reasons therefor, and shall immediately notify the Board of the withdrawal.

(b) Any party may file a motion requesting the presiding official to withdraw on the basis of personal bias or other disqualification and specifically setting forth the reasons for the request. This motion shall be filed as soon as the party has reason to believe there is a basis for disqualification.

(c) The presiding official may rule on the motion. If the motion is denied the party requesting withdrawal may request certification of the issue to the Board as an interlocutory appeal under § 1201.91. Failure of the party to request certification shall be considered a waiver of the request for withdrawal.

§ 1201.43 Sanctions.

The presiding official may impose sanctions upon the parties as necessary to serve the ends of justice, including but not limited to the instances set forth in paragraphs (a), (b), and (c) of this section.

(a) *Failure to comply with an order.* When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control; a request for admission, and/or production of witnesses, the presiding official may:

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

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

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

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

(b) *Failure to prosecute or defend.* If a party fails to prosecute or defend an appeal, the presiding official may dismiss the action with prejudice or rule for the appellant.

(c) *Failure to make timely filing.* The presiding official may refuse to consider any motion or other action which is not filed in a timely fashion in compliance with this subpart.

Hearings

§ 1201.51 Scheduling the hearing.

The notice of initial hearing shall fix the date, time and place of hearing. The hearing shall be scheduled not earlier than 15 days after the date of the notice unless the parties agree to an earlier date. The agency, upon request of the presiding official, shall provide appropriate hearing space. Motions for postponement by either party shall be made in writing and accompanied by an affidavit setting forth the reasons for the request and shall be granted only upon a showing of good cause.

§ 1201.52 Public hearings.

Hearings shall be open to the public. However, the presiding official may order a hearing or any part thereof closed, where to do so would be in the best interests of the appellant, a witness, the public or other affected persons. Any order closing the hearing shall set forth the reasons for the presiding official's decision. Any objections thereto shall be made a part of the record.

§ 1201.53 Transcript.

(a) *Preparations.* A transcript shall be prepared for every hearing under the supervision of the presiding official and shall be the sole official transcript of the proceeding. A copy of the transcript shall be provided to the appellant and the agency. Intervenors and other interested parties shall be furnished a copy at their own cost.

(b) *Corrections.* Corrections to the official transcript will be permitted upon motion. Motions for correction must be submitted within 10 days of the receipt of the transcript. Corrections of the official transcript will be permitted only when errors of substance are involved and only upon approval of the presiding official.

§ 1201.54 Official record.

The transcript of testimony and exhibits, together with all papers and motions filed in the proceedings, shall constitute the exclusive and official record.

§ 1201.55 Motions.

(a) *Form.* All motions shall be in writing and shall state the reasons why the motion is requested. Motions shall be submitted to the presiding official and he/she will provide the parties with copies. However, motions may be made orally during the course of a hearing.

(b) *Objection.* If a motion is made, in writing or orally, all other parties shall have an opportunity to object to it.

(c) *Motions for extension of time.* Motions for extension of time will be granted only for good cause shown.

§ 1201.56 Burden and degree of proof, affirmative defenses.

(a) *Burden and degree of proof.* (1) Agency: Under 5 U.S.C. 7701(c)(1) the agency action must be sustained by the Board if:

(i) It is brought under 5 U.S.C. 4303 and is supported by substantial evidence; or

(ii) It is brought under any other provision of law or regulation and is supported by a preponderance of the evidence.

(2) Appellant: The appellant shall have the burden of proof as to issues of jurisdiction and timeliness of filing.

(b) *Affirmative defenses of the appellant.* Under 5 U.S.C. 7701(c)(2), the Board is required to overturn the action of the agency even where the agency has met the evidentiary standard set forth in subsection (a), above, in any case where the appellant:

(1) Shows harmful error in the application of the agency's procedures in arriving at such decision;

(2) Demonstrates that the decision was based on any prohibited personnel practice described in 5 U.S.C. 2302(b); or

(3) Shows that the decision was not in accordance with law.

(c) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) Substantial evidence: That degree of relevant evidence which a reasonable mind, considering the record as a whole, might accept as adequate to support a conclusion that the matter asserted is true.

(2) Preponderance of the evidence: That degree of relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

(3) Harmful error: Error by the agency in the application of its procedures which, in the absence or oure of the error, might have caused the agency to reach a conclusion different than the one reached. The burden is upon the appellant to show that based upon the record as a whole the error was harmful, i.e., caused substantial harm or prejudice to his/her rights.

(d) *Moving forward.* In cases where action has been taken against an employee by the agency, the agency shall present its case first. The appellant may then present evidence.

§ 1201.57 Closing the record.

(a) When there is a hearing, the record shall be closed at the conclusion of the hearing. However, when the presiding official allows the parties to submit argument, briefs or documents previously identified for introduction into evidence, the record shall be left open for such time as the presiding official grants for that purpose.

(b) If the appellant waives a hearing, the record shall be closed on the date set by the presiding official as the final date for the receipt of submissions of the parties to the matter.

(c) Once the record is closed, no additional evidence or argument shall be accepted into the record except upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record. However, the presiding official shall make part of the record any motions for attorney fees, any supporting documentation, and determinations thereon, and any approved correction to the transcript.

Evidence

§ 1201.61 Service of documents.

All documents submitted with the pleadings shall be served upon all parties to the proceeding by the Board.

§ 1201.62 Admissibility.

(a) Evidence or testimony may be excluded from consideration by the presiding official if it is irrelevant, immaterial or unduly repetitious.

(b) All evidence and testimony offered in the hearing, but excluded by the presiding official, shall be described and that description made a part of the record.

§ 1201.63 Production of evidence by order of presiding official.

At any stage of a proceeding, the presiding official may request further evidence converning an issue and order its submission.

§ 1201.64 Production of statements.

After an individual has given evidence in a proceeding, any party may request a copy of any prior signed statement made by that individual which is relevant to the evidence given. If the party refuses to furnish the statement, the relevant evidence given, may be excluded from consideration.

§ 1201.65 Admission of facts and genuineness of documents.

(a) The presiding official may order any party to respond to requests for the admission of the genuineness of any relevant documents identified within the request or the truth of any relevant matters of fact or application of law to the facts as set forth in the request.

(b) Within the time period prescribed by the presiding official, the party on whom the request is served must submit to the presiding official:

(1) A sworn statement specifically denying, admitting or expressing a lack of knowledge regarding the specific matters on which an admission is requested; and/or

(2) An objection to the request in whole or in a part on the ground that the matters contained therein are privileged, irrelevant or otherwise improper.

§ 1201.66 Stipulations.

The parties may stipulate as to any matter of fact. Such a stipulation will satisfy a party's burden of proving the fact alleged.

§ 1201.67 Official notice.

The presiding official on his/her own motion or on motion of a party, may take official notice of matters of common knowledge or matters that can be verified. Official notice taken of any fact satisfies a party's burden of proving the fact noticed.

Discovery

§ 1201.71 Statement of purpose.

It is the intent of the Board that all proceedings will be conducted as expeditiously as possible with due regard to the rights of the parties. With regard to discovery, these two considerations require that a careful balance be established between avoiding unproductive delay in adjudication and obtaining that information essential to perfect the record. Accordingly, the discretion of the presiding official must be carefully exercised in determining the necessity for discovery.

§ 1201.72 Explanation and scope.

(a) *Explanation.* Discovery is the process whereby a party may obtain information from another party, including documents and testimony, which have not otherwise been provided. These materials are obtained for the purpose of assisting the requesting party in planning and developing his/her case.

(b) *Scope.* Any person may be examined regarding any nonprivileged matter, which is relevant to the issue under appeal, including the existence, description, nature, custody, condition and location of documents or other tangible things and the identity and location of persons having knowledge of relevant facts.

§ 1201.73 Orders for discovery.

(a) *Motion for discovery.* Motions for orders granting permission to make discovery and take depositions or to respond to written interrogatories under 5 U.S.C. 1205(b)(2)(B) shall be submitted to the presiding official.

(b) *Ruling.* Where the presiding official does not have the authority to issue the requested order, the motion shall be referred with a recommendation for decision to an appropriate official. This official shall be either an administrative law judge or a Member of the Board, who shall promptly rule on the request. Where the presiding official

has the authority he/she shall rule directly on the request. Any order issued shall include, where appropriate:

(1) Provision for notice to the party to be orally deposed as to the time and place of such deposition;

(2) Placement of whatever limitations on the conduct of the proceedings or the subject matter are necessary to protect any party or deponent from undue expense, embarrassment or oppression;

(3) Placement of limitations upon or answer to written interrogatories, or production of evidence; and

(4) Other restrictions upon the discovery procedures as determined by the presiding official.

§ 1201.74 Taking of depositions.

Depositions may be taken before a presiding official, or a notary public not interested in the outcome of the proceeding.

§ 1201.75 Rules governing discovery procedures.

Because discovery in matters before the Board is intended to be of a simplified nature, procedures are not set forth in great detail but shall be established by the presiding official as appropriate under the circumstances. Further guidance, however, may be obtained from the Federal Rules of Civil Procedure. Such rules should be interpreted as being instructive rather than controlling.

Subpenas

§ 1201.81 Motions for subpenas.

(a) *Motion.* A motion for the issuance of subpenas requiring the attendance and testimony of witnesses or the production of documents or other evidence under 5 U.S.C. 1205(b)(2)(A) shall be submitted to the presiding official.

(b) *Form.* Motions for subpena shall be submitted in writing, and shall specify with particularity the books, papers, or testimony desired and the facts expected to be proven thereby. It is not necessary to demonstrate that production of witnesses or documents will not be made voluntarily in order to obtain a subpena.

(c) *Rulings.* Where the presiding official does not have the authority to issue subpenas, the motion shall be referred with a recommendation for decision to an appropriate official. Such official shall be an administrative law judge or a Member of the Board, who shall promptly rule on the request. Where the presiding official has the authority he/she shall rule directly on the request.

(d) *Showing.* All requests for subpenas shall be supported by a showing of general relevance, reasonable scope and materiality of the evidence sought.

§ 1201.82 Motions to quash.

Any person against whom a subpena is directed may file a motion to quash or limit the subpena setting forth the reasons why the subpena should not be complied with or why it should be limited in scope. This motion shall be filed with the presiding official and shall be processed, where appropriate, as set forth in § 1201.81(c).

§ 1201.83 Service.

Service of subpena may be made by a United States Marshal or Deputy Marshal, by Board personnel, or by any person who is not a party to the proceeding who is over 18 years of age.

§ 1201.84 Return of service.

The service of subpena by a person other than a United States Marshal or Deputy Marshal shall be attested to by the person making such service. The attesting affidavit shall state the date, time and method of making service.

§ 1201.85 Enforcement.

In the case of contumacy or failure to obey a subpena issued, the Board, pursuant to 5 U.S.C. 1205(c) may request enforcement of the subpena in the appropriate United States district courts. Application for enforcement of subpena shall be made by Counsel designated by the Chair.

Interlocutory Appeals

§ 1201.91 Explanation.

An interlocutory appeal is an appeal to the Board of a decision made by a presiding official during the course of a proceeding. This appeal may be permitted by the presiding official if he/she determines that the issue presented is of such importance to the proceeding that it requires the Board's immediate attention. The Board makes a decision on the issue and the presiding official acts in accordance with that decision.

§ 1201.92 Criteria for certification.

Rulings of the presiding official may not be appealed during the course of the hearing unless the official certifies the ruling for review by the Board. The presiding official shall certify a ruling for review only if it can be shown that:

(a) The ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and

(b) An immediate ruling will materially advance the completion of the proceeding, or denial of an immediate ruling will cause undue harm to a party or the public.

§ 1201.93 Procedure.

(a) *Motion for certification.* A party seeking review by interlocutory appeal must file a motion for certification within five days of receipt of the presiding official's determination. The motion shall include arguments in support of both the certification and the determination to be made by the Board.

(b) *Certification and review.* The presiding official shall grant or deny a motion for certification within the five days following receipt of all pleadings. If certification is granted, the record shall be referred to the Board. If certification is denied the issue may be raised in a petition for review.

(c) *Stay of hearing.* The stay of the hearing during the time an interlocutory appeal is pending is at the discretion of the presiding official. However, this will not preclude the Board from staying a hearing during the time an interlocutory appeal is pending.

Ex Parte Communications

§ 1201.101 Explanation and definitions.

(a) *Explanation.* Ex parte communications are oral or written communications between decision-making personnel of the Board and an interested party to a proceeding without providing the other parties a chance to participate. Not all ex parte communications are prohibited, but only those which involve the merits of the case or those which violate other rules requiring submissions to be in writing. Accordingly, interested parties may make inquiries about such matters as the status of a case, when it will be heard, and the method for transmitting evidence to the Board. Parties may not inquire about such matters as what defense they should use, whether their evidence is adequate, or make a submission orally which is required to be in writing.

(b) *Definitions for purposes of this section.* (1) "Interested party" includes:

(i) Any party or representative of a party involved in a proceeding before the Board; or

(ii) Any other person who might be affected by the outcome of a proceeding before the Board.

(2) "Decision-making personnel" means any presiding official and/or an employee of the Board who reasonably can be expected to participate in the decision-making process of the Board.

§ 1201.102 Prohibition.

Ex parte communications concerning the merits of any matter before the Board for adjudication or which otherwise violate rules requiring written submissions is prohibited from the time the persons involved have knowledge that the matter may be considered by the Board until the Board has rendered a final decision.

§ 1201.103 Placement in the record; sanctions.

(a) Any communication made in violation of this section shall be made a part of the record and an opportunity for rebuttal allowed. If the communication was oral, a memorandum stating the substance of the discussion shall be placed in the record.

(b) The following sanctions shall be available:

(1) Parties: The presiding official may, in the interest of justice, require the offending party to show cause why his/her claim, interest or motion should not be dismissed, denied or otherwise adversely affected.

(2) Board personnel: Offending Board personnel will be treated in accordance with the Board's standards of conduct.

(3) Other persons: The presiding official may invoke such sanctions against offending parties as may be appropriate under the circumstances.

Final Decisions

§ 1201.111 Initial decision by presiding official.

(a) The presiding official shall prepare an initial (or recommended) decision within 25 days of the closing of the record. Such initial decision shall be immediately transmitted to the Secretary of the Board, to the Director of OPM and to all parties to the appeal, including named parties and intervenors, whether permissive or of right.

(b) Each initial decision shall contain:

(1) Findings of fact and conclusions, as well as the reasons or bases therefor, upon all the material issues of fact and law presented on the record;

(2) An order as to the final disposition of the case, including appropriate relief;

(3) The date upon which the decision will become effective, which, for purposes of this section, shall be deemed to be effective 35 days after issuance; and

(4) A statement of further right to appeal, including petition for review and judicial review.

§ 1201.112 Jurisdiction of presiding official.

After filing the initial decision, the presiding official shall retain jurisdiction over the case only to the limited extent necessary to correct the transcript, rule on a request by the appellant for attorney fees and take that action necessary to ensure compliance with the final decision.

§ 1201.113 Finality of decision.

The initial decision of the presiding official shall become final 35 days after issuance.

(a) *Exceptions.* The initial decision shall not become final if any party files a petition for review or if the Board reopens the case on its own motion within 35 days after issuance of the decision.

(b) *Petition for review denied.* If the Board denies all petitions for review, the initial decision shall become final five days after the issuance of the last denial.

(c) *Petition for review granted or case reopened.* If the Board grants a petition for review or reopens a case, the decision of the Board shall be the final decision.

(d) *Extensions.* The Board may extend the 35 day time limit for filing a petition for good cause shown.

(e) *Exhaustion.* Administrative remedies are considered exhausted when a decision becomes final in accordance within this section.

§ 1201.114 Filing of petition for review.

(a) *Who may file.* Any party to the proceeding, the Director of OPM, and the Special Counsel may file a petition for review. The Director may request review only if he/she is of the opinion that the decision is erroneous and will have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office (5 U.S.C. 7701(e)(2)).

(b) *Time for filing.* A petition for review may be filed within 35 days of issuance of the initial decision.

(c) *Place for filing.* A petition for review shall be filed with the Secretary of the Merit Systems Protection Board, Washington, D.C. 20419.

§ 1201.115 Contents of petition for review.

The petition for review shall set forth objections to the initial decision, supported by references to applicable laws or regulations, and with specific reference to the record. After providing an opportunity for response by other parties, the Board may grant a petition for review when it is established that:

(a) New and material evidence is available that, despite due diligence, was not available when the record was closed; or

(b) The decision of the presiding official is based on an erroneous interpretation of statute or regulation.

§ 1201.116 Procedure for review or reopening.

(a) In any case reopened or reviewed, the Board shall inform the parties of the reopening and review and may:

(1) Hear oral arguments;

(2) Require the filing of briefs;

(3) Remand the proceedings to the presiding official to take further testimony or evidence or make further findings or conclusions; or

(4) Take any other action necessary for final disposition of the case.

(b) The Board may affirm, reverse, remand, modify or vacate the decision of the presiding official, in whole or in part. Where appropriate, the Board shall issue a final decision and order a date for compliance.

§ 1201.117 Board reopening and reconsideration of case.

The Board may reopen and reconsider a decision of a presiding official on its own motion at any time, notwithstanding any other provisions of this part.

§ 1201.118 Judicial review.

Any employee or applicant for employment adversely affected by a final order or decision of the Board may obtain judicial review under the provisions of 5 U.S.C. 7703.

Subpart C—Hearing Procedures for Original Jurisdiction Cases

Actions Brought by the Special Counsel

§ 1201.121 Scope and compliance with subpart B.

(a) *Scope.*

The Board has original jurisdiction over actions brought by the Special Counsel and requests made by the Special Counsel for stays of certain personnel actions. The following sections of these regulations govern the proceedings concerning actions brought by the Special Counsel.

(b) *Compliance with Subpart B.*

Except as otherwise expressly provided by this subpart, the Special Counsel shall comply with the regulations regarding hearing procedures set forth in subpart B of this part in all complaints or requests he/she files with the Board.

§ 1201.122 Filing and service in Special Counsel actions.

(a) *Filing.* Two copies of all complaints and requests, together with numbered and tabbed exhibits or attachments, must be filed with the Office of the Secretary, and a copy must be served on all parties along with a certificate of service.

(b) *Service.* Service may be by mail or by personal delivery. Service by mail is accomplished by mailing by certified mail to all parties or their representatives at the last known address a copy of the complaint or request, together with exhibits or attachments, and a certificate of service. Personal delivery is accomplished by delivering the documents described above to the business office or home of the person to whom it is addressed and leaving it with that person, or with a responsible person at that address.

§ 1201.123 Special Counsel complaints.

If the Special Counsel determines that any of the actions set out below should be taken, he/she shall file a written complaint setting forth with particularity the supporting facts and any alleged violations of law or regulation.

(a) Action to require an agency to take corrective action (5 U.S.C. 1206(c)(1)(B));

(b) Action to correct a pattern of prohibited personnel practices not otherwise appealable to the Board (5 U.S.C. 1206(g));

(c) Action to discipline an employee (5 U.S.C. 1207); and

(d) Action to discipline an employee under the Federal Employees Flexible and Compressed Work Schedule Act (5 U.S.C. 6101 note).

The Board may order the Special Counsel and the responding party to file briefs and/or memoranda in any action the Special Counsel may bring before the Board.

§ 1201.124 Rights of employees.

When the Special Counsel files a complaint proposing a disciplinary action against an employee under 5 U.S.C. 1206(g), the affected employee shall have the right:

(a) To file an answer, supported by affidavits and documentary evidence;

(b) To be represented;

(c) To a hearing on the record before the Board or an administrative law judge;

(d) To a written decision by the Board, setting forth the reasons for its conclusion, issued at the earliest practicable date; and

(e) A copy of any final order imposing disciplinary actions.

§ 1201.125 Answer.

(a) *Filing and default:* A party named in a Special Counsel complaint shall file an answer with the Secretary of the Board within 30 days of receipt of the complaint. In the absence of good cause shown, a party failing to answer waives the right to contest the allegations in the complaint. Unanswered allegations shall be considered admitted and shall form the basis of an initial or final decision as appropriate.

(b) *Content:* An answer shall contain a specific denial, admission or explanation of each fact alleged in the complaint. If the respondent is without knowledge of a fact, he/she shall so state. Statements of fact and appropriate documentation may be included to support each denial or defense. Allegations unanswered or admitted in the answer shall be considered true and may not be denied later.

§ 1201.126 Final orders of the Board.

(a) In any action seeking correction of a prohibited personnel practice, the Board may order such corrective actions as it considers appropriate after providing an opportunity for comment by the agency and OPM. 5 U.S.C. 1206(c)(1)(B)).

(b) In any action seeking correction of a pattern of prohibited personnel practices not otherwise appealable to the Board, the Board may order an agency or employee to take whatever measures the Board may determine to be necessary or appropriate (5 U.S.C. 1206(h)).

(c) In any action to discipline an employee, including one brought to enforce 5 U.S.C. 7324, the Board may order a removal, reduction in grade, debarment (not to exceed five years), suspension, reprimand, or an assessment of civil penalty not to exceed $1,000 (5 U.S.C. 1207).

(d) In any action seeking the withholding of Federal funds under 5 U.S.C. 1506(a)(2) in which a State or local employee has engaged in prohibited political activities, the Board may order the Federal agency administering loans or grants to a State or local agency that reappoints the offending employee within a period of 18 months to withhold a sum not to exceed two years' pay of the offending employee at the rate he/she was receiving at the time of the violation.

(e) In any action to discipline an employee under the Federal Employees Flexible and Compressed Work Schedule Act, a final order of the Board may impose disciplinary action consisting of:

(1) Removal from Federal employment for any period of time the Board may prescribe;

(2) Suspension; or

(3) Such other discipline as the Board shall deem appropriate.

§ 1201.127 Request for stay.

Under 5 U.S.C. 1208, the Special Counsel may request a Member of the Board to stay any personnel action if he/she determines that there are reasonable grounds to believe that the action was or is about to be taken as a result of a prohibited personnel practice.

(a) *Content of request.* Each request must be signed by the Special Counsel or his/her representative, and must set forth:

(1) The names of the parties;

(2) The agency and officials involved;

(3) The nature of the action to be stayed;

(4) A concise statement of facts justifying the charge that the personnel action was or is to be the result of a prohibited personnel practice; and

(5) The laws or regulations that were or will be violated if the stay is not issued.

(b) *Filing and serving of request.* The request for stay shall be filed and served on all parties in accordance with § 1201.122.

(c) *Action on the request for stay.* (1) Initial stay. Within three calendar days after the filing of a request, excluding Saturdays, Sundays and legal holidays any Member of the Board shall grant a request for a stay of 15 calendar days under 5 U.S.C. 1208(a)(1), unless the Member determines that, under the facts and circumstances, the requested stay would not be appropriate. Unless denied within the three-day period, the stay shall be considered granted.

(2) Extension of initial stay. Upon request filed by the Special Counsel, any Member of the Board may extend the period of any stay ordered under 5 U.S.C. 1208(a) for a period of not more than 30 days. If the agency involved files with the Board its written views on the granting of the extension of a stay under this provision, the Board, in its discretion, may consider them.

(3) Indefinite stay. Upon request of the Special Counsel, the Board may extend any stay granted under 5 U.S.C. 1208(a) for whatever time it considers appropriate, but only after providing to the Special Counsel and the agency an opportunity to comment, and after the Board has concurred in the request of the Special Counsel. Simultaneously with filing a request for an extension of stay under 5 U.S.C. 1208(c), the Special Counsel shall file a brief setting forth the

facts and any relevant legal authority that the Board should consider in reaching its determination. The agency shall respond in accordance with any order of the Board.

(d) *Additional information.* At any time, the Board, or a Member of the Board, where appropriate, may require the Special Counsel and/or the agency to appear and present further information or explanation on a request for a stay, to file supplemental briefs or memoranda, or to supply factual information needed by the Board in making a determination regarding a stay.

§ 1201.128 Administrative appeal, judicial review.

No administrative appeal lies from an order of the Board. An employee subject to a final order imposing disciplinary action under 5 U.S.C. 1207 may obtain judicial review of the order of the Board in an appropriate United States Court of Appeals (5 U.S.C. 1207(c)).

§ 1201.129 Special Counsel actions heard by administrative law judge.

(a) Where, at the direction of the Board, an action brought by the Special Counsel is heard by an administrative law judge, the decision shall be a recommended decision to the Board in accordance with U.S.C. 557.

(b) The parties may file with the Office of the Secretary any exceptions they may have to the recommended decision of the administrative law judge within 30 days after receipt of the decision.

Actions Against Administrative Law Judges

§ 1201.131 Procedures.

When an agency proposes an action against an administrative law judge, the hearing shall be governed by the procedures established under subpart B, unless these regulations expressly provide otherwise. However, filing and service shall be made in accordance with § 1201.122 of this subpart.

§ 1201.132 Presiding official.

(a) The presiding official in all cases brought under this section shall be the Board or an administrative law judge designated by the Board.

(b) Where the presiding official is an administrative law judge, the decision shall be a recommended decision to the Board under 5 U.S.C. 557.

§ 1201.133 Board jurisdiction.

Under this section, the jurisdiction of the Board is limited to proposed action involving:

(a) A removal;
(b) A suspension;
(c) A reduction in grade;
(d) A reduction in pay; and
(e) A furlough of 30 days or less.

§ 1201.134 Filing of complaint.

To initiate an action against an administrative law judge, an agency shall file a complaint with the Board setting forth with particularity the facts that support the proposed action.

§ 1201.135 Procedure.

The administrative law judge against whom the complaint is filed may file an answer to the complaint in compliance with § 1201.125 of this subpart.

§ 1201.136 Showing required.

Proposed agency actions under this section shall be sustained only for good cause shown.

Removal From the Senior Executive Service

§ 1201.141 Right to hearing.

In the case of a proposed action to remove a career appointee from the Senior Executive Service to another civil service position the appointee, upon request, shall be granted an informal hearing before an official appointed by the Board at least 15 days before the effective date of the removal.

§ 1201.142 Hearing procedures; referral of transcript.

The appointee and/or his/her representative may appear and present arguments in an informal hearing before the Board or its designee and a transcript shall be made of the proceeding. The appointee shall not be entitled to any other procedural rights. However, the Board will refer a copy of the record to the Special Counsel, the Board's Office of Merit Studies, the Office of Personnel Management and the employing agency for whatever action may be appropriate.

§ 1201.143 Right to appeal.

There is no right to appeal under 5 U.S.C. 7703. The removal action shall not be delayed as a result of the hearing.

Subpart D—Procedures for Cases Involving Allegations of Discrimination

§ 1201.151 Scope and policy.

(a) *Scope.* (1) The rules in this subpart implement 5 U.S.C. 7702, and apply in any case where an employee or applicant for employment alleges that a personnel action appealable to the Board was taken, in whole or in part, on the basis of prohibited discrimination.

(2) "Prohibited discrimination" as used in this subpart means discrimination prohibited by:

(i) Section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16(a);

(ii) Section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d));

(iii) Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791);

(iv) Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 631, 633a); or

(v) Any rule, regulation or policy directive prescribed under any provision of law described in (i) through (iv) above.

(b) *Policy.* It is the policy of the Board to adjudicate impartially, thoroughly and fairly all issues raised under this subpart in the course of an action brought before the Board. In doing so the Board will allow appellants an opportunity to raise allegations of discrimination during the appeals process and to present fully evidence in support of the charges raised.

§ 1201.152 Compliance with procedures under subpart B.

Except as otherwise expressly provided by this subpart, all actions involving allegations of prohibited discrimination shall comply with the regulations regarding hearing procedures set forth in subpart B of this part.

§ 1201.153 Contents of petition.

(a) *Contents:* A petition for appeal raising issues of prohibited discrimination under this subpart shall comply with the provisions of § 1201.24 of subpart A with the following exceptions:

(1) The petition shall state that there was discrimination and provide specific examples of how the appellant was discriminated against; and

(2) The petition shall state whether the appellant has filed a discrimination complaint or grievance with his/her agency or any other agency, the date of filing such complaint or grievance, and any action taken.

(b) *Use of form:* Completion of the form in Appendix I to these regulations, including questions 13(a) and (b), shall constitute compliance with the provisions imposed by subsection (a) of this section.

§ 1201.154 Time for filing petition.

Following are the requirements for filing a petition raising issues of prohibited discrimination:

(a) Where the appellant has filed a timely formal complaint of discrimination with the agency:

(1) A petition must be filed within 20 days after receipt of the agency resolution or final decision on the discrimination issue; or

(2) When the agency has not resolved the matter or issued a final decision on the formal complaint within a 120-day period, the appellant shall nonetheless file an appeal to the Board within a year after the filing of the formal complaint with the agency.

(b) Where the appellant has filed a grievance with the agency under its negotiated grievance procedure, the employee may request the Board to review the final decision under 5 U.S.C. 7702 within 20 days after receipt of the final decision.

(c) Where the appellant has been subject to an action appealable to the board, he/she must either file a timely complaint of discrimination with the agency or appeal to the Board within 20 days after the effective date of the agency action being appealed.

§ 1201.155 Allegations of discrimination not raised in petition.

(a) *Timeliness.* An appellant may raise an allegation of discrimination at any time during the Board's consideration of the appeal of the agency's action, if the appellant did not know of the existence of a basis for the allegation at the time the petition for appeal was filed. The issue of discrimination may be excluded from consideration only upon a showing by the agency that to consider the issue would prejudice the rights of the agency and unduly delay the proceedings or that the discrimination issue is not directly related to the matter being appealed. If the issue of discrimination is excluded from consideration in the appeal, it shall be remanded to the agency for appropriate consideration under any applicable law or regulation.

(b) *Effect.* When an appellant raises an allegation of prohibited discrimination which was not previously raised before the agency, the presiding official shall use his/her authority under § 1201.41 of these regulations, particularly subsection (b)(8) of § 1201.41, to develop the record sufficiently to make a determination on the merits of the allegation. In developing the record in these circumstances, the time limits that are imposed on the production of evidence and filing of memoranda may reasonably be expected to be much more constricted than those imposed in a 5 U.S.C. 7701 appeal in order to meet the statutory 120-day processing requirement.

(c) *Remand.* In the event the parties agree in writing and file for the record a statement that a remand to the agency is desirable, the presiding official may remand the discrimination issue to the agency for consideration, if the presiding official determines to do so would be in the interests of justice. If the issue is remanded to the agency, the remand order shall contain a time period within which the agency action must be completed, but in no instance shall that time period exceed 120 days. During this time the Board will retain jurisdiction and the adverse action appeal shall be held in abeyance. Thereafter the actions shall be merged and processed and a decision issued within 120 days.

(d) *Agency answer.* When an appellant alleges prohibited discrimination for the first time during the course of a proceeding, and the matter is not remanded to the agency, the agency shall be given a reasonable opportunity to refute the allegation through a responsive pleading, testimony, production of documents or as otherwise permitted by the presiding official.

§ 1201.156 Time for processing appeals involving allegations of discrimination.

(a) *Issue raised in petition.* When an appellant alleges prohibited discrimination in the petition for appeal, the Board shall decide both the issue of discrimination and the appealable action within 120 days of the filing of the appeal.

(b) *Issue not raised in petition.* When an appellant has not alleged prohibited discrimination in the petition for appeal, but has raised the issue subsequently in the proceeding, the Board shall decide both the issue of discrimination and the appealable action within 120 days after the issue is raised.

(c) *Discrimination issue remanded to agency.* When an issue of discrimination is remanded to the agency, processing shall be completed within 120 days after the agency action is completed and the case returned to the Board.

§ 1201.157 Presiding official.

In an appeal from a final decision or order under 5 U.S.C. 7121 or 7122 issued by an arbitrator or the Federal Labor Relations Authority the presiding official shall be an administrative law judge, the Board, or a Member of the Board.

§ 1201.158 Final decision, notice of judicial review.

Any final decision of the Board under 5 U.S.C. 7702 shall notify the appellant of his/her right to petition the Equal Employment Opportunity Commission ("the Commission") to consider the Board's decision, or to file a civil action in an appropriate United States district court within 30 days of the receipt of the Board's final decision.

Review of Board Decision

§ 1201.161 Action by the Commission, finality and judicial review.

(a) *Time limit for determination.* In cases where an appellant petitions the Commission for consideration of the Board's decision under 5 U.S.C. 7702(b)(2), the Commission shall determine, within 30 days afte the date of petition, whether to consider the Board's decision.

(b) *Judicial review.* The Board's decision shall become judicially reviewable as of:

(1) The date of issuance of the decision if the appellant does not file a petition with the EEOC under 5 U.S.C. 7702(b)(1); or

(2) The date of the Commission's determination not to consider the petition filed under 5 U.S.C. 7702(b)(2).

(c) *Commission processing and time limits.* Where the Commission determines to consider the decision of the Board, within 60 days after making such determination, it shall complete its consideration and either—

(1) Concur in the decision of the Board; or

(2) Issue in writing and forward to the Board for its action under § 1201.162 of this subpart another decision which differs from the decision of the Board to the extent that the Commission finds that, as a matter of law—

(i) The decision of the Board constitutes an incorrect interpretation of any provision of any law, rule, regulation, or policy directive relating to prohibited discrimination; or

(ii) The decision involving such provision is not supported by the evidence in the record as a whole.

(d) *Transmittal of record.* The Board shall transmit a copy of its record to the Commission upon request.

(e) *Development of additional evidence.* When requested by the Commission, the Board shall develop additional evidence necessary to supplement the record within a period sufficient to permit the Commission to make its decision within the statutory 60-day time limit referred to in (c) above. In such event the Board may be

required to schedule additional proceedings to enable it to comply with such a Commission request.

(f) *Commission concurrence in Board decision; timing of judicial review.* If the Commission concurs in the decision of the Board under 5 U.S.C. 7702(b)(3)(A), the decision of the Board may be appealed to the appropriate United States district court.

§ 1201.162 Board action on the Commission decision.

(a) *Board decision.* Within 30 days after receipt of a decision of the Commission issued under § 1201.161(c)(2), the Board shall consider the decision and—

(1) Concur and adopt in whole the decision of the Commission; or

(2) To the extent that the Board finds that, as a matter of law:

(i) The Commission decision constitutes an incorrect interpretation of any provision of any civil service law, rule, regulation, policy directive; or

(ii) the Commission decision involving such provision is not supported by the evidence in the record as a whole, it may:

(A) Reaffirm the decision of the Board; or

(B) Reaffirm the decision of the Board with such revisions as it determines appropriate.

(b) *Judicial review.* If the Board concurs in or adopts the decision of the Commission under subsection (a)(1) of this section the decision of the Board shall be a judicially reviewable action.

Special Panel

§ 1201.171 Referral of case to special panel.

If the Board reaffirms its decision under § 1201.162(a)(2) with or without modification, the matter shall be immediately certified to the Special Panel established pursuant to 5 U.S.C. 7702(d). Upon certification, the Board shall, within five days (excluding Saturdays, Sundays, and Federal holidays), transmit to the Special Panel the administrative record in the proceeding, including—

(a) The factual record compiled under this section;

(b) The decisions issued by the Board and the Commission under this section; and

(c) Any transcript of oral arguments made, or legal brief filed, before the Board and/or the Commission.

§ 1201.172 Action by special panel.

(a) *Role of the Panel.* The Special Panel, if convened, shall review the administrative record under procedures it will establish, and, on the basis of the record, shall issue a final decision within 45 days of certification of a matter to it under § 1201.171.

(b) *Role of the Board.* The Board shall, upon receipt of the decision of the Special Panel, order the agency concerned to take any action appropriate to carry out the decision of the Panel.

(c) *Judicial review.* The final decision of the Special Panel shall be a judicially reviewable action.

§ 1201.173 Judicial review of cases decided under 5 U.S.C. 7702.

(a) *Place and type of review.* All judicial review from cases decided under 5 U.S.C. 7702 is in the appropriate United States district court, including: an action pursuant to the provisions of section 717(c) of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16(c)); section 15(c) of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 633a(c)); and section 15(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216(b)).

(b) *Time for filing.* Notwithstanding any other provision of law, all cases decided under 5 U.S.C. 7702 must be filed within 30 days after the individual received notice of the judicially reviewable action.

Subpart E—Enforcement of Final Order

§ 1201.181 Petition for enforcement.

(a) *Appellate jurisdiction.* Any party may petition the Board for enforcement of a final decision issued under the Board's appellate jurisdiction. Submission of this petition shall be made to the field office which rendered the initial decision. The petition shall specifically set forth the reasons why the petitioning party believes there is noncompliance.

(b) *Original jurisdiction.* Any party seeking enforcement of a Board order issued under its original jurisdiction shall submit a petition for enforcement to the Office of the Secretary. The petition shall specifically set forth the reasons why the petitioning party believes there is noncompliance. Processing of the petition will be made under the procedures set forth in § 1201.184 of this subpart.

§ 1201.182 Compliance.

The Chief Appeals Officer shall take all necessary action to ascertain whether the final decision of the Board is being complied with and shall issue an opinion on the matter. If the Chief Appeals Officer finds noncompliance, he/she shall undertake efforts to obtain compliance.

§ 1201.183 Referral to the Board.

Where the Chief Appeals Officer is unable to obtain satisfactory agency compliance with the final order, he/she shall submit the record of the case to the Board with appropriate findings and recommendations for enforcement.

§ 1201.184 Enforcement action by Board.

(a) *Notice to show cause.* The Board may issue a notice to any Federal employee who has failed to comply with an order to show cause why there was noncompliance. Such notice may require the employee or his/her representative to appear before the Board and/or to respond to the notice in writing.

(b) *Hearing.* If the Board determines to hold a hearing on a notice to show cause, it shall be on the record.

(c) *Certification to the Comptroller General.* Where appropriate, the Board may, under 5 U.S.C. 1205(d)(2), certify to the Comptroller General of the United States that no payment shall be made to any employee failing to comply with the Board's order, other than a Presidential appointee subject to confirmation by the Senate.

(d) *Effect of Special Counsel's action or failure to act.* No proceeding under this subpart shall be precluded because the Special Counsel did not file a complaint under 5 U.S.C. § 1206(g)(1)(B) and subpart C of this part.

Subpart F—Saving Provisions

§ 1201.191 Saving provisions.

(a) *Scope.* All executive orders, rules and regulations relating to the Federal service that were in effect prior to the effective date of the Act shall continue in effect and be applied by the Board in its adjudications until modified, terminated, superseded, or repealed by the President, Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority, as appropriate.

(b) *Administrative proceedings and appeals therefrom.* No provision of the Civil Service Reform Act shall be applied by the Board in such a way as to affect any administrative proceeding pending at the effective date of such provision. "Pending" is considered to encompass existing agency proceedings, and appeals before the Board or its predecessor agencies, that were subject to judicial review or under judicial review on January 11, 1979, the date on which the Act became effective. An

agency proceeding is considered to exist once the employee has received notice of the proposed action.

(c) *Explanation.* Mr. X was advised of agency Y's intention to remove him for abandonment of position, effective December 29, 1978. Twenty days later Mr. X appealed the agency action to the Merit Systems Protection Board. The Merit Systems Protection Board docketed Mr. X's appeal as an "old system case", *i.e.,* one to which the savings clause applied. The appropriate field office processed the case, applying the substantive laws, rules and regulations in existence prior to the enactment of Act. The decision, dated February 28, 1979, informed Mr. X that he is entitled to judicial review if he files a timely notice of appeal in the appropriate United States district court or the United States Court of Claims under the statute of limitations applicable when the adverse action was taken.

Part 1201—Appendix I—Merit Systems Protection Board Appeals Form

The purpose of this form is to help you provide valuable information to the Merit Systems Protection Board ("the Board") when you file an appeal. You are *not* required to use this form, and you are not limited to answering the questions on the form if you feel there is other information you wish to provide. However, if you do not use the form, your appeal documents must comply with the Board's regulations. Your agency's personnel office can assist you in obtaining these regulations, and the Board advises you to review them.

All appellants who elect to use this form should complete Parts I–III. Only those who are appealing Reduction-in-Force (RIF) actions are required to complete Part IV.

Privacy Act Statement: This form requests personal information which is relevant and necessary to reach a decision in your appeal. The Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

The decision of the Merit Systems Protection Board on appeal are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics. If there is a need to disclose information from your appeal file for reasons other than these, or those cited in the Privacy Act (5 U.S.C. 552a) or as required by the Freedom of Information Act (5 U.S.C. 552), your prior written consent will be obtained.

Part I: General[*]

1. Your Name: _____
Last, First, and Middle
2. Your Social Security Number: _____
3. Your Present Address:
Street No.: _____
City: _____
State and Zip Code: _____
4. Home Phone (including area code): _____
5. Office Phone (including area code): _____

Part II: Action Taken

6. Briefly describe the agency action you wish to appeal and attach any relevant documents.
_____
_____
_____
(a) Agency taking action: _____
(b) Bureau (Division) within Agency: _____
(c) Location of Agency:
(Street, City, State, Zip Code) _____
(d) Your position title: _____
(e) Your grade and salary: _____
(f) Are you a veteran? Yes _____ No _____
(g) Type of appointment you have:
(i) Temporary _____ Permanent _____
Applicant for Employment _____
Term _____
(ii) Are you in the competitive or excepted service? _____
(h) Length of Government service: _____
(i) Length of service with agency taking action: _____
(j) If annuitant, date of retirement: _____
(k) Were you serving a probationary or trail period when the agency took the action being appealed? Yes _____ No _____
7. What action would you like the Board to take on this case? _____
_____
8. What was the date (month, date, year) you received the written proposed notice to take this action? (attach copy) _____
_____
9. What was the date (month, date, year) you received the *final* notice of the decision to take this action? (attach copy) _____
_____
10. What was the effective date (month, date, year) of this action? _____
_____
11. Why do you think the agency was wrong in taking this action? Explain briefly. _____
_____
12. Have you, or anyone on your behalf, filed an appeal, a grievance, a complaint, including an unfair labor practice charge, with your agency or any other agency concerning this matter? Yes _____ No _____
If yes, when (date) _____
Where (location and with whom (agency)) _____
_____
Has a decision been issued? Yes _____
No _____
If so, when (date) _____
By whom _____ Title _____
(Attach a copy)
13. (a) if you believe you were discriminated against by the agency because of either your race, color, religion, sex, national origin, marital status, political affiliation, handicapping condition, or age, indicate so and explain why you believe it to be true. You must indicate, by examples, how you were discriminated against. _____
_____
_____
(b) Have you filed a discrimination complaint with your agency or any other agency? Yes _____ No _____
Date Filed _____
Place of Filing _____
Has there been a decision? Yes _____ No _____ If yes, attach a copy)

Part III: Hearing

14. You have a right to a hearing on this appeal. If you do not want a hearing, the Board will make its decision on the basis of the documents you and the agency submit. Do you want a hearing?
Yes _____ No _____
If you choose to have a hearing, the Board will notify you when and where it is to be held.
15. You have the right to designate someone to represent you on this appeal if he/she agrees to do so. This person does not have to be an attorney. The agency has a right to challenge your choice of a representative if there is a conflict of interest or position. You may change your designation of a representative at a later date, if you so desire, but must notify the Board promptly of any change.
"I hereby designate _____ to serve as my representative during the course of this appeal. I understand that my representative is authorized to act on my behalf."
Your signature: _____
Date: _____
Signature of representative: _____
Date: _____
Address: _____
Employer: _____
16. You may be permitted to call witnesses at a hearing upon the approval of the presiding official. If you intend to do so, provide their names and a brief statement of their relationship to the case. You will be permitted to request other witnesses later if you do not list them now.
(a) Name: _____
Relationship to case: _____
(b) Name: _____
Relationship to case: _____
(c) Name: _____
Relationship to case: _____
You or your representative are required to file four (4) copies of this form, together with its attachments, with the Board's field office identified in the decision notice provided by the agency. You must do likewise each time you file something with the Board.

Part IV: Reduction-in-Force (RIF)

Fill out this section only if you are appealing from a reduction-in-force (RIF). Your agency's personnel office can furnish you most of the information requested below.
17. Tenure Sub-Group: _____
18. Service Computation Date: _____
19. Has your agency offered you another position rather than separate you?
Yes _____ No _____
If your answer is "Yes", please give the following information:
(a) Title of position offered you: _____

[*] In filling out this form, wherever the space provided is insufficient you may add additional pages. If you do so, please put your name and Social Security number at the top of the page, and indicate by number which question you are answering.

(b) Grade and salary of position offered you:———
(c) Location of position offered you: ———
(d) Did you accept this position? Yes——— No———

20. Explain why you believe you should not have been affected by the reduction-in-force. (Explanations could include but are not limited to: you were placed in the wrong tenure sub-group; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from the competitive level; an exception was made to the regular order of selection; full 30-day notice was not given; you believe you can "bump" a person in a lower tenure sub-group; or any other reasons.) Please provide as much information as possible regarding each reason.

Part 1201—Appendix II—Appropriate Field Office for Filing Appeals

All submissions shall be addressed to the Chief Appeals Officer, Merit Systems Protection Board, at the below-listed addresses, according to geographic region of employing agency.

Address of Appropriate Field Office and Area Where Agency is Located:

1. ATLANTA FIELD OFFICE: 1340 Spring Street, Atlanta, Georgia 30309 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee).
2. BOSTON FIELD OFFICE: Room 1736, 100 Summer Street, Boston, Massachusetts 02110 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont).
3. CHICAGO FIELD OFFICE: Federal Office Building, 31st Floor, 230 South Dearborn Street, Chicago, Illinois 60604 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin).
4. DALLAS FIELD OFFICE: 1100 Commerce Street, Dallas, Texas 75242 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas, Swan Island).
5. DENVER FIELD OFFICE: Building 46, Denver Federal Center, Box 25025, Denver, Colorado 80225 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming).
6. NEW YORK FIELD OFFICE: New Federal Building, 26 Federal Plaza, New York, New York 10007 (New Jersey, New York, Puerto Rico, Virgin Islands).
7. PHILADELPHIA FIELD OFFICE: U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106 (Delaware, Maryland, Pennsylvania, Virginia, West Virginia).
8. SAINT LOUIS FIELD OFFICE: 1256 Federal Building, 1520 Market Street, Saint Louis, Missouri 63103 (Iowa, Kansas, Missouri, Nebraska).
9. SAN FRANCISCO FIELD OFFICE: 525 Market Street, San Francisco, California 94105 (Arizona, California, Hawaii, Nevada, Pacific Ocean area).
10. SEATTLE FIELD OFFICE: Federal Building, Room 1840, 915 Second Avenue, Seattle, Washington 98174 (Alaska, Idaho, Oregon, Washington).
11. WASHINGTON, D.C. FIELD OFFICE: 1717 H Street, NW, Washington, D.C. 20419 (Washington, D.C. Metropolitan area, all overseas areas not otherwise covered).

PART 1202—STATUTORY REVIEW BOARDS

§ 1202.1 Designation of Chair of Statutory Review Boards.

(a) Upon written request by the agency, the Chair of the Board shall designate a hearing officer of the Board to serve as Chair of any Board of Review established by the Secretary of Transportation under 5 U.S.C. 3383(b) for review of certain actions to remove air traffic controllers.

(b) The Board shall designate qualified employees of the Board to serve as chairs of performance rating review boards which may be established under P.L. 89-554(b) until all reviews of performance ratings pending prior to the effective date of the Act have been concluded.

(5 U.S.C. 1101 et seq.)

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Part XIV

Department of Health, Education, and Welfare

Office of Education

Emergency School Aid

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 185]

Emergency School Aid

AGENCY: Office of Education, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commissioner of Education proposes to amend the regulations governing awards under the Emergency School Aid Act. The purposes of these proposed regulations are to—

(a) Conform the current program regulations to statutory changes made by the Education Amendments of 1978;

(b) Ensure that the program both encourages the desegregation of elementary and secondary schools and meets desgregation needs more effectively; and

(c) Make regulations easier to understand and less burdensome.

DATES: Comments must be received on or before August 28, 1979.

Public meetings will be held in each of the eleven cities listed below on August 1, 1979. The time for these meetings is from 1:00 p.m. to 5:00 p.m. local time.

ADDRESSES: Comments should be addressed to Mr. Jesse J. Jordan, U.S. Office of Education, Room 2007, FOB-6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

The locations of the public meetings are—

Region I—Boston: Boston School Dept., Administration Building, Boston Committee Hearing Rm., 26 Court Street, Boston, Massachusetts.

Region II—New York: Hearing Room E, Room 2222, 26 Federal Plaza, New York, New York.

Region III—Philadelphia: University City Holiday Inn, 36th & Chestnut Street, Philadelphia, Pennsylvania.

Region IV—Atlanta: Regional Office Building, 101 Marietta Towers Bldg., Suite 2221, Atlanta, Georgia.

Region V—Chicago: Center for Urban Education, 160 West Wendell Street (1050 North Wells), Chicago, Illinois 60601.

Region VI—Dallas: William Travis Elementary School, 3001 McKinney Street, Dallas, Texas 75204.

Region VII—Kansas City: Federal Office Bldg., 601 East 12th Street, Room 140, Kansas City, Missouri.

Region VIII—Denver: George Washington High School, 655 South Monaco Street, Denver, Colorado.

Region IX—San Francisco: Federal Office Building, Room 209, 50 United Nations Plaza, San Francisco, California.

Region X—Seattle: Ingram High School, Little Theater, 1819 North 135th Street, Seattle, Washington.

Washington, D.C.: Room 5051 HEW-N, 330 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

For information on public meetings contact: The persons listed below:

Boston, MA—Dr. Thomas J. Burns, (617) 223-7500.

New York, NY—Dr. William D. Green, (212) 264-4370.

Philadelphia, PA—Dr. Albert C. Crambert, (215) 596-1001.

Atlanta, GA—Dr. William L. Lewis, (404) 221-2063.

Chicago, IL—Ms. Juliette Noone Lester, (312) 353-5215.

Dallas, TX—Mr. Edward J. Baca, (214) 767-3626.

Kansas City, MO—Dr. Harold Blackburn, (816) 374-2276.

Denver, CO—Dr. John Runkel, (303) 837-3544.

San Francisco, CA—Dr. Caroline Gillin, (415) 556-4920.

Seattle, WA—Mr. Allen Apodaca, (206) 442-0460.

Washington, D.C., Mr. Jesse J. Jordan (202) 245-7965.

For further information on these proposed regulations, contact Mr. Jesse J. Jordan (202) 245-7965.

SUPPLEMENTARY INFORMATION:

Authority: The authority for these proposed regulations is the Emergency School Aid Act ("ESAA" or "the Act"); Title VI of the Elementary and Secondary Education Act of 1965, as amended; 20 U.S.C. 3191 *et seq.*).

The proposed regulations are based on the amended statute, enacted as part of the Education Amendments of 1978 (Pub. L. 95-561), and on the Commissioner's experience in administering programs under the statute since its initial enactment as part of the Education Amendments of 1972 (Pub. L. 92-318). In developing these proposed regulations the Commissioner has also taken into account a number of studies of ESAA programs.

Highlights

Some of the more significant changes in ESAA programs under the proposed regulations are:

(a) A closer relationship between activities supported under most ESAA programs and desegregation plans of local educational agencies (LEAs), and the elimination of the program least closely related to those plans (Pilot Projects grants);

(b) The use of multi-year project periods;

(c) The addition of new activities for which support is available:

(1) State agency activities relating to voluntary desegregation;

(2) Desegregation planning activities by school districts; and

(3) Educational radio programming;

(d) Amended procedures for approval of LEA grants. These procedures emphasize the recency of the applicant's desegregation plan and the degree of desegregation under the plan;

(e) The establishment of types of grants (Planning Grants and Transitional Grants) to provide appropriate desegregation help without regard to annual funding cycles; and

(f) A shift in the focus of Nonprofit Organization Grants to emphasize community and parent support, and a change from competitions within each State to a national competition for those grants.

A description of these and other significant changes in the regulations follows.

Basic Grants

Under subpart C of the proposed regulations and the amended statute, Basic Grants activities must be designed to meet educational needs that arise from a qualifying plan.

Applications are ranked for funding on the basis of the date of implementation of the qualifying plan and the net change in minority group isolation in the applicant's schools between the year before that date and the first year of the proposed project. The ranking may be revised if the applicant shows by compelling evidence that it has extraordinary difficulties in carrying out its plan. Applications are then reviewed to determine whether the proposed activities—

(a) Are closely linked to the qualifying plan; and

(b) Are the best means of addressing plan-related needs.

The Commissioner sets the amount of an award on the basis of the cost of activities determined by the applicant and the Commissioner to offer the greatest promise of success.

Applications for Basic Grants are approved on an annual funding cycle. Multi-year projects may be approved if justified by the severity and likely duration of the educational needs addressed by the applicant's proposed activities and the nature of activities required to meet those needs.

An LEA may include in its Basic Grants application continued compensatory services for children who would otherwise lose services provided under title I of the Elementary and Secondary Education Act of 1965 as a result of attendance area changes under a qualifying plan. An LEA may also include in its application activities to

eliminate a disproportionately high incidence of suspensions, expulsions, and other disciplinary actions involving minority group students.

Special Project Grants

The proposed regulations contain descriptions of a number of types of Special Project Grants in subpart G.

The proposed regulations permit awards of two types (Planning Grants and Transitional Grants) without regard to annual funding cycles.

Under new statutory authority an LEA may apply for a Planning Grant to develop a qualifying plan. The maximum project period is 24 months. An LEA may receive only one Planning Grant.

Under the broad authority in section 608(a) of the Act, the Commissioner proposes three types of Transitional Grants for project periods of up to 12 months. An LEA may apply for a Transitional Grant or request the help of another public or a private nonprivate agecy for that purpose. Transitional Grants are for the following purposes:

(1) Pre-implementation assistance to help an LEA that has adopted but has not yet implemented a qualifying plan. The purpose of pre-implementation assistance is to prepare for the reassignment of children or faculty.

(2) Out-of-cycle assistance to help an LEA that adopted a qualifying plan too late to apply for a Basic Grant. The purpose of this type of grant is the same as the purpose of a Basic Grant.

(3) Special discretionary assistance to help an LEA meet an unexpected need that arises from the implementation of a qualifying plan after the deadline for receipt of Basic Grant applications.

Subpart D also contains revised, simplified proposed regulations for two types of grants that are authorized under current regulations—Grants for the Arts and Metropolitan Area Grants. The first type is not defined by the statute; the scond is. Finally, subpart D sets out other uses for discretionary funds under the statute and describes the requirements that apply to those uses.

Magnet School, University/Business Cooperation, and Neutral Site Planning Grants

Subpart E contains revised, simplified proposed regulations for these types of grants. A major change in these regulations is the removal of the 50 percent ceiling for minority group enrollment at a magnet school and the substitution of requirements for an integrated student body that are related to the applicant LEA's enrollment. A second major change is the simplification of procedures for the award of a grant.

Compensatory Service Grants

Subpart F contains revised, simplified proposed regulations for grants to continue compensatory services to children who would otherwise lose services under title I of the Elementary and Secondary Education Act of 1965 because of a qualifying plan. The principal change in this type of grant is the statutory extension of the eligibility requirements to LEAs with voluntary plans.

Nonprofit Organization Grants

The proposed regulations for this type of grant in subpart G are revised in several important respects. First, because of statutory amendments, the grants are to be based on a national rather than a within-State competition. Second, the proposed regulations shift the focus of grants to matters more closely related to an LEA's qualifying plan—such as encouraging parental and community involvement, monitoring the success of the plan, and promoting interracial and intercultural understanding among students) and away from providing compensatory education and staff training. Finally, the proposed regulations tie the procedures for making awards closely to procedures for Basic Grants.

State Agency Grants

Under new statutory authority, the regulations in subpart H govern grants to State agencies involved in or responsible for the desegregation of public elementary and secondary schools. The grants would pay for State agency activities relating to voluntary qualifying plans. These activities include planning, providing technical assistance, and providing staff training in connection with those plans. The amount of the grant is twice the amount spent by the State agency in the previous year, within statutory limits. The proposed regulations provide for reductions in the grant amount if the State agency does not justify the expenditure of the full amount for authorized activities. They also provide for proportionate reductions if available funds are insufficient.

Television and Radio Contracts

The proposed regulations in subpart I incorporate new statutory authority to support radio as well as television programming. They contemplate the use of procurement contracts for the development and production of programs and for ancillary activities set out in the regulations. The proposed regulations provide that any programming for which a contract is awarded be designed to appeal to both minority and nonminority children. Finally, the criteria for the initial review of proposals to develop and produce programs are greatly simplified, and the requirements for offerors are clarified.

Invitation To Comment

A public meeting on the proposed regulations will be held in each of the eleven cities listed at the beginning of this document. Since public meetings for several Office of Education regulations are being scheduled on the same day, it would be helpful to know how many persons are interested in commenting on these regulations. If you are interested in commenting at a public meeting, please call the appropriate person listed in this document, who will schedule a time for your comments. Persons who do not notify these persons of their intention to comment will be given an opportunity to speak in the order of registration.

In addition, interested persons are invited to submit written comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

In oral comments at a hearing and in written comments, a commenter should (1) identify specifically that section of the proposed regulations to which comments are being addressed; (2) describe his or her concern with respect to that section; and (3) recommend specific action. This is the kind of information that is needed in order to give maximum consideration to each commenter's concerns.

All written comments submitted in response to this notice and transcripts of the public meetings will be available for public inspection, both during and after the comment period, in Room 2001, FOB-6, 400 Maryland Avenue, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of the proposed regulations. The first citation is usually the appropriate section of the Act (Title VI

of the Elementary and Secondary Education Act of 1965, as amended). This is usually followed by a citation to the same provision in the United States Code.

Accordingly, the Commissioner proposes to revise 45 CFR Part 185 to read as set forth below.

Dated: June 15, 1979.

John Ellis,

Acting U.S. Commissioner of Education.

Approved: June 26, 1979.

Mary F. Berry,

Assistant Secretary for Education.

Approved: June 26, 1979.

Hale Champion,

Acting Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance Program Nos. 13.525, Basic Grants; 13.529, Nonprofit Organization Grants; 13.681, Planning Grants; 13.682, Preimplementation Assistance Grants; 13.683, Out-of-cycle Assistance Grants; 13.684, Special Discretionary Grants; 13.589, Magnet School, University/Business Cooperation and Neutral Site Planning Grants; 13.685, State Agency Grants; 13.687, Grants for the Arts; 13.532, Metropolitan Area Grants; and 13.531, Evaluation Contracts.)

Part 185 is revised to read as follows:

PART 185—EMERGENCY SCHOOLS AID

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Subpart C—Basic Grants

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Subpart D—Special Project Grants

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Grants for the Arts

185.60 Purpose.
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Other Special Projects

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Subpart E—Magnet School, University/Business Cooperation, and Neutral Site Planning Grants

185.90 Purposes.
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185.94 Approval of new projects—magnet schools and university/business cooperation.
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Subpart F—Compensatory Service Grants

185.100 Purpose.
185.101 Definitions.
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Subpart G—Nonprofit Organization Grants

185.110 Purpose.
185.111 Eligible applicants.
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185.114 Approval of new projects.
185.115 Approval of projects to support the implementation of a plan.
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Subpart H—State Agency Grants

185.120 Purpose.
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Subpart I—Television and Radio Contracts

185.130 Purpose.
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Subpart A—General Matters

§185.1 Emergency school aid.

(a) *Scope.* The regulations in this part govern awards under the Emergency school aid Act.

(Sections 601–617; 20 U.S.C. 3191–3207)

(b) *Purpose.* The purpose of the Emergency School Aid Act is to provide financial assistance—

(1) To meet the special needs incident to the elimination of minority group segregation and discrimination among students and faculty in elementary and secondary schools; and

(2) To encourage the voluntary elimination, reduction, or prevention of minority group isolation in elementary and secondary schools with substantial proportions of minority group students.

(Section 602(b); 20 U.S.C. 3192(b))

§185.2 Eligibility.

Eligible applicants for each type of award under this part are set out in the regulations that pertain to that type of award.

(Sections 601–617; 20 U.S.C. 3191–3207)

§185.3 Other applicable regulations.

(a) Awards under this part are subject to applicable provisions of the Education Division General Administrative Regulations (EDGAR) in 45 CFR part 100a (Direct Grant Programs) and 45 CFR part 100c (Definitions).

(b) However, the provisions of the EDGAR set out below do not apply to the types of awards described.

(1) The provisions in 45 CFR 100a.200 through 100a.220, except for 45 CFR 100a.216 and 100a.219(b)(3), do not apply to any award under this part. These

inapplicable provisions relate to the selection of projects.

(2) The provisions in 45 CFR 100a.250, relating to the length of a project period, do not apply to any award under this part except for—

(i) Grants for the Arts, described in subpart D;

(ii) Grants to jurisdictions set out in § 185.80(b); and

(iii) Nonprofit Organization Grants, described in subpart G.

(3) The following provisions do not apply to any award to a local educational agency under this part—

(i) 45 CFR 100a.118(c) and 100a.253, relating to the criteria for a continuation grant;

(ii) 45 CFR 100a.560 through 100a.568, relating to indirect cost rates; and

(iii) 45 CFR 100.680, relating to the participation of children enrolled in private schools.

(4) The provisions in 45 CFR 100a.100 through 100a.102, 100a.116(a), and 100a.118(b)(1), relating to deadline dates for applications, do not apply to Planning Grants and Transitional described in subpart D.

(5) The provisions in 45 CFR 100a.232, relating to the basis for the grant amount, do not apply to any award under this part except for—

(i) Planning Grants, described in subpart D;

(ii) Neutral Site Planning Grants, described in subpart E;

(iii) Compensatory Service Grants, described in subpart F; and

(iv) State Agency Grants, described in subpart H.

(6) Any other provision of the EDGAR which would conflict with the provisions of this part if it were applied to the matters treated in this part does not apply to awards under this part.

(Sections 601–617; 20 U.S.C. 3191–3207; 20 U.S.C. 1221e–3(a)(1))

(c) The provisions of 45 CFR part 100e (Education Appeal Board) apply to awards of asistannce but not procurement contracts, under this part.

(Sections 601–617; 20 U.S.C. 3191–3207; 20 U.S.C. 1234–1234c)

§185.4 Definitions.

(a) The definitions of the following terms in section 617 of the Emergency School Aid Act apply to those terms as used in this part.

Equipment.
Institution of higher education.
Integrated school.
Local educational agency (LEA).
Magnet school.
Minority group.
Minority group isolated school.
Minority group isolation.
Neutral site school.
Standard Metropolitan Statistical Area (SMSA).
State.

(Section 617; 20 U.S.C. 3207)

(b) The definitions of the following terms in section 1001 of the Elementary and Secondary Education Act of 1965, as amended, apply to those terms as used in this part:

Commissioner.
Construction.
Elementary school.
Nonprofit.
Secondary school.
Secretary.
State educational agency (SEA).

(ESEA, Section 1001; 20 U.S.C. 3381)

(c) The definitions of terms in 45 CFR Part 100c apply to those terms as used in this part, except where a term is defined differently under this part.

(d) "The Act" means the Emergency School Aid Act (Title VI of the Elementary and Secondary Education Act of 1965, as amended).

(e) "Desegregation", in reference to a plan, means the reassignment of children of faculty required by a court, agency, or official to remedy the illegal separation of minority group children or faculty in the schools of an LEA.

(Sections 606(a)(1)(A), 606(c)(1)(A)–(C), 607(a)(10) and (11), 610(a)(5); 20 U.S.C. 3196(a)(1)(A), 3196(c)(1)(A)–(C), 3197(a)(10) and (11), 3200(a)(5); H.R. Rep. No. 576, 92nd Cong., 1st Sess. 3, 12 (1971); S. Rep. No. 61, 92nd Cong., 1st Sess. 6, 35 (1971); 42 FR 12065 (March 2, 1977))

Subpart B—Requirements for Local Educational Agencies

§ 185.10 Public and advisory committee participation.

(a) An LEA shall develop any application for assistance in open consultation with parents, teachers, and, if the LEA operates a secondary school, secondary school students. At a minimum, the LEA shall—

(1) Meet the open meeting requirements of 45 CFR 100a.139 through 100a.141; and

(2) Consult with an advisory committee composed of parents of children enrolled in the LEA's schools, teachers, and, if the LEA operates a secondary school, secondary school students. At least half the members of the advisory committee must be parents. Also, at least half the members of the committee must be members of minority groups.

(b) The Commissioner does not approve an application without having received the written comments of a majority of each member of the advisory committee concerning the application. If a majority of the committee request an informal hearing concerning the application, the Commissioner does not approve the application without first affording the committee an opportunity for such a hearing.

(c) If the LEA receives an award, it shall periodically consult with the advisory committee, parents of children enrolled in its schools, and representatives of the area served regarding the services under the award.

(Section 610(a)(1) and (2), 610(c); 20 U.S.C. 3200(a)(1) and (2), 3200(c))

§ 185.11 State education agency review.

(a) An LEA that applies for assistance shall give the appropriate SEA a reasonable opportunity of offer recommendations to the LEA on the LEA's application.

(b) The LEA shall give the SEA a reasonable opportunity to submit comments to the Commissioner on the LEA's application, in accordance with 45 CFR 100a.156 through 100a.159.

(Section 610(a)(10); 20 U.S.C. 3200(a)(10))

§ 185.12 Additional cost.

(a) An LEA may include in its application for an award of assistance under the Act only activities that are authorized by the Act and are not normally carried out by the LEA.

(b) An LEA may not include an activity in its application if—

(1) The LEA supported the activity with funds from a source other than assistance under the Act in the fiscal year just prior to the fiscal year for which it seeks assistance for the activity; and

(2) Funds from sources other than assistance under the Act are available to support the activity, or would have been available for that purpose in the absence of action by the LEA.

(c) The LEA shall use funds it receives under the Act solely to pay its additional cost in carrying out the activities included in its application.

(d) For the purpose of this section, "additional cost" means the actual, incremental cost of an activity. The term does not include any cost that is not related solely to that activity.

(e) The LEA shall include in its application policies, procedures, and information that ensure that it will meet the requirements of this section.

(Sections 606(b), 610(a)(3); 20 U.S.C. 3196(b), 3200(a)(3))

§ 185.13 Supplementing non-Federal funds.

(a) An LEA that applies for assistance under the Act shall use funds it receives from that source to supplement the level of funds—and in no case supplant funds—that would, in the absence of those funds, be made available from non-Federal sources for—

(1) The purposes of the project for which the LEA seeks assistance;

(2) Promoting the integration of the LEA's schools; and

(3) The education of children participating in the project.

(b) However, this section does not prohibit the use of funds under the Act for an otherwise authorized activity required under a court-ordered plan described in section 606(a)(1)(A)(i) of the Act.

(c) The LEA shall include in its application policies, procedures, and information that ensure that it will meet the requirements of this section.

(Section 610(a)(7); 20 U.S.C. 3200(a)(7))

§ 185.14 Coordination of Federal funds.

(a) An LEA that applies for assistance under the Act shall coordinate the use of funds it receives under any other law of the United States with funds it receives under the Act to the extent consistent with that other law.

(b) The LEA shall include in its application policies, procedures, and information that ensure that it will meet the requirements of this section.

(Section 610(a)(7)(B); 20 U.S.C. 3200(a)(7)(B))

§ 185.15 Services to educationally deprived children.

An LEA that applies for assistance shall include in its application an assurance that, in developing its proposed project, it considered the need for compensatory services for children who—

(a) Received those services under title I of the Elementary and Secondary Education Act of 1965, as amended, and

(b) Are no longer eligible to receive those services as a result of attendance area changes under a qualifying plan (described in § 185.32).

(Section 610(a)(13); 20 U.S.C. 3200(a)(13))

§ 185.16 Evaluation.

(a) An LEA that receives assistance shall evaluate its approved project on a continuing basis to determine at least the following:

(1) The effectiveness of the project in achieving its goals;

(2) The impact of the project on related programs and on the community served; and

(3) The effectiveness of the project's structure and its means for the delivery of services.

(b) The LEA's evaluation shall include an objective measurement of change in educational achievement and other change that the LEA proposes to effect under the project.

(c) The LEA shall include in its application effective procedures for the evaluation described in this section.

(Section 610(a)(11); 20 U.S.C. 3200(a)(11))

§ 185.17 Private school participation.

(a)(1) An LEA that applies for assistance under the Act shall give children enrolled in private schools, and teachers and other educational staff employed in those schools, an opportunity to participate in its project on an equitable basis in accordance with this section.

(2) However, the Commissioner waives the requirement in this paragraph under section 612(c) of the Act if the LEA is prohibited by law from meeting it through reasonably feasible provisions.

(b)(1) In meeting the requirement in subsection (a), the LEA shall comply with the requirements of 45 CFR 100b.652 through 100b.663 for subgrantees.

(2) For the purpose of this section, the terms "subgrantee" and "subgrant" as used in those sections of part 100b mean "LEA" and "award", respectively. In addition, the terms "students" and "children" as used in those sections of part 100b include, for the purpose of this section, teachers and other educational staff.

(c) The requirement in subsection (a) relates only to a private nonprofit elementary or secondary school—

(1) That is located within the school district of the LEA; and

(2) That the LEA finds meets the requirements of § 185.21a (relating to nondiscrimination).

(d) A private school child, teacher, or other educational staff member may participate in the LEA's project only if his or her participation would assist in achieving the purposes of the Act (set out in § 185.1(b)). In meeting the requirements of 45 CFR 100b.657, the applicant shall include a description of how the participation of private school children, teachers, and other educational staff would assist in achieving those purposes.

(Sections 610(a)(8), 612(c); 20 U.S.C. 3200(a)(8), 3202(c))

§ 185.18 Freedom of choice desegregation plans.

If an LEA seeks assistance with respect to a desegregation plan described in section 606(a)(1)(A) of the Act, it shall identify in its application any elements of the plan that permit a child to select the school which he or she will attend.

(Section 610(a)(5); 20 U.S.C. 3200(a)(5))

§ 185.19 Compliance with plan.

If an LEA's eligibility for assistance is based on a plan described in section 606 of the Act, it shall include in its application an assurance that it will carry out, and comply with, all provisions, terms, and conditions of that plan.

(Section 610(a)(6); 20 U.S.C. 3200(a)(6))

§ 185.20 Maintenance of effort.

(a) An LEA that applies for assistance under the Act shall meet at least one of the following requirements:

(1) Its fiscal effort per student for the fiscal year for which it seeks assistance under the Act is not less than that for the second preceding fiscal year; or

(2) Its aggregate expenditure for the fiscal year for which it seeks assistance under the Act is not less than that for the second preceding fiscal year.

(b)(1) For the purposes of this section, "fiscal effort per student" means the expenditure for free public education—including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities—divided by the number of students in average daily attendance at the applicant's schools during the fiscal year for which the computation is made. Expenditures for free public education do not include expenditures for community services, capital outlay and debt service, or any expenditure from funds granted under any Federal program of assistance.

(2) "Aggregate expenditure" means the total expenditures used to compute "fiscal effort per student", as described in paragraph (b)(1).

(c) The LEA shall include in its application evidence that it meets the requirement of this section.

(Section 610(a)(9); 20 U.S.C. 3200(a)(9); H.R. Rep. No. 1701, 94th Cong., 2d Sess. 232 (1970); 122 CONG. REC. H4209 (daily ed. May 11, 1976))

§ 185.21a Limitation on eligibility—Transfers to discriminatory nonpublic schools.

(a) No LEA is eligible for assistance under the Act if, after June 23, 1972, it has transferred—directly or indirectly by gift, lease, loan, sale, or any other means—any real or personal property, or made available any services to, a nonpublic school or school system, or any person or organization controlling, operating, or intending to establish a nonpublic school or school system, before determining that the school or school system—

(1) Is not operated on a racially segregated basis as an alternative for children seeking to avoid attendance in desegregated or integrated public schools; and

(2) Does not otherwise practice, or permit to be practiced—in admissions or in the operation of any school activity—discrimination on the basis of race, color, or national origin.

(b)(1) In order to determine whether a transferee under paragraph (a) is a nonpublic school or school system—or a person or organization controlling, operating, or intending to establish a nonpublic school or school system—the applicant shall, at a minimum, obtain from the transferee, in writing, the following information:

(i)(A) The legal name and address of the transferee; and

(B) If the immediate transferee is acting in a representative capacity, the legal name and address of the party represented.

(ii) If the information in (i) does not clearly indicate the nature of the transferee or the party represented, a copy of the articles of incorporation, charter, bylaws, or other documents indicating the legal status and stated purposes of the transferee or the party represented.

(iii) A statement of the use to be made of the property or services to be transferred.

(2) In the case of a transfer occurring after June 23, 1972, but prior to February 6, 1973 (the date on which the regulations relating to this matter first became effective), the requirements in paragraph (b)(1) do not apply.

(c)(1) In making the prior determination required under paragraph (a) as to the nature and practices of a nonpublic school or school system, an LEA shall, at a minimum, obtain from that school or school system, in writing, the following information:

(i) Whether the school has publicized a policy of nondiscrimination in admissions, educational policies, scholarship programs, athletics, and extracurricular activities.

(ii) Whether the school has publicized this policy in a manner intended and reasonably likely to bring it to the attention of school-age minority group persons, and their families, without making other statements or taking actions that negate the effect of that publicity.

(iii) Whether applicants for admission have been treated on a nondiscriminatory basis.

(iv) Whether the racial composition of faculty, staff, and student body is consistent with a policy of nondiscrimination.

(v) Whether scholarship assistance is made available without regard to race.

(vi) Whether students and scholarship recipients are recruited among all segments of the community.

(vii)(A) Whether the school's incorporators, founders, board members, or donors of its land and buildings are announced or generally known as having as a primary objective the maintenance of segregated education; or

(B) Are announced or identified as officers or active members of an organization with that objective.

(2) In the case of a transfer occurring after June 23, 1972, but prior to February 6, 1973, a determination required to be made by paragraph (a) shall be substantiated by credible evidence satisfactory to the Secretary.

(d)(1) For the purpose of paragraph (c)(1)(iii) and (iv), a nonpublic school that has no minority students, or nonpublic school system that has no minority students in one or more of its schools, is presumed by the Secretary to discriminate.

(2) If that school or school system has also failed to adopt and publish a policy of nondiscrimination in accordance with paragraph (c)(1)(i) and (ii), the presumption of discrimination is conclusive.

(e) The fact that an LEA may have obtained an assurance or statement of nondiscrimination from a transferee—or included that assurance or statement in the transfer documents—does not excuse the LEA from making the determination required by paragraph (a).

(Section 606(c)(1)(A); 20 U.S.C. 3196(c)(1)(A); Green v. Connally, 330 F. Supp. 1150 (D.D.C. 1971), aff'd *sub nom.* Coit v. Green, 404 U.S. 997 (1971); Wright v. City of Brighton, Alabama, 441 F.2d 447 (5th Cir. 1971), cert. den. 404 U.S. 915 (1971))

§ 185.21b Limitation on eligibility—Prohibited personnel practices.

(a) No LEA is eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any practice, policy, or procedure that—

(1) Results in the disproportionate demotion or dismissal of instructional, administrative, or other personnel from minority groups in conjunction with desegregation or the implementation of any plan or the conduct of any activity described in section 606 of the Act;

(2) Has resulted in the disproportionate demotion or dismissal of any of those personnel during the period in which the agency has been desegregating or eliminating or reducing isolation of minority group children under—

(i) An order of a Federal or State court;

(ii) A plan approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964; or

(iii) An order of a State agency or official of competent jurisdiction.

(b)(1) For the purpose of paragraph (a), a disproportionate demotion or dismissal of minority group personnel has occurred if the ratio of minority group elementary school teachers, secondary school teachers, principals, or other staff demoted or dismissed to the number of minority group personnel employed by the agency before those demotions or dismissals exceeds by more than 10 percentage points the ratio of nonminority group personnel demoted or dismissed over the same period of time to the number of nonminority group personnel employed by the agency prior to those demotions or dismissal. For example, the agency would be in violation of this paragraph (a) if it has demoted or dismissed 21 percent of its minority group principles and 10 percent of its nonminority group principals over the same period of time.

(2) For purposes of this section, a demotion includes any reassignment—

(i) Under which a faculty or staff member receives less pay or has less responsibility than under the assignment he or she held prior to the reassignment;

(ii) That requires a lesser degree of skill than did the assignment he or she held previously; or

(iii) Under which he or she is required to teach in a subject or grade other than one for which he or she is certified or in which he or she has substantial experience or qualifications.

(3) For the purpose of this section, a dismissal includes any termination of or failure to renew a contract, for cause or otherwise, including resignations impelled by threatened administrative or other sanctions.

(c)(1) The Secretary considers a practice, policy, or procedure resulting in the disproportionate demotion or

dismissal of minority group personnel to be or remain in effect after June 23, 1972, if—at the time the LEA applies for assistance under the Act—the proportion of minority group personnel affected has not been restored at least to the proportion that existed prior to the demotions or dismissals.

(2) However, the Secretary does not make this finding if the LEA submits with its application information establishing that this practice, policy, or procedure has not been in effect since June 23, 1972. This information must include a description of corrective measures taken and progress achieved in eliminating the results of this practice, policy, or procedure.

(d) No LEA is eligible for assistance under the Act if—

(1) After June 23, 1972, the LEA, in selecting a staff member for demotion and dismissal, did not apply objective, nonracial, reasonable, and nondiscriminatory criteria to all staff members;

(2)(i) The LEA selected a staff member for demotion or dismissal on or before June 23, 1972, as described in paragraph (d)(1); and

(ii) At the time the LEA applies for assistance under the Act, the LEA has not offered this staff member reinstatement to his or her former position—or a comparable position—and offered him or her financial compensation for any loss caused by the demotion or dismissal; or

(3) The LEA fills a staff vacancy occurring after a demotion or dismissal in the process of desegregation with a person of a race, color, or national origin different from a qualified former staff member who was demoted or dismissed, unless this former staff member was offered employment in the vacancy and failed to accept the offer.

(e) No LEA is eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any other practice, policy, or procedure that results in discrimination on the basis of race, color, or national origin in the recruiting, hiring, promotion, payment, or assignment of any of its employees or other personnel for which the agency has any administrative responsibility. This includes the assignment of full-time classroom teachers to the schools of the LEA in a manner that identifies any of those schools as intended for students of a particular race, color, or national origin.

(Section 606(c)(1) (B); 20 U.S.C. 3196(c)(1)(B); S. Rep. No. 61, 92nd Cong. 1st Sess. 19 (1971), Singleton v. Jackson Municipal Separate School District, 419 F. 2d 1211 (5th Cir. 1969))

§ 185.21c Limitation on eligibility—Classroom segregation.

(a) Except as provided in § 185.22, no LEA is eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any procedure for the assignment of children to or within classes—in conjunction with desegregation or the conduct of any activity described in section 606 of the Act—that results in any separation of minority group from nonminority group children for more than 25 percent of the school day classroom periods.

(b) However, paragraph (a) does not prohibit, as a standard pedagogical practice, ability grouping that is—

(1) Based on nondiscriminatory, objective standards of measurement that—

(i) Are educationally relevant to the purposes of the grouping; and

(ii) In the case of national origin minority group children, do not essentially measure English language skills;

(2)(i) Determined by the nondiscriminatory application of the standards described in paragraph (b)(1); and

(ii) Maintained for only that portion of the school day classroom periods necessary to achieve the purposes of the grouping;

(3) Designed—(i) To meet the special needs of the students in each group; and

(ii) To improve the academic performance and achievement of students determined to be in the less academically advanced groups by means of—

(A) Specially developed curricula;

(B) Specially trained or certified instructional personnel; and

(C) Periodic retesting to determine academic progress and eligibility for promotion; and

(4) Validated by test scores or other reliable, objective evidence indicating the educational benefits of the grouping.

(Section 606(c)(1)(C); 20 U.S.C. 3196(c)(1)(C); S. Rep. No. 61, 92nd Cong., 1st Sess., 19 (1971))

§ 185.21d Limitation on eligibility—Discrimination against children.

Except as provided in § 185.22, no LEA is eligible for assistance under the Act if, after June 23, 1972, it has had or maintained in effect any practice, policy, or procedure that results or has resulted in discrimination against children on the basis of race, color, or national origin, including but not limited to—

(a) Limiting curricular or extracurricular activities or participation of children in those activities, to avoid the participation of minority group children;

(b) Denying equality of educational opportunity, or otherwise discriminating on the basis of language or cultural background, against national origin minority group children;

(c) Permitting the rental, use, or enjoyment of any of the LEA's facilities or services by a group or organization that—

(1) Discriminates against minority group children aged 5 through 17 in its admissions or membership policies; or

(2) Otherwise practices, or permits to be practiced, discrimination against these children on the basis of race, color, or national origin;

(d) Imposing disciplinary sanctions—including expulsion, suspension, or corporal or other punishment—in a manner that discriminates against minority group children on the basis of race, color, or national origin;

(e) Assigning students to ability groups, tracks, special education classes, classes for the mentally retarded, or other curricular or extracurricular activities on the basis of race, color, or national origin. Racially or ethnically identifiable groups, tracks, or classes that cannot be justified educationally under the criteria set out in § 185.21c(b) are presumed by the Secretary to be assigned on the basis of race, color, or national origin; and

(f) Denying to minority group children, on the basis of race, color, or national origin facilities or instructional or other services comparable to those provided to nonminority group children.

(Section 606(c)(1)(D); 20 U.S.C. 3196(c)(1)(D))

§ 185.22 Exception for planning grants.

The provisions of §§ 185.21c and 185.21d do not apply to an LEA described in § 185.41 if the applicant LEA provides assurances in its application that the development of the plan for which it seeks assistance will address the conditions described in those sections.

(Section 606(c)(2); 20 U.S.C. 3196(c)(2))

§ 185.23 Continuing conditions of eligibility.

(a) The limitations on eligibility in §§ 185.21a through 185.21d are continuing conditions of eligibility during the entire grant period.

(b) the LEA's failure to comply with these conditions after the award of assistance is grounds for termination of assistance and for other sanctions that the Secretary may impose.

(c) The provisions of 45 CFR part 100a (Education Appeal Board) apply to a

decision to terminate assistance or impose another sanction.

(Section 606(c); 20 U.S.C. 3196(c); S. Rep. No. 61, 92nd Cong., 1st Sess. 41–42 (1971))

§ 185.24 Show cause conferences.

(a)(1) If the Secretary determines that an applicant is not eligible for assistance under §§ 185.21a through 185.21d, the Secretary notifies the applicant in writing of that determination and the reasons for it.

(2) The notification includes an offer to show cause why the determination of ineligibility should be revoked and the applicant's application considered for funding.

(b) If the applicant requests an opportunity to show cause, the Secretary holds an informal conference for that purpose.

(c) After the conference has been held, the Secretary promptly notifies the applicant of the decision to continue or revoke the determination of ineligibility and the reasons for that decision.

(d) For the purpose of this section, "applicant" includes—

(1) An agency that is seeking an award for a new project; and

(2) An agency that is seeking a continuation award for a budget period after the first budget period of an approved multi-year project.

(e) The provisions of 45 CFR part 100e do not apply to a determination that an applicant is not eligible for assistance under §§ 185.21a through 185.21d.

(Section 606(c); 20 U.S.C. 3196(c))

§ 185.25 Waivers of ineligibility.

(a) In the event that an LEA prior to an award of assistance under the Act is determined to be ineligible under §§ 185.21a through 185.21d, the agency may apply to the Secretary for waiver of ineligibility.

(Section 606(c) (1) and (3); 20 U.S.C. 3196(c) (1) and (3))

(b) An application for waiver under paragraph (a) must contain—

(1) Information and assurances to ensure that any practice, policy, procedure, or other activity resulting in ineligibility has ceased to exist or occur; and

(2) Provisions to ensure that practice, policy, procedure, or activity will not reoccur after the agency submits its application for a waiver.

(c) If an applicant for assistance—except for assistance under section 608(a) of the Act—submits its application for waiver too late to permit the Secretary to consider it before the June 30 deadline in section 610(b) of the Act, the Commissioner disapproves the applicant's application for assistance.

(Sections 606(c)(1) and (3), 610(a) and (b); 20 U.S.C. 3196(c)(1) and (3), 3200(a) and (b))

§ 185.25a Waiver of ineligibility—Transfer to discriminatory nonpublic schools.

In the case of ineligibility under § 185.21a, an LEA shall include the following in its application for waiver:

(a) A list of all property transferred or services made available to nonpublic schools or school systems that—

(1) Are operated on a racially segregated basis; or

(2) Practice, or permit to be practiced, discrimination on the basis of race, color or national origin in admissions or the operation of any school activity.

(b) The names and addresses of these schools or school systems.

(c) The consideration received for these transfers.

(d) Evidence that—(1) The transfers have been rescinded; and

(2) To the extent possible under State law, all unearned consideration received for them has been repaid or returned; and

(e) A statement of steps taken by the agency to avoid or prevent these types of transfers in the future.

(Section 606(c); 20 U.S.C. 3196(c))

§ 185.25b Waiver of ineligibility—Prohibited personnel practices.

(a) In the case of ineligibility under § 185.21b resulting from the disproportionate demotion or dismissal of instructional, administrative, or other personnel from minority groups, an LEA shall include the following in its application for waiver:

(1) A plan of affirmative action to ensure that—within a reasonable time from the date of its application—the proportion of minority group personnel affected by these demotions or dismissals will be restored at least to the proportion that existed prior to the demotions or dismissals.

(2) A statement of steps taken by the LEA to prevent any future disproportionate demotion or dismissal of minority group personnel.

(b) In the case of ineligibility under § 185.21b resulting from discriminatory demotion or dismissal of instructional or other personnel from minority groups, an LEA shall include the following in its application for waiver:

(1) Evidence that all minority group personnel demoted or dismissed as a result of discrimination have been offered reinstatement to their former positions or comparable positions and afforded financial compensation for any loss caused by those demotions or dismissals; and

(2) A statement of steps taken by the LEA to prevent any future discriminatory demotion or dismissal of minority group personnel. This includes but is not limited to a statement of objective, nonracial, and reasonable criteria to be applied—

(i) In the event that reinstatement of minority group personnel as required by paragraph (b)(1) necessitates a reduction in the number of personnel; or

(ii) In the event of future demotions or dismissals for any reason.

(c)(1) In the case of ineligibility resulting from discriminatory assignment of teachers as prohibited by § 185.21b(e), an LEA shall include in its application for waiver evidence that the agency has assigned its full-time classroom teachers to its schools so that no school is identified as intended for students of a particular race, color, or national origin.

(2) In the case of an LEA implementing a required plan described in § 185.32(a), these nondiscriminatory assignments must conform to the requirements of that plan.

(3) In the case of an LEA not implementing that type of plan, or implementing a plan that contains no provision regarding assignment of faculty, the LEA shall make assignments so that the proportion of minority group full-time classroom teachers at each school is between 75 and 125 percent of the proportion of those teachers that exists on the LEA's faculty as a whole.

(d) In the case of ineligibility resulting from other discriminatory practices, policies, or procedures prohibited by § 185.21b(e), an LEA shall include the following in its application for waiver:

(1) Evidence that minority group personnel subjected to this type of discrimination have been—

(i) Reinstated or restored to the positions or status they held prior to, or would have held in the absence of, this discrimination; and

(ii) Given financial compensation for any loss caused by that discrimination.

(2) A statement of steps taken by the LEA to prevent this type of discrimination in the future.

(e) In the event that the corrective action required under this section includes the employment or promotion of minority group personnel, the LEA shall give preference—

(1) First to qualified minority group members of its own faculty or staff previously demoted or dismissed for any reason; and

(2) Second to qualified minority group faculty and staff members identified by

the Department as proviously demoted or dismissed by other LEA's in conjunction with desegregation or the conduct of any acitivity described in section 606 of the Act.

(Section 606(c); 20 U.S.C. 3196(c))

§ 185.25c Waiver of ineligibility—classroom segregation.

In the case of ineligibility under § 185.21c, an LEA shall include in its application for waiver—

(a) Evidence that minority group children are not separated from nonminority group children by or within classes for more than 25 percent of the school day classroom periods, except in the case of ability grouping that meets the requirements of § 185.21c(b) (1) through (3) and is the only available method of achieving a specific educational objective.

(b) A statement of steps taken by the LEA to ensure that separation of minority and nonminority group children as prohibited by § 185.21c will not reoccur.

(Section 606(c); 20 U.S.C. 3196(c))

§ 185.25d Waiver of ineligibility—discrimination against children.

In the case of ineligibility under § 185.21d, and LEA shall include in its application for waiver evidence that the practice, policy, or procedure prohibited by that section has ceased and that its effects have been remedied or eliminated. In particular—

(a) In the case of a denial of equal educational opportunity to national origin minority group children—as described in § 185.21(b)—the LEA shall submit an educational plan of sufficient comprehensiveness to rmemdy or eliminate the effects of the denial and to meet the special educational needs of all national origin minority group children for whose education the LEA is responsible.

(b) In the case of a violation under § 185.21d(c), the LEA shall include in its application for waiver evidence that—

(1) The discriminatory rental, use, or enjoyment of its facilities is no longer permitted; and

(2) Any agreement with respect to the discriminatory rental, use, or enjoyment has been rescinded and the unearned consideration from it has been returned or repaid, to the extent possible under the applicable State law.

(c)(1) In the case of the assignment of students to racially or ethnically identifiable groups, tracks, or classes that cannot be justified educationally—as described in § 185.21d(e)—the LEA shall include in its application for waiver the following informaiton:

(i) If the assignment was to a grouping to provide special education or related services to handicapped students, evidence that the students have been evaluated and placed in accordance with requirements for evaluation and placement of handicapped students under Pub. L. 94–142, section 504 of Pub. L. 93–112, and any regulations under those statutes.

(ii) If the assignment was to other groupings, evidence that the students have been reassigned without discrimination to groupings that are not recially or ethnically identifiable, or evidence that the students have been reassigned to groupings in accordance with the criteria in § 185.21c(b) (1) through (3).

(2) If the agency reassigns any student to a new grouping under paragraph (c)(1), it shall also include evidence that it has made provision for the transitional services necessary to enable the student to participate meaningfully in the educational program of the new grouping.

(Section 606(c); 20 U.S.C. 3196(c))

Subpart C—Basic Grants

§ 185.30 Purpose.

The purpose of a basic grant is to meet educational needs that arise from a qualifying plan described in § 185.32.

(Sections 602(b), 604(b)(1), 606(a)(1), 607(a); 20 U.S.C. 3192(b), 3194(b)(1), 3196(a)(1), 3197(a))

§ 185.31 Eligible applicants.

An LEA may apply for a basic grant.

(Section 606(a)(1); 20 U.S.C. 3196(a)(1))

§ 185.32 Qualifying plans.

(a) *Required plans.* (1) An LEA may apply if it is implementing a plan—

(i) That has been undertaken under a final order issued by—

(A) A court of the United States;

(B) A court of any State; or

(C) Any other State agency or official of competent jurisdiction;

(ii) That requires the desegregation of minority group segregated children or faculty in the LEA's elementary and secondary schools, or otherwise requires the elimination or reduction of minority group isolation in those schools; and

(iii) That may, in addition, require educational activities in minority group isolated schools not affected by the reassignment of children or faculty under the plan in order to remedy the effects of illegal segregation.

(2) For the purpose of subparagraph (1), a State agency or official of competent jurisdiction means any State agency or official authorized pursuant to State law to issue such an order.

(Section 606(a)(1)(A)(i); 20 U.S.C. 3196(a)(1)(A)(i))

(3) An LEA may apply if it is implementing a plan that has been approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 for the desegregation of minority group segregated children or faculty in the LEA's schools.

(Section 606(a)(1)(A)(ii); 20 U.S.C. 3196(a)(1)(A)(ii))

(b) *Nonrequired plans.* (1) An LEA may apply if, without having been required to do so, it has adopted and is implementing, or will, if assistance is made available to it under the Act, adopt and implement, a plan for the complete elimination of minority group isolation in all its minority group isolated schools.

(Section 606(a)(1)(B); 20 U.S.C. 3196(a)(1)(B))

(2)(i) An LEA may apply if it has adopted and is implementing, or will, if assistance is made available to it under the Act, adopt and implement, a plan to—

(A) Eliminate or reduce minority group isolation in one or more of its minority group isolated schools; or

(B) Reduce the total number of minority group children who are enrolled in its minority group isolated schools.

(ii) Elimination of minority group isolation is a change in a school's enrollment resulting in a reduction in the proportion of minority group children from greater than 50 percent to 50 percent or less.

(iii) Reduction of minority group isolation is a change in a school's enrollment after which the proportion of minority group children is reduced, but remains greater than 50 percent.

(Section 606(a)(1)(C) (i) and (ii); 20 U.S.C. 3196(a)(1)(C) (i) and (ii))

(3)(i) An LEA may apply if it has adopted and is implementing, or will, if assistance is made available to it under the Act, adopt and implement, a plan to prevent minority group isolation reasonably likely to occur (in the absence of assistance under the Act) in any of its schools in which at least 20 percent, but not more than 50 percent, of the enrollment consists of minority group children.

(ii) The Commissioner considers minority group isolation reasonably likely to occur (in the absence of assistance under the Act) in a school only if the LEA demonstrates by credible evidence that minority group

children will comprise more than 50 percent of the enrollment of the school during the first fiscal year for which it seeks assistance or the next succeeding fiscal year. This evidence may include, but is not limited to—

(A) Enrollment figures for the school during previous fiscal years;

(B) Enrollment figures of schools from which the enrollment of the school is drawn;

(C) Demographic data concerning the attendance area served by the school; and

(D) School board resolutions or other evidence of final official action likely to affect the enrollment of the school during the first fiscal year for which assistance is sought or the next succeeding fiscal year.

(iii) If the LEA seeks assistance for more than one fiscal year, its plan to prevent minority group isolation must include provisions to accomplish the purpose of the plan by mandatory enrollment changes in the event other means fail.

(Section 606(a)(1)(C)(iii); 20 U.S.C. 3196(a)(1)(C)(iii))

(4) An LEA may apply if, without having been required to do so, it has adopted and is implementing, or will, if assistance is made available to it under the Act, adopt and implement, a plan to enroll and educate in its schools children who would not otherwise be eligible for enrollment because of nonresidence in its school district, where that enrollment would make a significant contribution toward reducing minority group isolation in one or more school districts. The Commissioner considers an LEA's plan to make a significant contribution toward reducing minority group isolation only if it involves the enrollment by the applicant of at least 100 children who would not otherwise be eligible for enrollment because of nonresidence in its school district. Reducing minority group isolation in one or more school districts, for the purpose of this subparagraph (4), refers to any of the changes in enrollment described in paragraph (b)(2) in any school district to which the plan relates.

(Section 606(a)(1)(D); 20 U.S.C. 3196(a)(1)(D))

(5) The Commissioner does not consider a plan described in paragraph (b) (2), (3), or (4) to meet the requirements of this section where the elimination, reduction, or prevention of minority group isolation accomplished or to be accomplished in schools to which the plan relates results in an equal or greater degree of minority group isolation in other schools operated by the LEA or LEA's to which the plan relates.

(Sections 602(b), 606(a)(1) (C) and (D); 20 U.S.C. 3192(b), 3196(a)(1) (C) and (D))

(c) *Implementation of a plan.* (1) For purposes of determining an LEA's eligibility for assistance, the Commissioner considers the LEA to be implementing a plan if—

(i) It is operating its school system in accordance with the requirements of the plan; and

(ii) In the case of a required or nonrequired plan to eliminate, reduce, or prevent minority group isolation—or a plan to reduce the total number of minority group children who are enrolled in its minority group isolated schools—the degree of minority group isolation in its schools is less than the degree that would have existed in the absence of the plan.

(Section 606(a)(1); 20 U.S.C. 3196(a)(1))

(d) An LEA shall include in its application the following:

(i) A complete copy of the plan upon which it bases its application for assistance under this section (including all relevant legal documents);

(ii) A summary of the present requirements for that plan;

(iii) In the case of a plan described in paragraph (b), a copy of a school board resolution or other evidence of final official action adopting and implementing the plan, or agreeing to adopt and implement it upon the award of assistance; and

(iv) In the case of a plan to prevent minority group isolation described in paragraph (b)(3), where minority group children constitute more than 50 percent of the enrollment of all the schools operated by the LEA—

(A) A statement of the enrollment, by race, in any of its schools in which minority group children constitute more than 70 percent of the enrollment;

(B) A statement of the reasons for that disproportionate minority group enrollment in each school; and

(C) A statement of instructional and other services to be provided to children enrolled in each school that will ensure that services to those children are comparable to services to be provided to children enrolled in any school to which the plan described in paragraph (b)(3) relates.

(Sections 606(a)(1), 610(a); 20 U.S.C. 3196(a)(1), 3200(a))

§ 185.33 Authorized activities.

An LEA may use funds under a basic grant for any activity that is designed to meet an educational need that arises from a qualifying plan (described in § 185.32). Section 607(a) of the Act lists examples of authorized activities.

(Section 607(a); 20 U.S.C. 3197(a))

§ 185.34 Application procedures.

(a) An LEA that wants to apply shall meet the requirements in 45 CFR 100a.108 through 100a.118 and the requirements in this part.

(b) The LEA shall include in its application a needs assessment that shows the relationship of the educational needs addressed by the proposed activities to the implementation of the LEA's qualifying plan.

(c) The LEA shall include in its application an assurance that it has met and will meet applicable requirements of the Act and this part.

(Section 610(a); 20 U.S.C. 3200(a))

§ 185.35 Approval of new projects.

(a) The Commissioner decides whether to approve a new project on the basis of the procedures in this section.

(Sections 602(b), 610(d); 20 U.S.C. 3192(b), 3200(d))

(b) Applications for new projects submitted by LEA's in each State are considered separately.

(Section 605; 20 U.S.C. 3195)

(c)(1) Each application is assigned to one of the categories in this paragraph on the basis of the date when the LEA implemented the qualifying plan on which it bases its application.

(i) Category I contains applications relating to plans with implementation dates not more than three years before the July 1 that follows the deadline date for applications.

(ii) Category II contains applications relating to plans with implementation dates more than three, but not more than six, years before that date.

(iii) Category III contains applications relating to plans with implementation dates more than six years before that date.

(2)(i) The implementation date of a plan is the date of the first change in the enrollment of a school—or, in the case of a plan for the desegregation of minority group segregated faculty, the first reassignment of a faculty member—under the plan.

(ii) If an LEA is implementing more than one plan, or a plan that was implemented over a period of time, the implementation date is the date of the greatest change in the enrollments of schools, or the greatest number of

reassignments of faculty members, as appropriate.

(3)(i) The Commissioner makes awards for all approvable applications contained in Category I before those in Category II.

(ii) The Commissioner makes awards for all approvable applications contained in Category II before those in Category III.

(Sections 610(d) (1) and (3); 20 U.S.C. 3200(d) (1) and (3))

(d)(1) Within each category, applications are ranked on the basis of the net change in isolation in the applicant's schools between the fiscal year just prior to the implementation date of its plan ("base year") and the first fiscal year for which it seeks assistance ("project year"). The net change in isolation is computed on the basis of the procedures in this paragraph.

(2) The minority group percentage of the enrollment of each of the applicant's schools in the base year is computed. The number of minority group students enrolled in schools within each percentage range in column A of table I is determined. The number of students in each percentage range is then multiplied by the corresponding weight in column B of table I. The resulting weighted numbers are added. The sum is then divided by the total number of minority group students.

Table I

Column A minority group percentage	Column B weight
95 or more	0.0
At least 90 but less than 95	.1
At least 85 but less than 90	.2
At least 80 but less than 85	.3
At least 75 but less than 80	.4
At least 70 but less than 75	.5
At least 65 but less than 70	.6
At least 60 but less than 65	.7
At least 55 but less than 60	.8
At least 50 but less than 55	.9
50 or less	1.0

(3) The computation described in subparagraph (2) is repeated using the number of minority group students to be enrolled in the applicant's schools in the project year.

(4) The result of the computation for the base year is subtracted from the result of the computation for the project year to determine the net change in isolation between the base year and the project year.

(Section 610(d) (1) and (2); 20 U.S.C. 3200(d) (1) and (2))

(e) With the concurrence of the Assistant Secretary for Education that compelling evidence of extraordinary difficulty by an applicant in effectively carrying out a desegregation plan exists, the Commissioner may revise the rank order of applications between and within categories under paragraph (c) and (d) to reflect the applicant's greater need for assistance.

(Section 610(d)(1); 20 U.S.C. 3200(d)(1))

(f)(1) The Commissioner reviews each application to determine if it contains activities that address educational needs that arise from the implementation of the LEA's qualifying plan.

(2)(i) If the application contains activities described in subparagrah (1), the Commissioner reviews those activities to determine the degree to which they afford promise of achieving the purposes of the Act described in § 185.1(b).

(ii) In making this determination, the Commissioner considers—

(A) The information described in 45 CFR 100a.110 through 100a.115 as it relates to those activities; and

(B) The degree to which the applicant's plan involves, to the fullest extent practicable, the total educational resources, both public and private, of the community to be served.

(iii) On the basis of this review, the Commissioner decides whether an award to the applicant is warranted.

(Sections 602(b), 605(b)(3), 607(a), 610(d) (1), (4) and (5); 20 U.S.C. 3192(b), 3195(b)(3), 3197(a), 3200(d) (1), (4) and (5))

(g)(1) The Commissioner further reviews each application submitted by an applicant to which an award is warranted under paragraph (f) to ensure that each activity under the award is designed to achieve the purposes of the Act.

(2) Before making an award, the Commissioner may require the applicant to modify its proposed activities in order to meet more effectively the educational needs that arise from its plan. However, the amount of the award does not exceed the amount that would be required for activities that the applicant proposed to meet those needs.

(Sections 602(b), 607(a), 610(d)(4); 20 U.S.C. 3192(b), 3197(a), 3200(d)(4))

§ 185.36 Length of project.

(a) The Commissioner may approve a project period of up to 60 months.

(b) The Commissioner decides the length of a project period on the basis of the following factors:

(1) The severity and likely duration of the educational needs addressed by the applicant's proposed activities.

(2) The nature of those activities, or of activities to meet those needs most effectively.

(3) The recency of the LEA's implementation of the qualifying plan on which it bases its application.

(c) When approving an award for the first budget period of a multi-year project, the Commissioner indicates his or her intention to make one or more continuation awards for budget periods during the remainder of the project period.

(Section 610(e)(1); 20 U.S.C. 3200(e)(1))

§ 185.37 Approval of continuation awards.

The Commissioner approves a continuation award for a budget period after the first budget period of a multi-year project if—

(a) Sufficient appropriations are available for the budget period under section 610(e)(2)(A) of the Act;

(b) The applicant is not ineligible for assistance under §§ 185.21a through 185.21d; and

(c) The applicant is making satisfactory progress toward achieving the objectives of its project.

(Section 610(e)(2); 20 U.S.C. 3200(e)(2))

Subpart D—Special Project Grants

Planning Grants

§ 185.40 Purpose.

The purpose of a planning grant is to develop a qualifying plan (described in § 185.32).

(Sections 604(b)(2), 606(a)(1)(E), 608(a); 20 U.S.C. 3194(b)(2), 3196(a)(1)(E), 3198(a))

§ 185.41 Eligible applicants.

(a) An LEA may apply for a planning grant.

(b) No LEA may apply for a planning grant if it has received such a grant before.

(c) An LEA that applies for assistance to develop a required plan described in § 185.32(a) need not meet the requirements of §§ 185.21c or 185.21d if it provides assurances in its application that the development of the plan for which it seeks assistance will address the conditions described in those sections.

(Sections 606(a)(1), 606(a)(1)(E), 606(c)(2), 608(a); 20 U.S.C. 3196(a)(1), 3196(a)(1)(E), 3196(c)(2), 3198(a))

§ 185.42 Authorized activities.

An LEA may use funds under a planning grant for any activity that is reasonably related to developing a qualifying plan.

(Sections 606(a)(1)(E), 608(a); 20 U.S.C. 3196(a)(1)(E), 3198(a))

§ 185.43 Application procedures.

(a) An LEA may apply for a planning grant at any time.

(b) The applicant shall meet the requirements in 45 CFR 100a.108 through 100a.118 and the requirements of this part.

(c) If the applicant applies for a grant to develop a required plan described in § 185.32(a), it shall include in its application—

(1) A copy of the final order of the court, agency, or official that requires a plan described in § 185.32(a)(1); or

(2) A copy of the Secretary's finding of illegal separation of minority group children or faculty that requires a plan described in § 185.32(a)(2).

(d) If the applicant applies for a grant to develop a nonrequired plan described in § 185.32(b), it shall include in its application—

(1) The names of the schools in which minority group isolation will be eliminated, reduced, or prevented—or, in the case of a plan described in § 185.32(b)(4), the school districts from which nonresident children will come—under the plan; and

(2) Evidence that the plan will be implemented at the end of the proposed project.

(e) The applicant shall include in its application an assurance that it has met and will meet applicable requirements in the Act and in this part.

(Sections 606(a)(1)(E), 608(a), 610(a) 20 U.S.C. 3196(a)(1)(E), 3198(a), 3200(a) S. Rep. No. 856, 95th. Cong., 2d Sess. 66 (1978))

§ 185.44 Approval of projects.

(a) The Commissioner decides whether to approve a new project on the basis of the degree to which the proposed activities afford promise of achieving the purposes of the Act described in § 185.1(b), as indicated by—

(1) The information described in 45 CFR 100a.110 through 100a.115; and

(2) The extent to which the application contains convincing evidence that the plan will be implemented at the end of the proposed project.

(Section 610(d); 20 U.S.C. 3200(d))

(b)(1) The Commissioner may approve a project period of up to 24 months.

(Section 606(a)(1)(E); 20 U.S.C. 3196(a)(1)(E))

(2) The Commissioner decides the length of a project period on the basis of—

(i) The severity and likely duration of the problems to which the plan would be addressed; and

(ii) The nature of the applicant's proposed activities.

(3) When approving an award for the first budget period of a multi-year project, the Commissioner indicates his or her intention to make a continuation award for a second budget period.

(Section 610(e)(1); 20 U.S.C. 3200(e)(1))

(c) The Commissioner approves a continuation award for a second budget period on the basis of the standards in § 185.37(a).

(Section 610(e(2); 20 U.S.C. 3200(e)(2))

Transitional Grants

§ 185.50 Purposes.

A transitional grant is for any one of the following purposes:

(a) *Pre-implementation assistance*—to help an LEA that has adopted but not yet implemented a required plan, described in § 185.32(a), to prepare for the reassignment of children or faculty under the plan.

(b) *Out-of-cycle assistance*—to help an LEA to meet educational needs that arise from the implementation of a plan described in § 185.32 that the LEA adopted too late to serve as the basis for a basic grant application in the most recent competition under subpart C.

(c) *Special discretionary assistance*—to help an LEA meet an unexpected educational need that arose from the implementation of a plan described in § 185.32 after the deadline date for basic grant applications in the most recent competition under subpart C.

(Sections 604(b)(2), 608(a); 20 U.S.C. 3194(b)(2), 3198(a))

§ 185.52 Eligible applicants.

(a) LEAs, SEAs, other public agencies, and private nonprofit agencies and organizations are eligible to apply for transitional grants.

(b) However, an applicant that is not an LEA may apply for a transitional grant only at the request of the LEA that it proposes to help.

(Section 608(a); 20 U.S.C. 3198(a))

§ 185.52 Authorized activities.

(a) The recipient of a pre-implementation assistance grant described in § 185.50(a) may use funds under the grant for any activity designed to meet an educational need that is reasonably related to the LEA's preparing for the reassignment of children or faculty under the plan.

(b) The recipient of an out-of-cycle assistance grant described in § 185.50(b) may use funds under the grant for any activity designed to meet an educational need that arises from the implementation of the plan.

(c) The recipient of a special discretionary assistance grant described in § 185.50(c) may use funds under the grant for any activity designed to meet the unexpected educational need described in that paragraph.

(Section 608(a); 20 U.S.C. 3198(a))

§ 185.53 Application procedures.

(a) An applicant may apply for a transitional grant at any time.

(b) The applicant shall meet the requirements of 45 CFR 100a.108 through 100a.116 and the requirements of this part.

(c) An applicant shall include in its application—

(1) Except in the case of an application for a grant described in § 185.50(c) from an LEA that has a basic grant, a copy of the LEA's qualifying plan;

(2) A needs assessment that shows the relationship of the educational needs addressed by the proposed activities to the LEA's plan;

(3) If the applicant is not an LEA, a copy of the LEA's request for the applicant's help; and

(4) An assurance that the applicant has met and will meet applicable requirements of the Act and this part.

(Sections 608(a), 610(a); 20 U.S.C. 3198(a), 3200(a))

§ 185.54 Approval of projects.

(a) The Commissioner decides whether an award to the applicant is warranted on the basis of—

(1) The degree to which the proposed activities afford promise of achieving the purposes of the Act described in § 185.1(b), as indicated by—

(i) The applicant's needs assessment;

(ii) The information described in 45 CFR 100a.110 through 100a.115; and

(iii) Whether another applicant has submitted, or is likely to submit, an application to meet the need addressed by the proposed activities; and

(2) The factors set out in section 610(d) (1), (2), (3), and (5) of the Act.

(b)(1) The Commissioner further reviews each application submitted by an applicant to which an award is warranted under paragraph (a) to ensure that each activity under the award is designed to achieve the purposes of the Act.

(2) Before making an awaard, the Commissioner may require the applicant to modify its proposed activities in order to meet more effectively the educational needs described in § 185.50. However, the amount of the award does not exceed the amount that would be

required for activities that the applicant proposed to meet those needs.

(3) The Commissioner approves a project period of not more than 12 months for a transitional grant.

(4) The Commissioner does not set the amount of a grant described in § 185.50 (a) or (c) above $100,000.

(Sections 608(a), 610(d); 20 U.S.C. 3198(a), 3200(d))

Grants for the Arts

§ 185.60 Purpose.

The purpose of a grant for the arts is to provide, through the arts, opportunities for interracial and intercultural communication and understanding to help meet the special needs incident to the implementation of a qualifying plan (described in § 185.32).

(Sections 604(b)(2), 608(a); 20 U.S.C. 3194(b)(2), 3198(a))

§ 185.61 Eligible applicants.

A public agency other than an LEA that is responsible for the administration of statewide public arts programs may apply for a grant for the arts at the request of the LEA or LEAs that it proposes to serve.

(Section 608(a); 20 U.S.C. 3198(a))

§ 185.62 Eligibility for services from a grantee.

A grantee shall conduct activities under the grant primarily with students who attend schools—

(a) That are affected by a qualifying plan;

(b) In which the minority group enrollment is between 20 and 80 percent; and

(c) That are operated by LEAs that are in compliance with the requirements of §§ 185.21a through 185.21d.

(Section 608(a); 20 U.S.C. 3198(a))

§ 185.63 Authorized activities.

A grantee may use funds to carry out any activity that is reasonably related to the purpose of a grant for the arts (described in § 185.60).

(Section 608(a); 20 U.S.C. 3198(a))

§ 185.64 Application procedures.

(a) An applicant shall meet the requirements in 45 CFR 100a.108 through 100a.118 and the requirements of this part.

(b) An applicant shall include in its application—

(1) A copy of the qualifying plan for each LEA that the applicant proposes to serve, unless the LEA has submitted its plan to the Commissioner;

(2) A copy of the request for the applicant to serve the LEA, from each LEA that the applicant proposes to serve;

(3) An assurance, signed by an authorized official of each LEA that the applicant proposes to serve, that the LEA is in compliance with §§ 185.21a through 185.21d;

(4) Evidence, such as a copy of a State statutory provision or executive order, that the applicant is a public agency responsible for the administration of statewide public arts programs; and

(5) An assurance that the applicant has met and will meet applicable requirements of the Act and this part.

(Section 608(a); 20 U.S.C. 3198(a))

§ 185.65 Approval of projects.

(a) The Commissioner decides whether an award to the applicant is warranted on the basis of—

(1) The degree to which the proposed activities afford promise of achieving the purposes of the Act described in § 185.1(b), as indicated by the information described in 45 CFR 100a.110 through 100a.115; and

(2) The factors set out in section 610(d)(1) (2), (3) and (5) of the Act.

(b)(1) The Commissioner further reviews each application submitted by an applicant to which an award is warranted under paragraph (a) to ensure that each activity under the award is designed to achieve the purposes of the Act.

(2) Before making an award, the Commissioner may require the applicant to modify its proposed activities in order to carry out more effectively the purpose set out in § 185.60. However, the amount of the award does not exceed the amount that would be required for activities that the applicant proposed to carry out that purpose.

(3) The maximum assistance for any budget period for a grant for the arts is $100,000.

(c) The Commissioner does not award more than one grant for activities in any State.

(Section 610(d); 20 U.S.C. 3200(d))

Metropolitan Area Grants

§ 185.70 Purposes.

A metropolitan area grant is for either of the following purposes:

(a) To establish or maintain one or more integrated schools.

(b) To support the joint development of a plan or reduce or eliminate minority group isolation, to the maximum extent possible, in the public elementary and secondary schools within a Standard Metropolitan Statistical Area (SMSA).

(Sections 604(b)(2), 606(a)(2), 609(a); 20 U.S.C. 3194(b)(2), 3196(a)(2), 3199(a))

§ 185.71 Eligible applicants.

(a) *Integrated schools.* An LEA may apply for a grant if—

(1) It is located within an SMSA or serves a school district adjacent to a school district that is located wholly within an SMSA;

(2) The total student enrollment of the LEA includes a percentage of minority group students that is smaller than the percentage of minority group students enrolled in all schools in the SMSA; and

(3)(i) It has made a joint arrangement for the establishment or maintenance of one or more integrated schools with a cooperating LEA—

(A) That is located within the same SMSA; and

(B) That has a total student enrollment that includes a percentage of minority group students that is greater than the percentage of minority group students enrolled in all the schools in that SMSA.

(ii) A joint arrangement must consist of the enrollment in schools of the applicant LEA of students residing in the district served by, or attending the schools of, the cooperating LEA. The arrangement may not result in an increase in the degree of minority group isolation in any school operated by any LEA. The arrangement must involve the enrollment in the applicant's schools of only those students who in the absence of the arrangement would be enrolled in, or assigned to, a minority group isolated school.

(Sections 606(a)(2), 609(a)(1), 617(3); 20 U.S.C. 3196(a)(2), 3199(a)(1), 3207(3))

(b) *Area-wide plans.* (1) Two or more LEAs located within an SMSA may apply for a grant for the joint development of a plan to reduce and eliminate minority group isolation, to the maximum extent possible, in the public elementary and secondary schools in that SMSA. The plan must, at a minimum, provide that by a certain date—no later than July 1, 1983—the percentage of minority group children enrolled in each public elementary and secondary school in the SMSA will be at least 50 percent of the percentage of minority group children enrolled in all those schools, and shall specifiy in detail the means by which that objective is to be achieved.

(2) The Commissioner does not make a grant under this paragraph unless—

(i) Two-thirds or more of the LEAs in an SMSA have approved the application; and

(ii) The number of students in the schools of those agencies that have approved the application constitutes two-thirds or more of the number of

students in the schools of all the LEAs in the SMSA.

(Sections 609(a)(2); 20 U.S.C. 3199(a)(2))

§ 185.72 Authorized activities.

(a) *Integrated schools.* (1) The recipient of a grant under § 185.70(a) may use funds under the grant for any acitivity that is designed to meet an educational need that arises from the joint arrangement described in § 185.71(a)(3).

(2) The recipient may also use these funds to pay the the net cost, if any, to the recipient of enrolling and educating in its integrated schools students from the cooperating LEA.

(Section 609(a)(1); 20 U.S.C. 3199(a)(1))

(b) *Area-wide plans.* (1) The recipient of a grant under § 185.70(b) may use funds under the grant for any activity reasonably necessary to the joint development of a plan described in § 185.71(b).

(2) The recipient may not use these funds for construction or any repair or remodeling of facilities.

(Section 609(a)(2); 20 U.S.C. 3199(a)(2))

§ 185.73 Application procedures.

(a) An LEA that wants to apply for a metropolitan area grant shall meet the requirements in 45 CFR 100a.108 through 100a.118 and the requirements in this part.

(b) An LEA that wishes to apply for a metropolitan area grant shall meet the requirements in § 185.10, relating to public and advisory committee participation. However, references to an LEA in paragraph (a)(2) of that section include—

(1) The cooperating LEA, in the case of an application for an integrated schools project, described in § 185.70(a); and

(2) All the LEAs in the SMSA, in the case of an application for an area-wide plan project, described in § 185.70(b).

(c) An LEA shall include in its application an assurance that it has met and will meet applicable requirements of the Act and this part.

(Section 610(a); 20 U.S.C. 3200(a))

§ 185.74 Approval of new projects.

(a) The Commissioner decides whether an award to the applicant is warranted on the basis of—

(1) The degree to which the proposed activities afford promise of achieving the purposes of the act described in § 185.1(b), as indicated by the information described in 45 CFR 100a.110 through 100a.115; and

(2) The factors set out in section 610(d)(1), (2), (3) and (5) of the Act.

(b)(1) The Commissioner further reviews each application submitted by an applicant to which an award is warranted under paragraph (a) to ensure that each activity under the award is designed to achieve the purposes of the Act.

(2) Before making an award, the Commissioner may require the applicant to modify its proposed activities in order to carry out more effectively the purposes set out in § 185.70. However, the amount of the award does not exceed the amount that would be required for activities that the applicant proposed to carry out those purposes.

(Section 610(d); 20 U.S.C. 3200(d))

§ 185.75 Length of project.

(a) Awards of metropolitan area grants are subject to the provisions of § 185.36(a) and (c), and section 610(e)(1)(A) through (C) of the Act, relating to the length of a project.

(b) However, the project period for a grant for an area-wide plan, described in § 185.71(b), may not extend beyond July 1, 1983.

(Sections 609(a)(2), 610(e)(1); 20 U.S.C. 3199(a)(2), 3200(e)(1))

§ 185.76 Approval of continuation awards.

Awards of metropolitan area grants are subject to the provisions of § 185.37, relating to the approval of continuation awards.

(Section 610(e)(2); 20 U.S.C. 3200(e)(2))

Other Special Projects

§ 185.80 Use of discretionary funds.

The Commissioner may use funds appropriated under section 604(b)(2) of the Act for the following types of awards:

(a) The types of grants described in this subpart.

(b) Grants to Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands to achieve the purposes of the act described in § 185.1(b).

(c) Magnet school, university/business cooperation, and neutral site planning grants described in subpart E.

(d) State agency grants described in subpart H.

(e) Television and radio contracts described in subpart I.

(f) Evaluation contracts under section 613 of the Act.

(g) Any other type of award described in this part.

(h) Contracts, consistent with the requirements of the Act, for particular purposes designed to achieve the purposes of the act described in § 185.1(b).

(Sections 604(b)(2), 608(a), 617(10); 20 U.S.C. 3194(b)(2), 3198(a), 3207(10))

§ 185.81 Applicable requirements.

(a) The requirements of the act and this part that relate to a type of award apply to the use of any funds for that type of award.

(b) However, if the Commissioner uses funds appropriated under section 604(b)(2) for basic grants described in subpart C, he or she distributes these funds in the following way:

(1) He or she distributes to each State an amount which bears the same ratio to the amount available for basic grants as the number of minority group children aged five through seventeen, inclusive, in that State bears to the number of those children in all States.

(2) He or she uses the distributed funds for approvable applications contained in Categories I and II (as described in § 185.35(c)).

(3) If the amount distributed to a State exceeds the amount required for those applications in that State, he or she distributes the excess amount to other States in proportion to the need in those States for approvable applications contained in Categories I and II.

(4) If the amount available for basic grants exceeds the amount required for all approvable applications contained in Categories I and II, he or she distributes the excess amount to States in the manner described in this paragraph for approvable applications contained in Category III (as described in § 185.35(c)).

(Sections 604(b)(2), 608(a); 20 U.S.C. 3194(b)(2), 3198(a))

Subpart E—Magnet School, University/Business Cooperation and Neutral Site Planning Grants

§ 185.90 Purposes.

(a) The purposes of magnet school grants are to plan, design, and conduct educational programs in magnet schools.

(b) The purpose of university/business cooperation grants is to conduct cooperative programs between LEAs and institutions of higher education or businesses.

(c) The purpose of neutral site planning grants is to develop plans for neutral site schools.

(Sections 604(b)(2), 608(a)(1)–(3), 617(5) and (8); 20 U.S.C. 3194(b)(2), 3190(a)(1)–(3), 3207(5) and (8))

§ 185.91 Eligible applicants.

(a) An LEA may apply for a grant under this subpart.

(Section 608(a)(1)–(3); 20 U.S.C. 3198(a)(1)–3); H.R. Rep. No. 1701, 94th Cong., 2d Sess. 231 (1976))

(b) In the case of a grant to conduct educational programs in a magnet school, the Commissioner considers the curriculum of the magnet school to be capable of attracting substantial numbers of students of different racial backgrounds If—

(1) The LEA—

(i) Does not compel any student to enroll in the magnet school for any part of the grant period; and

(ii) Does not compel any student to enroll in another school after enrolling in the magnet school; and

(2) Sixty days after the beginning of the first school term, any part of which falls within the grant period, or 90 days after the effective date of the grant, whichever is later, the enrollment of the school meets the following requirements:

(i) Minority group students constitute no less than 20 and no more than 80 percent of the enrollment.

(ii) If the percentage of minority group students enrolled in all the applicant's schools is less than 20 percent, minority group students constitute between 20 percent and 50 percent, inclusive, of the enrollment in the school.

(iii) If the percentage of minority group students enrolled in all the applicant's schools is greater than 80 percent, minority group students constitute between 50 percent and 80 percent, inclusive, of the enrollment in the school.

(iv) The ratios of the number of students from each minority group to the total number of minority group students enrolled in the magnet school generally reflect the ratios among minority group students enrolled in all the LEA's schools.

(c)(1) An LEA's failure to meet the requirements of paragraph (b) is grounds for terminating the grant, insofar as it relates to a school affected by the failure, as of—

(i) The date of any compulsory enrollment referred to in paragraph (b)(1); or

(ii) The applicable date referred to in paragraph (b)(2).

(2) However, the Commissioner, at the written request of the LEA, may forebear from terminating the grant if he or she determines that the LEA—

(i) Has substantially complied with these requirements; and

(ii) Is likely to attain full compliance in the near future.

(Sections 608(a)(1), 617(5); 20 U.S.C. 3198(a)(1), 3207(5))

§ 185.92 Authorized activities.

An LEA may use funds under the grant for the activities described in this section.

(a) *Magnet schools.* (1) Funds may be used for the following three activities:

(i) The planning and design of one or more magnet schools.

(ii) The conduct of educational programs in one or more magnet schools where these programs are a part of, or directly related and necessary to, the special curriculum of a magnet school.

(iii) The repair and minor remodeling or alteration of existing school facilities in connection with the conduct of educational programs described in this paragraph (a)(1).

(2) "Special curriculum", as used in the definition of "magnet school" in section 617(5) of the Act, means a course of study embracing subject matter or a teaching methodology that is not generally offered to students of the same age or grade level, and in the same LEA, as the students to whom the special curriculum is offered. This term does not include—

(i) A course of study or a part of a course of study designed solely to provide basic educational services to handicapped students or to students of limited English-speaking ability;

(ii) A course of study or a part of a course of study in which any student is unable to participate because of his or her limited English-speaking ability;

(iii) A course of study or a part of a course of study in which any student is unable to participate because of his or her limited financial resources; or

(iv) A course of study or a part of a course of study which fails to provide for a participating student's meeting the requirements for completion of elementary or secondary education in the same period as other students enrolled in the applicant's schools.

(3) The planning and design of a magnet school includes, but is not limited to, the following activities:

(i) Planning and design of educational programs for the school.

(ii) Architectural design of new or modified facilities to house the school.

(iii) Surveys and studies relating to the establishment or improvement of the school.

(iv) Recruitment of students and staff for the school.

(4)(i) The Commissioner awards funds for the conduct of educational programs in a magnet school only if the LEA's fiscal effort per student for students enrolled at a magnet school is no less than its fiscal effort per student for students enrolled at all schools serving students of the same age or grade level operated by the applicant in the fiscal year for which it seeks assistance under this subpart.

(ii) For the purpose of this subparagraph (4), "fiscal effort per student" means the expenditure for free public education—including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities—divided by the number of students with respect to whom the computation is made. Expenditures for free public education do not include expenditures for community services, capital outlay and debt service, or any expenditure from funds granted under any Federal program of assistance.

(Sections 608(a)(1), 617(5); 20 U.S.C. 3198(a)(1), 3207(5))

(b) *University/business cooperation.* Funds may be used for—

(1) The conduct of educational programs by the applicant, in cooperation with one or more institutions of higher education or businesses, for the benefit of students enrolled, or staff employed, in—

(i) A magnet school assisted under this subpart; or

(ii) A school affected by a qualifying plan described in § 185.32; and

(2) The repair and minor remodeling or alteration of facilities in connection with the conduct of these educational programs.

(Section 608(a)(2); 20 U.S.C. 3198(a)(2))

(c) *Neutral site planning.* (1) Funds may be used for the development of plans for one or more neutral site schools, including but not limited to the following activities:

(i) Surveys and studies to determine the location of the school.

(ii) Planning educational programs for the school.

(iii) Architectural design of facilities to house the school.

(iv) The repair and minor remodeling or alternation of facilities in connection with the development of plans for the school.

(2) Funds may be used only in connection with a school planned to have the following characteristics:

(i) Minority group students will constitute no less than 20 percent and no more than 80 percent of the enrollment of the school.

(ii) The ratios of the number of students from each minority group to the total number of minority group students

who will be enrolled in the school generally reflect the ratios among minority group students who will be enrolled in all the LEA's schools.

(iii) The school will be equally accessible to nonminority group students and students from each minority group who will be enrolled in it.

(3) Funds may not be used for—

(i) The acquisition or improvement of a site for the school;

(ii) The construction of facilities to house the school;

(iii) The acquisition of equipment for the school; or

(iv) Any activity related to the operation of the school.

(Sections 608(a)(3), 617(8); 20 U.S.C. 3198(a)(3), 3207(8))

§ 185.93 Application procedures.

(a) An LEA that wants to apply for a grant under this subpart shall meet the requirements in 45 CFR 100a.108 through 100a.118 and the requirements in this part.

(b) An LEA shall include in its application an assurance that it has met and will meet applicable requirements of the Act and this part.

(c) In the case of an application for a grant to carry out activities relating to magnet schools and university/business cooperation, respectively, the applicant shall also include in its application—

(1) The number of minority group students and the total number of students enrolled or to be enrolled in each of its schools in the following years:

(i) The "base year" (meaning the second fiscal year prior to the first fiscal year for which an applicant seeks assistance under this subpart); and

(ii) The "project year" (meaning the first fiscal year for which an applicant seeks assistance under this subpart); and

(2) A description of the basis for its enrollment projections for the project year.

(Section 610(a); 20 U.S.C. 3200(a))

§ 185.94 Approval of new projects—magnet schools and university/business cooperation.

(a) The Commissioner ranks applications to carry out activities relating to magnet schools and university/business cooperation on the basis of the net change in isolation in the applicant's schools between the base year and the project year. The net change in isolation is computed on the basis of the procedures in § 185.35(d)(2) through (d)(4).

(b) If an application contains compelling evidence of extraordinary difficulty in effectively carrying out the project for which the applicant seeks assistance, the Commissioner may revise the rank order of applications under paragraph (a) to reflect the applicant's greater need for assistance.

(c) The Commissioner reviews each application to determine whether the activities that the applicant proposes to carry out afford promise of achieving the purposes of the Act described in § 185.1(b). In making this determination, the Commissioner considers—

(1) The information described in 45 CFR 100a.110 through 100a.115; and

(2) The extent to which the proposed activities are related to the elimination, reduction, or prevention of minority group isolation in all the applicant's schools.

(d) On the basis of this review, the Commissioner decides whether an award to the applicant is warranted.

(e)(1) The Commissioner further reviews each application submitted by an applicant to which an award is warranted under paragraph (d) to ensure that each activity under the award is designed to achieve the purposes of the Act.

(2) Before making an award, the Commissioner may require the applicant to modify its proposed activities in order to carry out more effectively the purposes set out in § 185.90. However, the amount of the award does not exceed the amount that would be requested for activities that the applicant proposed to carry out those purposes.

(Section 610(d); 20 U.S.C. 3200(d))

§ 185.95 Approval of new projects—neutral site planning.

The Commissioner decides whether to approve a new project on the basis of the degree to which the proposed activities afford promise of achieving the purposes of the Act described in § 185.1(b), as indicated by—

(a) The information described in 45 CFR 100a.110 through 100a.115; and

(b) The extent to which the application contains convincing evidence that the plan will be implemented at the end of the proposed project.

(Section 610(d); 20 U.S.C. 3200(d))

§ 185.96 Length of project.

(a)(1) The Commissioner may approve a project period of up to 60 months for activities relating to magnet schools and university/business cooperation.

(2) The Commissioner may approve a project period of up to 24 months for activities relating to neutral site planning.

(b) The Commissioner sets the length of the project period on the basis of—

(1) The severity and likely duration of the problems addressed by the proposed activities; and

(2) The nature of those activities, or—except for natural site planning grants—of activities to address those problems effectively.

(c) When approving an award for the first budget period of a multi-year project, the Commissioner indicates his or her intention to make one or more continuation awards for budget periods during the remainder of the project period.

(Section 610(e)(1); 20 U.S.C. 3200(e)(1))

§ 185.97 Approval of continuation awards.

Section 185.97 applies to the approval of continuation awards under this subpart.

(Section 610(e)(2); 20 U.S.C. 3200(e)(2))

Subpart F—Compensatory Service Grants

§ 185.100 Purpose.

The purpose of a compensatory service grant is to continue compensatory services to students who would otherwise lose those services as a result of an attendance area or enrollment change under a qualifying plan (described in § 185.32).

(Section 604(c); 20 U.S.C. 3194(c))

§ 185.101 Definitions.

The following definitions apply to terms used in this subpart:

"Attendance area or enrollment change" means any change in the policy of an LEA that results in a student's voluntary or mandatory enrollment at a school other than the school at which the student would normally have been enrolled in the absence of the change in policy.

"Compensatory services" means any educational services authorized under title I to meet the special educational needs of educationally deprived children.

"Title I" means title I of the Elementary and Secondary Education Act of 1965, as amended.

(Section 604(c); 20 U.S.C. 3194(c))

§ 185.102 Eligible applicants.

An LEA may apply for a compensatory services grant if—

(a) It is implementing—

(1) A required plan described in § 185.32(a)(1) that was ordered after August 21, 1974;

(2) A required plan described in § 185.32(a)(2) that was approved after that date; or

(3) A nonrequired plan described in § 185.32(b) that was adopted after that date;

(b) Under the plan, there are attendance area or enrollment changes; and

(c) As a result of the attendance area or enrollment changes, students who received compensatory services funded in whole or in part under title I are no longer receiving those services.

(Section 604(c)(1); 20 U.S.C. 3194(c)(1); H.R. Rep. No. 1701, 94th Cong., 2d Sess. 231 (1976)).

§ 185.103 Authorized activities.

(a) An LEA may use funds under the grant to—

(1) Provide compensatory services to students who—

(i) Received compensatory services funded in whole or in part under title I; and

(ii) In the project period, are no longer receiving compensatory services as a result of attendance area or enrollment changes under a plan described in § 185.102; and

(2) Provide services to other students as provided for in section 604(c)(2)(B)(ii) of the Act.

(b) The Commissioner considers a student eligible to receive compensatory services under paragraph (a)(1) if—

(1) The student received compensatory services funded under title I at any time prior to the implementation of a plan described in § 185.102;

(2) The student is not receiving any compensatory services funded under title I in the project period;

(3) The student is an educationally deprived child, for title I purposes, at the beginning of the project period; and

(4) In the absence of a plan described in § 185.102, the student would be enrolled at a different school, in which compensatory services funded under title I were provided during the last regular school term prior to the implementation of the plan, for the grade in which the student is enrolled in the project period.

(c) In addition, a student is eligible to receive compensatory services under paragraph (a)(1) if—

(1) The student meets the requirement in paragraph(b)(1); and

(2) The applicant shows by credible evidence that attendance area or enrollment changes under a plan described in § 185.102 alone caused the student to receive, in the project period, fewer—or no—compensatory services funded in whole or in part under title I.

(d)(1) The LEA shall ensure that at least 30 percent of the enrollment of a compensatory services project funded under the Act is comprised of students—

(i) Who are enrolled in the same school as students eligible under paragraph (a)(1); and

(ii) Whose enrollment in the school is not a result of attendance area or enrollment changes under a plan described in § 185.102.

(2) An LEA may not use funds under the grant in any manner that would result in the isolation of the students eligible under paragraph (a)(1) from other students enrolled in the same school.

(e)(1) An LEA shall use funds under the grant to provide to each student eligible under paragraph (a)(1) the level of compensatory services he or she failed to receive in the project period because of attendance area or enrollment changes under a plan described in § 185.102.

(2) However, if the Commissioner has reduced the grant amount under § 185.105, the LEA may use the grant funds to provide services to only some of those students, or to provide fewer services to those students, or both.

(Section 604(c); 20 U.S.C. 3194(c))

§ 185.104 Application procedures.

(a) An applicant shall meet the requirements in 45 CFR 100a.109 through 100a.116 and the requirements of this part.

(b) An applicant shall include in its application the following information:

(1) A copy of the plan on which the applicant bases its eligibility for assistance.

(2) A precise description of attendance area or enrollment changes under the plan.

(3) The number of students eligible to receive compensatory services under § 185.103(a)(1) and a description of how the applicant determined their eligibility.

(4) A description of the compensatory services for which the applicant seeks assistance.

(5) An assurance that it has met and will meet applicable requirements of the Act and this part.

(Section 610(a); 20 U.S.C. 3200(a))

§ 185.105 Funding procedures

(a) The Commissioner may approve a project period of up to 12 months.

(b) To the extent funds permit, the Commissioner sets the amount of each grant at a level sufficient to provide to each student eligible under § 185.103(a)(1) the level of compensatory services he or she will not receive in the project period because of attendance area or enrollment changes under a plan described in § 185.102, consistent with the requirements of section 604(c)(2) of the Act.

(c) If the amount needed to fund all approvable services exceeds the amount of funds available, the Commissioner reduces the amount for each grant by an equal proportion.

(Section 604(c); 20 U.S.C. 3194(c))

Subpart G—Nonprofit Organization Grants

§ 185.110 Purpose.

The purpose of a nonprofit organization grant is to support an LEA's development or implementation of a qualifying plan (described in § 185.32).

(Sections 604(b)(3), 608(b); 20 U.S.C. 3194(b)(3) 3198(b))

§ 185.111 Eligible applicants.

(a) Any public or private nonprofit agency, institution or organization (NPO), other than an LEA, is eligible to apply for a grant under this subpart.

(b) An NPO may receive a grant under this subpart regardless of whether the LEA whose plan the NPO proposes to support applies for assistance under the Act.

(Section 608(b); 20 U.S.C. 3198(b))

§ 185.112 Authorized activities.

(a) Except as provided in paragraph (b), an NPO may apply for any activity that is designed to support the development or implementation of a qualifying plan. These activities include, but are not limited to—

(1) Encouraging parental and community involvement in matters relating to the development or implementation of the plan;

(2) Providing information to parents and community members on the contents of the plan;

(3) Monitoring the implementation of the plan;

(4) Carrying out activities designed to promote interracial and intercultural understanding among students who are affected by, or are reasonably likely to be affected by, the implementation of the plan;

(5) Carrying out activities designed to stimulate a desire a learn in those students;

(6) Addressing non-academic problems faced by those students—at home, in school, or in the community—that affect their adjustment to schools to which the plan relates; and

(7) Promoting student understanding of and support for the plan.

(b) An NPO may not use funds under this subpart in connection with the provision of compensatory education, the development of basic skills, or the training of LEA staff.

(c) An NPO that proposes to support the development of a qualifying plan must receive a written request for that assistance from the LEA, except in the case of plan described in § 185.32(a) that has been required but not yet adopted.

(Section 608(b); 20 U.S.C. 3198(b))

§ 185.113 Application procedures.

(a) An NPO that wants to apply for a grant shall meet the requirements in 45 CFR 100a.108 through 100a.118, and the requirements in this part.

(b) An NPO may include in an application activities in support of only one qualifying plan. However, an NPO may submit more than one application.

(c) An NPO shall include in its application a needs assessment that shows the severity of the needs addressed by the proposed activities and the relationship of those needs to the development or implementation of a qualifying plan.

(d) An NPO that proposes to support the implementation of a qualifying plan shall include in its application—

(1) A copy of the LEA's qualifying plan or a detailed description of that plan; and

(2) The date when the LEA adopted the plan.

(e) An NPO that proposes to support the development of a plan shall include a copy of the LEA's request for that assistance, if a request is required under § 185.112(c).

(f) An NPO shall include in its application an assurance that it has met and will meet the applicable requirements of the Act and this part.

(Section 608(b); 20 U.S.C. 3198(b))

§ 185.114 Approval of new projects.

(a) Applications for projects to support the development of qualifying plans and those support the implementation of plans are considered separately. The Commissioner states in the application notice published in the Federal Register the amount of funds available for each type of project.

(b) The Commissioner reviews each application according to the procedures described in § 185.115 or § 185.116, as appropriate, to decide whether an award to the applicant is warranted.

(c)(1) The Commissioner further reviews each application submitted by an applicant to which an award is warranted under paragraph (b) to ensure that each activity under the award is designed to achieve the purposes of the Act.

(2) Before making an award, the Commissioner may require the applicant to modify its proposed activities in order to carry out more effectively the purposes set out in § 185.110. However, the amount of the award does not exceed the amount that would be required for activities that the applicant proposed to carry out that purpose.

(Section 608(b); 20 U.S.C. 3198(b))

§ 185.115 Approval of projects to support the implementation of a plan.

(a) The Commissioner reviews each application for a project to support the implementation of a qualifying plan and—

(1) Assigns it to a category, as described in § 185.35(c); and

(2) Ranks it within the category on the basis of an evaluation of the application under the criteria in paragraph (b).

(b) The Commissioner applies the following criteria in ranking applications within a category;

(1) The extent to which the applicant identifies needs that are clearly related to the plan.

(2) The severity of those needs.

(3) The extent to which the authorized activities proposed by the applicant are clearly related to the identified needs.

(4) The extent to which the applicant has experience working with other community organizations in the community affected by the qualifying plan.

(5) The quality of the key personnel the applicant plans to use on the project, as indicated by the factors in 45 CFR 100a.203.

(c) Except as provided in paragraph (d)—

(1) The Commissioner approves all projects contained in Category I before those in Category II;

(2) The Commissioner approves all projects contained in Category II before those in Category III; and

(3) The Commissioner approves within a category in the rank order of the applications established under paragraph (a).

(d) If more than one otherwise approvable project relates to the same qualifying plan, the Commissioner—

(1) Reviews the approvable activities to identify any duplication in the needs addressed by those activities; and

(2) In the case of duplication, approves only the activity contained in th highest ranking application.

(Section 608(b); 20 U.S.C. 3198(b))

§ 185.116 Approval of projects to support the development of a plan.

(a) The Commissioner ranks each application for a project to support the development of a qualifying plan on the basis of—

(1) An evaluation of the application under the criteria in § 185.115(b); and

(2) The extent to which the application contains convincing evidence that the plan will be adopted at the end of the proposed project.

(b) Except as provided in paragraph (c), the Commissioner approves projects in the rank order established under paragraph (a) until funds available for projects under this section are exhausted.

(c) If more than one otherwise approvable application relates to the same qualifying plan, the Commissioner follows the procedure described in § 185.115(d).

(Section 608(b); 20 U.S.C. 3198(b))

Subpart H—State Agency Grants

§ 185.120 Purpose.

The purpose of a State agency grant is to pay a portion of the cost to a State of the activities described in § 185.122.

(Sections 604(b)(2), 608(c); 20 U.S.C. 3194(b)(2), 3198(c))

§ 185.121 Eligible applicants.

(a) A State agency may apply for a grant under this subpart if—

(1) It is involved in or responsible for the desegregation of public elementary and secondary schools; and

(2) It obligated funds derived from State sources for the activities described in § 185.122 in the Federal fiscal year just prior to the Federal fiscal year for which funds for the grant are appropriated.

(b) The Commissioner does not make more than one grant for activities in any State. If more than one State agency in a State is eligible under paragraph (a), the Commissioner makes any grant under this subpart to the agency most directly responsible for carrying out the activities in § 185.122 in the State.

(Section 608(c); 20 U.S.C. 3198(c))

§ 185.122 Authorized activities.

(a) A State agency may use funds under the grant for the following activities:

(1) Planning for the implementation of voluntary plans to eliminate or reduce minority group isolation in public elementary and secondary schools.

(2) Assessing future needs for those plans, and developing strategies to meet those needs.

(3) Providing technical assistance to encourage LEAs or groups of LEAs to develop or implement those plans.

(4) Providing training for educational personnel involved in developing or carrying out those plans.

(b) A State agency may not use funds under the grant for grants to LEAs.

(c) The plans described in this section include—

(1) A plan described in § 185.32(b)(1), (2), and (4); and

(2) A plan described in § 185.32(a)(2), where the elimination or reduction of minority group isolation under the plan was voluntary within the meaning of section 602 of the Civil Rights Act of 1964.

(Section 608(c)(1); 20 U.S.C. 3198(c)(1); 42 U.S.C. 2000d–1)

§ 185.123 Application procedures.

(a) A State agency that wants to apply for a grant shall meet the requirements of 45 CFR 100a.109 through 100a.116 and the requirements of this part.

(b)(1) The applicant shall develop its application in consultation with teachers, educators, parents (including parents of minority group children) and representatives of the general public (including representatives of minority groups).

(2) At a minimum, the applicant shall consult with an advisory committee composed of the persons described in subparagraph (1). The proportion of the committee membership that is comprised of minority group members must be approximately the same as the proportion of children enrolled in the elementary and secondary schools in the State that is comprised of minority group children.

(3) The applicant shall include in its application the written comments of the advisory committee concerning the application.

(c) The applicant shall include in its application an assurance that it has met and will meet applicable requirements of the Act and this part.

(Section 608(c)(1) and (3); 20 U.S.C. 3198(c)(1) and (3))

§ 185.124 Approval of projects.

(a) The Commissioner approves a project if the proposed activities are authorized under § 185.122.

(b)(1) In setting the amount of a grant, the Commissioner first determines the amount of funds derived from State sources that was obligated by eligible applicants in a State for the activities described in § 185.122 in the Federal fiscal year just prior to the Federal fiscal year for which funds for the grant are appropriated. The Commissioner then sets the approvable amount of the grant at twice that amount.

(2) If the approvable amount of a grant under subparagraph (1) exceeds the amount justified by the applicant for authorized activities, the Commissioner reduces the approvable amount to the amount justified.

(3) If necessary, the Commissioner further reduces the approvable amount of a grant in any fiscal year to the greater of the following:

(i) Ten percent of the amount apportioned to the State for that fiscal year under section 605 of the Act; or

(ii) $500,000.

(4) If, after the reductions described in subparagraphs (2) and (3), the amount needed for all approvable grants exceeds the amount of funds available, the Commissioner reduces the amount for each grant by an equal proportion.

(c) The Commissioner approves a project period of not more than 12 months for a State agency grant.

(Section 608(c), 610(d); 20 U.S.C. 3198(c), 3200(d))

Subpart I—Television and Radio Contracts

§ 185.130 Purpose.

The purpose of a contract under this subpart is to—

(a) Develop and produce a children's television or radio program that—

(1) Teaches academic skills or encourages interracial and intercultural understanding, or both; and

(2) Appeals to both minority and nonminority children; or

(b) Carry out ancillary activities designed to make these programs available for transmission and utilization.

(Sections 604(b)(2), 611; 20 U.S.C. 3194(b)(2), 3201)

§ 185.131 Eligible offerors.

Any public or private nonprofit agency, institution, or organization capable of providing expertise in the activities authorized under this subpart is eligible to submit a proposal for a contract.

(Section 611(a)(1); 20 U.S.C. 3201(a)(1))

§ 185.132 Authorized activities.

The Commissioner makes contracts for—

(a) *Development and production*—the development and production of children's television and radio programs described in § 185.130(a); and

(b) *Ancillary activities*—the following activities, where they are related to programs developed and produced under this subpart:

(1) Duplication of tapes and other materials to meet broadcaster and other user needs.

(2) Promotion of viewership or listenership.

(3) Promotion of carriage by commercial broadcasters.

(4) Promotion of use by schools and others.

(Section 611(a)(1); 20 U.S.C. 3201(a)(1))

§ 185.133 Proposal procedures.

An offeror may submit a proposal for a contract in response to a Request for Proposals published by the Commissioner.

(Section 611; 20 U.S.C. 3201)

§ 185.134 Selection of contractors.

(a) The selection of contractors is subject to—

(1) The provisions of section 611 of the Act; and

(2) To the extent they are consistent with the regulations in this part:

(i) Applicable Requests for Proposals; and

(ii) The Federal Procurement Regulations in 41 CFR Chapters 1 and 3.

(b) *Development and production.* In establishing the competitive range for proposals for the development and production of programs, as provided for under the Federal Procurement Regulations, the Commissioner considers each of the following for each proposal:

(1) The quality of the needs assessment, and the magnitude of the assessed needs.

(2) The relationship of the proposed program's objectives to the assessed needs.

(3) The relationship of the proposed program to the objectives and assessed needs.

(4) The attainability of the objectives through the proposed program.

(5) The likely artistic and educational significance of the proposed program.

(6) The appropriateness of proposed program format and content to the target age group.

(7) The research and production techniques that the offeror will use.

(8) The qualifications of the project staff.

(9) The offeror's employment of minority group members in—

(i) Responsible administrative positions; and

(ii) Responsible development and production positions on the project staff.

(10) The quality of supplementary materials, such as teachers' guides and student workbooks, where appropriate.

(11) The schedule of activities and deliverables.

(12) The effectiveness of procedures for evaluating the educational and other effects of the proposed program on children.

(13) The adequacy of the offeror's facilities.

(c) *Ancillary activities.* In establishing the competitive range for proposals for ancillary activities, as provided for under the Federal Procurement Regulations, the Commissioner applies criteria included in the Request for Proposals for a particular activity.

(Section 611(a) (1) and (3); 20 U.S.C. 3201(a) (1) and (3))

§ 185.135 Requirements for offerors.

(a) *Usage.* An offeror to develop and produce a program shall include in its proposal an assurance that it will comply with each of the following requirements with respect to the program for which it seeks a contract.

(1) If will not charge users of the programs—whether broadcast or nonbroadcast—any cost beyond that of tape distribution and duplication.

(2) Any contract between a contractor and a talent union must allow at least the usages of the programs in this subaragraph (2) without charge to the user. However, the Commissioner may authorize lesser usages on a finding that the cost of these usages would be excessive.

(i) Six years of usage by public broadcasting stations starting with the first broadcast by such a station. A "year of usage" means unrestricted use during three separate weeks of any given 12 month period.

(ii) Twelve years of unrestricted use for in-school audiovisual purposes. For television programs, this includes transmission of the programs by education-dedicated, local origination, CATV channels and Instructional Television Fixed Services systems.

(iii) One broadcast over commercial stations in each of two 3-year periods, including broadcasts that result fom network originations.

(iv) If the program is distributed by a public network and is not broadcast in a commercial stations's coverage area, one additional broadcast by the commercial station in a 3-year period.

(3) The contractor will not permit the program to be made available for transmission under commerical sponsorship. If a commercial firm meets the costs of transmission, the Commissioner does not consider a brief statement to that effect at the beginning or end of the transmission commercial sponsorship. In the case of series programming, any commercial spot announcements must be demarcated by a station identification.

(4) A contractor that develops and produces a television program shall not give a station the exclusive right to broadcast any program in a coverage area until the thirteenth week after the first week in which it is broadcast in that area.

(5) The contractor will not permit the transmission or use of a program in any manner that results in a financial benefit to any person or organization.

(6) The contractor will cooperate with the Commissioner in making arrangements for the transmission of the programs.

(Section 611(a)(2); 20 U.S.C. 3201(a)(2))

(b) *Disclaimer.* (1) Each television or radio program—except for radio materials of less than three minutes in length—must carry the following disclaimer: "This program was produced by [name of contractor] under a contract from the U.S. Department of Health, Education, and Welfare, Office of Education. The content of this program is the responsibility of the contractor and is not officially endorsed by the Department or the Office of Education."

(2) Radio materials of less than three minutes in length must conclude with the following statement: "Funded by the U.S. Office of Education, HEW."

(Section 611; 20 U.S.C. 3201)

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Friday
June 29, 1979

Part XV

Department of Health, Education, and Welfare

Office of Education

Community Schools and Comprehensive Community Education Act; Proposed Rulemaking

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 160c]

Community Schools and Comprehensive Community Education Act

AGENCY: Office of Education, HEW.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commissioner of Education proposes regulations for the Community Schools and Comprehensive Community Education Act of 1978. The proposed regulations define a community education program and the scope of eligible project activities. They also establish criteria and requirements that govern the selection and awarding of direct grants under the Act and State plan requirements governing the State formula program.

DATES: Comments must be received on or before August 28, 1979.

Public meetings will be held in each of the ten Federal regions on August 7, 1979. The time for these meetings is—9:00 a.m.–12:00 Noon.

ADDRESSES: Comments should be addressed to Ms. Julie Englund, Director, Community Education Program, U.S. Office of Education, 400 Maryland Avenue, S.W. (ROB–3, Room 5622), Washington, D.C. 20202.

The locations for the public meetings are:

Region I—Boston—Boston School Dept., Administration Building, Boston Committee Hearing Rm., 26 Court Street, Boston, Mass.
Region II—New York—Hearing Room E, Room 2222, 26 Federal Plaza, New York, New York.
Region III—Philadelphia—University City Holiday Inn, 36th & Chestnut Street, Philadelphia, Pa.
Region IV—Atlanta—Regional Office Building, 101 Mariette Towers Bldg., Suite 2221, Atlanta, Georgia.
Region V—Chicago—Roosevelt University, 430 South Michigan, Room 773, O'Malle Theater, Chicago, Illinois.
Region VI—Dallas—North Lake Junior College, Room B206, Lecture Hall, 2000 Walnut Hill Lane, Irving, Texas (Near Dallas Fort Worth Airport)
Region VII—Kansas City—Federal Office Bldg., 601 East 12th Street, Room 140, Kansas City, Missouri.
Region VIII—Denver—George Washington High School, 655 South Monaco Street, Denver, Colorado.
Region IX—San Francisco—Federal Office Building, Room 209, 50 United Nations Plaza, San Francisco, Calif.
Region X—Seattle—Room 1021, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Englund, Community Education Program, Telephone: (202) 245–0591.

FOR INFORMATION ON REGIONAL MEETINGS CONTACT: The appropriate Regional Commissioner for Educational Programs listed below:

Region I, Boston, Dr. Thomas J. Burns, (617) 223–7500
Region II, New York, Dr. William D. Green, (212) 264–4370
Region III, Philadelphia, Dr. Albert C. Crambert, (215) 596–1001
Region IV, Atlanta, Dr. William L. Lewis, (404) 221–2063
Region V, Chicago, Ms. Juliette Noone Lester, (312) 353–5215
Region VI, Dallas, Mr. Edward J. Baca, (214) 767–3626
Region VII, Kansas City, Dr. Harold Blackburn, (816) 374–2276
Region VIII, Denver, Dr. John Runkel, (303) 837–3544
Region IX, San Francisco, Dr. Caroline Gillin, (415) 556–4920
Region X, Seattle, Mr. Allen Apodaca, (206) 442–0460

Supplementary Information

Background

The Community Schools and Comprehensive Community Education Act of 1978 (Title VIII of the revised Elementarty and Secondary Education Act of 1965) authorizes the Commissioner of Education to provide financial assistance to State educational agencies (SEAs), local educational agencies (LEAs), public agencies and nonprofit private organizations, and institutions of higher education.

The statute authorizes a program in which an SEA receives a formula allocation based on the population of its State. These formula funds are for the purposes of: (1) Administering a State program for the development of community education and (2) providing technical and financial assistance to develop local community educations programs. Eighty percent of the State's allocation must be granted to LEAs within the State.

The statute also authorizes direct, discretionary grant programs to assist—

(a) LEAs in planning, establishing, expanding, and operating community education programs;

(b) Public agencies and nonprofit private organizations in promoting more efficient use of school facilities and more effective delivery of social services; and

(c) Colleges and universities in providing training to persons who are or will be engaged in community education.

The Community Schools and Comprehensive Community Education Act of 1978 replaces the first Federal community education legislation, the Community Schools Act of 1974.

Major Provisions of the Proposed Regulations

While some provisions of the proposed regulations are similar to the existing regulations under the Community Schools Act of 1974, the proposed regulations also include a number of significant changes. These changes are a result of (1) the new legislation, (2) past administrative experience and evaluation of the Community Schools Act of 1974, and (3) changing national needs and concerns.

The Nature of a Community Education Program

The Act defines a community education program as "a program in which a public building, including but not limited to a public elementary or secondary school, or a community or junior college (or a related extension center), is used as a community center operated by a local educational agency in conjunction with other groups in the community, community organizations, and local governmental agencies, to provide educational, recreational, health care, cultural, and other related community and human services for the community that the center serves in accordance with the needs, interests, and concerns of that community."

To clarify this definition, the proposed regulations, in § 160c.4, describe the minimum elements of a community education program. These elements apply to each community education program to be assisted under the program, whether through direct grants or under the State formula program.

The proposed regulations limit eligible activities to the leadership, administrative, and coordinating activities involved in planning, establishing, expanding, or operating a community education program. Under the proposed regulations, the program does not pay for costs directly related to the provision of services or activities.

This approach reflects the Commissioner's judgment that while a community education program may encompass virtually any type of educational or other social service, the Federal program was not meant to pay for these services but, rather, for the processes of organizing and coordinating these services in a community education program. These proposed limits distinguish community educaion from adult education, elementary and secondary education, and recreational and social services.

State Formula Program for Community Education

The State Community Education Program promotes those processes that will—

(a) Build capacity within each State to support the continued development of community education;

(b) Involve citizens in local and State community education efforts;

(c) Encourage grantees to provide in school buildings other Federal programs—particularly those listed in section 806 of the Act—and programs funded from local and State sources; and

(d) Encourage efficient use of school and community facilities, coordinate services, and eliminate duplication of community and human services.

Sections 160c.12 through 160c.19 of the proposed regulations set forth the State plan requirements for the State formula program. This is a new program and reflects congressional purpose to make States more responsible for the development of community education.

The Act entitles an SEA—on submission of an acceptable State plan—to receive funding based on the population of its State. The proposed regulations require that the State plan include information necessary to determine if the provisions of the Act have been met.

National Strategy for the Implementation of the Program

The proposed regulations promote, in all programs, the most efficient and effective use of public resources through coordination. The regulations encourage a grantee to commit itself to community education by enlisting the participation of citizens in the governance of its programs and by making community education a permanent part of its agency.

The regulations are designed so that each funding category is unique and complete within itself, yet reinforces and is supported by other categories. For example, certain project materials from LEA projects could be used by an institution of higher education to train SEAs that, in turn, could then use the material in expanding community education to other LEAs within their States.

Because of the newness of community education and the different funding categories under the law, the proposed regulations focus on directly funded projects that have a significance beyond the provision of services in local settings. Evaluation criteria measure whether a proposed project will develop new methods and procedures to advance community education nationally.

The following is a discussion of each of the programs under the Act that funds direct awards.

Grants to Local Educational Agencies

Sections 160c.30 through 160c.37 provide for grants to LEAs to plan, establish, expand, and operate community education programs. This emphasis contrasts with the State formula program which provides monies through SEAs to LEAs to expand community education, to the extent practicable, by initiating new programs or increasing the scope of existing programs. These provisions provide for funding those projects with the greatest potential for national impact and replication.

The regulations focus on projects that can develop new and exemplary approaches to meeting the minimum elements of community education, foster local support, and incorporate community education as a permanent part of the operation and procedures of local agencies.

"Local educational agency" is defined by Section 1001(f) of the Elementary and Secondary Education Act generally to be a "public board of education or other public authority legally constituted within a State for administrative control or direction of, or to perform a service function for public elementary and secondary schools * * *"

This is consistent with the definition that has been used by the community education regulations under the Community Schools Act of 1974.

Grants to Public Agencies and Nonprofit Private Organizations

Section 160c.40 through 160c.48 of the proposed regulations provide for grants to public agencies and nonprofit private organizations to make more efficient use of school facilities and the delivery of social services. The proposed regulations create two general categories for funding—grants to SEAs and grants to other public agencies and nonprofit private organizations.

The proposed regulations specify that grants will be made to States for the purposes of conducting State-level activities for furthering community education and providing technical assistance to local agencies in the development of community education programs.

The proposed regulations provide for grants to other public agencies and nonprofit private organizations to promote the national development of community education. A project may be national in scope or involve an approach that may be replicated by other national, State, regional, or local agencies and organizations. The proposed criteria stress the dissemination of project materials and findings to a national audience.

Grants to Institutions of Higher Education

Sections 160c.60 through 160c.66 of the proposed regulations provide for grants to institutions of higher education to provide short-term, full- or part-time, pre-service or in-service training and to develop training materials. The criteria stress training that will focus on unique or diverse methods of fostering community education, plans to create a national impact through the development of training resources, and methods of developing community education in local settings.

Education Division General Administrative Regulations

These proposed regulations do not contain certain types of requirements. Those requirements are covered in the Education Division General Administrative Regulations (EDGAR), which will replace the General Provisions for Office of Education Program Regulations and which have been published as a notice of proposed rulemaking (NPRM).

Anyone wanting to comment on these requirements should do so in response to the EDGAR NPRM, rather than to this NPRM.

The following items applicable to this program are now among those covered generally in EDGAR:

How to apply for a grant.

How grants are made.

Certain conditions that must be met by a grantee.

The administrative responsibilities of a grantee.

The Office of Education's procedures to assure compliance.

Invitation To Comment

A public meeting on this Notice of Proposed Rulemaking will be held in each of the 10 Federal regions. Since we expect to schedule public meetings for several regulations on the same day, at the same place, we need to get an idea of how many persons are interested in speaking about these regulations. If you are interested in making oral comments at a public meeting, we encourage you to call the appropriate Regional Commissioner of Education. He/she will schedule a time for your comments to be given. Persons who do not notify the

Regional Commissioner of their intention to make oral comments will be given an opportunity to speak after those who registered. Those persons making presentations will be called upon according to their prearranged schedule, or if not prearranged, in the order of registration.

In addition, interested persons are invited to submit comments, suggestions, and recommendations regarding the proposed regulations. Comments, suggestions, and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulation.

All comments submitted in response to this notice will be available for public inspection, both during and after the comment period, in Room 2089, FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Public Participation

The Office of Education (OE) has attempted to practice the community education principle of citizen involvement in the development of these proposed regulations. OE has discussed the primary issues related to the new legislation with approximately 500 individuals and organizations representing a variety of community education constituents.

Citation of Legal Authority

The reader will find a citation of statutory or other legal authority has been placed in parentheses on the line following each substantive provision.

Under the authority contained in Title VIII of the Elementary and Secondary Education Act, as amended by the Education Amendments of 1978 (Pub. L. 95–561), the Commissioner proposes to amend the regulations in Part 160c of Title 45 of the Code of Federal Regulations to read as set forth below.

(Catalog of Federal Domestic Assistance No. 13.563; Community Schools and Comprehensive Community Education Act)

Dated: June 5, 1979.

Ernest L. Boyer,

Commissioner of Education.

Approved: June 26, 1979.

Hale Champion,

Acting Secretary of Health, Education, and Welfare.

PART 160c—COMMUNITY SCHOOLS AND COMPREHENSIVE COMMUNITY EDUCATION ACT

Subpart A—General

Sec.

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What Conditions Must Be Met by a Grantee?

160c.66 Project duration.

Authority: Title VIII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561. (20 U.S.C. 3261)

Subpart A—General

§ 160c.1 Description of the Community Education Act.

(a) *General purpose.* The Community Education Act provides assistance to State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education, and public agencies and nonprofit private organizations to support the administrative and coordinating costs of planning, establishing, expanding, and operating community education programs.

(b) *Specific purposes.* The purposes of the Act are to—

(1) Assure involvement of citizens in local and State community education efforts:

(2) Encouraging services funded under other Federal, State, and local programs to be provided in school facilities;

(3) Encourage efficient use of schools and other public buildings;

(4) Develop capacity within States to support the continued growth of community education; and

(5) Encourage the coordination of community and human services and eliminate duplication and fragmentation of these services in State and local communities.

(c) *Types of projects.* The Community Education Act awards grants to—

(1) SEAs to administer State Community Education Programs described under the heading "State Community Education Program";

(2) LEAs for projects described under the heading "Grants to Local Educational Agencies";

(3) Public agencies and nonprofit private organizations for projects described under the heading "Grants to Public Agencies and Nonprofit Private Organizations";

(4) Institutions of higher education for projects described under the heading "Training Grants to Institutions of Higher Education"

(Sec. 802; 20 U.S.C. 3282)

§ 160c.2 Regulations that apply to the Community Education Act.

(a) *Regulations for the State formula program.* The following regulations apply to grants and sub-grants under the State Community Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in Part 100b (State-Administered Programs) and Part 100c (Definitions).

(2) The regulations in subpart A (General) and under the heading, "State Community Education Program" in this part.

(b) *Regulations for direct grant programs.* The following regulations apply to grants under the Community Education Act other than grants and sub-grants under the State Community Education Program:

(1) The Education Division General Administrative Regulations (EDGAR) in Part 100a (Direct Grant Progams) and Part 100c (Definitions).

(2) The regulations in this part, as applicable, except those for the State Community Education Program.

(c) *Regulations for procurement contracts.* The regulations in this part do not apply to procurement contracts under the Community Education Act. These contracts are subject to—

(1) Federal and HEW procurement regulations in 41 CFR Chapters 1 and 3; and

(2) Requirements and criteria in particular requests for proposals published in Commerce Business Daily.

(Sec. 801; 20 U.S.C. 3281)

§ 160c.3 Definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in Part 100c:

Applicant
Application
Commissioner
Elementary school
Institution of higher education
Local educational agency (LEA)
Nonprofit
Project
Public agency
Secondary school
State
State educational agency (SEA)

(b) *Program-specific definitions.* The following definitions apply specifically to this part:

"Act" or "Community Education Act" means Title VIII of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95-561).

"Program" means a community education program that meets each of the minimum elements in § 160c.4.

"Public facility" means a facility owned by any department of branch of a State, county, or municipal government.

"State Community Education Program" refers to the State formula program funded under Section 808 of the Act.

(Sec. 801; 20 U.S.C. 3281)

§ 160c.4 What are the minimum elements of a community education program?

A community education program has the following minimum elements:

(a) *Role of the school.* A public elementary or secondary school shall be involved directly and substantially in administering and operating the program. This does not mean that a public elementary or secondary school has to be solely or primarily responsible for administering and operating the program.

(b) *Community served.* The program shall serve an identified community. The community shall at least include the attendance area for the regular instructional program of the school involved in administering and operating the program.

(c) *Community center*—(1) *Facilites.* (i) A public facility such as a public elementary or secondary school, a public community college or junoior college, or a community recreation or a park center shall serve as a community center.

(ii) The community center may include satellite or mobile facilites to provide program activities and services. The satellite or mobile facilities may be nonpublic facilities that are made available for use by the public.

(2) *Scope of services and their relationship to regular instructional program.* To be a community center, the public facility shall offer educational, recreational, health care, cultural, and other related community and human services that—

(i) Are broad in their scope and nature. Program services may not be restricted to one or a limited number of areas such as recreation or adult education, or to one or a limited number of groups of persons in the community, for example, a program that serves only pre-school children, the handicapped, or the elderly;

(ii) Are merged with and mutually reinforce to the extent possible the regular instructional program of the elementary or secondary school involved in administering and operating the program; and

(iii) Extend the services offered by the public facility and the uses made of it by serving more groups of persons, lengthening the hours of service, and broadening the scope and nature of services.

(d) *Community needs.* The program shall include systematic and effective procedures—

(1) For identifying and documenting on a continuing basis the needs, interests, and concerns of the community served with respect to community education activities; and

(2) For responding to those needs, interests, and concerns.

(e) *Community resources and interagency cooperative arrangements.* (1) The program shall identify and use to the fullest extent possible educational, cultural, recreational, and other existing and planned resources located outside of the school (including, but not limited to, services of volunteers) to enhance the size and quality of the program.

(2) The program shall be designed to encourage and use cooperative agreements and other methods of cooperation among public and private agencies, to make maximum use of existing talents and resources, and to avoid duplication of services.

(f) *Program clients.* The program shall be designed to serve—

(1) All age groups in the community, including preschool children, children and youth, adults, and senior citizens; and

(2) Groups within the community with special needs for community education

activities, such as persons of limited English-speaking ability, mentally or physically handicapped persons, or other groups of persons.

(g) *Community involvement in governance.* The program shall involve institutions, groups, and individuals in advising on the assessment of community needs and resources, program operation, and evaluation. These institutions, groups, and individuals shall include, but need not be limited to, local community colleges, and social, recreational, and health groups. They shall also include persons broadly representative of the community served, including parents and students.

(Secs. 802, 803; 20 U.S.C. 3282, 3283)

§ 160c.5 How are the minimum elements of a community education program applied?

(a) The purpose of each project funded under the State Community Education Program and under the program of grants to LEAs shall be to administer one or more community education programs.

(b) Each community education program shall—

(1) Already meet all of the minimum elements; or

(2) Be able to meet all of the minimum elements with the assistance provided under the project.

(c) The minimum elements apply to each community education program assisted under the project rather than to the project as a whole. For example, under the minimum element concerning the role of the school in § 160c.4(a), if an LEA applies to plan, establish, expand, or operate five community education programs centered in five school buildings, a public elementary or secondary school shall be involved directly and substantially in administering and operating each of the five programs. However, the overall local project designed to plan, establish, expand, or operate these programs may be administered in a central office of the LEA.

(Secs. 802, 803; 20 U.S.C. 3282, 3283)

§ 160c.6 Scope of eligible project activities.

(a) *General rule.* A community education program may include all of the types of activities and services described in Section 807 of the Act. However, the project to which the Federal share is applied may include only the administrative and coordinating activities of planning, establishing, expanding, and operating a community education program. It may not include the costs of the direct services and activities provided under the program.

(b) *Eligible project activities.* The project may include only the leadership, coordinating, administrative, and technical assistance activities involved in planning, establishing, expanding, or operating one or more community education programs. These activities may include—

(1) Employing a community education administrator and the administrator's staff;

(2) Training for the administrator and staff and for the grantee's chief executive officer;

(3) Scheduling services and activities;

(4) Assessing community needs and interests;

(5) Recruiting program participants and administrative and instructional staff for the program;

(6) Disseminating information to the community and to other interested persons and organizations;

(7) Obtaining community participation in planning and carrying out the program;

(8) Organizing community education task forces or advisory councils and planning and carrying out their activities;

(9) Budgeting and managing the program;

(10) Identifying and obtaining the participation of other community resources;

(11) Planning and developing the program;

(12) Evaluating the program, including any outside evaluation of the program;

(13) Developing usable information about the program and its methods;

(14) Coordinating the program activities and services provided by different agencies and organizations;

(15) Obtaining technical assistance to carry out these activities; and

(16) Providing training and technical assistance to other projects.

(c) *Ineligible project activities.* Expenses directly related to providing services or activities are outside the scope of the project. These include, but are not limited to, instructional and service staff salaries, instructional materials and equipment, facilities for activities, and transportation for participants.

(Secs. 803, 807; 20 U.S.C. 3283, 3287)

§ 160c.7 Non-Federal contribution for related Federal programs.

An SEA or LEA that receives funds under the Act for community education programs may use the costs of the project as part of or all of the non-Federal contribution that is required under any program listed in section 806 of the Act, if both of the following conditions are met:

(a) A portion of any program listed in section 806 of the Act is implemented in a building in which a community education program assisted under this Act is conducted; and

(b) There is a necessary and direct relation between the portion of the program in paragraph (a) of this section and any element of the community education program assisted under this act.

(Sec. 806; 20 U.S.C. 3286).

§§ 160c.8 and 160c.9 [Reserved]

Subpart B—State Community Education Program

What Kinds of Activities Does the Office of Education Fund Under the State Community Education Program?

§160c.10 Purpose of State grants.

The general purpose of the State Community Education Program is to assure capacity building in the State to support continued development of community education and attain full State responsibility for this development within the five-year period of authorization for the Federal Act. Specific purposes of the State Community Education Program are described in § 160c.1 (Description of the Community Education Act).

(Sec. 808; 20 U.S.C. 3288)

§160c.11 Eligible activities.

(a) The Commissioner funds SEAs—

(1) To provide financial assistance through subgrants to LEAs to plan, establish, expand, and operate community education programs;

(2) To administer a State plan governing the community education activities and to provide technical assistance, coordination, and information services to community education programs in the State.

(b) Any State may apply for a grant to support community education programs that meet or are making progress toward meeting each of the minimum elements in § 160c.4. This includes the development of new community education programs in the State that will meet these minimum elements.

(Sec. 804; 20 U.S.C. 3284)

How Does a State Apply for a Grant? What Provisions Are Required in a State Plan?

§ 160c.12 Documents a State must submit to receive a grant.

To receive a grant, a State through its SEA shall submit to, or have on file with, the Commissioner—

(a) A general application that complies with the requirements and contains the assurances required under section 435 (single State application) of the General Education Provisions act; and

(b) A State plan that complies with the requirements in §§ 160c.13 through .19. The State plan need not be submitted more often than once every three years.

(Sec. 808 (a) 20 U.S.C. 3288(a))

§ 160c.13 Assistance to community education programs.

A State plan must provide information to document that—

(a) Specific community education programs in LEAs that are assisted with funds distributed by the State under the State Community Education Program meet or will make substantial progress toward meeting the minumum elements in § 160c.4; and

(b) Funds received by the State under the State Community Education Program and reserved for administrative activities—including technical assistance to LEAs—will relate to the development of community education programs that meet the minimum elements.

(Secs. 803, 808(a)(4)–(7); 20 U.S.C. 3283, 3288(a)(4)–(7))

§ 160c.14 Use of funds.

(a) A State plan must explain procedures to ensure that funds received under the State Community Education program will be used only to pay the Federal share of the eligible costs described in § 160c.6 (Scope of eligible project activities). Sufficient information must be provided with respect to—

(1) Activities carried out at the state level by the SEA; and

(2) Projects carried out locally with funds distributed by the State among LEAs within the state.

(Secs. 803, 804, 807; 20 U.S.C. 3283, 3284, 3287)

§ 160c.15 Expanding community education programs.

(a) *General.* A State plan must furnish evidence that, to the extent practicable, funds under the State Communmity Education Program will be used to expand community education programs of the schools of LEAs within the State.

(b) *Expansion activities.* Expanding community education programs includes—

(1) Planning and establishing new community education programs; and

(2) Enlarging the scope of existing community education programs by—

(i) Increasing the number and types of services offered in these programs in response to community needs and interests;

(ii) Increasing the number of community residents, agencies, and organizations that participate in planning and implementing the programs and improving the quality of that participation; or

(iii) Increasing the time during which public facilities are used in the programs.

(c) *State-wide assessment.* To satisfy paragraph (a), a State plan must—

(1) Furnish evidence that the SEA has carried out, and describe the manner in which it has carried out, an assessment to identify—

(i) Existing and planned community education programs throughout the State;

(ii) The locations with the strongest interests in and needs for new community education programs;

(iii) Resources available to plan, establish, or expand community education programs throughout the State; and

(2) Describe the results of the assessment and the standards for selecting community education programs for funding based on this assessment.

(Sec. 808(a)(1); 20 U.S.C. 3288(a)(1))

§ 160c.16 Local distribution of funds.

(a) *Distribution.* A State plan must describe procedures for distributing among LEAs within the State 80 percent of the funds it receives for community education programs.

(b) *Standards.* A State plan must describe the standards and procedures for distributing these funds to LEAs—

(1) Considering the size of the population to be served by the community education programs of each LEA; and

(2) To achieve—

(i) Expansion of community education programs;

(ii) Assistance to existing or proposed community education programs of the highest quality; and

(iii) The most effective use of resources to meet community education needs throughout the State.

(Sec. 808(a)(3); 20 U.S.C. 3288(a)(3))

§ 160c.17 Evaluation procedures.

(a) A State plan must describe procedures to evaluate annually the effectiveness of—

(1) Community education programs that receive financial and technical assistance under the State Community Education Program; and

(2) If possible, LEA programs receiving financial assistance under Sec. 809 of the Act.

(b) A State plan must describe—

(1) The specific criteria to be used in assessing the effectiveness of community education programs;

(2) The evaluation instruments to be used, or how they will be developed or selected; and

(3) The results of the most recently completed evaluation.

(Sec. 808(a)(11); 20 U.S.C. 3288(a)(11))

§ 160c.18 Other State plan provisions.

A State plan must assure that—

(a) *State administration.* The State will meet the requirements in Section 808(a)(10) of the Act with regard to the reservation of 15 percent of the funds under the State allotment for the specified administrative activities of the SEA;

(b) *Remaining funds.* The State will use funds remaining under the State allotment after awarding 80 percent of the allotment to LEAs and after reserving a maximum of 15 percent for State administrative activities to train and provide technical assistance to SEA personnel in the administration of State community education activities.

(c) *Cost-sharing.* The State will meet the requirements of Section 808(a)(9) of the Act concerning payments from non-Federal sources.

(Sec. 808(a)(9), (10); 20 U.S.C. 3288(a)(9), (10))

§ 160c.19 Ten-year plan.

(a) *General.* A State plan must provide assurances that the State—after consulting with appropriate State agencies—will develop a ten-year plan for coordination of education programs with all relevant community services, including but not limited to State and local recreation authorities and associations. This coordination includes—

(1) Cooperative agreements with appropriate State, local, and Federal agencies;

(2) Continuous involvement of appropriate agencies in the development of community education programs;

(3) Integration of community education programs into the community service activities of these State and local agencies; and

(4) Shared information, technical assistance, and exchange of personnel among appropriate State and local agencies to increase their effectiveness in addressing common problems and similar objectives.

(b) *Specific information in the State plan.* The State plan must include the following information on the ten-year plan:

(1) A specific timeline for its development, adoption, and implementation.

(2) The agencies—including their relationship with the SEA—with which the State will consult in developing and carrying out the plan and the basis for including those agencies.

(c) *Completion; implementation.* The ten-year plan must be completed no later than two years after the State receives its first grant under the State Community Education Program.

(Sec. 808(a)(2); 20 U.S.C. 3288(a)(2))

Subpart C—Grants to Local Educational Agencies

What Kinds of Projects Does the Office of Education Fund Under This Program?

§ 160c.30 Eligible projects.

The Commissioner awards direct grants to LEAs for the Federal share of the administrative costs of planning, establishing, expanding, and operating community education programs.

(Sec. 809; 20 U.S.C. 3289)

§ 160c.31 Purpose of projects.

(a) *General purpose.* The Commissioner funds LEA projects that have the greatest potential for national impact. These projects must show promise for advancing the state of the art of community education by developing approaches, methods, or information to be used by other LEAs throughout the Nation.

(b) *Eligible activities.* A project may include the activities described under § 160c.6(b) (Eligible project activities).

(Sec. 807, 809; 20 U.S.C. 3287, 3289)

How Does an Applicant Apply for a Grant?

§ 160c.32 Application requirements.

(a) The Commissioner considers making a grant to an LEA only if it submits an application meeting the requirements under Part 100a, Subpart C of EDGAR and any additional requirements that may be specified in the annual notice inviting applications.

(Sec. 809; 20 U.S.C. 3289)

(b) An application from an LEA must comply with the requirements in §§ 100a.138 through 100a.141 of EDGAR concerning an open meeting on the application.

(20 U.S.C. 3386)

§ 160c.33 State review of local educational agency applications.

(a) The Commissioner will not approve an application submitted by an LEA unless the SEA of the State in which that LEA is located has been given an opportunity to review and comment on such application.

(b) The procedures for this review and comment are described in §§ 100a.155 through 100a.159 of EDGAR.

(Sec. 809(b); 20 U.S.C. 3289(b))

How Is a Grant Made?

§ 160c.34 How the Commissioner judges applications from local educational agencies.

The Commissioner decides whether or not to fund an application from an LEA based on—

(a) The criteria for evaluating applications in § 160c.35; and

(b) The extent to which funding the project contributes to—

(1) Support for a variety of projects that collectively, to the extent possible, meet the diversity of needs in promoting community education nationally. The broad coverage includes—

(i) A variety of strategies for addressing needs; and

(ii) A variety of delivery systems.

(2) Avoidance of duplication of projects that have already been funded and judged acceptable for dissemination by the Commissioner;

(3) An appropriate geographic distribution of community education programs throughout the Nation and in urban and rural areas; and

(4) The funding of a diversity of community education methods or approaches.

(Sec. 809, 20 U.S.C. 3289)

§ 160c.35 Criteria for evaluating applications.

The Commissioner evaluates applications from LEAs on the basis of the criteria in this section. The maximum possible score for all criteria is 100 points. The maximum possible score for each criterion is indicated separately under that criterion.

(a) *EDGAR criteria.* (30 points) The evaluation criteria in part 100a, subpart D of EDGAR §§ 100a.202 through 100a.206 according to the points there specified.

(b) *Quality of community education programs.* (30 points) The quality of the existing or planned community education programs involved in the project in meeting the minimum elements in § 160c.4. In applying this criterion, the Commissioner focuses particularly on—

(1) *School involvement.* (i) The extent to which an LEA and the local board of education are involved in program administration and their commitment to the support and improvement of the program;

(ii) Integration and mutual reinforcement between the regular instructional program of the school and community education activities and services; and

(iii) Maximum use of existing school facilities;

(2) *Needs and Services.* The extent to which the program provides services and activities that respond to identified local needs and the extent to which geographic and other constraints to potential participation in the program by members of the community to be served are recognized and resolved;

(3) *Agency coordination.* The adequacy of arrangements to achieve maximum coordination and cooperation among public and private agencies, utilize existing resources—including arrangements to link the program with programs listed in Section 806 of the Act—and avoid duplication in service delivery; and

(4) *Community participation.* The extent of community participation in all aspects of the program, including needs and resource assessment, application preparation, and implementing and evaluating the program.

(c) *Potential for advancing community education.* (30 points) The project's potential for advancing community education nationally. In applying this criterion, the Commissioner considers the quality of the project in meeting any one or a combination of the following:

(1) *Citizen involvement.* The degree to which the project develops new methods of citizen involvement in the governance of a community education program.

(2) *Use of resources.* The degree to which the project develops new methods for the efficient and effective use of human and material resources.

(3) *Incorporating community education.* The degree to which the project develops new methods of incorporating community education as an integral part of an LEA and building long term support for it.

(d) *Evaluation and potential for replication.* (10 points) The degree to which the project's results will be evaluated and the project is replicable.

In applying this criterion, the Commissioner considers—

(1) Whether there is a proposed plan for having the project evaluated by outside, objective evaluators;

(2) The proposed use of quantifiable data insofar as possible to measure the extent to which the project achieves its objectives; and

(3) Provisions to develop from the project usable information—including characteristics, practices, procedures, and materials—capable of being disseminated to a broad national audience or to a special client population.

(Sec. 809; 20 U.S.C. 3289)

What Conditions Must Be Met by a Grantee?

§ 160c.36 Cost sharing.

An LEA that receives a grant shall meet the cost sharing requirement in Section 815(b) of the Act. The grantee may meet the cost sharing requirement from the sources provided in Title CFR Part 74, subpart G.

(Sec. 815(b); 20 U.S.C. 3295(b))

§ 160c.37 Project duration.

The Commissioner may approve an LEA project for a period not to exceed two years. Approval of a project for more than a year and the award of continuation grants within the project period are covered in § 100a.450 of EDGAR.

(Sec. 809; 20 U.S.C. 3289)

Subpart D—Grants to Public Agencies and Nonprofit Private Organizations

What Kinds of Projects Does the Commissioner Fund Under This Program?

§ 160.40 Eligible applicants.

The Commissioner may fund grants to or contracts with public agencies—including SEAs—and nonprofit private organizations to encourage the use of school facilities and other public facilities for the efficient and coordinated delivery of community services in community education programs or in other activities described in Section 806(b) of the Act.

(a) *Non-duplication of contracts.* The Commissioner does not fund a project to support activities that duplicate any contract activities under the program. For example, if the Commission awards a contract to involve parks and recreation agencies in program activities, the Commissioner does not award a grant for these activities.

(b) *Notice of funding reservations.* The Commissioner publishes a notice periodically in the Federal Register inviting applications for the program and notifying prospective grant applicants of—

(1) Activities to be carried out by contracts; and

(2) The amount of funds reserved for grants to SEAs and to other public agencies and nonprofit private organizations.

(Sec. 810; 20 U.S.C. 3290)

§ 160c.41 State educational agency projects.

Grants to SEAs are designed to achieve the purposes in § 160c.1(b).

(a) *Activities in general.* A grant supports an SEA in—

(1) Developing and carrying out State-level planning and inter-agency coordination activities and statewide dissemination of information activities; and

(2) Providing support through developmental and technical assistance and other appropriate means to one or more specific community education programs administered by an LEA or to one or more coordinated programs under Section 806(b) of the Act.

(Sec. 810; 20 U.S.C. 3290)

(b) *Relationship to community education programs.* An SEA shall provide developmental and technical assistance to all community education programs receiving Federal assistance under this part.

(Sec. 810; 20 U.S.C. 3290)

§ 160c.42 Nature of projects for other public agencies and nonprofit private organizations.

(a) *General.* The Commissioner awards grants to public agencies other than SEAs and to nonprofit private organizations to encourage the use of school facilities and other public facilities for community education programs and for the improvement and development of new models to coordinate delivery of community and human services in these facilities.

(b) *National significance.* The Commissioner awards grants only to projects that have the potential of furthering these purposes nationally. A project may have this potential either because the activities under the project are national in scope or because the project involves a particularly new and different idea or approach that is worthy of being replicated at other sites or by other organizations throughout the Nation.

(c) *Outcomes.* Each project shall provide for—

(1) *Evaluation.* An evaluation of the effectiveness of the project, including evaluative reports and products that describe the project, its results, and an analysis of its impact on community education.

(2) *Information.* The development of information that is useful in training others or for wide distribution; and

(3) *Dissemination.* Methods to distribute nationally to all interested parties materials developed as a result of the project.

(Sec. 810; 20 U.S.C. 3290)

(d) *Specific types of projects.* Eligible activities include coordination, sharing of information, technical assistance, and training. A project may focus on—

(1) Training a particular national, regional, or statewide group interested in community education or in the coordinated delivery of community and human services in schools and other public facilities;

(2) Developing working relationships between two or more of these groups; or

(3) Developing, testing, and disseminating new models of local activities to promote improved coordination of community and human services in schools and other public facilities.

(Sec. 810; 20 U.S.C. 3290)

How Does an Applicant Apply for a Grant?

§ 160c.43 Application requirements.

The application requirements described in § 160c.32 apply to this program.

(Sec. 810, 20 U.S.C. 3290)

How Is a Grant Made?

§ 160c.44 How the Commissioner judges applications from public agencies and nonprofit private organizations.

The Commissioner decides whether or not to fund an application from a public agency or nonprofit private organization based on—

(a) The criteria for evaluating an application in § 160c.45 or 160c.46 as appropriate; and

(b) The extent to which the project contributes to national diversity as provided in § 160c.34(b).

(Sec. 810; 20 U.S.C. 3290)

§ 160c.45 Criteria for evaluating applications from State educational agencies.

The Commissioner evaluates applications from SEAs on the basis of the criteria in this section. The maximum possible score for all criteria is 100 points. The maximum score for

each criterion reflects the degree of importance assigned to that criterion by the Commissioner and is indicated separately under that criterion. In evaluating applications, the Commissioner considers—

(a) *EDGAR criteria.* (30 points) The evaluation criteria in Part 100a, Subpart D §§ 100a.202 through 100a.206, of EDGAR, according to the points there specified.

(b) *Quality of State-level activities.* (30 points) The quality of State-level activities to develop community education. In applying this criterion, the Commissioner considers the degree to which the SEA has developed and will carry out—

(1) An assessment of State-level agencies and organizations providing programs and services related to community education and of resources available to the SEA in developing its community education activities;

(2) Provisions for participation by State agencies, organizations, personnel, and the public in the development of the SEA application and in the implementation and evaluation of the project;

(3) A plan for cooperation of existing resources of State agencies, public and private organizations, and State associations providing community and human services related to community education;

(4) A plan for coordination with institutions of higher education for training of SEA community education personnel, LEAs assisted by the State project, and federally funded LEAs in the State;

(5) Activities to foster the inclusion of programs listed in Section 806 of the Act in community education programs; and

(6) Activities to create greater awareness of community education and to build it into the structure of State agencies, organizations, and associations.

(c) *Quality of technical assistance.* (30 points) The overall quality of the plan for assisting local community education programs. In applying this criterion, the Commissioner considers the degree to which the SEA has planned for and will carry out—

(1) A needs assessment of LEAs including a strategy to strengthen coordination of the technical assistance and State level functions;

(2) Activities to assist LEAs in developing community education programs, including—

(i) Assisting LEAs meet one or more of the minimum elements of a community education program;

(ii) Helping LEAs plan and develop applications for assistance under the Act;

(iii) Helping to establish and coordinate community education task forces and advisory bodies;

(iv) Providing for the training of local directors of community education programs and their staffs and community members;

(v) Providing assistance in the dissemination of information about community education programs;

(vi) Helping community education programs to develop and conduct evaluations; and

(vii) Helping LEAs bring their community education programs into conformity with any State plan for community education.

(3) A process for involving LEAs, institutions of higher education, and appropriate individuals and groups in the preparation and operation of the technical assistance program; and

(4) An evaluation.

(d) *National impact.* (10 points) The project's potential usefulness to other SEAs and potential for national impact on the advancement of community education.

(Sec. 810; 20 U.S.C. 3290)

§ 160c.46 Criteria for evaluating applications from other public agencies and nonprofit private organizations.

The Commissioner evaluates applications for grants from public agencies other than SEAs and nonprofit private organizations on the basis of the criteria in this section. The maximum possible score for all criteria is 100 points. The maximum possible score for each criterion is indicated under the criterion. In evaluating applications, the Commissioner considers—

(a) *EDGAR criteria.* (30 points) The evaluation criteria in part 100a, subpart D of EDGAR §§ 100a.202 through 100a.206, according to the points there specified.

(b) *Client involvement.* (20 points) The extent of involvement of potential clients of the project in the design and operation of the project.

(c) *Potential for advancing community education.* (30 points) The degree to which the proposed project has the potential for advancing community education or the coordinated delivery of community and human services in public facilities nationally. In applying this criterion, the Commissioner considers such factors as the degree to which—

(1) The project includes unique or diverse methods of fostering interagency cooperative methods; or

(2) The project provides a plan to impact a given audience or group nationally; or

(3) The project provides different methods of developing community education permanence within the agency or organization.

(d) *Dissemination.* (20 points) The degree to which the project results will be evaluated and disseminated to a national audience. In applying this criterion the Commissioner considers—

(1) The proposed plan for developing an evaluation of the projects;

(2) The plan to develop usable information (including characteristics, practices, procedures, and materials resulting from the projects); and

(3) Provisions for disseminating the project results to a broad audience, or to special client groups that could benefit from knowledge of project results.

(Sec. 810; 20 U.S.C. 3290)

What Conditions Must Be Met by a Grantee?

§ 160c.47 Cost sharing.

An SEA, other public agency, or nonprofit private organization that receives a grant shall meet the cost sharing requirement in Section 815(c) of the Act. The grantee may meet the cost sharing requirement from the sources provided in 45 CFR Part 74, Subpart G.

(Sec. 815(c), 20 U.S.C. 3295(c))

§ 160c.48 Project duration.

The provisions in § 160c.37 concerning project duration apply to grants to SEAs, other public agencies, or nonprofit private organizations.

(Sec. 810, 20 U.S.C. 3290)

Subpart E—Training Grants to Institutions of Higher Education

What Kinds of Training Projects Does the Commissioner Fund?

§ 160c.60 Eligible applicants.

The Commissioner awards grants to institutions of higher education to pay all or part of the costs of developing and establishing or expanding programs providing short term full-time or part-time pre-service or in-service training for personnel who are engaged in or who intend to engage in community education programs.

(Sec. 812; 20 U.S.C. 3292)

§ 160c.61 Types of projects.

(a) Projects may focus on one or more of the following areas of training:

(1) General community education training designed to introduce persons interested in commencing and

developing community education programs to the practices, procedures, and history of community education.

(2) Training of SEA community education leaders in managing a State program and in providing technical assistance to local districts throughout their State.

(3) Training materials development designed—

(i) To assess the validity of a number of different approaches taken in implementing community education programs at the State, local, and institution of higher education levels; and

(ii) To develop training materials based on viable approaches.

(4) Activities to disseminate information about national training and to bring together different organizations and institutions providing training to persons in community education.

(5) Statewide, regional, or national consortia composed of a variety of skilled trainers—

(i) To provide short-term interdisciplinary training to persons interested in community education; or

(ii) To provide training on new methods of collaboration among agencies and institutions providing services in community education.

(6) Other areas of training in community education.

(b) The Commissioner publishes a notice periodically in the Federal Register inviting applications for the program. The notice may establish priorities among these areas or reserve funds for them.

(Sec. 812; 20 U.S.C. 3292)

§ 160c.62 Training activities.

(a) A project may include training—

(1) In all of the following skills and understandings:

(i) A general understanding of the concepts of community education, including those reflected in the minimum elements;

(ii) General skills necessary and appropriate for the group addressed by the training grant, including organizational, developmental, and administrative skills;

(iii) Technical skills related to carrying out needs and resource assessments, evaluation of community education efforts, planning, and data collection;

(iv) Skills in the provision of developmental and technical assistance;

(v) Identification of and coordination with other national, State, or local resources.

(2) That provides information on—

(i) Successful community education projects and activities related to the client group or category;

(ii) Community education programs and research and development in community education available from the Community Education Clearinghouse authorized by Section 814(a) of the Act, the Commissioner, and other sources.

(b) The training shall be—

(1) Designed to meet the needs of participating trainees;

(2) Provided on a continuing basis over the course of the grant period, with provisions for follow-up and reinforcement of specific training sessions or activities; and

(3) Short-term in nature and offered at times and in such a manner as to allow participation by recipients of the training on a basis that will cause minimum disruption to the carrying out of their responsibilities in planning and working with community education programs.

(Sec. 812, 20 U.S.C. 3292)

How Does an Applicant Apply for a Grant?

§ 160c.63 Application requirements

The application requirements described in § 160c.32 apply to this program.

(Sec. 812, 20 U.S.C. 3292)

How Is a Grant Made?

§ 160c.64 How the Commissioner judges applications for training projects from institutions of higher education.

The Commissioner decides whether or not to fund an application for training projects from institutions of higher education based on—

(a) The criteria for evaluating applications in § 160c.65, and

(b) The extent to which the project contributes to national diversity as provided in § 160c.34(b).

(Sec. 812, 20 U.S.C. 3292)

§ 160c.65 Criteria for evaluating applications for training projects from institutions of higher education.

The Commissioner evaluates applications for training projects from institutions of higher education on the basis of the criteria in this section. The maximum possible score for all criteria is 100 points. The maximum possible score for each criterion is indicated separately under the criterion.

(a) *EDGAR criteria.* (30 points) The evaluation criteria in Part 100a, Subpart D of EDGAR §§ 100a.202 through 100a.206, according to the points there specified.

(b) *Quality of project.* (15 points) The quality of the proposal in addressing one or more of the areas described in § 160c.61(a).

(c) *Knowledge of existing community education training.* (10 points) The extent to which an application reflects and builds upon a knowledge of existing community education training and research related to the specific training area.

(d) *Client involvement.* (10 points) The extent of involvement of potential clients of the project in designing and implementing the project.

(e) *Potential for advancing community education.* (20 points) The degree to which the proposed project has the potential for advancing community education nationally. In applying this criterion, the Commissioner considers such factors as the degree to which—

(1) The project includes unique or diverse methods of fostering interagency cooperative methods;

(2) The project provides a plan to impact a given audience or group nationally;

(3) The project provides different methods of developing community education permanence within the agency or organization being trained.

(f) *Dissemination.* (15 points) The degree to which the project results will be evaluated and disseminated to a national audience. In applying this criterion, the Commissioner considers—

(1) The proposed plan for developing an evaluation of the project;

(2) The plan to develop usable information (including characteristics, practices, procedures, and materials) resulting from the project; and

(3) Dissemination of the project results to a broad audience or to a special client group that could benefit from knowledge of project results.

(Sec. 812; 20 U.S.C. 3292)

What Conditions Must Be Met by a Grantee?

§ 160c.66 Project duration.

The provisions in § 160c.37 concerning project duration apply to training grants to institutions of higher education.

(Sec. 812, 20 U.S.C. 3292)

Note.—The following appendix will not appear in the Code of Federal Regulations.

Appendix—Guidelines for State Community Education Program

1. *Purpose.* These guidelines are recommendations and suggestions for meeting the funding requirements for States under Sec. 808 of the Community Schools and Comprehensive Community Education Act of 1978 and its implementing regulations.

The guidelines set forth permissible means of meeting the legal requirements of the Act and regulations and may be relied upon to that extent. The guidelines are not to be construed as legal requirements. Programs that do not come within these guidelines will not be prejudiced.

While there are a variety of ways that an applicant may plan for and then implement a State plan for community education, the following suggestions and guidelines are intended to assist States in meeting the minimum requirements of the Act and in going beyond those requirements to implement a high quality State program.

(20 U.S.C. 3288, 45 CFR 160c.10)

2. *State Educational Agency functions.* The regulations set out several requirements concerning the State plan that can be met more effectively if adequate planning is carried out prior to submission of the plan. It should be helpful in preparing a State plan to consider the dual functions of a State community education program staff:

(a) *State-level and Statewide activities.* Developing and carrying out State-level planning and interagency coordinating activities and statewide dissemination of information activities, including obtaining and maintaining citizen participation in the statewide community education effort; conducting needs and resource assessments of State agencies and organizations; identifying and cooperating with institutions of higher education for community education training; coordinating activities with other statewide agencies, organizations, and associations; and creating statewide awareness of community education.

(b) *Technical and financial assistance.* Providing technical and financial assistance to local community education programs within the State, including providing assistance to LEAs in meeting the minimum elements of the Act; helping LEAs develop applications for assistance under the Act; helping LEAs to establish and maintain task forces and advisory bodies; assisting local directors of community education and their staffs and community members providing assistance in the preparation of local budgets for community education; helping evaluate local programs; and assisting LEAs to work within the State plan for community education.

(20 U.S.C. 3284, 3288; 45 CFR 160c.11)

The guidelines suggested below apply to both State-level and statewide activities and assistance to local community education programs. Each State should consider the following areas while developing the State plan and develop procedures to assure that LEAs within the State consider these areas.

3. *Importance of citizen involvement in development of State plan.* The potential for success of both statewide and technical assistance programs will be greatly enhanced if there is broad representative involvement of diverse segments of the State's population prior to submitting the State plan, during the actual development of the plan, and during the carrying out and evaluation of the State plan. States are encouraged to consider developing an effective structure to encourage citizen involvement. Involvement of a variety of interested individuals and groups within and outside the formal community education network will increase the likelihood of State plans that reflect the needs of citizens.

Each State should also develop procedures to assure that as many groups and individuals as possible have an opportunity for involvement in the development of the State plan. This might be accomplished through public meetings, hearings, or other appropriate activities.

(20 U.S.C. 3288; 45 CFR 160c.10)

4. *Ongoing citizen participation.* Advisory councils or groups of citizens should be formed by the State to provide continual advice on the total State community education effort. A basic tenet of community education is citizen involvement and participation in education and in community problem solving and decision making. Therefore, it would be anomalous for a State that is supporting community education principles to operate a statewide program without the active and continuous involvement of individuals and appropriate groups, organizations, and agencies. This should include involvement in the planning, assessment, implementation, operation, and evaluation of the State program and local activities. One method of participation might be an advisory council. While the council should be large enough to represent diverse groups and interests, it should not be so large that its size limits efficient operation. For some States a task force and/or several sub-unit task forces or study groups might be appropriate. Care should be taken to provide sufficient staff support for any council activities. In keeping with the principles of community education, active and continuous involvement of groups or individuals should prevail rather than short-term interrupted participation. A State plan should also include appropriate assistance to LEAs, in order to make citizen participation a component of all local community education projects.

(20 U.S.C. 3288; 45 CFR 160c.10)

5. *Selection of community members.* In selecting individuals and groups to serve on an advisory council or otherwise to provide advice to the State program, the following might be considered for membership:

(a) Representatives of such groups as social agencies, recreation programs, community colleges, local action groups, and municipal agencies;

(b) Representatives of Federal and State programs, including the programs in Section 806 of the Act;

(c) Representatives of local community education programs, including personnel from cooperating agencies;

(d) Representatives of LEAs;

(e) Representatives of the State board of education and the chief state school officer; and

(f) Representatives of volunteer organizations.

(20 U.S.C. 3288; 45 CFR 160c.10)

6. *Functions of council or citizen group.* The following are examples of functions that might be performed by an advisory council or citizen group. The council or group might—

(a) Assist in statewide community education planning, including identification of target population, assessment of needs, selection of appropriate activities and priorities in response to these needs;

(b) Recruit personnel to assist State or local community education efforts and assist in mobilization of resources;

(c) Assist in community education project staff development;

(d) Asssist in identifying agencies that might desire to be involved in State or local community education efforts;

(e) Assist in disseminating information about community education;

(f) Coordinate the community education program with appropriate State or local councils, community groups, professional organizations, public and private agencies; and

(g) Evaluate the State or local community education efforts.

(20 U.S.C. 3288; 45 CFR 160c.10)

7. *Program staff development.* The regulations set out several requirements that can be more effectively implemented if the State program staff have adequate experience and expertise in community education. For example, the State staff assists LEAs to work with all ages and with persons with special needs, to conduct resource and needs assessments, to work collaboratively with community agencies and organizations to provide diverse programs, and to involve agencies, institutions, and groups in the community education effort. While any one staff member may not have all of the above experience or expertise, the State staff as a whole shold have these experiences or develop a statewide pool of individuals and groups who can provide assistance to LEAs. Additionally, quality staff training opportunities should be provided to enchance the total staff's ability to provide assistance to LEAs.

(20 U.S.C. 3288; 43 CFR 160c.10)

8. *Board of education support.* The Community Schools and Comprehensive Community Education Act includes a five-year program of decreasing Federal assistance to the States. It is assumed that at the end of the five year cycle of Federal assistance, the State will have the capacity to sustain community education development from State and local resources. One important step toward establishing a base for this State capacity is to develop State board of education support for community education. Similarly, LEAs should be encouraged to involve local boards of education in community education program administration.

(20 U.S.C. 3295(a); 45 CFR 160c.10)

9. *Expanding community education programs—needs assessment.* Knowledge of community education programs and services that exist in the State is helpful in determining how the State should plan to expand community education programs. These guidelines suggest that each State introduce a systematic and effective procedure, on a continuing basis, to identify

and prioritize statewide and LEA needs and plan activities that directly respond to these prioritized needs.

Additional information could be obtained by involving public and private agencies and organizations by identifying which agencies might be helpful in recruiting participants in the statewide and local efforts and serving as sources of expertise, training, materials, volunteer, and the like.

The SEA might consider the level of assistance to be provided to each LEA in one or more of the areas of planning, establishing, operating or expanding, based on the statewide and local needs and resources.

(20 U.S.C. 3288(a)(1); 45 CFR 160c.15(c))

10. *Ten-year plan.* The statute and regulations specify that all States provide assurances in their State plan that the State will develop a ten-year plan for the coordination of educational programs with all relevant community services. Collaboration is emphasized with public and nonprofit agencies and in the use of various resources. The intent of the statute is for each State, through shared resources, to assume responsibility for community education development.

The regulations state that the ten-year plan shall be completed not later than two years after State recieves its first grant under the State Community Education Program. The State should submit a copy of its ten year plan and any amendments with the apporpriate State plan for funding under the Federal program. The State should indicate in subsequent State plans any amendments and how it is implementing the ten-plan plan.

The ten-year plan should reflect the long range community education goals of the SEA and detail SEA relationships with other State and local agencies involved in the development of community education.

Various agencies should be involved in resource identification and in the development of a plan for coordination. This plan should provide for commitment of these agencies to develop community education after the expiration of Federal assistance. Although the regulations specify the involvement of State and local recreation authorities and associations, other State and local agencies providing services, and local agencies, providing services related to community education, including community education training, should be involved in the total process.

(20 U.S.C. 3288 (a)(2); 45 CFR 160c.19)

11. *Evaluation.* The regulations require an evaluation of each program assisted. Both process (formative) and impact (summative) evaluations should be conducted. Process evaluation can be defined as a timely examination of project activities that occur with a view to:

(a) How they correspond with plans and resources;

(b) The extent to which the activities appear to be effective; and

(c) How they can be improved.

Process evaluation can be looked upon as a mangement information system. Impact evaluation examines final results and asks whether the objectives were achieved and to what degree.

(20 U.S.C. 3288(a)(11); 45 CFR 160c.17)

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Friday
June 29, 1979

Federal Register

Part XVI

Department of Health, Education, and Welfare

Office of Education

Financial Assistance to Local and State Agencies To Meet Special Educational Needs

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Parts 116 and 116a]

Financial Assistance to Local and State Agencies To Meet Special Educational Needs

AGENCY: Office of Education, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations govern programs authorized by Title I of the Elementary and Secondary Education Act for children with special educational needs. The regulations in part 116 govern all title I programs; those in part 116a govern the title I program of grants to local educational agencies (LEAs) for projects designed to meet special educational needs of educationally deprived children in low-income areas. The proposed regulations incorporate changes required by the Education Amendments of 1978 and simplify and shorten existing regulations.

DATE: Comments must be received on or before October 1, 1979.

Public meetings will be held in each of the ten regions on July 30, 1979.

The time for these meetings is—

9:00 a.m.—12:00 Noon

1:00 p.m.—5:00 p.m.

7:00 p.m.—9:00 p.m.

ADDRESS: Comments should be addressed to Dr. John F. Staehle, U.S. Office of Education, 400 Maryland Avenue, S.W. (ROB 3, Room 3642), Washington. D.C. 20202.

The locations of the public meetings are—

Region I—Boston—Boston School Dept., Administration Building, Boston Committee Hearing Rm., 26 Court Street, Boston, Massachusetts.

Region II—New York—Hearing Room E, Room 2222, 26 Federal Plaza, New York, New York.

Region III—Philadelphia—University City Holiday Inn, 36th & Chestnut Street, Philadelphia, Pennsylvania.

Region IV—Atlanta—Regional Office Building, 101 Mariette Towers Bldg., Suite 2221, Atlanta, Georgia.

Region V—Chicago—Center for Urban Education, 160 West Wendell Street, (1050 North Wells), Chicago, Illinois 60601.

Region VI—Dallas—William Travis Elementary School, 3001 McKinney Street, Dallas, Texas 75204.

Region VII—Kansas City—Federal Office Bldg., 601 East 12th Street, Room 140, Kansas City, Missouri.

Region VIII—Denver—George Washington High School, 655 South Monaco Street, Denver, Colorado.

Region IX—San Francisco—Federal Office Building, Room 209, 50 United Nations Plaza, San Francisco, California.

Region X—Seattle—Ingram High School, Little Theater, 1819 North 135th Street, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Dr. John F. Staehle, telephone (202) 245-2720.

FOR INFORMATION ON REGIONAL HEARINGS CONTACT: The appropriate Regional Commissioner for Educational Programs listed below:

Region I, Boston, Dr. Thomas J. Burns, (617) 223-7500

Region II, New York, Dr. William D. Green, (212) 264-4370

Region III, Philadelphia, Dr. Albert C. Crambert, (215) 596-1001

Region IV, Altanta, Dr. William L. Lewis, (404) 221-2063

Region V, Chicago, Ms. Juliette Noone Lester, (312) 353-5215

Region VI, Dallas, Mr. Edward J. Baca, (214) 767-3626

Region VII, Kansas City, Dr. Harold Blackburn, (816) 374-2276

Region VIII, Denver, Dr. John Runkel, (303) 837-3544

Region IX, San Francisco, Dr. Caroline Gillin, (415) 556-4920

Region X, Seattle, Mr. Allen Apodaca, (206) 442-0460.

SUPPLEMENTARY INFORMATION:

Scope of the Proposed Regulations

Public Law 95-561 provides a new and substantially expanded text for title I. Title I, as amended, includes most of the provisions of the previous legislation, provisions that are in the current reguations, and new requirements and options.

This notice of proposed rulemaking (NPRM) completely revises parts 116 and 116a of the title I regualtions. The NPRM—

(a) Reflects a newly developed format for regulations for State-administered programs;

(b) In accordance with Operation Common Sense of the Department of Health, Education, and Welfare, is limited to regulations that are necessary to implement or clarify statutory requirements;

(c) Does not repeat statutory requirements, although they may be paraphrased or incorporated by reference;

(d) Does not include any regulations related to statutory requirements that are sufficiently clear and detailed to be implemented without regulations.

The reader, therefore, should review the statutory requirements concerning the formulas for basic, concentration, and incentive grants; grants to State agencies; schoolwide projects; non-instructional duties; State rulemaking; accounting; State technical assistance and rulemaking and most aspects of Federal administration.

The statute requires OE to publish a "policy manual" within six months of the publication of final regulations. In the manual each title I requirement will be explained with appropriate references to the statute, the regulations, legislative hsitory, court decisions, decisions of the Title I Audit Hearing Board, and administrative experience.

Part 116. The proposed recodified part 116 governs the administration of title I programs by State educational agencies (SEAs). That part also contains those regulations that apply to all applicant agencies. The applicant agencies include local educational agencies (LEAs), State agencies providing free public education for handicapped, neglected or delinquent children; and SEAs that apply for grants for programs for migratory children.

The proposed part 116 implements new statutory provisions for—

(a) The submission of State monitoring and enforcement plans;

(b) Determinations of maintenance of effort;

(c) Multi-year applications;

(d) Federal and State standards for the monitoring of projects and the resolution of complaints and audits;

(e) Compliance agreements; and

(f) General evaluation requirements for all title I applicants.

Supplement, Not Supplant

The Education Amendments of 1978 retain the requirement that title I funds supplement and not supplant the level of non-Federal funds that, in the absence of title I funds, would be available for the education of children in the title I project. The NPRM contains five "tests" of the supplement, not supplant requirement (§§ 116.50 through 116.55). Due of the complex issues involved in implementing several of these tests, options are offered for them in an effort to facilitate public comments.

The first test, the "replacement of funding test" in § 116.51 applies when title I funds pay for a service paid for with State and local funds in the previous year. The regulations contain two options—the first (option A) includes the test and the second (option B) excludes it.

This test comparing State and local funding for Title I participants in two years has been used as an indicator of what State and local funds "would have been made available to title I participants in the absence of title I funds. It is designed to prohibit cuts in State and local funding from being unequitably distributed to title I

participating children in the absence of title I funds. However, the operation of the fourth test—the "equitable provision of non-Federal funds test" (§ 116.54)—applies to many of the same situations covered by the first test. The first test would apply to one other situation, a case in which a school district provided more State and local funds to title I participants than to non-participants in the past year, and wanted to inequitably reduce State and locally funded services to title I participants. While it can be argued that prohibiting this type of reduction is consistent with the statutory supplement, not supplant requirements, the operation of this test can also have the undesirable effect of discouraging a district from making more State and local funds available to title I participants.

Three alternative versions of the applicability of another one of the tests, the "required by law" test, are proposed. The basic provision of this test is that title I funds cannot be used to provide services an agency is required to provide.

The first version (Option A) applies the "required by law" test to all expenditures. The second version (Option B) applies the test to all expenditures except those under special programs enumerated in section 131(b)(1) of the amended statute. The special programs include certain State and local compensatory education programs, programs for bilingual children, and programs for children with handicaps and learning disabilities. For expenditures under those programs, the other four tests apply.

The third version (Option C) of the test applies a special test to expenditures under the special enumerated programs. This special test allows title I funds to be used to provide the required services to an individual child as long as children eligible for title I services, *as a group*, receive the level of services required to be provided to them from non-title I funds.

The underlying premise of the "required by law" test is that an LEA will provide the services which it is legally required to provide and, therefore, non-Federal funds would, in the absence of title I funds, be available to provide the required services. Thus, an LEA's failure to provide the required level of funds before using title I funds would violate the supplement, not supplant requirement.

In the past, this interpretation has, as a practical matter, precluded the use of title I funds to provide supplementary services to educationally deprived children who are required to receive all of the special educational and related services identified in his or her individualized educational plan. It can be argued that any use of title I funds to provide these services would violate the supplement, not supplant test. A similar problem arises with some State minimum competency requirements.

The amended statute can be interpreted as liberalizing the applicability of the strict "required by law" test with respect to services under the enumerated special programs. Section 126(d) provides a new "in the aggregate" measurement applicable to the special programs. With the exception of the "required by law" test, all of the other supplanting tests can be met by an LEA showing that its aggregate level of funding is sufficient. Therefore, the second version applies only the other tests to services under the enumerated special programs. This would permit services which are required by law to be provided with title I funds, so long as the non-Federal funds are equitably provided on the basis of objective standards, and there is no violation of the replacement of funding, substitution of services, or designated and available tests. The third version also interprets the "in the aggregate" language as liberalizing, but does not entirely relieve an agency of meeting the "required by law" test for the enumerated special programs. This version allows some flexibility in distributing special program services from non-title I funds.

State laws or court orders which require compensatory instruction when students fail minimum competency tests are receiving much attention. It is not clear how they would be considered for the purposes of Options B and C. Since these requirements vary greatly, determinations as to whether programs meeting these requirements are special programs under section 131(b)(1) of title I would have to be made on a case by case bases.

Until the final regulations become effective, the first version of the required by law test, which is in the current title I regulations (45 CFR 116.40(b) published in the Federal Register at 41 FR 42903 on September 28, 1976), will continue to be in effect.

The last test, the "substitution of services" test in section 116.55 of this NPRM, permits, under specified circumstances, title I funding of a service that substitutes for a non-federally funded service. The substitution may be implemented as a "pull out" program, although other types of substitution (such as in-class programs) are also envisioned. Under the first alternative for this test in the NPRM, (Option A), the test only applies where the substituting services "requires more than 20 percent of the time that the title I participating children would spend receiving instruction *from a non-federally funded teacher* if they were not in a title I project." Since the test applies to what a child receives from each teacher, this approach could potentially present significant problems for use of title I funds at the high school level, where students are traditionally assigned to a different teacher for each subject. However, this approach for the most part, does not allow title I programs to replace more than a small portion of a regular teacher's instructional time. Therefore, it has the advantage of encouraging coordination of instruction in the non-federally funded subject areas with remedial instruction funded by title I.

The legislative history of the amended statute recognizes the current dearth of title I programs in high schools and encourages OE to adopt a "neutral" position with respect to the focus of title I programs in the current regulations. The potential difficulties posed by Option A of this test may discourage high school programs provided with title I funds. Therefore, a second approach to this test (Option B) which is easier to apply to high school programs is also in the NPRM. Option B applies where the substituting services require more than 20 percent of the time that the title I participating children would receive instruction *from its non-federally funded instructional program.*

Part 116a. (Financial Assistance to LEAs) implements statutory requirements for—

(a) The selection of school attendance areas for projects;

(b) The selection of children to be served;

(c) The organization and responsibilities of parent advisory councils; and

(d) The determination of the comparability of State and locally-funded services provided in project schools with services in non-project schools.

Part 116a also includes standards for the allocation of basic grants to LEAs and for the approval of applications.

The final regulations for part 116a will include regulations based on the NPRM for evaluations by LEAs. That NPRM was published in the Federal Register on February 7, 1979. The final regulations will also include regulations based on the NPRM for concentration grants which were published in the Federal Register on June 14, 1979 (44 FR 34167).

Other Title I Regulations

Part 116b governs title I grants to State agencies for the handicapped. Part 116c governs title I grants to State agencies for neglected or delinquent children. Part 116d governs the programs of grants to SEAs for projects for migratory children. Amendments to part 116d were published in the Federal Register in a separate notice of proposed rulemaking on May 14, 1979.

Education Division General Administrative Regulations

These proposed regulations do not contain certain types of requirements. Those regulations are covered in the Education Division General Administrative Regulations (EDGAR), which will replace the General Provisions for Office of Education Program Regulations and which were published in the Federal Register on May 4, 1979 as a notice of proposed rulemaking (NPRM).

Anyone wanting to comment on these requirements should do so in response to the EDGAR NPRM, rather than to this NPRM.

The following items applicable to this program are now among those covered generally in EDGAR:

How to apply for a grant.

How grants are made.

Certain conditions that must be met by a grantee.

The administrative responsibilities of a grantee.

The Office of Education's procedures to assure compliance.

Public Comment and participation

The Bureau of Elementary and Secondary Education (BESE) at a meeting on September 14 of representatives of national organizations presented issues that BESE had defined at that time on the basis of a review of H.R. 15. The Office of Education (OE) considered the few comments it received on those issues. OE has also considered the comments the Secretary received in response to Operation Common Sense. Most of those Comments, however, were directed primarily to statutory requirements.

Comments on title I regulations were directed, for the most part, to the criteria for determining the comparability of services in title I schools to services in non-title I schools. The proposed rules do not change those requirements except in one respect required by law. However, section 102 of Pub. L. 95-561 requires the Commissioner to make a study of alternative criteria. That study may lead to further changes in the regulations.

Invitation To Comment

Public comment is invited on all provisions of the NPRM but special attention should be given to the alternative versions of the tests concerning the supplement, not supplant requirement.

A public meeting on this Notice of Proposed Rulemaking will be held in each of the ten Federal regions. Since we expect to schedule public meetings for several regulations on the same day, at the same place, it would be helpful to know how many persons are interested in speaking about these regulations. If you are interested in making oral comments at a public meeting, we encourage you to call the appropriate Regional Commissioner of Education, who will schedule a time for your comments. Persons who do not notify the Regional Commissioner of their intention to make oral comments will also be given an opportunity to speak. Persons making presentations will be called upon according to their prearranged schedule or if a schedule has not been prearranged, in the order of registration.

Interested persons are invited to submit comments and suggestions on these proposed regulations. Written comments, and suggestions, may be sent to the address given at the beginning of this document. All comments received on or before October 1, 1979, will be considered in the development of final regulations.

All written comments submitted in response to this notice will be available for public inspection, both during and after the comment period, in Room 3642, Regional Office Building No. 3, 7th and D Streets, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Citation of Legal Authority

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

Dated: June 21, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

Approved: June 26, 1979.

Hale Champion,

Acting Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance Program Numbers 13.428, Educationally Deprived Children—Local Educational Agencies and 13.430, Educationally Deprived Children—State Administration)

Accordingly, 45 CFR Part 116 and Part 116a are proposed to be amended as stated below.

PART 116—FINANCIAL ASSISTANCE TO LOCAL AND STATE AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS

Subpart A—General

Sec.

116.1 Financial assistance to local and State agencies to meet special educational needs.
116.2 Regulations that apply to financial assistance to State and local agencies to meet special educational needs.
116.3 Definitions.

Subpart B—How a State Applies for a Grant

116.10 State applications.

Subpart C—How a Grant Is Made to a State

116.20 Approval of State applications.
116.21 Commissioner's approval of a State monitoring and enforcement plan (MEP).

Subpart D—How To Apply to the State for a Subgrant

116.30 Frequency of applications.
116.31 Amendments.
116.32 Maintenance of effort.

Subpart E—How a Subgrant Is Made to an Applicant

116.40 Determination of the amount of a grant.
116.41 SEA's approval of an application.

Subpart F—Conditions That Must Be Met by the SEA and its Subgrantees

116.50 Title I funds supplementary to non-Federal funds.
116.51 Replacement of funding test.
116.52 Funds designated and available test.
116.53 Services required by law test.
116.54 Equitable provision of non-Federal funds test.
116.55 Substitution of instructional services test.
116.56 Use of funds and property.

Subpart G—Administrative Responsibilities of the SEA and Applicant Agencies

116.60 State monitoring standards.
116.61 Procedures for resolving complaints.
116.62 Audits and audit resolution.
116.63 State compliance agreements.
116.64 Evaluation by the SEA and the applicant agencies.
116.65 Other reports.

Authority: Title I of the Elementary and Secondary Education Act as Amended by Pub. L. 95-561, unless otherwise noted.

Subpart A—General

§ 116.1 Financial assistance to local and State agencies to meet special educational needs.

The programs authorized by Title I of the Elementary and Secondary Education Act and governed by the

regulations in this part provide financial assistance to—

(a) Local educational agencies (LEAs) for projects for—

(1) Educationally deprived children in low-income areas; and

(2) Children in local institutions;

(b) State agencies for projects for—

(1) Handicapped children; and

(2) Institutionalized neglected or delinquent children; and

(c) State educational agencies (SEAs) for projects for migratory children.

(20 U.S.C. 2701)

§ 116.2 Regulations that apply to financial assistance to State and local agencies to meet special educational needs.

The following regulations apply to title I financial assistance to local and State agencies:

(a) The Grants Administration Regulations in 45 CFR part 74.

(b) The Education Division General Administrative Regulations (EDGAR) in parts 100b (State-administered Programs) and 100c (Definitions).

(c) The regulations in this part 116 and in parts 116a, 116b, 116c, and 116d.

(20 U.S.C. 1221e-3(a)(1); 2701)

§ 116.3 Definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in part 100c:

Applicant	Project
Application	Project Period
Fiscal Year	Public
Grant period	Public Agency

(b) *Program definitions.* The following additional definitions are applicable to this part and to parts 116a, 116b, 116c, and 116d:

"Applicant agency" means—

(1) Any agency that applys to an SEA for a grant; or

(2) An SEA that applies for a grant for a program for migratory children.

"Children" means persons not above age 21 who are entitled to a free public education not above grade 12, or who are of preschool age.

"Operating agency" means any LEA or other agency through which an SEA is operating its program for migratory children.

(c) *Statutory definitions.* The definitions in section 198 of title I are applicable to this part and parts 116a, 116b, 116c, and 116d.

(20 U.S.C. 1221-3(a)(1); 2701; 2854)

Subpart B—How a State Applies for a Grant

§ 116.10 State applications.

(a) The "Introduction to Education Division Programs" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(b) Section 501 of the Elementary and Secondary Education Act and section 435 of the General Education Provisions Act provide for identical assurances that an SEA must give the Commissioner in its State general application. The Commissioner considers those assurances to be a part of each application the SEA files for a grant from funds appropriated for title I.

(c) The SEA applies for the authority to make grants to LEAs and State agencies by submitting to the Commissioner a monitoring and enforcement plan (MEP) that contains the information required by the section of title I that prescribes the contents of an MEP (171).

(d) The SEA applies for a grant for a project for migratory children by submitting to the Commissioner—

(1) An application in accordance with the section of title I containing the program requirements for projects for migratory children (142) and part 116d; and

(2) A monitoring and enforcement plan that meets the requirements of 20 U.S.C. 1232d; 2821.

Subgrant C—How a Grant Is Made to a State

§ 116.20 Approval of State applications.

(a) The Commissioner approves the granting of title I funds by an SEA to LEAs and State agencies if—

(1) The Commissioner finds that the State MEP meets the requirements of the statute and of § 116.21; and

(2) The Commissioner is satisfied that the SEA will carry out its assurances.

(b) The Commissioner approves a grant to an SEA for a project for migratory children if the SEA has met the requirements of—

(1) Paragraph (a);

(2) That section of title I containing the program requirements for projects for migratory children (142).

(3) The provisions of part 116d pertaining to applications.

(20 U.S.C. 2762; 2832)

§ 116.21 Commissioner's approval of a State monitoring and enforcement plan (MEP).

The Commissioner approves an SEA's MEP if it contains specific procedures—

(a) That meet the requirements of—

(1) That section of title I dealing with monitoring (167) and § 116.60;

(2) That section of title I dealing with complaint resolution (168) and § 116.61;

(3) That section title I dealing with audits and audit resolution (170) and § 116.62; and

(b) For monitoring, auditing and resolving complaints, including procedures for—

(1) Verifying information supplied by applicant agencies; and

(2) Determining compliance with the requirements of that section of title I dealing with services for private school children (130) and § 116a.45.

(20 U.S.C. 2814; 2815; 2817; 2821)

Subpart D—How To Apply to the State for a Subgrant

§ 116.30 Frequency of applications.

(a) An LEA or a State agency may apply to the SEA for—

(1) Approval of a project application for a period not to exceed three years; or

(2) An extension of the SEA's previous approval of an application provided that the total period of time covered by an application does not exceed three years.

(b) An SEA may enter into agreements with LEAs or other agencies to provide services to migratory children for a year and may extend the SEA's agreement with an LEA or other agency for a total of not more than two additional years.

(20 U.S.C. 2731)

§ 116.31 Amendments.

(a) *Annual updating of information in a three-year application.* An LEA or State agency shall annually bring its application up to date by sending the SEA at least the following information:

(1) The amount of title I funds carried over from the preceding year and the amount requested from the applicant's current allocation.

(2) A budget for the expenditure of those funds.

(3) The number of public and private school children who will participate in each component as identified by subject area and grade level.

(4) The number and type of staff to be employed for each major component.

(5) The amounts of title I funds to be expended per public school child and per private school child.

(b) *Other amendments.* Title I authorizes the applicant agency to obligate title I funds only for purposes that are within the scope of the agency's three-year application as approved by the SEA. The applicant agency, therefore, shall submit appropriate amendments whenever necessary and secure the SEA's approval for any substantial change or addition to its project such as—

(1) A new activity or service, or construction or equipment;

(2) The criteria for the selection of children to receive a new service;

(3) A change in the criteria for the selection of children to receive a previously approved service;

(4) Additions to and deletions from the LEA's list of areas or schools designated for projects;

(5) The extension of a previously approved service to additional grade levels; and

(6) New projects to be conducted in accordance with that section of title I dealing with schoolwide projects.

(20 U.S.C. 2731–2735)

§ 116.32 Maintenance of effort.

(a)(1) The SEA may not consider an application unless the LEA or State agency has shown that it has maintained its fiscal effort in accordance with section 126(a) of title I and this section or unless the Commissioner has waived that equipment.

(2)(i) In accordance with section 126(a) of title I, an agency is considered to have maintained its effort if its expenditure of State and local funds—on an aggregate or per pupil basis—in the first fiscal year preceding the fiscal year in which the applicant agency applies for title I funds is not less than for the second preceding fiscal year.

(ii) The expenditures to be considered are those that are defined as current expenditures in section 198 of title I, excpet that those expenditures may not include any expenditures of Federal funds for which the agency is accountable to the Federal Government.

(iii) For the purpose of this section, the current expenditure per pupil for each of the two years may be rounded to the nearest ten dollars; the aggregate current expenditures for each of the two years may be rounded to the nearest 100 dollars; and a decrease of less than two percent from the second to the first preceding fiscal year may be disregarded.

(b) *Waiver of fiscal effort.* (1) An LEA or a State agency that has not maintained its fiscal effort as defined in paragraph (a) may ask the Commissioner for a waiver.

(2) The Commissioner grants a waiver only if the agency has used every opportunity available under State and local law to maintain the necessary level of expenditures and the failure to maintain effort was due to—

(i) A natural disaster;

(ii) A precipitous and unforeseen decline in financial resources; or

(iii) Other exceptional and unforeseen circumstances.

(4) If the Commissioner grants a waiver, the SEA shall reduce the applicant agency's allocation in accordance with the section of title I dealing with waivers of the maintenance of effort requirement (126(a)(2)).

(c) *Substantial compliance. In reviewing a request for waiver, the Commisisoner may determine that the applicant's reduction in expenditures did not in any way result in a reduction of the level of the services it provided in the first preceding fiscal year compared to the second and that the applicant, therefore, substantially complied with the maintenance of effort requirement. In that case, the Commissioner determines that no waiver is necessary and the applicant is, therefore, eligible to receive a grant.*

(20 U.S.C. 2736)

Subpart E—How a Subgrant Is Made to an Applicant

§ 11.40 Determination of the amount of a grant.

(a) Each year the Commissioner notifies each SEA of the amount of funds available for grants to its applicant agencies and to the SEA for programs for migratory children. The SEA, after making the necessary determinations, notifies each eligible agency of the amount of title I funds available for a grant to that agency.

(b) The SEA reviews each application from an eligible agency and, if that application meets the requirement for approval, determines the amount of the applicant's grant.

(c) The Commissioner reviews each application from an SEA for programs for migratory children and determines the amount of the SEA's grant.

(20 U.S.C. 2761; 2811)

§116.41 SEA's approval of an application.

(a)(1) An SEA shall approve an application for a grant if that application meets the requirements of title I, this part, and part 100(b) of EDGAR.

(2) In addition—

(i) An application from an LEA must meet the requirements of part 116a;

(ii) An application from a State agency for the handicapped must meet the requirements of part 116b; and

(iii) An application from a State agency for neglected or delinquent children must also meet the requirements of part 116c.

(b) The SEA may approve the use of title I funds for construction or equipment only if necessary to enable the applicant agency to conduct an approved project and if the facilities will be used primarily for title I purposes.

(c)(1) Training provided with title I funds must be related to—

(i) The needs and functions of the persons to be trained;

(ii) Title I activities planned for implementation during the year in which the training is received or when the next school year begins.

(2) The persons who may receive training at title I expense include title I staff, parent council members and volunteers, regular classroom teachers of title I children, staff specialists who serve title I children, and principals of schools in which title I services are or will be provided.

(3) Training for members of advisory councils must also meet the requirements of section 125(d) of title I dealing with training programs for members of advisory councils.

(4) Training for education aides must also meet the requirements of section 124(l) of title I.

(d) The SEA may not approve the use of title I funds for health, social or nutrition services unless it finds that such services are—

(1) Not available from other sources; and

(2) Are necessary to enable certain children to reach the objectives of the title I project in which they will participate (see section 124(f) of title I).

(20 U.S.C. 2731–2737; 2772; 2782)

Subpart F—Conditions That Must Be Met by the SEA and its Subgrantees

§ 116.50 Title I funds supplementary to non-Federal funds.

(a)(1) Section 126(c) and 126(d) of title I require that title I funds be used to supplement, and to the extent practical increase, the level of non-Federal funds that would be available in the absence of title I funds and, in no case, supplant those non-Federal funds.

(2) Section 126(d) of title I requires that, for the types of program identified in section 131(b)(1) of title I, and LEA's level of non-Federal funding in the aggregate for educationally deprived children in eligible attendance areas or attending eligible schools be at least as high as the level that the LEA would have provided in the absence of title I funds.

(3) Section 132 of title I describes the conditions for a limited exemption from the requirements in section 126(d) of title I.

(b) *Tests of supplanting.* §§ 116.51–55 provide tests for determining whether or not title I funds are supplanting non-Federal funds.

(1) The tests in § 116..51–53 are concerned with the amount of non-Federal funds that would be available in the absence of title I funds.

(2) The test in § 116.54 concerns the use of the non-Federal funds that are available.

(3) The test in § 116.55 concerns the use of title I funds to provide a service that is a substitute for a regularly scheduled non-federally funded service.

§ 116.51 Replacement of funding test.

[*Option A*

(a) This test of supplanting applies to an agency that provides a title I service that is the same as or similar to a service the agency provided with non-Federal funds during the year preceding the fiscal year for which title I funds are requested.

(b) An agency's title I funds supplant non-Federal funds to the extent that the title I service replaces the non-federally funded service.

(c) To prevent a finding of supplanting the agency must show that—

(1) It is not reducing the overall level of non-Federal funding for services to children in the title I project; or

(2) The curtailment of non-Federal funding for that service applies equally to children who are participating in the title I project and those who are not.

Option B

§ 116.51 would be deleted.]

(20 U.S.C. 2736(c))

§ 116.52 Funds designated and available test.

(a) This test of supplanting applies to an agency which has or during the project year will have, non-Federal funds that are designated and available to the agency to provide a service that is the same as or similar to a service the agency provides under title I. An agency's title I funds supplant the designated and available non-Federal funds to the extent that they are not fully utilized to provide that service. The non-Federal funds may be designated and available.

§ 116.52 Funds designated and available test.

(a) This test of supplanting applies to an agency which has or during the project year will have, non-Federal funds that are designated and available to the agency to provide a service that is the same as or similar to a service the agency provides under title I. An agency's title I funds supplant the designated and available non-Federal funds to the extent that they are not fully utilized to provide that service. The non-Federal funds may be designated and available for that service by State statute or regulation or by official action of the applicant or operating agency.

(b) To prevent a finding of supplanting an agency that fails to spend those non-Federal funds must be able to show that failure is not in any way related to the availability of title I funds.

(20 U.S.C. 2736(c))

§ 116.53 Services required by law test.

(a) *The basic test.* (1) An agency supplants non-Federal funds if it uses title I funds to provide a service up to the level required by law. An agency may use title I funds to provide a service if the agency is using sufficient non-title I funds to provide the level of service required by law.

(2) A service is "required by law" if it is required by—

(i) Applicable State or Federal statutes or regulations;

(ii) Final court orders; or

(iii) Formal determinations or agreements under Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972 (Pub. L. 92–318); or Section 504 of the Rehabilitation Act of 1972.

Note.—Option paragraphs are enclosed in brackets.

[*Option A*

(b) *Applicability.* The basic test in paragraph (a) applies when an agency uses title I funds to provide any service—including services provided under a special program listed in section 131(b)(1) title I—that is the same as or similar to a service required by law.

Option B

(b) *Applicability.* The basic test in paragraph (a) applies when an agency uses title I funds to provide a service—except for a service provided under a special program listed in section 131(b)(1) of title I—that is the same as or similar to a service that is required by law. The test does not apply when an agency uses title I funds to provide a service under one or more of the special programs listed in section 131(b)(1) of title I.

Option C

(b)(1) *Applicability of the basic test.* The basic test in paragraph (a) applies when an agency uses title I funds to provide a service—except for a service provided under a special program listed in section 131(b)(1) of title I—that is the same as or similar to a service that is required by law.

(2) *Applicability of the special program test.* The special program test applies when an agency uses title I funds to provide a service that is the same as or similar to a service provided under a special program listed in section 131(b)(1) of title I.

(c) *The special program test.* An agency supplants non-Federal funds if it uses title I funds to provide a special program service required by law, unless—

(1) Educationally deprived children in the aggregate, in eligible attendance areas or attending eligible schools receive from non-title I funds that level of special program service which is required by law; and

(2) The agency distributes non-Federal funds for the special program service, in accordance with the objective criteria which meet the requirements of section 126(d)(3) of title I.

(20 U.S.C. 3736 (c) and (d))

(3) The level of non-Federal funds used to provide the service is—

(i) Commensurate with the amount of non-Federal funds available for all children and the amount specifically available for children with the same special needs as the children who receive the title I service; and

(ii) Not less than the level that would have been available in the absence of title I funds.]

(20 U.S.C. 2736 (c) and (d))

§ 116.54 Equitable provision of non-Federal funds test.

(a) This test of supplanting applies to an agency that uses State non-Federal funds to provide services that are the same as or similar to the agency's title I funded services.

(b)(1) An agency is supplanting if it uses those non-Federal funds in a way that discriminates against children who are eligible for title I assistance.

(2)(i) An LEA that has non-Federal funds available for services that are the same as or similar to those provided by the LEA's title I project must use an appropriate measure or measures of educational need to determine how much of those non-Federal funds is to be made available for educationally deprived children in areas that are eligible and in areas that are not eligible for title I projects.

(ii) The number of children to be served and the amount of those non-Federal funds that are available, in the aggregate, for children in the LEA's eligible areas shall be determined on the basis of that measure or those measures of educational need.

(c) To prevent a finding of supplanting an agency must be able to show that the amount of non-Federal funds available

to provide that service—which is the same or similar to one the agency provides with title I funds—to title I eligible children was determined on an appropriate basis of educational need and without regard to the availability of title I funds.

(20 U.S.C. 2736 (c) and (d))

§ 116.55 Substitution of instructional services test.

(a) This test of supplanting applies to an agency providing a title I service that—

(1) Children receive instead of a non-federally funded service or subject of the same type; and

[*Option A*

(2) Requires more than 20 percent of the time that the children would spend receiving instruction from a non-federally funded teacher if they were not in a title I project, or

Option B

(2) Requires more than 20 percent of the total instructional time that the children would receive from State and local funds.]

(b) In a case under paragraph (a)(1) and/or (a)(2) an agency is supplanting if it does not provide sufficient non-Federal funds as required by this section.

(c) An agency may avoid a finding of supplanting if it provides sufficient non-federally funded staff or non-Federal funds to support a part of the title I project. The agency may meet the requirements of this paragraph by—

(1) Employing the full-time equivalent number staff persons the agency would provide for the children if they were not receiving a title I service; or

(2) Providing the same amount of non-federal funds—that would be required to employ that full-time equivalent number of staff persons—to pay a part of the cost of a title I project or to provide services for the participating children in addition to those provided in the title I project.

(d)(1) The full-time equivalent number of staff persons shall be determined by dividing the full-time equivalent number of children in LEA's district who are receiving a title I service by the average number of staff persons the agency normally provides for that number of children at the same level or grade, in the case of high school children, in the same subject area.

(2) For example—(i) If 90 elementary school children who would otherwise spend their entire school day with the same teacher spend 40 percent of their time receiving special instruction in a title I project, the full-time equivalent number of children receiving that instruction is 36. If on the average, a non-federally funded teacher of children at the same grade level as those in the project serves 24 children, then the agency is required to provided the full-time equivalent number of 1.5 non-federally funded teachers.

(ii) If 225 high school children who would otherwise spend one hour a day receiving instruction in a particular school subject receive all of their instruction on that subject in a title I project, the full-time equivalent number of children is 225. If, on the average, a non-federally funded teacher in the same subject area serves 125 children, then the agency is required to provide an equivalent of 1.8 non-federally funded teachers, or a lesser number in accordance with subparagraph (3).

(3) In the case of a title I project involving children who would otherwise spend less than a full day with the same teacher, the agency may disregard fractional full-time equivalents. For example, if the full-time equivalent number of staff persons according to subparagraph (1) is 3.9, the agency is required to provide the equivalent of only 3 non-federally funded staff persons.

(20 U.S.C. 2736(c))

§ 116.56 Use of funds and property.

(a) *Public control.* A public agency shall control the use of title I funds and have title to and control of property acquired with title I funds.

(b) *Property on private school premises.* An LEA shall be responsible for insuring that any title I equipment that is used on the premises of a private school is used by the LEA's staff to provide approved title I services.

(c) *Reimbursement for expenses incurred by parent council members and volunteers.* Members of parent councils and volunteers not receiving regular compensation under title I may be reimbursed from title I funds for personal expenses directly attributable to the performance of their duties and functions as described in approved applications.

(d) *Staffing for programs and projects.* An SEA may authorize the payment of title I funds to an applicant or operating agency for the employment of the personnel required to provide specific services as described in that agency's approved title I application.

(e) *Planning grants.* Title I funds may be used for planning in accordance with section 124(c) of title I.

(f) *Cooperative projects.* Two or more applicant agencies eligible for grants under title I may apply for a grant for a single project to be carried out jointly in accordance with arrangements between or among those agencies (see section 124(o) of title I).

(20 U.S.C. 2734(c),(m),(o); 2735(d))

Subpart G—Administrative Responsibilities of the SEA and Applicant Agencies

§ 116.60 State monitoring standards.

(a) *Frequency of on-site visits by SEA personnel.* An SEA shall, for each year, adopt a schedule of visits by SEA personnel to title I projects.

(1) The LEAs, State agency schools and operating agencies whose projects are to be visited every year shall include those agencies with the largest grants, the most complex projects, or a history of problems involving compliance with title I regulations.

(2) If the SEA finds that it cannot effectively or efficiently conduct on-site visits to all of those agencies and schools each year, it shall adopt policies for identifying those agencies and schools to be visited every other year and, if necessary, those that are to be visited less frequently.

(3) The SEA shall ensure that its personnel make on-site visits to all LEAs, State schools, and operating agencies with title I projects at least every three years unless—on the basis of extraordinary or unusual conditions described in the SEA's MEP—the Commissioner finds that SEA staff may visit agencies or schools less frequently. The conditions the Commissioner may consider are the amounts of title I funds available for State administration, the nature and sizes of projects, and the geographical isolation and number of agencies to be monitored.

(b) *Purpose and scope of monitoring.* The SEA's monitoring personnel shall review project operations for compliance with all applicable title I requirements, the project application as currently amended, and the assurances in the general application. The SEA's monitoring procedures shall include checking—

(1) Information supplied by the applicant or operating agency in connection with its project; and

(2) In the case of an LEA, the equity of the title I services and the equality of title I expenditures for the private school children who were selected to participate in the project.

(c) *Monitoring reports.* (1) The SEA shall issue a monitoring report to the LEA or State agency within 45 days of the completion of the monitoring visit.

This report shall include the SEA's findings concerning—

(i) The project's most effective educational practices;

(ii) Non-compliance with applicable title I regulations, including § 116a.45 relating to the equitable provision of services to private school children; and

(iii) Recommendations for improving the project.

(2) If an SEA's monitoring report indicates that corrective action is required, the applicant or operating agency shall respond to the monitoring report within 30 days of the receipt of the report.

(3) The SEA shall review the applicant's response and take whatever action is necessary—including action under § 116.63 (State compliance agreements)—to insure that any non-compliant practices are corrected.

(20 U.S.C. 2814)

§ 116.61 Procedures for resolving complaints.

(a)(1) Each LEA, State agency, or operating agency shall adopt written procedures for receiving, investigating, and resolving complaints alleging violations of statutory or regulatory requirements for title I, the General Education Provisions Act, or EDGAR.

(2) Those procedures shall include the procedures required by the section of title I dealing with the resolution of complaints by LEAs.

(3) If the agency is unable to resolve a complaint in 30 days, it shall notify the SEA of the substance of the complaint and the reasons for the delay (see section 128(l) of title I).

(4)(i) The SEA may then act upon the complaint in accordance with paragraph (b), or grant the agency additional time to resolve the complaint in accordance with its own procedures.

(ii) The SEA may not grant any additional time, however, unless it finds that the LEA or State agency is proceeding to resolve the complaint and that the complaint cannot be more readily resolved by State action.

(b)(1) An SEA shall adopt written procedures for receiving complaints—or reviewing appeals from decisions of LEAs or State agencies with respect to complaints—that certain provisions of title I or the General Education Provisions Act or related regulations have been violated.

(2) Those procedures shall include the procedures required by the section of title I dealing with the resolution of complaints by SEAs.

(3) The SEA may refer a complaint to the appropriate applicant agency if that agency has not had the opportunity to act on the complaint in accordance with paragraph (a).

(c)(1) On receiving a complaint from a concerned organization or person that provisions of title I or of the General Education Provisions Act have been violated, the Commissioner refers that complaint to the SEA for action in accordance with paragraph (b).

(2) If, however, the complainant alleges that the LEA and SEA already know of the complaint and have had sufficient time to resolve it, the Commissioner investigates the matter and determines whether the SEA is to be allowed more time to resolve the complaint.

(20 U.S.C. 2815; 2738)

§ 116.62 Audits and audit resolution.

(a) *Frequency of audits.* An SEA shall adopt schedules and make the necessary arrangements to insure that it receives an audit report on the title I operations of each applicant and each operating agency at least every three years unless—because of conditions stated in the SEA's MEP—the Commissioner finds that some agencies may be audited less frequently. The conditions the Commissioner may consider are the amounts of title I funds available for State administration, the nature and sizes of projects and the geographical isolation and numbers of agencies to be audited.

(b) *Purpose and scope of audits.* (1) An audit of a title I project shall include for at least one major component of that project the auditor's findings concerning fiscal integrity and compliance with all applicable title I requirements.

(2) The compliance portion of the general audit shall include, at a minimum, a review of the following areas:

(i) The selection by the LEA of school attendance areas for projects.

(ii) The selection of children to be served.

(iii) Conformity to an approved application.

(iv) The supplemental use of title I funds.

(v) The use of title I funds for services to children for whom the project or project component was designed and not for general aid.

(vi) Equity of services and equality of expenditures for private school children.

(c) An SEA's procedures for the resolution of audits shall include the following:

(1) Within 30 days after receiving an audit report the SEA shall send the report to the agency whose project was audited.

(2) Within 60 days after receiving the audit report, the agency shall respond in writing to the SEA concerning any findings involving corrective action or the repayment of title I funds.

(3) Within 60 days of receiving that response, the SEA shall send its final determination and recommendations to the agency whose project was audited and notify that agency of its right to appeal to the SEA within 30 days.

(d) The SEA's procedures for audit appeals shall include provisions for—

(1) Notifying the audited agency that its request for the opportunity to appeal the SEA's final determination has been accepted or rejected.

(2) The conduct of hearings;

(3) Provisions for hearings with records of the evidence as actually presented;

(4) A record of the SEA's final action on the appeal; and

(5) Notifying the agency whose project was audited—

(i) Of the SEA's final action on the appeal and any corrective action the audited agency is required to take;

(ii) That within 20 days it shall report to the SEA on the corrective action the audited agency has taken or that it will exercise its right to appeal to the Commissioner under that section of the General Education Provisions Act dealing with review of applications.

(20 U.S.C. 2817; 1231b-2)

§ 116.63 State compliance agreements.

(a) If an SEA finds that an LEA, State agency, or operating agency is conducting its project in violation of provisions in title I, the title I regulations, the General Education Provisions Act, or EDGAR, or the terms of an approved application the SEA shall notify that agency that it must do one of the following:

(1) Correct the violation immediately.

(2) In accordance with the provisions for withholding funds in section 169(a) of title I, appear before an impartial decisionmaker who will recommend to the SEA whether or not the agency's title I funds should be withheld.

(3) Enter into a compliance agreement with the SEA in accordance with section 169(c) of title I.

(b) *Terms of a compliance agreement.* The terms of a compliance agreement shall specify—

(1) The activity that is in violation of title I requirements;

(2) The provisions of law or regulations that the agency is violating in carrying out that acitivity;

(3) The steps the agency shall take to correct the violations; and

(4) The time, within six months but not later than the beginning of the next school year, by which the LEA, State agency, or operating agency shall be in full compliance.

(c) *Notification to the Commissioner.* Within 15 days after the signing of a compliance agreement the SEA shall notify the Commissioner of the name of the agency with which the SEA signed the agreement and the statute or regulations with which compliance is required.

(d) *Compliance agreements not retroactive.* The terms of a compliance agreement under section 169(c) or 186(c) of title I are applicable only to corrective action to be taken by an agency following the signing of that agreement. A compliance agreement cannot be used to waive the maintenance of effort requirement in section 126(a) of title I or the findings of State or Federal auditors with respect to title I expenditures incurred prior to the signing of the agreement.

(20 U.S.C. 2816(c))

§ 116.64 Evaluation by the SEA and the applicant agencies.

(a) Each SEA shall submit periodic reports to the Commissioner evaluating the effectiveness of title I projects in accordance with the Commissioner's regulations. The Commissioner provides each SEA with the necessary forms and instructions. (see § 116.7 of Notice of Proposed Rulemaking 44 FR 7914, February 7, 1979).

(b) Each applicant agency must include in its application a description of—

(1) Its procedures for evaluating its project; and

(2) The use the agency has made of its previous evaluations in planning the title I project.

(c) The SEA shall notify its applicants of the times for the submission of evaluation reports.

(20 U.S.C. 2734(g))

§ 116.65 Other reports.

Each applicant or operating agency shall submit to the SEA the reports the SEA requires in order to—

(a) Carry out its responsibilities;

(b) Comply with its assurances; and

(c) Carry out its monitoring and enforcement plan.

(20 U.S.C. 2822(e))

PART 116a—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES FOR CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

Subpart A—General

Sec.

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116a.46 Title I services for private school children.
116a.47 Children in institutions.
116a.48 Advisory Councils.
116a.49 Comparability of State and locally-funded services.

Authority: Title I of the Elementary and Secondary Education Act as Amended by Pub. L. 95-561, unless otherwise noted.

§ 116a.1 Financial assistance to local educational agencies (LEA's) for children with special educational needs.

This part provides rules for that portion of title I of the Elementary and Secondary Education Act that authorizes Federal grants to local educational agencies (LEAs) for programs to meet the special educational needs of—

(a) Educationally deprived children in school attendance areas with high concentrations of children from low-income families; and

(b) Children in local institutions for neglected or delinquent children.

(20 U.S.C. 2711, 2721, 2722)

§ 116a.2 Other regulations that apply.

In addition to the regulations in this part, the regulations in part 116 and the Education Division General Administrative Regulations (EDGAR) in 45 CFR Parts 100b (State administered Programs) and 100c (Definitions) are applicable to programs of financial assistance to LEAs for children with special educational needs.

(20 U.S.C. 1221e-3(a)(1))

§ 116a.3 Definitions.

In addition to the definitions in § 116.3 the following definitions apply to this part:

"Attendance area" means the geographic area served by a particular public school or group of schools for children in a specified group of grades, such as kindergarten through grade 6, grades 7 through 9, or grades 10 through 12. An attendance area need not be one contiguous geographic area. If the area served by a particular school cannot be readily defined on a geographic basis, that area consists of the residences of the children whom the LEA assigned to that school or would assign to that school if they were not attending voluntarily another public school or a private school.

"Educationally deprived children" means children whose educational attainment is below that appropriate for children of their age.

"Institution for delinquent children" means a public or private residential facility that is operated primarily for the care of children who have been adjudicated to be delinquent or in need of supervision. The term also includes an adult correctional institution in which children reside.

"Institution for neglected children" means a public or private residential facility—other than a foster home—that is operated primarily for the care of children who have been committed to the institution or voluntarily placed in the institution under applicable State law because of abandonment or neglect by, or death of, parents or persons acting in the place of parents.

(20 U.S.C. 2711, 2732, 2733)

Subpart B—How a State Applies for a Grant (see subpart B of part 116)

Subpart C—How Is a Grant Made to a State (see subpart C of part 116)

Subpart D—Amounts Available for Grants to LEA's

§ 166a.30 Determination of the amount available for a basic grant to an LEA.

(a)(1) *County allocations.* The Commissioner each year advises an SEA of the amount available for basic grants to LEAs in each county in the State (see section 111 of title I).

(2) The SEA, in accordance with paragraph (b), shall determine how much of the county allocation is to be

allocated to each LEA within that county.

(b) *Distribution of county allocations.* (1) The SEA shall first determine the amount of the county allocation to be allocated to each LEA on the basis of the number of children, aged 5–17, if any, in institutions for neglected or delinquent children.

(2) For this purpose the children to be counted are those identified as—

(i) Being in the institution during the month of October of the preceding calendar year;

(ii) Having resided in the institution for at least 30 days; and

(iii) Living in an institution for which the number of children counted in accordance with (i) and (ii) is at least 10.

(3) The SEA shall then distribute the remainder of the county allocation to the LEAs in the county on the basis of the best available data on the number of children from low-income families who are currently residing in the school districts of those LEA's.

(4) The SEA is not required to make an allocation to an LEA if the amount represents less than 10 of the children who were counted in the determination of the allocation for county.

(c) *Distribution based on Survey of Income and Education.* In addition, the SEA shall allocate to LEA's the amount of the basic grant that is based on data from the Survey of Income and Education (see section 111(a)(3)(D) of title I).

(d) *Reallocations.* (1) The SEA shall determine each year which LEA's and State agencies have received allocations in excess of the amounts required for their current projects.

(2) The SEA shall notify those agencies by February 1 of each fiscal year of the amounts the SEA is considering reallocating and give those agencies an opportunity to revise their applications.

(3) After considering the responses from those agencies the SEA may reallocate the excess funds, if any, to those LEAs that have the greatest need for additional title I funds because the data on which their allocations are based do not reflect fully the numbers of children from low-income families currently residing in their districts (see section 193 of title I). That reallocation shall not be made before March 1 of the year for which the title I funds are appropriated.

(20 U.S.C. 2711, 2843)

§ 116a.31 Special incentive grants.

See section 116 of title I.

§ 116a.32 Concentration grants.

See section 117 of title I.

Subpart E—Applications and Program Requirements

§ 116a.40 Documents an LEA submits to its SEA to get a title I grant.

(a)(1) An LEA that has been notified of its allocation shall submit an application to the SEA in order to get a grant.

(2) The SEA shall supply the necessary forms and instructions for the application which may be for a period of three years or less.

(b) The assurances in the single LEA application apply to each application for a title I grant (see section 502 of the Elementary and Secondary Education Act or section 436 of the General Education Provisions Act).

(c) The SEA shall consider an application for a grant only if it finds that—

(1) The LEA has submitted evidence showing that it has maintained its fiscal effort or has secured a waiver in accordance with § 116.31; and

(2) The application contains the information the SEA requires to determine whether the project meets the criteria for approval in § 116a.42.

(20 U.S.C. 2731)

§ 116a.41 Determination of the amount authorized for a project.

(a) An SEA after it approves an LEA's application shall determine the amount the LEA is authorized to expend to conduct the project.

(b) The amount shall not exceed the amount allocated or reallocated to the LEA in accordance with § 116a.30 plus the amount the LEA carried over from the preceding fiscal year.

(20 U.S.C. 2811)

§ 116a.42 Standards for the approval of an application.

An SEA shall approve an LEA's application if the SEA determines that the application meets the requirements of that subpart of title I dealing with the application and program requirements (subpart 3 of part A of title I) and §§ 116a.43 through 116a.48.

(20 U.S.C. 2732–2740)

§ 116a.43 Designating areas or schools for projects.

(a) *Eligibility of areas or schools.* A school attendance area or, if an area is ineligible, the school serving that area is eligible to be designated for a title I project if it meets the requirements of this section. An LEA may make the required determinations for all of its areas or schools or by areas or schools that have been grouped according to grade spans, such as, kindergarten through grade 6, grades 7 through 9, and grades 10 through 12. However, an LEA may not use more grade spans for this purpose than it would be permitted to use in determining the comparability of its project schools under § 116a.49.

(1) *Percentage basis.* An attendance area is eligible if its percentage of children from low-income families is—

(i) At least equal to the percentage for the district as a whole; or

(ii) At least 25 percent, if the LEA's combined expenditure of title I and State compensatory education funds, if any, per child for instructional services in each attendance area that is currently eligible—and was eligible and designated for a project in the preceding year—will be at least equal to the amounts expended in the preceding year (see section 122(a)(1) of title I).

(2) *No-wide variance.* All of the attendance areas in a district are eligible if the difference in the percentage of children from low-income families between the areas with the highest and lowest concentration is not more than one-third of the districtwide percentage.

(3) *Numerical basis.* An attendance area is eligible for a project if the number of children in that area from low-income families is at least equal to the average number of those children per attendance area for the district as a whole.

(4) *Eligible school.* If an area is not eligible for a project but the percentage or number of children in average daily attendance at the school serving that area is at least equal to the percentage required by subparagraph (1) or the number required by subparagraph (3), the LEA may designate that school for a project.

(b) *Project areas or schools.* (1) The LEA, on the basis of a general assessment of the special educational needs of children in all eligible areas or schools determines the grade levels at which title I services will be provided and, in accordance with this section, the eligible areas of schools containing those grades.

(2)(i) If some areas or schools are selected on a percentage basis and some on a numerical basis, the total number of areas or schools to be served may not exceed the number of eligible areas or schools that could be served if only one basis had been used to select them.

(c) *Ranking areas or schools for projects.* (1)(i) If the LEA does not designate the maximum number of eligible areas or schools for projects, it

shall designate for projects those areas or schools with the highest concentrations of children from low-income families (see section 122(a)(1) of title I).

(ii) This may not apply if the LEA demonstrates that an area or school with a lower incidence of children from low-income families or schools has a substantially higher incidence of educational deprivation than a higher ranked area (see paragraphs (a)(2) and (d) of section 122 of title I).

(2) A lower ranked area or school or an area or school that does not meet the requirements of paragraph (a) may be designated for a project only if the LEA in its application demonstrates that the percentage or number of educationally deprived children is at least 1.2 times the percentage or number of educationally deprived children in the area or school that would otherwise be designated for a project.

(3)(i) Only with the consent of the district advisory council and the approval of the SEA, as required by section 122(a)(2) of title I, may an LEA designate for a project an area or school that does not meet the requirements of paragraph (a).

(ii) The SEA shall not, however, approve the designation of that area or school for a project if it finds that the number of children from low-income families in all of the areas designated for projects is decreased by more than 10 percent by the substitution of that area or school for the area or school that would otherwise be designated for a project.

(d) *Areas and schools previously designated for projects.* (i) An LEA in accordance with section 122(c) of title I may, except as provided in (ii), designate an area or school that does not meet the requirements of paragraph (a) if that area or school was eligible and designated for a project in either of the two preceeding years.

(ii) The LEA may not designate an area that has substantially changed or a school whose child population has substantially changed since the year the area or school was designated for a project.

(20 U.S.C. 2732)

§ 116a.44 Selecting the children to be served.

(a) An LEA selects the children to be served by—

(1) Applying the criterion or criteria by which educationally deprived children will be identified to receive title I services according to the provisions of title I dealing with children to be served (section 123) and the assessment of educational need (section 124(b)); and

(2) Determining the number, needs and characteristics of the educationally deprived children in each area or school designated for a project.

(b) An LEA may use title I funds to—

(1) Determine which educationally deprived children should be served according to the LEA's specified criterion or criteria; and

(2) Develop diagnostic information about the children to be served.

(20 U.S.C. 2733)

§ 116a.45 Project design.

(a) To make the finding required by the provision of title I dealing with sufficient size, scope, and quality (section 124(d)) the SEA must determine that—

(1) The LEA has used appropriate diagnostic procedures to determine the needs of the children to be served and has established objectives and performance criteria that are directly related to those needs;

(2) The LEA plans to concentrate its use of title I resources on a limited number of selected children from project areas and not to permit the effectiveness of the project to be impaired by—

(i) The presence of other children from project areas; or

(ii) The participation on a space-available basis of children who meet the criteria for selection except for the fact that they reside in areas or schools not designated for projects:

(3) The LEA plans to use its title I resources in ways that will enable it to achieve the objectives of the project; and

(4) The LEA's plans for evaluating the project are consistent with the project's objectives and performance criteria and meet appropriate technical standards.

(b)(1) The SEA shall also examine an LEA's plans, if any, to use non-Federal or other Federal funds to provide services that in the absence of those funds the LEA would provide with title I funds (see section 134(d) of title I: skipping children determined to be in greatest need).

(2) If the SEA finds that those services meet some but not all of the requirements of paragraph (a), the SEA, before it approves the application, shall require the LEA to provide additional services with title I funds so that the project provided with State, local, and Federal funds will meet the requirements of paragraph (a).

(c) The SEA shall not approve an application unless the SEA also determines that the LEA has met all of the other requirements of section 124 of title I—Requirements for Design and Implementation of Programs, including the following—

(1) Expenditures related to ranking of project areas and schools (124)(3));

(2) Evaluations (124(g));

(3) Teacher and school board participation (124)(i));

(4) Parent participation (124(j));

(5) Substaining gains (124(k)).

(20 U.S.C. 2734)

§ 116a.45 Title I services for private school children.

(a) Before it approves an application, the SEA shall determine that—(1) The applicant LEA has consulted with appropriate private school officials who have specific knowledge of the number of educationally deprived private school children and of the special educational needs of those children;

(2) The LEA plans to select private school children to receive title I services on the basis of criterial that are the same as or similar to the criteria for the selection of public school children;

(3)(i) The LEA will offer to private school children title I services that are comparable—in quality, scope and opportunity to participate—to the services provided for public school children with similar needs;

(ii) The private school children will be in schools with the same or similar grade spans but not necessarily at the same grade levels as the public school children;

(4) The title I services—

(i) Are not designed to provide and will not provide a benefit to the private school; and

(ii) will always be provided under the LEA's administration and control.

(b) Title I services may be provided on private school premises only—

(1) To the extent necessary to insure the delivery of those services to private school children on an equitable and comparable basis; and

(2) If those services are not normally provided by the private school.

(c) *Equality of expenditures.* The section of title I dealing with the participation of children enrolled in private schools requires that title I expenditures for private school children be equal to those for public school children with similar needs.

(1) The LEA and the SEA shall determine the equality of those expenditures on the basis of the costs per child of the instructional and support services (not including salary increments based on length of service) to be provided with title I funds. General administration and transportation

services are not considered support services.

(2) The LEA shall be required to justify any significant difference in expenditure on the basis of differences in the numbers or needs of the public and private school children to be served.

(d) The provisions of title I dealing with non-instructional duties (section 134) are not applicable to title I-paid personnel when they provide title I services on private school premises.

(e) The LEA is not required to comply with paragraphs (a), (b), and (c) if the Commissioner, under the by-pass provision (section 130(b) of title I), has waived those requirements.

(f) The SEA shall revoke its approval of the project of any LEA that reduces title I services to private school children while a determination under section 130(b) is pending.

(20 U.S.C. 2740)

§ 116a.47 Children in institutions.

(a)(1) An LEA whose allocations is based at least in part on children in institutions for neglected or delinquent children, including adult correctional institutions, shall provide I services to meet the special educational needs of the children currently residing in those institutions.

(2) If the LEA is unable or unwilling to provide services that meet the requirements of this section, its SEA shall reduce the LEA's allocation by the amount attributable to children in institutions and either—

(i) Assume the responsibility; or

(ii) Assign the responsibility to another State agency or to another public agency that is willing to accept it.

(3) If no public agency is willing to accept the responsibility, the SEA shall not allocate the funds to any other agency except for the purpose of serving children in institutions.

(4) If an institution closes and the children are transferred to an institution in the school district of another LEA, the SEA shall adjust the allocations of the two LEAs to reflect that transfer.

(b) The LEA may provide its title I services for institutionalized children at the institution, at a public or private school, or another location where the services can be provided effectively under the LEA's administration and control.

(c) In its application the LEA shall describe—

(i) Its assessment of the special educational needs of the institutionalized children; and

(2) The title I services to be provided for those children.

(d) The SEA shall approve an application that meets the following requirements:

(1) The LEA has—

(i) Considered the special educational needs of institutionalized children without regard to age or grade levels;

(ii) Assessed those needs using appropriate measures of educational achievement; and

(iii) Considered the special educational needs the children may have because they are institutionalized.

(2) The LEA has performance objectives and appropriate plans for evaluating the educational achievement of the children to be served.

(3) The LEA's proposed use of title I funds complies with § 116.50–55 (title I funds supplementary to State and local funds).

(4) The title I services to be provided were planned in consultation with the staff of the institution and are designed to meet the objectives of the project for the institutionalized children to be served.

(e) In its reports to the SEA, the LEA shall include specific information on the types of services provided and the effectiveness of the title I project in meeting the special educational needs of the institutionalized children.

(f) If the LEA has received an allocation based at least in part on numbers of children in two or more institutions, it shall provide title I services for children in each of those institutions in accordance with the provisions of this section.

(g) If the LEA plans to provide certain title I services to both institutionalized children and children from project areas, the SEA—before it approves the application—shall determine that the LEA will also provide those additional title I services that may be required to meet the special educational needs of the institutionalized children.

(20 U.S.C. 2711)

§ 116a.48 Advisory councils.

(a)(1) *Composition of a district advisory council (DAC).* Each LEA shall adopt procedures for the election by parents of a DAC that meets the membership requirements of section 125(a)(1) of title I.

(2) The LEA in consultation with its DAC shall determine the number of members to be elected to its DAC.

(3) If the LEA decides that its DAC members are not to be elected from the district as a whole, the LEA in consultation with its DAC shall determine the number of DAC members to be selected from each area or school or group of areas or schools.

(b) *Bases for electing the members of a DAC.* Each LEA in consultation with its DAC shall adopt procedures for the election of its DAC on one of the following bases:

(1) By parents in the district as a whole.

(2) By parents in each of several administrative areas comprising the LEA's entire school district.

(3)(i) By parents in each project area or school or group of project areas or schools; and

(ii) Parents in each area or group of areas eligible but not designated for a title I project.

(4)(i) By the members of the advisory council or councils for each project area or school or group of project areas or schools; and

(ii) By parents in each area or group of areas eligible but not designated for a title I project.

(c) *Nominations and elections of members to a DAC.* (1) If the members of a DAC are elected from the district as a whole or by administrative areas in accordance with subparagraphs (1) or (2) of paragraph (b), the LEA's nomination procedures shall include the identification of nominees as follows:

(i) Parents of children to be served, including parents of private school children.

(ii) Representatives of children, including private school children, and schools in areas eligible but not designated for a project.

(iii) Other persons who reside in the district or teach in a project school in that district (see section 125(a)(3) of title I). The members elected from an administrative area shall include the same types of representation required for the election of DAC members for a district as a whole.

(2) If the members of a DAC are elected in accordance with paragraph (b)(3)—

(i) The parents in the project area or areas shall elect a specified number of members to the district advisory council, including at least the minimum number of parents of children to be served.

(ii) The parents in the eligible area or areas not designated for projects shall elect two or more representatives, as specified by the LEA, of children and schools in those areas.

(3) If the members of a DAC are elected in accordance with paragraph (b)(4)—

(i) The members of the area or school advisory council or councils shall elect a specified number of persons from among those members, including a majority of parents of children to be served.

(ii) The parents in the eligible area or areas not designated for projects shall elect two or more representatives, as specified by the LEA, of children and schools in those areas.

(d) *Election by parents.* Parents who participate in the election of members of an advisory council shall be parents of school-age children, including private school children, or parents of pre school children in the LEA's title I project.

(i) Only parents whose children reside in the LEA's district may participate in the election of the DAC.

(ii) Only parents whose children reside in a project area or attend a project school may participate in the election of the advisory council for that area or school.

(e) *LEAs with only one attendance area.* An LEA with only one attendance area may, without regard to number of schools serving that area, have one area council that shall also be its district council.

(f) *Area or school advisory councils.* (1)(i) Each LEA shall establish for each project area or project school, except as provided in section 125(a)(2) of title I, an advisory council (SAC) that meets the requirements of that section.

(ii) A project area or school in which title I services are provided by more than one full-time equivalent staff member to more than 40 but fewer than 75 children shall have a sufficient number of members to function effectively as a council.

(2) *Nomination of SAC members.* Each LEA in consultation with its DAC shall establish procedures for the nomination of persons who may be considered for election to the advisory council for each project area or project school. The nominees shall be identified as—

(i) Parents of children who are to be served and who reside in that area or attend that school; and

(ii) Other persons who reside in the district or who teach in a project school in the district (see section 125(a)(3) of title I).

(g) *Identification of parents of children to be served.*

(1) The LEA shall establish appropriate procedures to identify parents of children who are currently participating in a project or will participate in a project so that those parents may be considered for membership on a DAC or SAC.

(2) In no case, however, may the LEA identify parents fot this purpose unless those parents have first given their consent.

(h) *Rights of parents to elect council members.* An LEA shall not adopt procedures, other than those required by this section and the section of title I dealing with parental involvement (125) that restrict the rights of parents to elect the persons they choose to be members of a DAC or an SAC.

(i) *Notice of nominations and elections.*

(1) The LEA shall provide for timely and adequate notice to the parents and the general public in the agency's school district, or in the appropriate school attendance area in the case of a school council, of the time, place, and method of nomination and election of council members.

(2) The LEA shall take appropriate measures, such as the publication of the notice in a language other than English, to insure that adequate notice is provided for parents in an area where the dominant language is other than English.

(3) After the election the LEA shall make the names of the members of the council available to the public through appropriate notices and upon request.

(j) *Involvement of councils.* Each LEA shall include in its application sufficient information to enable the SEA to make the following determinations:

(1) That each advisory council member has been furnished free of charge copies of title I, the Federal title I regulations and guidelines, and State title I regulations and guidelines (see section 125(c) of title I).

(2) That all council members will receive appropriate training (see section 125(d) of title I).

(3) That the LEA is providing each council with the LEA's current application and other information and documents, such as prior applications and evaluations, that the council may need for its effective involvement in planning, implementing, and evaluating title I projects;

(4) That each council has adequate opportunities to—

(i) Consider the information available concerning the special educa>tional needs of the educationally deprived children residing in the project area or areas, and of children residing in institutions, and the various programs available to meet these needs; and

(ii) Make recommendations concerning which needs the title I project should meet and which should be met by other programs.

(5) That all parents of children to be served have had an opportunity to present their views concerning the application to the appropriate SAC or DAC.

(6) That the LEA provides each council with opportunities to submit comments and considers those comments before it approves applications and submits them to the SEA.

(7) That each council operates under procedures that will insure the timely and proper performance of its functions, including procedures for convening meetings and for recording and maintaining minutes.

(k) *Out-of-State travel for training.*

(1) The LEA's program of training to be provided with title I funds for advisory council members (see section 125(d) of title I) may include out-of-State travel to conferences, hearings or meetings that—

(i) Because of special or unusual circumstances, the Commissioner determines will provide unique opportunities for training;

(ii) Are relevant to the title I program and to the title I functions of the persons for whom approval of out-of-State travel is requested.

(2) The SEA shall limit the use of title I funds for out-of-State travel to a particular conference, hearing or meeting to the number of council members required to insure that the information and training they receive will be made available to the other members of advisory councils and to appropriate staff persons in the State.

(20 U.S.C. 2735)

§ 116a.49 Comparability of State and locally funded services.

(a) *Assurances. (1) When an LEA applies for a grant it shall assure its SEA that its State and locally-funded services for children in each project area or school will be comparable to the services it provides in non-project areas or schools. Specifically, the LEA shall assure the SEA that it will maintain the comparability of the services it will provide in areas or schools that were in the LEA's project during the previous year.*

(2) For newly designated areas or schools the LEA shall submit preliminary data showing that the State and locally-funded services in those areas and schools meet the requirements of this section.

(3) The LEA does not include in its reports schools with enrollments of 100 or fewer, but it shall submit an assurance that it will allocate its staff and other resources to those schools without regard to the availability of title I funds.

(b) *Data on comparability reports.* Each year an LEA that has both project and non-project areas or schools—but not including schools with enrollments of 100 or fewer—in the same grade span and size groupings as defined in

paragraphs (e) and (f) shall submit a comparability report to the SEA. For each project area or school and for all non-project schools in the same grade span and size bracket the LEA shall show in its report—

(1) The number of children enrolled on an actual or on a weighted basis if State law requires that State and local funds be allocated to the school level on the basis of the numbers of children in certain grade levels or with special characteristics;

(2) The number of instructional staff assigned to that title I school and to those non-project schools. The term "instructional staff" means persons who provide instruction directly to children and the immediate supervisors of and assistants to those persons;

(3) The total amount of the annual salaries of the instructional staff but not including salary increments based on length of services (longevity);

(4) The number of children enrolled (see paragraph (b)(1) of this section) divided by the number of instructional staff members (see paragraph (b)(2) of this section); and

(5) The amount of the annual salaries (see paragraph (b)(3) of this section) for instructional staff divided by the number of children enrolled (see paragraph (b)(1) of this section).

(c) *Criteria.* The SEA finds that the LEA is providing comparable services in a project area or school if—

(1) The number of children enrolled per instructional staff member is not more than 105 percent of the corresponding ratio for all of the non-title I schools; and

(2) The amount expended for salaries for instructional staff per child enrolled is not less than 95 percent of the corresponding amount for the non-title I schools.

(d) *Dates for reports.*

(1) An LEA shall submit its comparability report to the SEA by December 1 of each year.

(2)(i) The data on that report shall be as of the date specified by the SEA.

(ii) The SEA may not specify a date later than November 1.

(3)(i) If the data on the report show that one or more project areas or schools do not meet the comparability criteria in paragraph (c), the LEA shall submit a revised report showing that as of another date all of the LEA's title I areas or schools are comparable.

(ii) If the data on the revised report are as of a date that is later than December 1 but not later than March 31, the SEA shall suspend its approval of the application for the period from December 1 to the date for which the data on the revised report are submitted.

(3) The SEA shall, as of December 1, revoke its approval of an application if the LEA fails to submit a satisfactory comparability report by March 31.

(e) *Grouping by grade span.* (1) An LEA with one or more project and non-project areas or schools for children at the same grade levels first determines how its schools are to be grouped according to their grade spans. For example, if an attendance area for kindergarten through grade 6 is designated for a project, the services provided by the LEA for children in those grades in that area are compared with the services the LEA provides in non-title I areas in schools with the same or similar grades.

(2) The LEA shall group all of its schools into not more than three groups if its operates 10 or more grade levels above kindergarten; two groups if it operates 8 or 9 grade levels above kindergarten; two groups if it operates 5 or more grade levels in grades 6 through 12; and one group for fewer numbers of grades.

(3) An additional group, however, is permitted for schools with 8 or more grades above kindergarten.

(f) *Grouping by size of enrollment.* If the largest enrollment of all of the schools in a grade span—not including children in schools with enrollment of 100 or fewer—is at least twice that of the smallest, the schools may be divided into two groups according to sizes of enrollment.

(g) *All areas or schools designated for projects.* (1) An LEA, unless it has only one school in a grade span, or is exempt in accordance with subparagraph (3) shall file reports on the comparability of its project areas or schools even if the LEA has no schools in non-project areas with which the schools in project areas are to be compared.

(2)(i) Each of those areas or schools is considered to be comparable if its ratio of children to instructional staff is not more than 105 percent and its expenditures per child for instructional staff are not less than 95 percent of the corresponding ratios for all of the schools or areas with the lowest percentages or numbers of children from low-income families.

(ii) Not more than 50 percent of the areas or schools in the grade span shall be used for the purpose of those ratios.

(3) An LEA that was not required to file a comparability report by December 1, 1978, is not required to file a report if the only purpose of that report would be to meet the requirements of this paragraph (see section 126(e) of title I).

(h) *Data that may be excluded.* The LEA is not required to include the data required by paragraph (b) for programs for handicapped children, bilingual programs, or State or local compensatory or State phase-in programs that meet the requirements of section 131 of title I.

(i) *Maintenance of comparability.* (1) The LEA shall keep the source documents from which it derivied the data on its comparability reports and shall make those documents available to the SEA and to auditors upon their request.

(4) The LEA—following the submission of its comparability report to the SEA—shall make periodic determinations and whatever adjustments that may be necessary to maintain the comparability of its services in project areas or schools.

(j) *Reports to the Commissioner.* By May 1 of each year the SEA shall report to the Commissioner on the numbers of LEAs—

(1) That are operating title I projects;

(2) That submitted comparability reports;

(3) That were required to submit revised reports;

(4) That submitted revised reports based on data as of December 1 or earlier;

(5) That submitted revised reports based on data as of December 2 or later;

(6) Whose applications the SEA revoked for failing to submit a satisfactory original or revised comparability report based on data as of March 31 or earlier.

(k) *LEAs receiving substantial amounts of Federal funds.* An LEA receiving 95 percent or more of its funds for education from Federal sources is not required to meet the provisions of this section.

(20 U.S.C. 2736(e))

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Friday
June 29, 1979

Part XVII

Department of Health, Education, and Welfare

Office of Education

Bilingual Education

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 123]

Bilingual Education

AGENCY: Office of Education, HEW.

ACTION: Notice of Proposal Rulemaking.

SUMMARY: The Commissioner of Education proposes regulations to govern the award of grants under the Bilingual Education Program as required by the Education Amendments of 1978. The proposed regulations will—

(a) Reflect statutory changes with respect to the Education Amendments provided in Pub. L. 95–561;

(b) Simplify the requirements through a reorganization of the content and simplified language;

(c) Reflect recommended changes resulting from a program review.

DATES: Comments must be received on or before (insert 60th day after publication date). Public meetings will be held in each of the ten regional cities. The time for these meetings is—July 31, 1979, 9 a.m.–12 noon, 1 p.m.–5 p.m., 7 p.m.–9 p.m.

ADDRESSES: Comments should be addressed to: Mr. Charles E. Hansen, 400 Maryland Avenue, SW. (Rm. 421, Reporters Building), Washington, D.C. 20202.

The locations of the public meetings are—

Region I—Massachusetts: Boston School Dept., Administration Building, Boston Committee Hearing Rm., 26 Court Street, Boston, Mass.

Region II—New York: Hearing Room E, Room 2222, 26 Federal Plaza, New York, New York.

Region III—Pennsylvania: University City Holdiay Inn, 36th and Chestnut Street, Philadelphia, Pa.

Region IV—Georgia: Regional Office Building, 101 Mariette Towers, Suite 2221, Atlanta, Georgia.

Region V—Illinois: Center for Urban Education, 160 West Wendell Street (1050 North Wells), Chicago, Illinois.

Region VI—Texas: William Travis Elementary School, 3001 McKinney Street, Dallas, Texas.

Region VII—Missouri: Federal Office Building, 911 Walnut, Room 302, Kansas City, Missouri.

Region VIII—Colorado: George Washington High School, 655 South Monaco, Denver, Colorado.

Region IX—California: Federal Office Building, Room 209, 50 United Nations Plaza, San Francisco, Calif.

Region X—Washington: Ingram High School, Little Theater, 1819 North 135th Street, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Charles E. Hansen, telephone (202) 245–2600.

FOR INFORMATION ON REGIONAL MEETINGS CONTACT: The appropriate Regional Commissioner for Educational Programs listed below:

Region I, Boston, Dr. Thomas J. Burns, (617) 223–7500.

Region II, New York, Dr. William D. Green, (212) 264–4370.

Region III, Philadelphia, Dr. Albert C. Crambert, (215) 596–1001.

Region IV, Atlanta, Dr. William L. Lewis, (404) 221–2063.

Region V, Chicago, Ms. Juliette Noone Lester, (312) 353–5215.

Region VI, Dallas, Mr. Edward J. Baca, (214) 767–3626.

Region VII, Kansas City, Dr. Harold Blackburn, (816) 374–2276.

Region VIII, Denver, Dr. John Runkel, (303) 837–3544.

Region IX, San Francisco, Dr. Caroline Gillin, (415) 556–4920.

Region X, Seattle, Mr. Allen Apodaca, (206) 442–0460.

SUPPLEMENTARY INFORMATION:

I. *Authority.*

The statutory authority for this program is Title VII of the Elementary and Secondary Education Act, as amended by 92 Stat. 2268–2284.

(20 U.S.C. 3221–3261).

II. *Summary of the Regulations.*

The Commissioner published interim final regulations on March 29, 1979, (44 FR 18906) to implement statutory changes for Fiscal Year 1979. These proposed regulations constitute a complete rewrite of current program regulations and would govern the operation of programs authorized by the Bilingual Education Act (Title VII of the Elementary and Secondary Education Act, as amended) beginning in Fiscal Year 1980. The proposed regulations are divided into four parts:

(1) Part 123 contains General Provisions applicable to all programs.

(2) Part 123a governs the Direct Grants Program.

(3) Part 123b governs the Desegregation Support Program.

(4) Part 123c governs the Fellowship Program, which awards Fellowships to individuals to earn post-masters degrees as trainers of teachers in bilingual education.

III. *Major Provisions.*

Part 123 includes—among other general provisions—a brief description of all of the programs, together with listings of eligible applicants and definitions that apply to all of the programs.

Part 123a further describes each of the six types of projects under the Direct Grants Program.

The following is a discussion of each of these types of projects:

Basic Projects of Bilingual Education.

Section 123.10 contains the activities that are supported by these projects. These activities remain essentially unchanged from those listed in the interim final regulations under which the program operated in Fiscal Year 1979.

Section 123a.30 proposes new funding criteria that alter the goals of these projects from demonstration of approaches to installation of projects that serve children with the greatest needs and capacity building. The two important criteria for the selection of projects are the applicant's need for bilingual education and the capacity of an applicant to sustain the program after Federal funds end.

Demonstration Projects. This is a new program proposed by the Commissioner to support a limited number of highly visible demonatration projects in bilingual education. From a set-aside of funds appropriated for the Basic Projects, the Commissioner may make awards to grantees that show great promise of demonstrating exemplary programs of bilingual instruction. These grantees would be selected, through the procedures contained in §§ 123a.130 and 123a.132, in a national competition for these grants.

State Educational Agency Projects for Coordinating Technical Assistance. Section 123a.210 contains the major activities supported by this program, all of which support State educational agencies (SEAs) in playing an active technical assistance role in the bilingual education programs funded under these proposed regulations within their respective States.

Support Services Projects. Sections 123a.311 through 123a.312 contain allowable activities for Bilingual Education Support Centers (BESC). These centers were previously called Training Resource Centers. Section 123a.316 contains an expanded list of activities for Evaluation, Dissemination, and Assessment Centers (EDAC). These centers were previously called Dissemination and Assessment Centers.

Training Projects. Section 123.2(a)(6) implements a legislative amendment by including nonprofit private organizations as eligible applicants.

An applicant may develop projects that lead to a degree or a teaching credential with a specialization in bilingual education as well as implement projects that improve and enhance the capacity of an institution to train personnel for bilingual education. The proposed regulations also permit

training for persons participating in or preparing to participate in programs of bilingual education and parents of limited English proficiency children.

Schools of Education Projects. Section 123a.520 implements a new program available to institutions of higher education for the purpose of designing training programs in bilingual education under the direct supervision of the head of a school or department of education.

Bilingual Desegregation Support Programs. The Education Amendments of 1978 transfer this program from the Emergency School Aid Act to the Bilingual Education Act.

Participation in this program is limited to an LEA that meets the eligibility requirements of the Emergency School Aid Act (Section 606 of the Education Amendments of 1978) or a private nonprofit agency, institution or organization (NPO) that has received a request for assistance from an eligible LEA. Section 123b.10 describes the authorized activities. The activities authorized for LEAs include the activities authorized for Basic Projects as well as activities designed to improve the skills of children of limited English proficiency in their native languages. In addition, LEAs and NPOs may develop curricula for programs of bilingual instruction.

Fellowship Program for Preparation of Teacher Trainers in Bilingual Education. The fellowship program is designed for graduate programs at the post-master's level.

Sections 123c.40 and 123c.51 implement a new legislative requirement that, after completion of their studies, fellows work in an activity related to the training of teachers and related personnel of bilingual education or repay the financial assistance received under the fellowship program.

The regulations list activities open to individuals who choose to work. Procedures for repayment are described, as are conditions under which a fellow may request a waiver, or deferral of either the work or repayment requirement.

Bilingual Research and Development Program. These proposed regulations do not cover this program. Most of the activities under this program are conducted under discrete competitive contracts announced through Request for Proposals (RFPs) in the COMMERCE BUSINESS DAILY. Some of the work is undertaken directly by the Federal agencies involved.

IV. *Studies and Recommendations.*

In 1978, a consultant to the Office of Education undertook a comprehensive review of the Office of Bilingual Education. That review raised several questions regarding the operation of the basic program. The analysis of the review revealed:

1. Applicants submitted lengthy proposals, often with information that served no useful purpose in making a decision to fund or not to fund.

2. The quality of the applications that were funded had little or no relationship to the quality of the projects.

3. Successful applications presented little evidence of need.

4. Many applicants placed limited emphasis on capacity building to continue a bilingual education program beyond Federal support.

Options Considered.

During the preparation of this notice of proposed rulemaking (NPRM), the following procedures for selecting Basic Projects in Bilingual Education were considered:

1. The first option considered was to operate the basic program in essentially the same fashion as in the past. Applicants would address existing selection criteria augmented by the management criteria in the Education Division General Administrative Regulations (EDGAR) and would prepare a narrative describing the project design. Funding decisions would be based exclusively on the quality of the narrative.

a. The procedure does not provide reliable objective data to determine the needs of an applicant or the needs of individual children to be served.

b. Identification of numbers of children in need could not be objectively compared with the capacity of an LEA to continue bilingual education beyond Federal support.

2. The second option considered was for the Commissioner to rely exclusively on the criterion for need, with program staff closely monitoring projects in the first year of operation to correct any operational deficiencies in order to ensure success. This option was not selected for these reasons:

a. To fund projects solely on a need basis seems premature prior to a systematic study of how to appropriately measure language proficiency.

b. To fund exclusively on a need basis without a narrative description provides insufficient information for staff to properly monitor project operations.

3. The option presented in this NPRM recognizes need in relation to numbers of children of limited English proficiency, as well as the capacity of an LEA to offer bilingual education after Federal funding ceases. The requirements also include a brief narrative sufficient for effective monitoring and evaluation. This option has been selected because it reduces to a minimum the paperwork burden on an applicant while providing sufficient information to address the requirements of bilingual programs with respect to the specific legislative requirements.

These criteria will enable the Commissioner to better judge the potential services of a proposed project. They also ensure that applicants will serve children most in need of bilingual education.

Reviewers are invited to comment on these options. Comments are particularly encouraged on the relative numerical values proposed for the criteria selected.

V. *Major Issues.*

In addition to the funding criteria for Basic Projects, a number of other policy issues were raised during the development of the proposed regulations. Five significant issues are presented. Public comment on these issues is encouraged. The comments will serve as guidance to the Commissioner in drafting the final regulations.

Continued funding for districts previously served. The new amendments to the Act emphasized capacity building; i.e., the ability of a recipient to continue its project after Federal funding ends. In addition to emphasizing this through funding criteria, the proposed regulations require a district which seeks new projects in a school previously funded under the program to provide a strong justification of its need for continued support and demonstrate a significant increase in the number of bilingual education personnel.

Historically underserved children. Pub. L. 95-561 adds a provision that the Commissioner give priority to applications proposing to serve children of limited English proficiency—in various regions—who historically have been underserved by programs of bilingual education. The proposed regulations repeat the statutory provisions, and give the Commissioner some flexibility in how they are implemented.

Support centers and training. These proposed regulations generally retain the types of projects previously funded. However, regulations for the Material Development Centers are included as an appendix because, after FY 80, those activities will be conducted through discrete contracts, making grants unnecessary. The appended material will not be codified in the Code of Federal Regulations.

A new type of project to fund schools of education has been established. These projects are designed to create or expand bilingual education teacher training programs.

Desegregation support. The proposed regulations make the Bilingual Education Desegregation Support Program as similar as possible to Basic Projects under the Direct Grants Program. The proposed strategy permits the Commissioner to consider desegregation support applications under the Basic Projects competition if desegregation support funds have been exhausted.

To avoid constraining the district's desegregation plan, the proposed regulations do not apply the requirement that children whose native language is English may not exceed 40 percent of a project's enrollment.

A Desegregation Support Project permits children to study their native language and culture without regard to the restrictions applicable to Basic Projects. Applicants are subject to the civil rights requirements under Section 606(c) of ESEA and to that statute's procedures for show cause conferences and waivers of ineligibility.

Fellowships. For those fellowship recipients who do not fulfill their post-graduate employment obligations, the proposed regulations adopt the same approaches taken in the interim final regulations. They require pay-back of a fellowship within 15 years with interest on the unpaid balance at an annual rate of seven percent.

For the first time fellowships are limited by the proposed regulations to a course of study leading to a post-master's degree. This reflects the Commissioner's judgment that this level of training is needed to develop employable and successful teacher trainers of bilingual education personnel.

VI. *Additional Information.*

These proposed regulations do not contain certain types of requirements. Those regulations are covered in the Education Division General Administrative Regulations (EDGAR), which will replace the General Provisions for Office of Education Program regulations and which were published in the Federal Register on May 4, 1979 (44 FR 26308) as an NPRM.

Anyone wanting to comment on these requirements should do so in response to the EDGAR NPRM, rather than to this NPRM.

The following items applicable to this program are now among those covered generally in EDGAR:

How to apply for a grant.

How grants are made,

Certain conditions that must be met by a grantee.

The administrative responsibilities of a grantee.

The Office of Education's procedures to assure compliance.

Invitation To Comment

A public meeting on this NPRM will be held in each of the ten Federal regional cities. If you are interested in commenting at a public meeting, we encourage you to call the appropriate Regional Commissioner, who will schedule a time for your comments.

Persons who do not notify the Regional Commissioner of their intention to comment also will be given an opportunity to speak. Those persons making presentations will be called upon according to their prearranged schedule—or, if a schedule has not been prearranged—in the order of registration.

In addition, interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All written comments submitted in response to this notice will be available for public inspection, both during and after the comment period, in Room 421, Reporters Building, 7th & D Streets SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

Dated: June 15, 1979.

John Ellis,

Acting U.S. Commissioner of Education.

Approved: June 26, 1979.

Hale Champion,

Acting Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance Number 13.403, Bilingual Education)

The Commissioner redesignates Part 123 of 45 CFR as Parts 123, 123a, 123b, and 123c and proposes to revise the regulations to read as follows:

PART 123—BILLINGUAL EDUCATION: GENERAL PROVISIONS

Subpart A—General

Sec.

123.1 Bilingual Education Programs.
123.2 Who is eligible for assistance under these programs?
123.3 What regulations govern these programs?
123.4 What definitions apply to these programs?
123.5–123.9 [Reserved]

Subpart B [Reserved]

Subpart C—How Does One Apply for a Grant?

123.20 What is the purpose of this subpart?
123.21 How does an applicant use regulations and apply for funds?
123.22 Must an application be submitted to an SEA?
123.23–123.39 [Reserved]

Subpart D—How Is a Grant Made?

123.30 What general criteria does the Commissioner apply?
123.31 What is the length of the project period?

Subpart E—What Conditions Must Be Met by a Grantee?

123.40 What restrictions are there on the use of funds?
123.41 What are other specific provisions?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended. 92 STAT. 2268–2282 (20 U.S.C. 3221–3252, 3261).

PART 123—BILINGUAL EDUCATION: GENERAL PROVISIONS

Subpart A—General

§ 123.1 Bilingual Education Programs.

(a) The Bilingual Education Act authorizes four types of programs:

(1) Direct Grants (part 123a).

(2) Desegregation Support (part 123b).

(3) Fellowships (part 123c).

(4) Research and Development (not covered by these regulations).

(b) The Direct Grant Program includes six types of projects:

(1) Basic Projects in Bilingual Education (§§ 123a.10 through 123a.60). These projects establish, operate, or improve programs of bilingual education to assist children of limited English proficiency.

(2) Demonstration Projects (§§ 123a.110 through 123a.140). These projects demonstrate exemplary approaches to meeting the educational needs of children of limited English proficiency.

(3) State Educational Agency (SEA) Projects for Coordinating Technical Assistance (§§ 123a.210 through 123a.230). These projects provide

financial assistance to SEAs that coordinate technical assistance to programs of bilingual education funded under these regulations within their respective States.

(4) Support Services Projects (§§ 123a.310 through 123a.330). These projects provide financial assistance to two types of service centers:

(i) Bilingual Education Support Centers (BESCs).

(ii) Evaluation, Dissemination, and Assessment Centers (EDACs).

(5) Training Projects (§§ 123a.410 through 123a.441). These projects train personnel for bilingual education programs.

(6) School of Education Projects (§§ 123a.520 through 123a.553). These projects assist institutions of higher education in increasing or developing their capability to provide degree-granting bilingual education training programs.

(20 U.S.C. 3231, 3233)

(c) The Desegregation Support Program is designed to meet the needs of minority group children who are from an environment in which the dominant language is other than English and who lack equality of educational opportunity because of language barriers and cultural differences.

(20 U.S.C. 3261)

(d) The Fellowship Program prepares individuals to train teachers of bilingual education.

(20 U.S.C. 3233)

(e)(1) The Research and Development Program authorizes—

(i) Research activities funded by the Office of Education (OE);

(ii) Research—funded by the National Institute of Education (NIE) in consultation with OE—to enhance the effectiveness of bilingual education and other programs for persons of limited English proficiency; and

(iii) Coordination—by the Assistant Secretary for Education—of OE, NIE, the National Center for Educational Statistics, and other appropriate agencies to develop a national research program for bilingual education.

(20 U.S.C. 3252)

(2) Awards under this program are made by contract and are not covered by these regulations.

(3) These contracts are subject to—

(i) Federal and HEW procurement regulations in Chapters 1 and 3 of 41 CFR; and

(ii) Requirements and criteria in particular requests for proposals.

(f) The Commissioner may reserve funds for each of the programs and types of projects described in this section in accordance with applicable appropriations statutes.

(20 U.S.C. 3252)

§ 123.2 Who is eligible for assistance under these programs?

The following are eligible for assistance under the Bilingual Education Programs:

(a) *Direct Grant Program.* Those eligible for assistance under the various projects within this program are as follows:

(a) *Basic Projects in Bilingual Education—*

(i) A local educational agency (LEA);

(ii) An institution of higher education (IHE) that applies jointly with one or more LEAs; or

(iii) An elementary or secondary school for Indian children on a reservation and operated or funded by the Bureau of Indian Affairs (BIA).

(2) *Demonstration Projects—*

(i) An LEA;

(ii) An IHE that applies jointly with one or more LEAs; or

(iii) An elementary or secondary school for Indian children on a reservation and operated or funded by the BIA.

(3) *State Educational Agency (SEA) Projects for Coordinating Technical Assistance—*

Only an SEA is eligible to apply for this type of project.

(4) *Support Services Projects: BESC—*

(i) An LEA;

(ii) An SEA;

(iii) An IHE or a nonprofit private organization after consultation with one or more LEAs or with an SEA; or

(iv) An IHE or a nonprofit private organization that applies jointly with one or more LEAs or with an SEA.

(5) *Support Services Projects: EDACs—*

(i) An LEA; or

(ii) An IHE that applies jointly with one or more LEAs.

(6) *Training Projects—*

(i) An LEA;

(ii) An SEA;

(iii) An IHE or a nonprofit private organization after consultation with one or more LEAs or with an SEA; or

(iv) An IHE or a nonprofit private organization that applies jointly with one or more LEAs or with an SEA.

(7) *School of Education Projects—*

(i) An IHE with a school or department of education after consultation with one or more LEAs or with an SEA; or

(ii) An IHE with a school or department of education that applies jointly with one or more LEAs or with an SEA.

(U.S.C. 3261, 3233)

(b) *Desegregation Support Program.* Those eligible for assistance under this program are as follows:

(1)(i) An LEA that meets the requirements of Sections 606(a) and 606(c) of the Elementary and Secondary Education Act (ESEA) of 1965, as amended, and of any regulations implementing those sections may apply for a grant.

(ii) If an applicant LEA does not meet the requirements in section 606(c) of ESEA, the Secretary uses the procedures for show cause conferences established by regulations under Title VI of ESEA.

(iii) The Secretary uses the proceudures for granting a waiver of ineligibility described in Section 606(c) of ESEA and in regulations implementing that section.

(2) A nonprofit private agency, institution, or organization may apply for a grant if it has received a request for curriculum development from an LEA that is eligible under subparagraph (b)(1)(i) or that has received a waiver of ineligibility under subparagraph (b)(1)(iii) of this section.

(20 U.S.C. 3261)

(c) *Fellowship Program.* Those eligible under this program are as follows:

(1) An IHE that offers a program of study leading to a degree above the master's level for individuals preparing to train teachers of bilingual education.

(2) An individual is eligible to apply for a fellowship under this program if this individual—

(i)(A) Is a citizen or a national of the United States;

(B) Is a permanent resident of the United States;

(C) Is in the United States for other than a temporary purpose and can provide evidence from the Immigration and Naturalization Service of his/her intent to become a permanent resident; or

(D) Is a permanent resident of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands or the Trust Territory of the Pacific Islands; and

(ii) Has been accepted for enrollment in a full-time course of study offered by an IHE approved for participation in this program. The course of study must lead to a degree above the Master's level in the field of training of teachers for bilingual education.

(20 U.S.C. 3233)

§ 123.3 What regulations govern these programs?

(a) The following regulations apply to the Bilingual Education Programs:

(1) The Education Division General Administrative Regulations (EDGAR) in part 100a (Direct Grant Programs) and part 100c (Definitions) apply except as noted in certain provisions of the Bilingual Education Programs regulations.

(2) The regulations in these parts (123, 123a, 123b, and 123c).

(b) However, part 100a of EDGAR does not apply to the Fellowship Program.

(20 U.S.C. 1221e-3, 3223)

§ 123.4 What definitions apply to these programs?

(a) *Definitions in EDGAR.* The following terms used in these parts are defined in part 100c:

Applicant	Grantee
Application	Nonprofit
Award	Preschool
Budget	Private
Budget period	Project
Commissioner	Project period
Department	Recipient
EDGAR	Secondary school
Elementary school	Secretary
HEW	State
Grant	State educational agency (SEA)

(b) *Program-specific definitions.* The following terms are specific to these parts:

"Act" means the Bilingual Education Act (Title VII of the Elementary and Secondary Education Act, as amended).

"Appropriate bilingual personnel" means individuals who have the ability to converse with considerable proficiency in the languages of the students on general topics as well as in areas of instruction appropriate to the grade level of the students. This ability includes verbal comprehension and the ability to speak, read, and write the languages. It does not, however, imply an extensive vocabulary that might be necessary to converse with educated native speakers on complicated matters not related to required curriculum.

"Institution of higher education" (IHE) means in any State an educational institution—including a junior college or community college—that meets the requirements in Section 1001(e) of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 3381(e))

"Limited English proficiency," with reference to an individual, means an individual—

(1)(i) Who was not born in the United States and whose native language is other than English;

(ii) Who was born in the United States but who comes from a home in which a language other than English is most relied upon for communication; or

(iii) Who is an American Indian or Alaskan Native student and comes from an environment in which a language other than English has had a significant impact on his or her level of English language proficiency; and

(2) Who, as a result of (1), has sufficient difficulty speaking, reading, writing, or understanding the English language to deny him or her the opportunity to learn successfully in classrooms in which the language of instruction is English.

(d) "Local educational agency" (LEA) means—

(1) An LEA as defined in EDGAR (100c); or

(2) An elementary or secondary school—

(i) Operated by a nonprofit institution or organization of an Indian tribe that the Commissioner of Education approves for purposes defined in the Act; and

(ii) In which Indian children constitute more than 50 percent of the enrollment.

"Low income" means an annual family income that does not exceed the poverty level determined under Section 111(c)(2) of Title I of the Elementary and Secondary Education Act of 1965, as amended.

"Native language," with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child.

"Program of bilingual education" means a program of instruction, designed for children of limited English proficiency in elementary or secondary schools. The program shall include these characteristics—

(1)(i) There is instruction given in, and study of, English and (to the extent necessary to allow a child to achieve competence in the English language) the native language of the children of limited English proficiency.

(ii) The instruction is given with appreciation for the cultural heritage of the children of limited English proficiency and of other children in American society with emphasis on those cultures within the LEA.

(iii) With respect to elementary school instruction, the instruction is given in all courses or subjects of study necessary to allow a child to progress effectively through the educational system.

(iv) In courses such as art, music, and physical education, an applicant shall provide for the participation of children of limited English proficiency in classes that are not subject to the limitations on participation of English dominant children.

(2) A program of bilingual instruction may include the participation of children whose language is English in order to prevent the segregation of children on the basis of national origin in programs and to broaden the understanding of children about languages and cultural heritages other than their own.

(i) In no event shall the participation of children whose language is English exceed 40 percent.

(ii) The objective of the bilingual education program shall be to assist children of limited English proficiency to improve their English language skills. The participation of other children must be for the principal purpose of contributing to the achievement of that objective.

§ 123.5-123.19 [Reserved]

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 123.20 What is the purpose of this subpart?

(a) The regulations in this subpart govern applications under the Direct Grants Program (123a) and the Desegration Support Program (123b).

(b) The regulations in this subpart do not apply to the Fellowship Program. Regulations for the Fellowship Program are found in Part 123c.

(20 U.S.C. 3231, 3233, 3261)

§ 123.21 How does an applicant use regulations and apply for funds?

(a) The Introduction to Education Division Programs at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(b) An applicant for the Direct Grants Program or the Desegregation Support Program shall submit an application that—

(1) Meets the requirements in EDGAR, part 100a, subpart C;

(2) Complies with applicable requirements in the Act and these regulations;

(3) Provides other information that the Commissioner may require in the notice of closing date or the application package to permit an evaluation of applications.

(20 U.S.C. 1 221e-3)

§ 123.22 Must an application be submitted to an SEA?

(a) Except as specified in paragraph (d), an applicant that seeks assistance for a project under the Direct Grants Program and the Desegregation Support Program—or an IHE requesting participation in the Fellowship Program—shall submit its application for comment to the SEA of the State in which the applicant proposes to conduct the project.

(b) If an applicant seeks assistance for a Support Services Project that it proposes to conduct in more than one State, the applicant shall submit its application for comment to the SEAs of all States to be involved in the proposed project.

(c) Procedures for State comment are specified in EDGAR §§ 100a.155 through 100a.159, except that—

(1) The applicant shall provide a copy of its application to the SEA in advance of its submission to the Office of Education in order to afford the SEA a reasonable opportunity to comment on the application to the applicant; and

(2) If the applicant subsequently makes substantive revisions in its application, it shall submit a copy of the revised application to the SEA so that the SEA may comment to the Commissioner under the provisions in EDGAR.

(d) An eligible school operated or funded by the Bureau of Indian Affairs shall submit its application for comment to the Secretary of the Interior or his or her designee and follow the same procedures described in paragraph (c).

(20 U.S.C. 3231(b)(3)(D))

§§ 123.23–123.29 [Reserved]

Subpart D—How Is a Grant Made

§ 123.30 What general criterion does the Commissioner apply?

In evaluating applications for assistance under the Direct Grants Program and the Desegregation Support Program, the Commissioner applies a criterion that considers the extent to which the applicant recruits and employs appropriate bilingual personnel. (10 points)

§ 123.31 What is the length of the project period?

(a) *Direct Grants Program and Desegregation Support Program.*

(1) The Commissioner approves a project period of from one to three years based on the factors in section 721(e) of the Act.

(2) The Commissioner may make a continuation award for a budget period after the first budget period of an approved multi-year project—

(i) Under the conditions in section 721(e)(2) of the Act for Basic Projects and Demonstration Projects;

(ii) Under the conditions in § 100a.253 of EDGAR for other projects under the Direct Grants Program and for projects under the Desegregation Support Program.

(b) *Fellowships.*

(1) *Request to participate.* The Commissioner approves an IHE's request to participate in the fellowship program for a period of from one to three years, depending on the capacity and quality of the applicant's training program in bilingual education.

(2) *Fellowship applications.* The Commissioner approves a fellowship for one year. A recipient of a fellowship who seeks assistance beyond this period shall compete annually with other applicants.

(20 U.S.C. 1221e–3, 3231(e))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 123.40 What restrictions are there on the use of funds?

(a) A grantee under the Direct Grants Program or the Desegregation Support Program shall comply with the "supplement, and not supplant" requirement in section 721(b)(3)(G) of the Act.

(b) Other grant conditions are described in parts 123a and 123b.

(20 U.S.C. 3231(b)(3)(G))

§ 123.41 What are other specific provisions.

(a) Allowable costs under the Direct Grants Program and the Desegregation Support Program are direct and indirect costs in carrying out an approved project subject to the restrictions in EDGAR.

(b) The limits on indirect cost rates in EDGAR § 100a.562 apply to each educational training grant in which one or more of the grantees is other than a State or a local government.

(c)(1) Training activities under the Direct Grant Program and the Desegregation Support Program may include as allowable costs for each trainee tuition and other fees required by the training institution, up to $250 for books, and up to $250 for travel to sites of field study.

(2) These activities may also include as allowable costs stipends for the trainee's subsistence.

(d) The allowable stipend amounts are as follows:

(1) *Long-term training.* In training with a duration in excess of 90 days for an individual trainee—

(i) *Post-Master's degree.* The provisions on stipends for the Fellowship Program in §§ 123c.42 and 123c.43 apply to an individual enrolled full-time in a course of study leading to a degree beyond the master's level.

(ii) *Pre-Master's degree.* A stipend for an individual enrolled in a full-time course of study leading to a master's degree or a baccalaureate degree may not exceed $325 per month.

(iii) *Part-time attendance.* The amounts for stipends in (i) and (ii) are proportionately reduced for attendance on a part-time basis.

(2) *Short-term training.* For an individual participating in a training activity for 90 days or less and not otherwise compensated for his or her time during that training, the stipend may be established in accordance with the grantee's prevailing practices for training not funded under these regulations.

(e) Allowable stipends for the Fellowship Program are covered in §§ 123c.42 and 123c.43.

(20 U.S.C. 1221e–3, 3233(a)(3))

PART 123A—BILINGUAL EDUCATION: DIRECT GRANTS PROGRAM

Subpart A—General (see Subpart A of Part 123)

Subpart B—Basic Projects in Bilingual Education

What Kinds of Activities Does the Office of Education Assist?

Sec.

123a.10 What activities are eligible for assistance?
123a.11 What is a program of bilingual education?
123a.12 Are there programs for children of limited Spanish proficiency?
123a.13–123a.19 [Reserved]

How Does One Apply for a Grant?

123a.20 What are the requirements when applying for a Basic Project?
123a.21 What requirements pertain to advisory councils?
123a.22 What requirements pertain to participation of children enrolled in nonprofit private schools?
123a.23 What are the requirements for training activities?
123a.24 What requirements pertain to identifying children of limited English proficiency?
123a.25–123a.29 [Reserved]

How Is a Grant Made?

123a.30 What are the selection criteri

What Conditions Must Be Met by a Grantee?

123a.40 Participation of children enrolled in nonprofit private schools.
123a.41 Is there a requirement for an advisory committee?
123a.42 How is the advisory committee selected?
123a.43 Who is eligible to serve on the advisory committee?
123a.44 Where is a program of bilingual education offered?
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What Compliance Procedures Are Used by the Commissioner?

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123a.120 What provisions apply to applications?

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Subpart D—State Education Agency (SEA) Projects for Coordinating Technical Assistance

What Kinds of Activities Does the Office of Education Assist?

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What Kinds of Activities Does the Office of Education Assist?

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Subpart G—Schools of Education Projects

What Kinds of Activities Does the Office of Education Assist?

123a.510 Purpose of school of education projects.
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123a.540 How are the activities to be carried out?
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123a.543 What other requirements apply?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended. 92 Stat. 2268–2282 (20 U.S.C. 3221–3252).

PART 123a—BILINGUAL EDUCATION: DIRECT GRANTS PROGRAM

Subpart A—General (See Subpart A of Part 123)

Subpart B—Basic Projects in Bilingual Education

What Kinds of Activities Does the Office of Education Assist?

§ 123a.10 What activities are eligible for assistance?

The following activities are authorized for Basic Projects in Bilingual Education:

(a) Establishing, operating, and improving programs of bilingual education.

(b) Providing auxiliary and supplementary community and educational activities designed to facilitate and expand the implementation of programs of bilingual education, including—but not limited to—such activities as—

(1) Adult education programs—particularly for parents of children participating in programs of bilingual education—carried out, where appropriate, in coordination with programs assisted under the Adult Education Act; and

(2) Preschool programs preparatory and supplementary to bilingual education programs.

(c) Providing auxiliary and supplementary training activities for all persons, including paraprofessionals, who participate or who are preparing to participate in basic projects. The following activities are authorized:

(1) Necessary training in the languages used in the program.

(2) Opportunities for career development, including opportunities to—

(i) Enroll in degree programs in bilingual education at institution of higher education; and

(ii) Improve the special skills necessary to conduct a program of bilingual education.

(3) Training designed to help participants meet State certification requirements for teachers.

(d) Planning, providing technical assistance for, and taking other steps leading to the development of, programs of bilingual education.

(20 U.S.C. 3231(a), 3233(a)(7))

§ 123a.11 What is a program of bilingual education?

(a) A program of bilingual education is designed for children of limited English proficiency in elementary and secondary schools.

(b) The major objective of this program is to enable these children to achieve proficiency in English as measured by their effective participation in the educational program of the school.

(20 U.S.C. 3223(a)(4))

§ 123a.12 Are there programs for children of limited Spanish proficiency?

(a) In the Commonwealth of Puerto Rico only, a grantee may offer a program of bilingual education to serve the needs of children of limited Spanish proficiency.

(b) This program may be in addition to a program designed to serve the needs of children of limited English proficiency.

(20 U.S.C. 3223, 3231(d))

§§ 123a.13–123a.19 [Reserved]

§ 123a.20 What are the requirements when applying for a basic project?

An applicant shall meet the requirements in §§ 123a.21–123a.24 in order to apply for a Basic Project grant.

(20 U.S.C. 3223, 3231)

§ 123a.21 What requirements pertain to advisory councils?

(a) An applicant shall—

(1) Establish an advisory council to assist in the preparation of the application; and

(2) Provide adequate staff and resources for the council to prepare comments and recommendations concerning the application.

(b) The advisory council shall—

(1) Consist of at least seven persons, a majority of whom shall be parents and other representatives of children of limited English proficiency;

(2) Participate in planning the proposed project;

(3) Review drafts of the application; and

(4) Prepare comments on the content of the application.

(20 U.S.C. 3223(a)(4)(E))

§ 123a.22 What requirements pertain to participation of children enrolled in nonprofit private schools?

Before submitting an application, an applicant shall consult with the appropriate private school officials in order to meet the requirements of §123a.40.

(20 U.S.C. 3231(b)(3)(C)(ii))

§ 123a.23 What are the requirements for training activities?

An applicant shall—

(1) Include in its budget adequate funds for auxiliary and supplementary training activities for its teachers, counselors, paraprofessionals, and any other persons associated with or are preparing to be associated with a program of bilingual education;

(2) Base these training activities on an assessment of the needs of its personnel.

(20 U.S.C. 3231(a)(3)(B), (b)(3)(B))

§ 123a.24 What requirements pertain to identifying children of limited English proficiency?

(a) Before submitting an application each applicant shall implement an assessment to identify children of limited English proficiency.

(b) The assessment shall be based on procedures that have, as a minimum, the following characteristics:

(1) An evaluation of the English proficiency of target students in relation to the proficiency of students of the same age and grade level(s) whose native language is English.

(2) An examination of language proficiency in areas related to the curriculum of the school and the school environment.

(3) An examination of students' ability to use the English language as an active tool in the school and classroom.

(4) An evaluation of written, as well as oral language.

(5) An individually administered evaluation by trained personnel.

(6) A capability to discriminate between language problems and other learning disabilities.

(7) A compatibility with the socio-cultural group to which the child belongs.

(20 U.S.C. 1221e-3, 3223, 3231)

§ 123a.25–123a.29 [Reserved]

How Is a Grant Made?

§ 123a.30 What are the selection criteria?

The selection criteria in EDGAR do not apply. In addition to the general criterion regarding the recruitment and employment of appropriate bilingual personnel—found in § 123.30 and worth a maximum of 10 points—the Commissioner uses the following selection criteria—worth a maximum of 90 points—in assessing applications for assistance:

(a) *Need.* (50 points) The Commissioner considers the need of the applicant as measured by:

(1) Percentage of children of limited English proficiency enrolled in the project school(s).

Percentage and points

60–or above—15;
55–59—12;
50–54—9;
40–49—6;
35–39—3;
34 and below—0.

(2) Number of children of limited English proficiency enrolled by the LEA.

Number and points

More than 4,000—10
3,001–4,000—9
2,001–3,000—8
1,501–2,000—7
1,001–1,500—6
751–1,000—5
501–750—4
401–500—3
301–400—2
201–300—1
200 and below—0

(3) Percentage of total number of children enrolled by the LEA with limited English proficiency.

Percentage and points

More than 50—10
41–49.9—8
31–40.9—6
21–30.9—4
11–20.9—2
10 and below—0

(4) Percentage of the total number of children of limited English proficiency to be served by the bilingual education project who have never been enrolled in a bilingual education program.

Percentage and points

More than 95—10
90–94—9
85–89—8
80–84—7
75–79—6
70–74—5
65–69—4
60–64—3
55–59—2
50–54—1
49 and below—0

(5) Percentage of the total number of children to be served by the project who are members of low-income families.

Percentage and points

More than 95—5
90–94—4
85–89—3
80–84—2
75–79—1
74 and below—0

(b) *Instructional approach.* (10 points) The Commissioner considers—

(1) The rationale for the selection of the instructional strategy;

(2) The extent to which the project serves the children most in need;

(3) The methods by which children were selected for the project; and

(4) The rationale for selection of the project schools or grades or both, including the concentration of resources in a limited number of schools in order to provide effective educational programs.

(c) *Performance objectives.* (15 points) The Commissioner considers performance objectives and expected times for their accomplishment. These objectives include but are not limited to—

(1) Achievement goals for students in the project, including the means for identifying children who have achieved proficiency in English and transferring these children to English language classrooms.

(2) Parental involvement;

(3) Staff training; and

(d) *Commitment and capacity.* (15 points) (1) *General.* The Commissioner considers—

(i) Evidence of the previous commitment the applicant has made to bilingual education; and

(ii) The likelihood that the applicant will continue or increase that commitment as indicated by—

(A) A plan for teacher training;

(B) Expectations for expansion of the project;

(C) Plans to provide follow-up services from State and local resources to children who achieve proficiency in English;

(D) Plans for a gradual assumption of costs by the grantee during the federally supported project period; and

(E) Availability of necessary resources in future years.

(2) *Prior grantees.*

(i) The Commissioner awards points for this criterion to an applicant described in this subparagraph and the general criterion at § 123.30 only if it provides a special justification in its application.

(ii) An applicant shall provide a special justification if—within the three fiscal years prior to the fiscal year in which it applies—it has received a grant under the Act to carry out a program of bilingual education in the school or schools to be served by the proposed project.

(iii) This applicant shall justify its continuing need for Federal assistance to carry out the program of bilingual education and show how the project will build the applicant's capacity to sustain the program after Federal funding ends, and

(iv) Demonstrate that it has significantly increased the number of appropriate bilingual personnel in the project schools.

(e) *Discretionary criteria.* In awarding grants, the Commissioner—subject to the preceding criteria that measure the need for a project and its quality—exercises discretion to be certain that—

(1) Priority is given to assist children of limited English proficiency who have historically been underserved by programs of bilingual education; and

(2) Available funds are distributed, to the extent feasible, in proportion to the distribution of children of limited English proficiency throughout the Nation and within each of the States.

(20 U.S.C. 3231(b)(1), (b)(3)(A), (b)(3)C)(i), (b)(3)(E), (b)(3)(F), (b)(3)(H), (C))

What Conditions Must Be Met by a Grantee?

§ 123a.40 Participation of children enrolled in nonprofit private schools.

(a) Based on consultations with private school officials, as provided in § 123a.22, the grantee shall provide for participation in the project by children enrolled in nonprofit private schools in the area to be served whose language is the same and grade level and educational needs are similar to those that the project is intended to address.

(b) The participation of these children shall be on a basis comparable to that provided for public school children as provided in § 100b.654 of EDGAR.

(20 U.S.C. 3231(b)(3)(C)(ii))

§ 123a.41 Is there a requirement for an advisory committee?

Within 60 days after the Commissioner makes an award, a grantee shall establish an advisory committee. The committee shall consult continuously with the grantee and participate in conducting the basic project.

(20 U.S.C. 3223(a)(4)(E))

§ 123a.42 How is the advisory committee selected?

Parents of children participating in the program shall select the committee.

(20 U.S.C. 3223(a)(4)(E))

§ 123a.43 Who is eligible to serve on the advisory committee?

(a) Parents of children of limited English proficiency who are participating in the program shall be a majority of the committee.

(b) The committee may also include—

(1) Parents of other participants in the proposed program;

(2) Teachers; and

(3) Other interested individuals.

(c) In the case of programs carried out in secondary schools, the committee shall include secondary students participating in the program who are selected by secondary students participating in the program.

(d) A member of the advisory council (described in § 123a.21) may serve as a member of the advisory committee.

(20 U.S.C. 3223(a)(4)(E))

§ 123a.44 Where is a program of bilingual education offered?

(a) A program of bilingual education shall serve children in the schools that they normally attend.

(b) The program may provide teacher training and curriculum development activities outside the school or schools in which the LEA offers the program.

(20 U.S.C. 3223(a)(4)(B))

§ 123a.45 How may children be grouped?

(a) If graded classes are used, a grantee shall—to the extent practicable—place each child enrolled in a program of bilingual education in a class or classes with children of approximately the same age and level of educational attainment.

(b) If the grantee places in the same class in a program of bilingual education children of significantly varying ages or levels of educational attainment, the grantee shall make every reasonable effort to ensure that each child is provided with instruction that is appropriate to his or her level of education attainment.

(20 U.S.C. 3223(a)(4)(D))

§ 123a.46 What children must be served?

The grantee shall—

(a) Serve those children most in need of assistance provided by these projects.

(b) Set measurable goals for determining when children enrolled in a bilingual education program no longer need assistance in developing proficiency in English.

(c) Conduct an evaluation of each child who has been enrolled in a Federally funded program of bilingual education for two years to determine if the child should remain in the program.

(20 U.S.C. 3231 (b)(1)(B), (b)(3)(F))

(d) Provide, from State and local services, for necessary followup services to sustain the achievement of children after they have left the program.

§ 123a.47 What other grant requirements apply?

The grantee shall—

(a) Use the most qualified educational personnel, as provided in section 721(b)(3)(C)(i) of the Act; and

(b) Develop a plan for evaluation of the program of bilingual education.

(20 U.S.C. 3231 (b)(3)(C)(i), (b)(3)(C)(iii))

What Compliance Procedures Are Used by the Commissioner?

§ 123a.60 How does the Commissioner provide for the participation of children in nonprofit private schools?

If the applicant is unwilling or unable to provide for the participation of children of limited English proficiency enrolled in nonprofit private schools as required by § 123a.40, the Commissioner—

(1) Withholds approval of the application until the applicant demonstrates that it is willing to provide for the participation of children of limited English proficiency; or

(2) Reduces the amount of the grant by the amount the Commissioner needs in order to—

(i) Arrange to assess the needs of children in nonprofit private schools in the area to be served; and

(ii) Carry out a bilingual education program for these children.

(20 U.S.C. 3231(f))

Subpart C—Demonstration Projects

What Kind of Activities Does the Office of Education Assist?

§ 123a.110 What activities are eligible for assistance?

(a) A project shall be designed to carry out a high quality national demonstration of a basic project in bilingual education.

(b) The project may address the needs of all children of limited English proficiency in a project area, or it may focus on children of limited English proficiency who are—

(1) Handicapped;

(2) Gifted and talented;

(3) Juvenile delinquents;

(4) Potential dropouts; or

(5) Preschool children.

(c) The project may demonstrate exemplary approaches to or methods for any aspects of a program of bilingual education. This may include exemplary types of community or parental involvement or exemplary patterns of curriculum and staff organization.

(20 U.S.C. 3231)

How Does One Apply for a Grant?

§ 123a.120 What provisions apply to applications?

The provisions in subpart C under Basic Projects apply to Demonstration Projects.

(20 U.S.C. 1221e–3, 3223, 3231)

How Is a Grant Made?

§ 123a.130 What are the selection criteria?

(a) The Commissioner uses the selection criteria for Basic Projects (123a.30) to evaluate applications.

(b) The Commissioner reduces by 50 percent the total points assigned to the criteria in (a).

(c) The Commissioner applies the specific criteria in § 123a.131.

(d) The total net possible score for the criteria in (a) and (c) is 100 points.

(20 U.S.C. 1221e–3, 3231(b), (c))

§ 123a.131 What specific criteria are used to evaluate applications?

The Commissioner uses the following specific criteria worth a maximum of 50 possible points to evaluate applications:

The extent to which the project activities are designed—

(a) To produce a beneficial change in the delivery of educational programs; (10 points)

(b) To fulfill an identified need not currently addressed by funded projects; (15 points)

(c) To produce needed curricula; (10 points) and

(d) To provide measures of the success of the project based on systematic evaluation. (15 points)

(20 U.S.C. 1221e–3, 3231)

§ 123a.132 Does the Commissioner have priorities among the activities?

The Commissioner periodically may select specific target groups or approaches described in § 123a.110(b) or (c) as priorities. If the Commissioner selects priorities, he or she generally funds applications within the priorities before funding other applications for Demonstration Projects. These priorities are announced in the notice of closing date published in the Federal Register.

(20 U.S.C. 1221e–3, 3231)

What Conditions Must Be Met by a Grantee?

§ 123a.140 What conditions apply?

The Conditions for the Basic Projects in Bilingual Education (§§ 123a.40 through 123a.50) apply to Demonstration Projects.

(20 U.S.C. 3231)

Subpart D—State Educational Agency (SEA) Projects for Coordinating Technical Assistance

What Kinds of Activities Does the Office of Education Assist?

§ 123a.210 What activities are eligible for assistance?

(a) The Commissioner awards funds to an SEA to provide technical assistance—and to coordinate technical assistance provided by other agencies or organizations—to programs of bilingual education in its State that are funded under these regulations.

(b) Activities under these projects are limited to coordination and technical assistance designed to—

(1) Coordinate programs of bilingual education funded under these regulations with other State, local, and Federal programs that share similar goals, purposes, and approaches.

(2) Develop financial support for programs of bilingual education funded under these regulations by LEAs, IHEs, and nonprofit private organizations;

(3) Improve the assessment and use of curriculum materials developed by these programs;

(4) Identify the children most in need of bilingual education services under these programs;

(5) Help personnel in these programs to meet State requirements for bilingual personnel;

(6) Evaluate the effectiveness of these programs; and

(7) Improve the quality of instruction and management in these programs.

(8) Select and use instruments in these programs to measure the language proficiency of—

(i) Children of limited English proficiency;

(ii) Personnel employed in bilingual education programs; or

(iii) Trainers in higher education bilingual programs.

(9) Other activities approved by the Commissioner.

(20 U.S.C. 3231(b)(5))

How Is a Grant Made?

§ 123a.230 How are funds distributed to SEAs?

(a) The Commissioner awards a grant to each SEA that applies if the SEA—

(1) Meets the applicable requirements in the Act and these regulations;

(2) Submits an application that achieves a score of at least 50 points under the evaluation criteria.

(b) The Commissioner determines the amount of an award to an SEA under the evaluation criteria subject to the applicable statutory constraints.

(c) The Commissioner may request revision in the SEA's application to strengthen the project. Subject to those revisions the Commissioner may increase the amount of the initial award.

(20 U.S.C. 3231(b)(5))

§ 123a.31 What criteria does the Commissioner use?

In asssessing an SEA application for assistance, the Commissioner uses the following criteria worth a total of 100 possible points.

(a) The general criteria in EDGAR §§ 100a.202 through 100a.206 weighted as follows:

(1) Plan of operation. (10 points)

(2) Quality of key personnel. (7 points)

(3) Budget and cost effectiveness. (5 points)

(4) Evaluation plan. (5 points)

(5) Adequacy of resources. (3 points)

(b) The general criterion regarding the recruitment and employment of appropriate bilingual personnel, found in § 123.30 and worth a maximum of 10 possible points.

(c) The following program specific criteria:

(1) The extent to which the proposed project will improve in the State the quality of programs of bilingual education funded under these regulations. (30 points)

(2) The extent to which the proposed project is designed to build the financial

and programmatic capacity of the LEA in the State to provide bilingual education programs following the expiration of Federal funding of these programs. (30 points)

(20 U.S.C. 3231(b)(5))

Subpart E—Support Service Projects

What Kinds of Activities Does the Office of Education Assist?

§ 123a.310 What are the purposes of Support Service Projects?

(a) Grants under the Support Service Projects fund centers that provide services to—

(1) Strengthen programs of billingual education; and

(2) Strenghen training programs for persons serving in or preparing to serve in programs of bilingual education.

(b) The centers may provide services to programs of bilingual education and bilingual education training programs whether or not these programs are funded under these regulations.

(c) There are two types of centers covered in these regulations: Bilingual Education Service Centers (BESCs) and Evaluation, Dissemination, and Assessment Centers (EDACs).

(20 U.S.C. 3231(a)(3), (a)(4), 3233)

§ 123a.311 What activities are eligible for support under a BESC project?

(a) A BESC shall conduct training for administrators, counselors, paraprofessionals, teachers, teacher aides, other persons associated, or preparing to be associated with a program of bilingual education or an IHE bilingual education training program.

(b) Training shall focus on imparting knowledge and developing skills—appropriate to person associated with different program aspects—to—

(1) Understand the purposes and nature or bilingual education;

(2) Plan, implement, or evaluate instructional programs including auxiliary and supplementary training;

(3) Select and implement instructional and evaluative designs;

(4) Select and use instructments to measure the language proficiency of—

(i) Children of limited English proficiency;

(ii) Personnel employed in bilingual education programs; or

(iii) Trainers in higher education bilingual programs;

(5) Select and use instruments to measure academic achievement of children of limited English proficiency;

(6) Identify and use community resources; and

(7) Identify and use appropriate instructional and supplementary materials; or

(8) A combination of these.

(20 U.S.C. 3231(a)(3), 3233)

§ 123a.312 What training is provided for parents by a BESC?

A BESC shall conduct training to enable parents involved in a bilingual education program to—

(a) Understand its goals and purposes;

(b) Participate in its development and implementation;

(c) Participate in its advisory council and advisory committee; and

(d) Obtain and understand information regarding the academic progress of their children.

(20 U.S.C. 3231(a)(3), 3233)

§§123a.313–123a.315 [Reserved]

§ 123a.316 What activities are eligible for support under an EDAC project?

An EDAC—

(a) Evaluates the effectiveness and applicability of materials for use in programs of bilingual education or in bilingual education training programs.

(b) Publishes and disseminates—

(1) Appropriate evaluation methods and materials; and

(2) Information on available experts and resources in bilingual education;

(3) Materials developed under this Act.

(c) Assesses within the center's service area—

(1) The number of children in need of bilingual education;

(2) The number of and need for bilingual teachers and other personnel; and

(3) The need for curriculum materials and student assessment instruments; and

(d) Develops instruments and procedures for use in needs assessment surveys.

(e) Trains personnel of a BESE or an SEA in the selection of appropriate evaluation and assessment methods and materials.

(20 U.S.C. 3231(a)(4))

How Is a Grant Made?

§ 123a.330 What criteria does the Commissioner use in selecting a support center?

(a) The Commissioner may periodically specify geographic service areas or particular language groups to be served by a particular type of support center. For example, the Commissioner may invite applications to provide services related to the needs of Spanish-dominant children in a particular four-State area.

(b) The Commissioner determines these service areas and language groups based on the need for services provided by the centers.

(c) Subject to limits established under paragraph (a), the Commissioner uses the following criteria—worth a total of 100 possible points—in selecting grantees:

(1) The general criterion regarding the recruitment and employment of appropriate bilingual personnel, found in § 123.30 and worth a maximum of 10 points.

(2) *General criteria.* The general criteria in EDGAR §§ 100a.202 through 100a.206 weighted as follows:

(i) Plan of operation. (10 points)

(ii) Quality of key personnel. (7 points)

(iii) Budget and cost effectiveness. (5 points)

(iv) Evaluation plan. (5 points)

(v) Adequacy of resources. (3 points)

(3) *Program-specific criteria.*

(i) The extent to which the applicant has assessed, by reliable and objective means, the needs to be served by the center; (20 points)

(ii) The quality of the proposed activities in responding effectively to those needs; (20 points)

(iii) The extent of the applicant's proposed coordination with other resources serving bilingual education programs. (20 points)

(20 U.S.C. 1221e–3, 3231(a)(3), (a)(4), 3233)

Subpart F—Training Projects

What Kinds of Activities Does the Office of Education Assist?

§ 123a.410 What types of activities are eligible for support?

The following activities are authorized to be carried out under training projects for persons participating in, or preparing to participate in, bilingual education projects such as administrators, counselors, paraprofessionals, parents, teachers, and teacher-aids:

(a) Training that leads to an undergraduate degree or teaching credential with a specialization in bilingual education.

(b) Encouraging reform, innovation, and improvement in graduate bilingual education programs by—

(1) Developing curricula for bilingual education programs at IHEs.

(2) Recruiting and retaining qualified bilingual faculty at IHEs.

(3) Providing training to improve language, research, instructional, or administrative skills of faculty members at IHEs who are directly involved in

training personnel for bilingual education programs.

(c) Providing specialized graduate bilingual education degree curricula in administration or supervision, guidance and counseling, evaluation, and curriculum development.

(d) Training projects designed to improve the skills of the participants through short-term or year-round training institutes.

(e) Training projects to increase the skills of SEA personnel.

(20 U.S.C. 3233(a)(1), (a)(7))

Subpart C [Reserved]

How Is a Grant Made?

§ 123a.430 What are the funding procedures?

(a) The Commissioner reviews separately applications or components of applications proposing each of the authorized activities described in § 123a.410.

(b) The Commissioner reviews applications or components of applications according to the procedures described in §§ 123a.431 or 123a.432, as appropriate to select projects for approval.

(c) The Commissioner states in the notice of closing date the amount of funds available for each type of project.

(20 U.S.C. 3233(a)(1))

§ 123a.431 What are the specific criteria for short-term or year-round training institutes?

(a)(1) The Commissioner uses the general program criteria in EDGAR in evaluating applications that propose the activities described in § 123a.410(c).

(2) These criteria comprise 30 points.

(b) The Commissioner uses the criterion in § 123a.30 related to recruitment and employment of bilingual personnel worth 10 points.

(c) The Commissioner also uses the following specific criteria:

(1) The extent to which the proposed project will improve the skills of participants in carrying out their responsibilities in connection with bilingual education programs. (40 points)

(2) The extent to which the proposed project will utilize bilingual techniques in training the participants. (20 points)

The total points that can be obtained is 100 points.

(20 U.S.C. 3233(a)(1))

§ 123a.432 What are the criteria for all other projects?

In addition to the general criterion related to recruitment and employment of appropriate bilingual personnel—found in § 123.30 and worth 10 possible points—the Commissioner uses the criteria in EDGAR worth a maximum of 30 possible points, and the following specific criteria—worth a maximum of 60 possible points—in evaluating applications for all projects other than short-term or year-round training institute projects.

(a) The extent to which the proposed project will incorporate the use of both English and a language other than English as a medium of instruction. (10 points)

(b) The extent to which the proposed project includes field experience with programs of bilingual education. (10 points)

(c) The extent to which the proposed project affords promise of increasing the number of professional educational personnel in programs of bilingual education. (15 points)

(d) Capacity building as evidenced by the extent to which an educational program will be available at the IHE for students within two or three years in order to assure quality training of bilingual education personnel. (10 points)

(e) The commitment of the IHE to the operation of the program as evidenced by the institutional financial support on a year-to-year basis. (15 points)

(20 U.S.C. 3233(a)(1))

What Conditions Apply to a Grantee?

§ 123a.440 What requirements apply to all grantees?

A grantee shall give priority to training persons who—

(a) Are bilingual; and

(b) Demonstrate a high degree of interest in bilingual education.

(20 U.S.C. 3233(a)(1))

§ 123a.441 What requirements apply to certain grantees?

A grantee that is carrying out an activity authorized under § 123a.410 (a) or (b) shall require that all participants in its training program demonstrate proficiency in English and in the target language as a condition of successful completion of the program.

(20 U.S.C. 3233(a)(1))

Subpart G—School of Education Projects

What Kinds of Activities Does the Office of Education Assist?

§ 123a.510 Purpose of school of education projects.

(a) The purpose of a school of education grant is to establish or expand an existing bilingual education training program at a school or department of education within an IHE.

(b) The program to be established or expanded must be a degree-granting program at either the undergraduate or graduate level.

(c) A school of education grant develops and IHE's training capacity by supporting the hiring and retension of a faculty member who, under the direct supervision of the head of the school of education, plans, organizes, and administers the training program.

(20 U.S.C. 3233(a)(1))

§ 123a.511 What activities are eligible for support?

The grantee shall employ a full-time faculty member or members to—

(a) Design and develop a multi-disciplinary specialization in bilingual education applicable to elementary and secondary schools;

(b) Design and develop a teaching credential with a specialization in bilingual education;

(c) Design and develop specialized programs in bilingual education. These programs may be related to areas such as special education, reading, evaluation, counseling, early childhood education, curriculum and instruction. The Commissioner may reserve funds or place priority on one or more of these specialized areas in the annual notice of closing date; or

(d) Carry out other training activities described in § 123a.410 (a) or (b).

(20 U.S.C. 3233(a)(1))

How Is a Grant Made?

§ 123a.530 What criteria are used to evaluate applications?

In evaluating an application the Commissioner uses the general criteria in EDGAR, the bilingual education program general criterion, and program specific criteria. The total possible points is 100.

(a) The EDGAR general criteria in §§ 100a.202 through 100a.206 comprise 40 possible points as follows:

(1) Plan of operation. (15 points)

(2) Quality of key personnel. (7 points)

(3) Budget and cost effectiveness. (5 points)

(4) Evaluation plan. (8 points)

(5) Adequacy of resources. (5 points)

(b) The bilingual education general criterion regarding the recruitment and employment of appropriate bilingual personnel, found in § 123.30 is worth a maximum of 10 possible points.

(c) In addition, the Commissioner uses the following specific criteria—worth a maximum of 50 points—in evaluating applications:

(1) The extent to which the project will improve the capacity of the institution to train personnel for bilingual education. (20 points)

(2) The extent to which the project is likely to improve and reform the program in bilingual education at the IHE. (20 points)

(3) The committment of the institution and of the head of the school or department of education to the success of the project. (10 points)

(20 U.S.C. 3233(a))

What Conditions Must Be Met by a Grantee?

§ 123a.540 How are the activities to be carried out?

A grantee shall—

(a) Appoint a full-time faculty member to administer the project.

(b) Place this faculty member in the organizational structure so as to provide access to key decision makers, including the head of the school or department of education.

(c) In hiring this faculty member—consider persons who have completed their doctoral training in the Bilingual Education Fellowship Program, as well as other qualified applicants.

(d) Provide no teaching responsibilities to this faculty member during the first year of the project.

§ 123a.541 What are the funding requirements?

The Commissioner reimburses the institution for the salary of the faculty member(s) employed for this project according to the following schedule:

(1) First year—100 percent of the total cost.

(2) Second year—⅔ of the total cost.

(3) Third year—⅓ of the total cost.

(20 U.S.C. 1221e-3, 3233(a)(1))

§ 123a.542 What is the faculty status of project personnel?

In those institutions that award tenure, the faculty member(s) hired for this project shall have employment status that assures them equal opportunity for tenure at the institution.

§ 123a.543 What other requirements apply?

The institution shall provide adequate office space and supplies necessary for the conduct of the project.

(20 U.S.C. 3233(a)(1))

PART 123b—BILINGUAL EDUCATION: DESEGREGATION SUPPORT PROGRAM

Subpart A—General

Sec.

123b.1–123b.4 (See § 123.1–123.4)
123b.4 What definitions apply to this program?

Subpart B—What Types of Projects Does the Office of Education Assist?

123b.10 What activities are eligible for assistance under the Desegregation Support Program?

Subpart C—How Does One Apply for a Grant?

123b.20 What are the requirements when applying for a desegregation support project?

Subpart D—How Is a Grant Made?

123b.30 What are the funding procedures?
123b.31 What are the selection criteria for applications that propose activities described in § 123a.10(a)?
123b.32 What are the selection criteria for applications that propose activities described in § 123a.10(b)?

Subpart E—What Conditions Apply to a Grantee?

123b.40 What are the requirements for advisory committees?
123b.41 What requirements apply to LEAs?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended. 92 Stat. 2282–2284 (20 U.S.C. 3261).

PART 123b—BILINGUAL EDUCATION: DESEGREGATION SUPPORT PROGRAM

Subpart A—General

§ 123b.3 What definitions apply to this program?

"Minority group," with reference to members of that group, means—

(1) Persons who are American Indians, Alaskan Natives, Asians, Pacific Islanders, Blacks, Hispanics, Franco-Americans, or Portuguese; or

(2) Persons who are from environments in which the dominant language is other than English, and who, as a result of language barriers and cultural differences, do not have an equal educational opportunity.

(20 U.S.C. 3207(6), 3261)

Subpart B—What Types of Projects Does the Office of Education Assist?

§ 123b.10 What activities are eligible for assistance under the desegregation support program?

(a) An LEA may undertake any activity that is—

(1) Authorized for a basic program (§ 123a.10); or

(2) Designed to develop the reading, writing, and language skills in the native language of students enrolled in the project.

(b) An LEA or a nonprofit private agency, institution, or organization may develop curricula that are—

(1) Designed to meet the special educational needs of children of limited English proficiency for the development of reading, writing, and speaking skills in the English language and in their native or dominant language; and

(2) Designed to meet the needs of children of limited English proficiency and their classmates to understand the history and cultural backgrounds of the minority groups of which the children are members.

(20 U.S.C. 3261(a)(1))

Subpart C—How Does One Apply for a Grant?

§ 123b.20 What are the requirements when applying for a desegregation support project?

(a) Before preparing its application, an LEA shall establish an advisory council that meets the requirements of this paragraph.

(1) The council must consist of at least seven persons who are broadly representative of parents, school officials, teachers, and interested members of the community or communities to be served;

(2) At least half the council must be parents;

(3) At least half the council must be members of the minority group the educational needs of which the project is intended to meet;

(4) The council must—

(i) Participate in planning the proposed project;

(ii) Review drafts of the application for assistance; and

(iii) Prepare comments on the content of the application.

(5) The LEA shall provide adequate staff and resources for the council to prepare comments and recommendations concerning the application.

(b) An LEA that applies to carry out the activities described in § 123b.10(a) shall meet the requirements in § 123a.22–§ 123a.24.

(20 U.S.C. 3261)

Subpart D—How Is a Grant Made?

§ 123b.30 What are the funding procedures?

(a) Except as provided in paragraph (g), the Commissioner uses the

procedures in this section to allocate funds appropriated for this program.

(b) The Commissioner reviews separately applications or components of applications proposing the activities described in § 123b.10(a) and those described in § 123b.10(b).

(c) The Commissioner reviews applications or components of applications according to the procedures described in §§ 123b.31 or 123b.32, as appropriate, to select projects for approval.

(d) The Commissioner states in the notice of closing date the amount available for each type of project.

(e) If funds available for the activities described in § 123b.10(a) are exhausted before an applicant's project is selected, the Commissioner considers that project for approval under part 123a (Basic Projects) based upon its score on the criteria in § 123a.30.

(f) An applicant that receives a grant under the procedures described in paragraph (e) may carry out only those activities authorized in part 123a (Basic Projects) and shall meet all requirements of that part.

(g) The Commissioner uses the procedures in section 751(a)(1) of the Act to allot funds appropriated for fiscal year 1980.

(20 U.S.C. 3261)

§ 123b.31 What are the selection criteria for applications that propose activities described in § 123b.10(a)?

(a)(1) The Commissioner uses the criteria in § 123a.30 to evaluate applications that propose activities described in § 123b.10(a).

(2) The Commissioner reduces the points assigned to those criteria by 40 percent.

(b) The Commissioner applies the following additional criteria:

(1) Using the table that follows this paragraph, the Commissioner assigns each application the number of points in column B that corresponds to the period of time in column A between—

(i) The date when the LEA implemented the desegregation plan on which it bases its eligibility; and

(ii) The due date for applications under this program.

(2)(i) For the purpose of this paragraph, the implementation date of a plan is the date of the first change in the enrollment of a school—or, in the case of a plan for the desegration of minority group segregated faculty, the first reassignment of a faculty member—under the plan.

(ii) If an LEA is implementing more than one plan or a plan that was implemented over a period of time, the implementation date is the date of the greatest change in the enrollments of schools, or the greatest number of reassignments of faculty members, as appropriate.

Table

Column A—Implementation date	Column B—Points
Up to 1 year	20
Up to 2 years	17
Up to 3 years	14
Up to 4 years	9
Up to 5 years	6
Up to 6 years	3
More than 6 years	0

(c)(1) The Commissioner considers the extent to which—

(i) The LEA's need for assistance under this program is directly related to the requirements of the plan on which it bases its eligibility; and

(ii) The proposed project is designed to complement any programs carried out under Title VI of the Elementary and Secondary Education Act.

(2) This criterion comprises 20 points.

(d)(i) The Commissioner adds the points obtained by each application under paragraphs (b) and (c).

(ii) The Commissioner funds applications in rank order until the funds available for activities described in § 123b.10(b) are exhausted.

(20 U.S.C. 3261)

§ 123b.32 What are the selection criteria for applications that propose activities described in § 123b.10(b)?

(a)(1) The Commissioner uses the general program criteria in EDGAR §§ 100a.202 through 100a.206 to evaluate applications that propose the activities described in § 123b.10(b).

(2) These criteria comprise 50 points, as follows:

(i) Plan of operation. (15 points)

(ii) Quality of key personnel. (20 points)

(iii) Budget and cost effectiveness. (5 points)

(iv) Evaluation plan. (5 points)

(v) Adequacy of resources. (5 points)

(b)(1) The Commissioner applies the criteria in § 123a.31 (b) and (c).

(2) These criteria comprise 40 points.

(c)(1) The Commissioner also applies the general criterion regarding the recruitment and employment of bilingual personnel in § 123.30.

(2) This criterion comprises 10 points.

(20 U.S.C. 3231(b)(3)(H), 3261)

Subpart E—What Conditions Apply to a Grantee?

§ 123b.40 What are the requirements for advisory committees?

(a) An LEA shall ensure that the advisory council described in § 123b.20(a) fully participates in implementing the project.

(b) A nonprofit private agency, institution, or organization shall establish an advisory committee that meets the following requirements:

(1) The advisory committee must consist of at least ten persons who are broadly representative of parents, school officials, teachers, and other interested members of the community or communities to be served by the project.

(2) At least half the members of the committee must be parents.

(3) At least half the members of the committee must be members of the minority group the educational needs of which the project is intended to meet.

(4) The committee must exercise policymaking authority with respect to the project.

(20 U.S.C. 3261(a)(2))

§ 123b.41 What requirements apply to LEAs?

An LEA that receives a grant to carry out the activities described in § 123b.10(a) shall comply with all the requirements in subpart E of part 123a (Basic Projects) except for the requirements of § 123a.41–123a–43 (advisory committees) and § 123, "Program Specific Definitions,"—a program of bilingual education—(participation of children whose language is English).

(20 U.S.C. 3261)

PART 123C—FELLOWSHIPS FOR PREPARATION OF TEACHER TRAINERS IN BILINGUAL EDUCATION

Subpart A—General

Sec.

123c.1–123c.4 (See § 123.1–123.4)

123c.5 What is the purpose of the fellowships?

Subpart B—How Does an Institution Apply for and Obtain Approval of its Fellowship Program?

123c.10 How does an institution apply?

123c.11 How does the Commissioner approve IHEs?

123c.12 How does the Commissioner evaluate requests for participation?

Subpart C—How Does An Individual Apply for a Fellowship?

123c.20 Where does an individual apply?

Subpart D—How Are Fellows Selected?

Sec.

123c.30 How does the Commissioner select fellows?

Subpart E—What Conditions Have To Be Met by Fellows?

123c.40 What are the contractual requirements?
123c.41 What is the period of a fellowship?
123c.42 What are the costs to be considered in the computation of an award?
123c.43 What are the limits on the amount of the stipend?
123c.44 What are the service requirements of the fellowship?
123c.45 How shall the recipient begin to account for his or her obligation?
123c.46 What are the requirements for payback of the fellowship?
123c.47 What is the repayment schedule?
123c.48 How is the amount to be paid back adjusted?
123c.49 What interest is charged?
123c.50 Under what circumstances is repayment deferred?
123c.51 Under what circumstances is repayment waived?
123c.52 What is the length of the deferment of payment?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended. 92 Stat. 2276–2278 (20 U.S.C. 3233).

PART 123c—FELLOWSHIPS FOR PREPARATION OF TEACHER TRAINERS IN BILINGUAL EDUCATION

Subpart A—General

§ 123c.5 What is the purpose of the fellowships?

The Commissioner awards fellowships for the purpose of permitting individuals to enroll in a full-time program of study leading to a postmaster's degree with a specialization in the training of teachers for bilingual education.

(20 U.S.C. 3233(a)(2))

Subpart B—How Does an Institution Apply for and Obtain Approval of its Fellowship Progam?

§ 123c.10 How does an institution apply?

(a) An eligible institution applies for participation by submitting to the Commissioner a request that provides information needed by the Commissioner to determine—

(1) The institution's eligibility; and

(2) Its responsiveness to the evaluation criteria in § 123c.12.

(b) The Commissioner may specify particular information requirements in a notice of closing date or in the application package.

(20 U.S.C. 3233(a)(2))

§ 123c.11 How does the Commissioner approve IHEs?

(a)(1) The Commissioner approves an IHE for participation with reference to one or more specific languages other than English and designates the maximum number of fellowships by language that may be awarded at the IHE.

(2) This number is based on—

(i) The IHE's capacity to prepare teacher trainers in bilingual education; and

(ii) The relative needs for bilingual education teachers by region and language.

(b) The Commissioner does not review IHE requests for participation on a competitive basis. The Commissioner approves or disapproves a request based on—

(1) The particular IHE's qualifications under the evaluation criteria in § 123c.12; and

(2) The relative needs for bilingual education teachers by region and language.

(20 U.S.C. 3233(a)(2))

§ 123c.12 How does the Commissioner evaluate requests for participation?

In evaluating a request for participation by an IHE, the Commissioner considers the quality of the institution's program of study in the field of teacher training in bilingual education, with emphasis on the following factors:

(a) The extent to which the program has been adopted as a permanent part of the graduate programs of study offered by the institution as evidenced by:

(1) The organizational location of the program;

(2) The theoretical and methodological framework of the program including its interdisciplinary aspects, and the courses to be taught bilingually;

(3) The requirements for satisfactory progress in, and completion of the program.

(b) The qualifications of faculty members for the programs of study, especially with regard to their bilingual competency, their knowledge of the history and culture of the United States and geographical areas associated with a language other than English, their professional status in the IHE, the percentage of time they will spend in the program, and the nature of their work.

(c) The extent to which the progrm, either through required courses or field experiences, affords promise of imparting pedogogical, linguistic, cultural, research, and testing competencies that prepare fellows to train bilingual education teachers at elementary and secondary schools.

(d) The extent to which the program includes effective means of providing field based experience designed to prepare trainers of bilingual education teachers including arrangements with LEAs, SEAs, and persons or organizations with expertise in bilingual teacher training for the implementation of field-based aspects of the program.

Subpart C—How Does an Individual Apply for a Fellowship?

§ 123c.20 Where does an individual apply?

(a) An individual submits an application for a fellowship to the IHE in which that individual is accepted for enrollment.

(b) Each participating IHE establishes procedures for the receipt of applications from individuals.

(c) A list of participating institutions may be obtained by writing to the Office of Bilingual Education, U.S. Office of Education, 400 Maryland Avenue S.W. (421 Reporters Building), Washington, D.C. 20202.

(20 U.S.C. 3233(a)(2))

Subpart D—How Are Fellows Selected?

§ 123c.30 How does the Commissioner select fellows?

(a) Each participating IHE shall forward to the Commissioner all fellowship applications that it received and shall designate its recommended nominees. The Commissioner selects fellows from among these applications.

(b) Subject to the maximum number of fellowships designated for each IHE, the Commissioner applies the following criteria weighted according to the points indicated.

(1) *Financial need.* The extent to which the application demonstrates the financial need of the applicant. (25 points)

(2) *Academic record.* The quality of the academic record of the applicant. (20 points)

(3) *Bilingual proficiency.* The applicant's proficiency in both English and the other language(s) of study. (15 points)

(4) *Experience.* The quality and extent of the applicant's experience in teaching, administering, or providing services to programs of bilingual education. (20 points)

(5) *Need for teachers.* The need for teachers of various groups of individuals with limited English proficiency. (20 points)

(20 U.S.C. 3233(a)(2))

Subpart E—What Conditions Have To Be Met by Fellows?

§ 123c.40 What are the contractual requirements?

Upon selection for a fellowship, the recipient shall sign a contract provided by the Commissioner and agree to the conditions specified in this subpart.

(20 U.S.C. 3233(a)(b))

§ 123c.41 What is the period of a fellowship?

A fellowship remains in effect only for the period that the recipient maintains satisfactory progress in an eligible program of study.

(20 U.S.C. 3233(a)(6))

§ 123c.42 What are the costs to be considered in the computation of an award?

A fellowship may include:

(a) The cost of tuition and other fees required by the IHE;

(b) Up to $250 for books; and

(c) Up to $250 for travel to sites of field study. Third year doctoral students may have this amount increased.

(d) A stipend for a recipient—

(1) Who is gainfully employed 20 or fewer hours per week or not employed; and

(2) Who has had at least one year of experience in teaching in administering, or providing services to programs of bilingual education.

(20 U.S.C. 3233(a)(3))

§ 123c.43 What are the limits on the amount of the stipend?

An institution may award—

(a) A stipend of up to $400 per month for not more than two years to a recipient—

(1) Enrolled full time in a post-master's degree program; and

(2) With at least one year of experience in bilingual education; or

(b) A stipend of up to $500 per month for not more than three years to a recipient—

(1) Enrolled full time in a doctoral degree program, and

(2) With at least two years of experience in bilingual education.

(20 U.S.C. 3233(a)(3))

§ 123c.44 What are the service requirements of the fellowship?

(a) A recipient of a fellowship shall agree to work in one or more of the following activities for a period of time equivalent to that for which he or she received assistance under the fellowship:

(1) Training personnel or bilingual education programs at IHEs.

(2) Conducting research related to training bilingual education personnel.

(3) Conducting evaluations of programs designed to train bilingual education personnel.

(4) Developing curriculum materials designed for bilingual instruction.

(5) Training personnel employed by an SEA, an LEA, or a nonprofit private organization to meet the special educational needs of students of limited English proficiency.

(6) Training parents or community advisory groups in school districts serving students of limited English proficiency.

(7) Working in any other activity that relates to training bilingual education personnel and that has been approved in advance by the Commissioner.

(b) A recipient shall begin working in one of these authorized activities within one year of the date he or she is no longer enrolled as a full-time student at an IHE.

(20 U.S.C. 3233(a)(6))

§ 123c.45 How shall the recipient begin to account for his or her obligation?

Within one year from the date she or he ceases to be enrolled as a full-time student at an IHE, the recipient shall—

(a) Submit to the Commissioner a description of the authorized work in which she or he is employed;

(b) Submit to the Commissioner the first monthly payment required under §§ 123c.46 through 123c.48; or

(c) Submit to the Commissioner a request for a deferment or waiver accompanied by a statement of justification.

(20 U.S.C. 3233(a)(6))

§ 123c.46 What are the requirements for pay-back of the fellowship?

If a recipient does not work in one of the authorized activities, she or he shall repay the amount of the fellowship. This amount may be adjusted according to § 123c.48.

(20 U.S.C. 3233(a)(6))

§ 123c.47 What is the repayment schedule?

A recipient required to repay the amount of a fellowship shall—

(a) Begin repayments no later than one year from the date he or she is no longer enrolled as a full-time student at an IHE.

(b) Repay the amount owed in equal monthly installments of at least $30 each.

(c) Repay the required amount, including interest, no later than 15 years after the beginning of the repayment period. This period will be extended if the Commissioner grants a deferment.

(20 U.S.C. 3233(a)(6))

§ 123c.48 How is the amount to be paid back adjusted?

The Commissioner prorates the amount a recipient is required to repay based on the length of time the recipient worked in an authorized activity compared with the length of time during which he or she received assistance.

(20 U.S.C. 3233(a)(6))

§ 123c.49 What interest is charged?

The Commissioner charges a recipient interest on the unpaid balance owed by the recipient at the rate of seven percent per year. No interest is charged for the period of time—

(a) That precedes the date on which the recipient is required to commence repayment; or

(b) During which repayment has been deferred.

(20 U.S.C. 3233(a)(6))

§ 123c.50 Under what circumstances is repayment deferred?

The Commissioner may defer repayment if the recipient—

(a) Suffers from a serious physical or mental disability that prevents or substantially impairs the recipient's employment in authorized work;

(b) Is unable to secure employment in any of the authorized work activities;

(c) Re-enrolls as a full-time student at an IHE;

(d) Is a member of the Armed Forces of the United States;

(e) Is in service as a volunteer under the Peace Corps Act;

(f) Is a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973; or

(g) Demonstrates to the Commissioner's satisfaction the existence of circumstances that prevent him or her from making a scheduled payment(s).

(20 U.S.C. 3233(a)(6))

§ 123c.51 Under what circumstances is repayment waived?

The Commissioner may waive repayment if the recipient—

(a) Suffers from a serious physical or mental disability that prevents or substantially impairs the recipient's employment in authorized work; or

(b) Demonstrates the existence of other extraordinary circumstances.

(20 U.S.C. 3233(a)(6))

§ 123c.52 What is the length of the deferment of payment?

(a) A recipient shall renew a deferment on a yearly basis, unless the Commissioner determines otherwise.

(b) Deferments for military, Peace Corps, or Domestic Volunteer service may not exceed three years.

(20 U.S.C. 3233(a)(6))

[Note.—This appendix to the Notice of Proposed Rulemaking will not appear in the Code of Federal Regulations.]

Appendix A—Materials Development Projects for Programs of Bilingual Education.

These provisions govern awards for materials development projects in fiscal year 1980. Subsequent awards will be made through a contractual procedure subject to Federal and HEW procurement regulations in Chapters 1 and 3 of 41 CFR.

Section I—*Purpose.*

Materials development projects develop instructional and testing materials for programs of bilingual education and training programs authorized under the Bilingual Education act.

Section II—*Eligibility.*

A local educational agency or an institution of higher education that applies jointly with one or more local educational agencies is eligible to apply for assistance.

Section III—*Authorized Activities.*

(1) Developing instructional and testing materials for bilingual education programs.

(2) Developing instructional materials for use by institutions of higher education in preparing persons for vocations in the field of bilingual education.

(3) Conducting and analyzing assessment surveys to justify the specific need for a materials development plan.

(4) Any other activity necessary for the development of instructional materials, for which the Commissioner gives prior written approval.

Section IV—Selection Criteria.

The Commissioner uses the following criteria—worth a total of 100 possible points—in selecting grantees. The general criteria in EDGAR §§ 100a.202 through 100a.206 weighted as follows:

(1) Plan of operation. (10 points)

(2) Quality of key personnel. (7 Points)

(3) Budget and cost effectiveness.(5 points)

(4) Evaluation plan. (5 points)

(5) Adequacy of resources. (3 points)

Program—specific criteria.

(1) How the applicant justifies, by reliable and objective means the need for instructional materials. (15 points)

(2) The extent to which the materials will significantly benefit programs of bilingual education. (15 points)

(3) The quality of the applicant's plan to deliver adequate numbers of copies of instructional materials for testing purposes. (15 points)

(4) The extent of the applicant's proposed coordination with BESCs and EDACs to test, publish, and disseminate these materials. (15 points)

(5) The extent the applicant proposes to recruit and employ appropriate bilingual personnel. (10 points)

[FR Doc. 79-20174 Filed 6-28-79; 8:45 am]

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Friday
June 29, 1979

Part XVIII

Department of Energy

Economic Regulatory Administration

Motor Gasoline Allocation Base Period

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Part 211]

[Docket No. ERA-R-79-23]

Motor Gasoline Allocation Base Period—Comment Period Change

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Change of Comment Period.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is terminating the public comment period on July 5, 1979 rather than on July 10, 1979 with respect to its interim final rule related to the motor gasoline allocation base period. In view of the comments received so far and the supply shortages currently being experienced, this action is taken to permit ERA to adopt quickly a final rule in this matter.

DATES: Comments by July 5, 1979.

ADDRESSES: All comments to Public Hearing Management, Docket No. ERA–R–79–23, Economic Regulatory Administration, Room 2313, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert Gillette (Comment Procedures), Economic Regulatory Administration, Room 2214 B, 2000 M Street, NW., Washington, D.C. 20461, (202) 254–5201.
William Webb (Office of Public Information), Economic Regulatory Administration, Room B 110, 2000 M Street, NW., Washington, D.C. 20461, (202) 634–2170.
William Caldwell (Office of Regulations and Emergency Planning), Economic Regulatory Administration, Room 2314, 2000 M Street, NW., Washington, D.C. 20461, (202) 254–8034.
Joel Yudson (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 254–6744.

SUPPLEMENTARY INFORMATION: On May 1, 1979, the ERA issued an interim final rule and notice of proposed rulemaking (44 FR 26712, May 4, 1979) which, among other things, updated the motor gasoline base period and adopted an unusual growth adjustment provision. Hearings were held in Washington, D.C., on June 7, 1979 and in San Francisco, California, on June 19, 1979. Written comments were scheduled to be received until July 10, 1979. We have already received many comments in connection with the interim final rule, including a number from State Governors and representatives. Many of the commenters urge modification of the rule. We believe that it will be necessary to issue a final rule well before September 30, 1979, the expiration date of the interim rule. To help resolve some of the current supply problems, we intend to adopt a final rule that will place into effect some of the suggested modifications in time to be effective for August allocations. Accordingly, we are shortening the comment period by five days from July 10, 1979 to July 5, 1979.

Issued in Washington, D.C., June 28, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

[FR Doc. 79-20455 Filed 6-28-79; 12:31 p.m.]
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